

STUDY:
THE COSTS/BENEFITS OF HOME RULE STATUS

Prepared through the Northwest Colorado Council of Governments'
Technical Assistance Grant Program
In partnership with the Colorado Department of Local Affairs
Energy and Mineral Impact Assistance Program



PREPARED BY: Rachel E. Lunney
Director of Member Services
Northwest Colorado Council of Governments

PREPARED FOR: Town of Grand Lake

DATE: May 8, 2000

NORTHWEST COLORADO COUNCIL OF GOVERNMENTS
STUDY: A COST/BENEFIT ANALYSIS OF HOME RULE STATUS
TABLE OF CONTENTS

SUMMARY.....	1
SPECIFIC AREAS OF INTEREST FOR GRAND LAKE.....	6
TAXATION OF RENTALS.....	6
ADMISSIONS / THEATER PERFORMANCE TAX.....	7
OCCUPATION / EMPLOYMENT TAX.....	7
NIGHTLY LODGING RENTAL TAX.....	7
TAXATION PROVISION.....	8
DEVELOPMENT IMPACT FEES / TAXES.....	8
OTHER TAXES.....	9
MAXIMUM TOTAL SALES TAX.....	9
FRANCHISES.....	9
BONDS.....	10
IMPROVEMENT DISTRICTS.....	10
COSTS INVOLVED WITH SELF-COLLECTION OF SALES TAXES.....	11
ESTIMATED COSTS OF ESTABLISHING HOME RULE CHARTER.....	14
ADDITIONAL BENEFITS OF HOME RULE.....	15
APPENDIX A: C.R.S. 39-26-104. PROPERTY AND SERVICES TAXED.....	16
APPENDIX B: COLORADO SALES TAX EXEMPTIONS.....	18

**NORTHWEST COLORADO COUNCIL OF GOVERNMENTS
STUDY ON THE COSTS AND BENEFITS OF HOME RULE STATUS**

Summary:

Northwest Colorado Council of Governments receives funding every year from the Colorado Department of Local Affairs through the Energy and Mineral Impact Assistance Program. NWCCOG utilizes this funding to provide a variety of technical assistance programs to members. One of these programs is the Technical Assistance Grant Program, whereby members may request funding and/or NWCCOG staff assistance to complete a variety of community development projects.

Through this Technical Assistance Grant Program, the Town of Grand Lake has requested NWCCOG staff assistance in conducting a cost/benefit analysis of home rule status. The grant program aims to fund projects that can serve as a model for other communities in NWCCOG's region. Therefore, we are sharing this study so that it can be used as a resource by all NWCCOG members, especially statutory towns that are considering home rule.

NWCCOG's Region:

This study focuses on home rule as it pertains to municipalities only. Home rule as it pertains to counties is significantly different, and may be the subject of a future study. Currently, one-half of NWCCOG's 20 member municipalities are home rule. The table below provides a list of these towns and the date they adopted the home rule charter:

NWCCOG's Region:

Statutory Towns	Home Rule Towns	HRT – Date Charter Adoption	HRT – Date of Charter Amendments
Basalt	Aspen	6/16/70	
Eagle	Avon	6/13/78	7/84
Fraser	Breckenridge	4/1/80	
Granby	Dillon	4/20/93	
Grand Lake	Frisco	8/1/88	
Hot Sulphur Springs	Gypsum	10/21/82	
Kremmling	Minturn	4/6/82	
Montezuma	Silverthorne	3/22/94	
Red Cliff	Vail	9/12/72	11/85, 11/95
Walden	Winter Park	4/12/83	

Study Methodology:

Differences between statutory towns and home rule towns exist in many different areas, including form of government, organization and structure of the town, land use, election procedures, taxation, eminent domain, etc. Grand Lake specifically was interested in examining whether or not it would make fiscal sense to undertake the challenge of becoming home rule. Specifically, Grand Lake's interest lies in the following issues:

- ◆ What additional powers and flexibility in the area of taxation would Grand Lake realize if it became home rule? Could the town then tax the following:
 - ◆ Rentals on skis, snowmobiles, and boats
 - ◆ Horse rides

- ◆ Boat tours
 - ◆ Mini golf
 - ◆ Admissions
 - ◆ Occupation/employment
 - ◆ Nightly lodging rentals
- ◆ Would Home Rule status give Grand Lake any more powers and flexibility in the following areas:
- ◆ Assessing development impact fees to fund things such as affordable housing, open space, and trails
 - ◆ Granting franchises
 - ◆ Issuing bonds
 - ◆ Establishing improvement districts
- ◆ What are the costs/benefits associated with self-collection of sales taxes?
- ◆ What are the estimated costs associated with establishing home rule, including the costs of establishing the charter commission, writing the charter, associated legal costs, etc.

Grand Lake also would like to determine the resultant cost of administration of becoming home rule, as well as the impact on business owners, residents, and visitors.

This study provides information that will assist Grand Lake in determining the costs and benefits of home rule in the particular areas of interest to be used to determine whether or not home rule status is appropriate for their community.

Study Methodology:

NWCCOG staff interviewed staff from each of NWCCOG’s home rule municipalities and asked questions to determine, from their perspective, the costs and benefits of both home rule as well as self-collection of sales taxes, for those that self-collect. The following table provides the names and telephone numbers of the contact person at each town in case more information is sought:

Municipality	Contact Person	Telephone Number
Aspen	Larry Thorson, Finance Director	970/920-5029
Avon	Scott Wright, Finance Director	970/748-4000
Breckenridge	Don Taylor, Asst. Town Manager	970/453-2251
Dillon	Carrie McDonald, Treasurer	970/468-2403
Frisco	Clay Brown, Town Manager	970/668-5276
Gypsum	Jeff Shroll, Town Manager	970/524-7514
Minturn	Alan Lanning, Town Manager	970/827-5645
Silverthorne	Donna Braun, Finance Director	970/262-7303
Vail	Steve Thompson, Finance Director	970/479-2116
Winter Park	Nancy Anderson, Town Clerk	970/726-8081

Other sources of information used for this study include:

- ◆ Colorado Municipal League’s *Home Rule Handbook* (1999 Edition).
- ◆ Colorado Municipal League’s *1995 Municipal Taxes*.
- ◆ Colorado Department of Revenue website (www.revenue.state.co.us).
- ◆ Colorado Association of Municipal Sales Tax Auditors website (www.ci.boulder.co.us/camta).
- ◆ Home Rule Charters of the towns of Aspen, Avon, Breckenridge, Dillon, Frisco, Gypsum, Minturn, Silverthorne, Vail, and Winter Park.

- ◆ Colorado Revised Statutes – Title 29: Government – Local; Title 39: Taxation.
- ◆ Conversations with Geoff Wilson, General Counsel, Colorado Municipal League.
- ◆ Colorado Municipal League's *Matrix of Colorado Home Rule Charters*, 1998.
- ◆ Article from Municipal Lawyer, *Comprehensive Infrastructure Financing Strategies: The Excise Tax Alternative to Impact Fees*.

Summary:

In Colorado, municipalities have constitutional functional home rule powers reserved by the people in Article XX of the Colorado Constitution. Article XX reserves for citizens of home rule municipalities “the full right of self government in local and municipal matters.” A home rule municipality, in local and municipal matters, does not need a specific grant of authority to act from the state constitution or the state statutes, but if there is a limitation on its ability to act in the Colorado Constitution or in its own charter, it cannot act. A home rule municipality has more power than a statutory municipality because it can look beyond the statutes and a few constitutional provisions to Article XX as a source of power. Still, the powers of home rule municipalities are limited by their charters, federal law, the state constitution, court decisions, and, at times, the legislation enacted by the General Assembly. Thus, the determination of whether a particular matter is one of “local and municipal” concern under Article XX is key to home rule authority.

When a local problem arises, a statutory municipality can look only to the state statutes and a few constitutional provisions for its power or authority to act. On the other hand, where no statutory authority to act exists, home rule municipalities may still have the power to solve their local problems and solve them quickly, without resorting to the state legislature. As an example of the flexibility of home rule power, the following is a partial list of actions which home rule municipalities can take but which statutory municipalities may not pursue. A home rule municipality may:

- ◆ Within certain limits, create new tax sources to meet local financial needs;
- ◆ Establish its own maximum debt limitations or have no maximum limitations, as it desires;
- ◆ Establish its own time limitations for the repayment of municipal bonds;
- ◆ Establish its own procedures for providing street, sidewalk, and other special improvements;
- ◆ Have available broader and more flexible taxing powers, including the ability to collect, administer, and enforce sales and use taxes and to determine what transactions are subject to or exempt from sales and use taxes; the ability to establish procedures for the adoption, amendment, increase, or decrease of taxes; the authority to levy taxes not available to statutory municipalities, such as lodger taxes, admissions taxes, real estate transfer taxes, and other excise taxes; and the ability to provide property tax increase limits different from those provided for in the statutes.

Conclusion:

Through the research to complete this study, it is clear that home rule municipalities have more power and flexibility to deal with matters closest to home. The words “local and municipal” appearing in Article XX of the Constitution is not an expression which has a fixed meaning, however, and therefore the consultation of the town attorney will be necessary throughout the process of becoming home rule should the town decide to proceed. It is clear, however that the levy and collection of taxes for municipal purposes, and special assessments, are matters of municipal concern.

As the following report details, it is evident that the additional powers and flexibility that Grand Lake wishes to obtain is attainable by becoming home rule. Specifically, if Grand Lake becomes home rule, it will be able to:

- ◆ Expand its *taxable base* on which to apply sales tax to include snowmobile rentals, ski rentals, boat rentals, horse rides, boat tours and mini-golf;
- ◆ Impose an excise tax on new development to be used for a variety of growth-related expenditures;
- ◆ Apply new taxes including an admissions tax, lodgers tax, employment "head" tax;
- ◆ Have greater flexibility to assess development impact fees;
- ◆ Increase the town sales tax rate such that it would exceed the current total maximum 7% (8% in the case of Grand Lake) allowable per state statute;
- ◆ Establish its own guidelines and procedures for franchises, municipal borrowing, and establishing improvement districts.

Most "administrative" costs of being home rule is involved with the establishment of the charter. Since the majority of the home rule towns in NWCCOG's membership have been home rule for 10 or more years, this study was unable to provide estimated costs of each step in becoming home rule, but did list the necessary steps involved. It was not indicated that any additional "administrative" costs were incurred by a town once it becomes home rule; on the contrary, the home rule charter gives the town the ability to streamline many state-required processes such as publication requirements, bidding requirements, and allows the town to establish procedures for the simple and expeditious transfer of funds among municipal departments, which in most cases results in costs savings to the town. However, there are administrative costs involved with self collection of taxes, should the town decide to self-collect.

Grand Lake was also interested in examining the potential effects on business owners, residents, and visitors. The following are some potential effects, based on the results of the research of this study:

- ◆ *Business owners* – If the town institutes self-collection of taxes, there will need to be an education process to inform them of the change; many towns interviewed that self-collect see the fact that business owners now have a local contact as a major benefit to the business; if the sales tax base is expanded to include items that were previously not taxable, there will need to be a process to educate businesses on the process for collecting sales tax. If the town establishes an auditing program (not all self-collecting towns conduct audits), it will have to consider how having a local town employee auditing a local business will be accepted by that business, since that employee is so "close to home."
- ◆ *Visitors* – There will be an effect on visitors to Grand Lake on home rule only if the town proceeds with enacting new taxes. Most of the taxes that Grand Lake is examining in this study (sales tax to be extended to snowmobile and ski rentals, horse rides, boat tours, admissions tax, lodging tax) are taxes that will be borne mostly by visitors to the town.
- ◆ *Residents* – In general, municipal home rule is based upon the theory that the citizens of a municipality should have the right to decide how their local government is to be organized and how their local problems should be solved. The formation of a home rule charter commission, which is made up of citizens, puts the power in the hands of the citizens to do just this. Through the drafting and passage of the charter, it is up to the citizens to decide how powerful they want their local government to be. This will require a major education process to ensure that citizens understand what home rule means.

In summary, the information provided here is to be used as a basis to evaluate whether or not proceeding with home rule is appropriate for the Town of Grand Lake. It is important to note 2 things:

- (1) The adoption of the TABOR amendment in 1992 imposed uniform tax and spending limits on all local governments, including home rule municipalities. Prior to TABOR, home rule municipalities exercised considerable latitude to formulate their own tax structure. *Nevertheless, even in the post-TABOR era, home rule municipalities may still exercise broader taxing authority than do statutory municipalities, as will be shown by this report.*
- (2) The powers of a home rule municipality, in all areas including taxation, is not always “black and white.” There is a lack of definite limits on home rule powers, which creates legal uncertainty when the municipality legislates in a relatively new area. The power of home rule towns is limited by their charters, federal law, the state constitution, court decisions, and at times, the legislation enacted by the General Assembly. Thus, the determination of whether a particular matter is one of “local and municipal” concern under Article XX is key to home rule authority, and the use of the town attorney throughout this entire process is strongly recommended.

Home Rule Status Study

The following is a discussion on the powers of home rule municipalities vs. the powers of statutory municipalities in specific areas of interest to the Town of Grand Lake.

Taxation of Rentals (snowmobiles, skis, boats), Horse rides (guided, with and without meals), Boat tours, Mini golf:

A statutory town is limited, in terms of taxation powers, to the state tax base. This is defined generally in the state statutes 39-26-104 (Appendix A). Statutory municipalities must conform their local sales tax bases with the state sales tax base, except for food, residential power, and machinery and machine tools. The sales tax base of statutory municipalities is subject to reduction whenever the General Assembly acts to grant or broaden an exemption. A home rule municipality can, however, expand the *taxable base* beyond what a statutory town is allowed to have. Numerous home rule municipalities have a broader tax base or fewer exemptions (see list of state exemptions in Appendix B). For instance, a home rule municipality can expand its taxable base, and apply sales tax to rentals (snowmobiles, skis, boats) horse rides, boat tours, mini golf, and admissions. This is allowed, provided that the voters approve this tax. One thing to note: if a home rule municipality expands its taxable base, it may be forced to begin self-collecting because the state will not necessarily collect this addition to the tax base.

Based on conversations with finance and management staff of home rule municipalities in NWCCOG's region, a home rule municipality may change the sales and use tax base to include just about anything, after a successful election by the voters per TABOR. Provided that it self-collects, home rule municipalities have the right to establish their own regulations regarding those goods and services upon which to impose their local sales and use taxes.

The following are examples of where home rule municipalities have increased their sales tax base beyond that of the state:

- ◆ City of Aspen – considering taxing auto leases, lift tickets.
- ◆ Town of Avon – sales tax applies to groceries, ski rentals.
- ◆ Town of Breckenridge – sales tax applies to ski rentals, cable TV, lodging, short term rentals.
- ◆ Town of Dillon – sales tax applies to groceries and lodging.
- ◆ Town of Silverthorne – sales tax applies to ski rentals, rental of golf equipment, lodging, short-term rentals, groceries.
- ◆ Town of Vail – sales tax applies to ski rentals, groceries, short-term rental of amusement devices.
- ◆ Town of Winter Park – sales tax applies to auto leases, ski equipment rental, bike rental, and mini golf.
- ◆ City of Aurora – sales tax applies to telecommunications services (including internet access services), recreational services (including but not limited to pool and billiards, golf, bowling, coin-operated amusement devices, skating and tennis).

Home rule municipalities are also not limited to imposing use taxes only on motor vehicles and building and construction materials. Consequently, many apply their use tax as broadly as their sales tax.

Admissions/theater performances tax (seat tax):

The authority of a home rule municipality, under Colorado Constitution, Article XX, to adopt an admissions tax was upheld in *Deluxe Theatres, Inc. v. City of Englewood*, 198 Colo. 85, 596 P.2d 771 (1979). In *City of Sheridan v. City of Englewood*, 609 P.2d 108 (Colo. 1980), the Supreme Court ruled that a statutory municipality does not have authority to adopt an admissions tax. However, a statutory municipality presumably can levy an occupation tax on the operator.

There are two methods for a municipality to assess this tax:

- ◆ Levy a separate admissions tax, or
- ◆ Apply sales tax to admissions fees

Occupation/employment tax (head tax):

Home rule municipalities enjoy broad authority to impose so-called "occupation taxes" on business activities. Like statutory municipalities, home rule cities and towns can draw upon the broad authority set forth in the statute "to license, regulate and tax any and all lawful occupations and places of business." However, the authority to impose an occupation tax in a home rule municipality can also be derived from the municipality's own charter, as illustrated in the cases upholding the authority to impose a "head tax" on employees of a business operating within the municipality. The *Denver v. Duffy Storage and Moving Co.*, 168 Colo. 91, 450 P.2d 339 (1969) case is particularly significant in that it is the first Colorado case clearly to uphold the authority of a home rule municipality to levy occupational taxes on employees as well as employers.

There are several methods for a municipality to assess an occupation tax:

- ◆ Annual flat fee for each business
- ◆ Graduated scale based on number of employees
- ◆ General occupation tax/business license fee
- ◆ Tax levied on employees as well as employers (Denver, Aurora, Greenwood Village)
- ◆ Fee that varies by location within the town (Vail)

Nightly lodging rentals tax (bed tax):

No specific statutory authority exists for cities and towns to enact an accommodations or lodgers' tax. A statutory municipality, as well as a home rule municipality, presumably can levy an occupation tax on the operator. Some home rule municipalities impose an accommodations or lodgers' tax in the form of an increased sales tax rate or as a separate tax based on the price of the lodging pursuant to their taxing power conferred by Article XX of the Colorado Constitution.

Ways to tax lodging:

- ◆ Apply regular sales tax rate
- ◆ Levy a higher rate of sales tax on lodging
- ◆ Levy a separate accommodations tax instead of applying sales tax
- ◆ Impose both a sales tax and levy a separate accommodations tax

Grand Lake currently had a lodging tax of 1.8% that is remitted to the Grand County Convention and Tourism Board. However, if it became home rule, the town most likely could impose an additional town lodging tax, per its taxation powers granted by its home rule charter.

Taxation Provision:

After review of the ten home rule charters of NWCCOG's region, the following is a common provision regarding taxation that is found in the majority of these charters:

Authority to Levy Taxes:

The council may by ordinance, levy and collect taxes for municipal purposes which may include but shall not be limited to: general ad valorem property taxes, and excise taxes (such as sales taxes, use taxes, bed taxes, occupation taxes and real estate transfer taxes). No sales tax, use tax, bed tax or income tax shall be levied after the adoption of this Charter until such tax shall have been approved by a majority of the qualified electors voting at a regular or special election. For purposes of this Charter, the term "sales tax" shall mean a tax on the sale of tangible personal property at retail or the furnishing of services.

Development Impact Fees/taxes (affordable housing, open space, trails...):

It is important to distinguish between an *impact fee* and an *excise tax*.

An *impact fee* is a financing alternative that can be used only to finance facilities that are necessary to support new development. The authority to impose an impact fee is derived from the state statutes. An impact fee requires earmarking of funds for the benefit of the properties charged, establishment of a precise impact fee formula to ensure nexus between the fee charged and the infrastructure demand created by the development, and may require identification of service areas in which the fees can be spent. Further, impact fees must be spent within specific time limits, and a system of credits for payments for or contributions toward infrastructure improvements may be required. Thus, the state statutes must be looked to if a statutory town wishes to enact an impact fee; however, in the case of the Town of Winter Park described below, a home rule municipality apparently has more power to enact an impact fee by ordinance.

An *excise tax* affords a municipality more flexibility than an impact fee in that it is a form of taxation that is not a burden laid directly upon persons or property. Because it is a tax, the revenues generally may be used for *any* legitimate governmental purpose. Excise taxes are adopted pursuant to the municipality's taxing power, which in the case of a home rule municipality is derived from the charter. They do not require earmarking of funds, or creation of a detailed formula to ensure a nexus between the taxes charged and the impact caused by new development. Geographic service areas for their collection or expenditure are unnecessary. Home rule powers may allow a local government to enact all forms of taxation, including an excise tax, that are not prohibited by state constitution or statutes.

The courts generally will not subject tax ordinances to the same level of scrutiny as regulatory fees or exactions. Further, the excise tax provides general revenues, and is not subject to the same legal constraints as impact fees.

Home rule status strengthens the legal authority of a municipality to impose development impact fees. The following are some examples of impact fees and excise taxes:

- ◆ ***Impact Fee:*** Winter Park vs. Fraser example – Winter Park, a home rule town, recently passed, by ordinance, a \$3/square foot impact fee on new development to be used for affordable housing. The Town of Fraser, a statutory town, was examining the possibility of passing a similar impact fee, but was limited by the state statutes that only allows an impact fee for "infrastructure" and does not specifically state "affordable housing".
- ◆ ***Excise tax:*** This, as a new tax, must go to the vote of the people regardless of whether or not the town is home rule or statutory. A home rule town has the ability to impose an excise

tax per the powers of their charter. The following are examples of excise taxes assessed by home rule municipalities:

- The City of Cherry Hills Village, a home rule municipality, imposed on certain persons who obtain building permits for new construction, expansions, and substantial alterations, a tax of 15 cents or 40 cents per square foot, depending on the type of improvement. The Colorado Supreme Court ruled that the tax was not an unconstitutional property tax or special assessment, but was, instead, an excise tax. The authority of Cherry Hills Village to enact the tax was not at issue in the case. Presumably, the City relied upon its home rule authority under Article XX of the Colorado Constitution.
- Town of Silverthorne – voters passed a development excise tax assessed at \$2/square foot of new development for growth-related expenditures. This affords the town flexibility in utilizing the proceeds from this excise tax for a variety of uses.

Other taxes:

Home rule status gives a municipality the flexibility to creatively structure other types of taxes and fees, even in the absence of statutory enabling authority. Examples of home rule revenue measures upheld by the courts include:

- ◆ A transportation impact fee (*Bloom v. Fort Collins*, 784 P.2d 304 (Colo. 1989))
- ◆ Stormwater utility charges (*Zelinger v. City and County of Denver*, 724 P.2d 1356 (Colo. 1986); *City of Littleton v. State of Colorado*, 855 P.2d 448 (Colo. 1993)).

Maximum total sales tax :

Under state law, a seven percent, or in some instances eight percent maximum applies to the total state, county and municipal sales tax imposed in any locality. However, this statutory maximum limitation on sales taxes does not appear to apply to home rule municipalities.

Evidence of this is in the state statutes: Per state statute 29-2-108. Limitation on Amount. *“In no case shall the total sales tax or total use tax imposed by the state of Colorado, any county, and any city or town in any locality in the state of Colorado exceed seven percent; except that this limitation shall not preclude a county sales tax or use tax at a rate not to exceed one percent.”*

Per state statute 29-2-107 – *“Nothing in this article shall be construed to apply to, affect, or limit the powers of home rule municipalities organized under article XX of the state constitution to impose, administer, or enforce any local sales or use tax except those provisions which specifically refer to “home rule”.*

There are 2 examples in NWCCOG's region where home rule municipalities have exceeded the statutory limit on total sales tax (not including those towns over 7% due to county tax of 1% provided for in state statutes):

- ◆ Winter Park – 3% state, 1% county, 5% town for a total of 9%
- ◆ Aspen – 3% state, 3% county, 1.7% town for a total of 7.7%

Franchises:

Franchises are one area in which home rule municipalities may be subject to more restrictions than statutory municipalities. The initiative and referendum powers are guaranteed with respect to franchises even if the ordinance granting the franchise contains an emergency clause, and the signatures of not more than five percent of the registered electors may be required in order to order a referendum on a franchise. (Colo. Const. Art. XX sec. 4)

A home rule municipality may, through charter provisions:

- ◆ Determine whether or not a municipality can award an exclusive franchise;
- ◆ Determine the procedure to approve a franchise agreement (through election, ordinance, or other form of council action);
- ◆ Determine whether or not there will be a maximum number of years allowed for franchise agreements, and what that limit is;
- ◆ Determine whether or not the town has the option to purchase the franchise, and if so what type of action is required (election or council action).

After review of the charters of the 10 home rule municipalities in NWCCOG's region, the following are typical items addressed by provisions included in each charter with respect to franchises:

- ◆ General Powers
- ◆ Water Rights
- ◆ Utility rates and service areas
- ◆ Granting of Franchises
- ◆ Franchise records
- ◆ Existing franchises
- ◆ Revocable permits
- ◆ Franchise review
- ◆ Acquisition of utilities
- ◆ Sale of Utilities

Bonds:

Home rule municipalities have additional flexibility in terms of municipal borrowing. This additional flexibility includes the ability to streamline requirements for issuance of bonds and other financial obligations, establish its own maximum debt limitations or have no maximum limitation, as it desires, establish its own time limitations for the repayment of municipal bonds and the ability to increase general obligation bond authority of municipalities (subject to voter approval).

Improvement Districts :

Home rule municipalities can include provisions in their charters that facilitate the formation of special improvement districts and expand purposes for which districts may be formed. Through charter provisions, a municipality can:

- ◆ Determine the types of improvement districts allowed (special, general, local);
- ◆ Determine the action required to create an improvement district (election, ordinance, or other council action);
- ◆ Determine if there will be a limit on the amount or type of debt issued to pay for improvements, and if so what that limit may be.

The following are two examples of charter provisions for improvement districts:

Town of Minturn:

The Town shall have the power to create local improvement districts and to assess the cost of the construction or installation of special or local improvements of every character against the property benefited thereby within designated districts in the Town as follows: (a) by ordinance adopted by the Council provided no protest is filed within 30 days of final passage of the ordinance creating the district by the owners of more than 50 percent of the property to be included in the proposed district or (b) on petition filed by more than 50 percent of the landowners in the area of the proposed district.

Town of Silverthorne:

- (A) *The Town shall have the power to create improvement districts within the Town and to contract for, construct, or install improvements of every character within the Town and within designated districts within the Town. The Town shall have authority to assess the cost of improvements wholly or in part upon property specially benefited in such district and to issue bonds for the entire cost therefore.*
- (B) *The council shall by ordinance prescribe the procedure for: creation of districts, notice, the method and time for filing protest and disposition thereof, the method and manner of making such improvements, letting contracts therefore, assessing the cost thereof, and issuing and paying bonds for costs and expenses of the organization of said districts and of construction or installation of said improvements.*
- (C) *The council may adopt by ordinance procedures for the conduct of elections, if any, for the creation of districts, issuance of bonds, or levy of special assessments.*

Costs involved with self-collection of sales taxes:

Cities which have a home rule charter, and which have elected to administer their own local sales and use taxes, are referred to as "self-collected" or "self-administered." Self-administered jurisdictions have the right to establish their own regulations regarding those goods and services upon which to impose their local sales and use taxes.

State-collected local jurisdictions must abide by state rules regarding which goods and services are subject to sales and use tax and which are not. For state-collected jurisdictions, most goods are subject to sales tax, and most services are not. State-collected local jurisdictions must abide by state rules regarding which goods and services are subject to sales and use tax and which are not. Goods exempt from state and state-collected local sales tax include, but are not limited to, prescription drugs, insulin and insulin supplies, prosthetic and medical supplies prescribed by a doctor. In addition, some items are exempt from state sales and use tax, but may be subject to city and county sales taxes, at the option of the local jurisdiction. These include among others food for home consumption, and electricity, gas and fuel oil for residential use.

Of the 10 municipalities in NWCCOG's region that are home rule, 6 self-collect. These self-collecting towns include Aspen, Avon, Breckenridge, Silverthorne, Vail and Winter Park. Each town was contacted and asked to describe the costs and benefits associated with self-collecting. The summary below presents several recurring themes:

Municipality	Contact	Benefits of Self-Collection	Costs of Self-Collection
Aspen	Larry Thorson, Finance Director	<ul style="list-style-type: none"> ◆ More control over businesses moving into and out of town ◆ Less errors with self-collection (a large error on the part of the state prompted Aspen into self-collection) ◆ No delay in getting revenues ◆ Better information on a industry-wide basis how certain sectors are doing 	

		<ul style="list-style-type: none"> ◆ More accurate reports ◆ The City is on the premises, while the state is not – helpful in terms of delinquent accounts 	
Avon	Scott Wright, Finance Director	<ul style="list-style-type: none"> ◆ Tax ordinance provides flexibility on what is covered – i.e. the town taxes groceries, whereas this is exempt according to state statutes ◆ Can deal more directly with merchant's questions and problems – the merchants have a local contact rather than dealing with someone from the state over the phone ◆ Can deal with penalties, interest, and the destaint process through an ordinance ◆ Have more control at the local level (hard to quantify, but the council would probably never give this control up) 	<ul style="list-style-type: none"> ◆ Salary – requires a dedicated staff person ◆ Software/systems costs – Colorado is one of the few states in the nation that allow self-collection, therefore there are not many options out there with respect to software ◆ Printing costs – sales tax booklets ◆ The town may start auditing – this may be a cost, may be a benefit
Breckenridge	Don Taylor, Finance Director/Asst. Town Manager	<ul style="list-style-type: none"> ◆ Enforcement is better ◆ Easier to get on delinquent accounts quicker ◆ Acceleration of receipt of revenue 	<ul style="list-style-type: none"> ◆ Costs of computer programs – has yet to see really good computer programs, because there are so few out there ◆ Personnel costs ◆ Costs of performing audits – personnel costs as well as many businesses may resent this and take it personally since its being performed by town people, not the state
Silverthorne	Donna Braun, Finance Director	<ul style="list-style-type: none"> ◆ Cash flow increase due to more accurate accounting and less delinquencies ◆ Cost savings to businesses in that now they have a local contact – they no longer have to 	<ul style="list-style-type: none"> ◆ Purchase software (could be \$5,000 and up) ◆ Hire another staff person ◆ Educating businesses ◆ Print sales tax coupon booklets ◆ Must re-write town code to

		go through the state	include a sales tax ordinance – associated attorneys fees ◆ Costs involved with “selling” to the town council
Vail	Sally Larten, Sales Tax Administrator	<ul style="list-style-type: none"> ◆ In the first year the town would realize an extra month’s tax due to no longer having a lag ◆ If a town audits, it makes more sense. The Town of Vail does not audit for political reasons. ◆ The town is able to look at businesses more closely than the state – this is a large benefit due to the transient nature of business in Vail – many businesses moving in and out – the town can monitor this more closely 	
Winter Park	Nancy Anderson, Town Clerk	<ul style="list-style-type: none"> ◆ Would not change back in a heart beat ◆ Better control – you know your own businesses better than the state – you know if they are doing well, if they’ve closed, etc. because they are right there ◆ If delinquent, you can start contacting right away ◆ The state continues to be very helpful – they will handle seizing delinquent businesses for the town because they are owed money as well 	<ul style="list-style-type: none"> ◆ Purchase software – Winter Park spent approximately \$14,000 ◆ There is not much software made specifically for self-collecting sales tax ◆ Additional work required of current staff – would like to hire a staff person specifically for self-collection; if they had a dedicated staff person they would also do some auditing

It is important to note that if a town becomes home rule, and if it chooses to impose new taxes, the state may not collect these taxes for the town, so the town may be forced to self-collect. Evidence: state statutes 29-2-106: *The executive director of the department of revenue shall, at no charge, administer, collect, and distribute the sales tax of any home rule municipality, upon request of the governing body of such municipality, if the provisions of the sales tax ordinance of said municipality..., correspond to the requirements of this article for sales taxes imposed by*

counties, towns, and cities and if no use tax is to be collected by the department except as provided in section 39-26-208, C.R.S.

Estimated costs with establishing home rule: charter, legal, commission:

The list below describes the steps involved with establishing a home rule charter. There are, of course, costs associated with each step, however most towns in NWCCOG's membership have been home rule for over 10 years and these costs were difficult to quantify at this time. However, for sake of example, NWCCOG staff did speak to David Clyne, Town Manager for the Town of Morrison and Rick Sonenberg, Town Manager from the Town of Monument. In April, Morrison and Monument held elections to establish home rule charter commissions. The Town of Morrison has budgeted \$10,000 for costs associated with the process of becoming home rule. The bulk of this budgeted figure is for attorney's fees, and does not include staff costs or election costs. The Town of Monument has budgeted \$20,000, which does not include election costs. Oftentimes, a budget for these expenses is prepared by the Charter Commission, and the town is responsible for these expenses.

Steps involved with becoming home rule:

Pre-Commission Preparation:

Study group formation (comprise of both citizens and council members) – could be one or several – attorneys fees could be incurred during this stage

Research

Educating citizens on home rule

Charter Commission Organization:

Election of charter commission

Meetings – costs of meetings

Supplies – binders, copying costs, etc.

Use of consultants

Speakers

Attorneys fees

Charter commission should prepare budget and submit it to municipal government

Public hearing – cost of publication

Special Consultants:

Attorneys

Special consultants

Or have speakers from home rule municipalities

Drafting the Charter:

Research

Attorneys fees

Publicizing Home Rule:

Educational program including:

Neighborhood and public meetings

Distribute printed material door to door

Newspaper ads

Speakers bureau

Local TV and radio spots

Printed pamphlets

Adopting the Charter:

Election costs

Additional benefits of home rule that may provide costs savings to the town:

- ◆ Simplify or modify various publication requirements, including more streamlined procedures for adoption of codes by reference. The charter may also allow for publication of notices and ordinances in a more cost-effective manner than dictated by state statute.
- ◆ Repeal or modify statutory provisions governing bidding and awarding of public projects and disposal of public property.
- ◆ Home rule charter provisions can be written which provide a method for the simple and expeditious transfer of funds among municipal departments.
- ◆ Determine whether actions will be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication, or posting with regard to ordinances; and determination of the effective date of ordinances.

§ 39-26-103**Note 2**

bin Const. Co. v. Weed, 1965, 407 P.2d 350, 158
Colo. 430.

TAXATION**§ 39-26-104. Property and services taxed**

(1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(a) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail;

(b)(I) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:

(A) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(B) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(II) The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this article shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

(c) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service;

(d) Repealed by Laws 1979, H.B.1611, § 25.

(d.1) Effective July 1, 1980, for gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises;

(d.2) Repealed by Laws 1982, H.B.1166, § 4.

(e) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph (e) at no charge or at a reduced charge and which are considered

as part of their salary, wages, or income shall be exempt from taxation under the provisions of this part 1.

(f) On the entire amount charged to any person for rooms or accommodations as designated in section 39-26-102(11).

(Laws 1935, H.B.984, § 4; Laws 1937, H.B.615, § 1; Laws 1941, H.B.355, § 4; Laws 1945, H.B.451, § 1; Laws 1945, H.B.100, § 1; Laws 1959, H.B.355, § 2; Laws 1964, S.B.14, § 2; Laws 1978, H.B.1172, § 2; Laws 1978, H.B.1257, § 1; Laws 1979, H.B.1611, §§ 7, 25; Laws 1980, H.B.1207, § 3; Laws 1982, H.B.1166, §§ 1, 4.)

Prior Compilations: C.S.A.1935, c. 144, § 4; C.R.S.1953, § 138-6-4; C.R.S.1963, § 138-5-4.

Law Review Commentaries

Introduction to Tax Liens. Glenn W. Merrick, 13 Colo.Law. 399 (March 1984).

Sales and Use Tax Consequences in Sales of Businesses. 11 Colo.Law. 679 (March 1982).

Library References

Taxation ¶1231 to 1246.
WESTLAW Topic No. 371.
C.J.S. Licenses §§ 26 to 31, 47.

United States Supreme Court

Ad valorem property taxes, imported tires which had been mingled with other tires imported in bulk, see *Michelin Tire Corp. v. Wages*, 1976, 96 S.Ct. 535, 423 U.S. 276, 46 L.Ed.2d 495, rehearing denied 96 S.Ct. 1151, 424 U.S. 935, 47 L.Ed.2d 344.

Commerce clause,

Tax credits, motor vehicle fuel containing alcohol produced in state or in states with reciprocity, see *New Energy Co. of Indiana v. Limbach*, 1988, 108 S.Ct. 1803, 486 U.S. 269, 100 L.Ed.2d 302, on remand 535 N.E.2d 304, 41 Ohio St.3d 718.

Use tax on direct mail catalogs printed out of state, see *D.H. Holmes Co. LTD. v. McNamara*, 1988, 108 S.Ct. 1619, 486 U.S. 24, 100 L.Ed.2d 21.

First use tax on natural gas use, validity, see *Maryland v. Louisiana*, 1981, 101 S.Ct. 2114, 451 U.S. 725, 68 L.Ed.2d 576.

Imposition of sales tax, inclusion of federal excise tax, see *Gurley v. Rhoden*, 1975, 95 S.Ct. 1605, 421 U.S. 200, 44 L.Ed.2d 110.

Intergovernmental tax immunity; state sales and use tax, bankruptcy liquidation sales, see *California State Board of Equalization v. Sierra Summit*, 1989, 109 S.Ct. 2228, 104 L.Ed.2d 910.

Merchandise built to foreign users' specifications warehoused in state, status under export-import clause of federal constitution, see *Kosydar v. National Cash Register Co.*, 1974, 94 S.Ct. 2108, 417 U.S. 62, 401 L.Ed.2d 660.

Preemption, power of states to impose sales tax on aviation fuel, see *Wardair Canada, Inc. v. Florida Dept. of Revenue*, 1986, 106 S.Ct. 2369, 477 U.S. 1, 91 L.Ed.2d 1.

Sales tax imposed on carriers based upon percentage of gross income of business, see *Complete Auto Transit, Inc. v. Brady*, 1977, 97 S.Ct. 1076, 430 U.S. 274, 51 L.Ed.2d 326, rehearing denied 97 S.Ct. 1669, 430 U.S. 976, 52 L.Ed.2d 371.

State tax on liquor sold at military installations, see *United States v. State Tax Commission of Mississippi*, 1975, 95 S.Ct. 1872, 421 U.S. 599, 44 L.Ed.2d 404.

State use tax exemption for tax paid to reciprocating states, exemption only for state residents at time original tax paid, see *Williams v. Vermont*, 1985, 105 S.Ct. 2465, 472 U.S. 14, 86 L.Ed.2d 4659.

Taxation on the generation or transmission of electricity, discrimination against out-of-state consumers, see *Arizona Public Service Company v. Snead*, 1979, 99 S.Ct. 1629, 441 U.S. 141, 60 L.Ed.2d 106.

Notes of Decisions

Casual sales 3
Commerce clause 1
Food sales 4
Illegal payments 8
Isolated or casual sales 3
Manufacture 7
Tangible personal property 2

Telephone services 5
Trade-in allowance 6

1. Commerce clause

It may not be concluded that the commerce clause does not apply to use tax without first

TABLE 5-1
 COLORADO SALES TAX EXEMPTIONS

<u>Provision</u>	<u>Date Enacted</u>	<u>Estimated FY 91 Revenue Loss (millions)</u>
Gasoline and special fuel	1935	\$55.0
Sales to charitable organizations	1937	15.0
Sales to governmental units	1937	19.5
Cigarettes	1959	12.7
Sales to public schools	1969	NA
Sales of prescription drugs	1965	21.7
Sales of insulin	1977	Incl Above
Sales of glucose for treatment of insulin reactions and insulin measuring and injecting devices	1979	Incl Above
Certain medical supplies and equipment; eyeglasses, contacts, and hearing aids; therapeutic devices, appliances or related accessories	1980	4.0
Sales of fuel for residential heat, light, and power	1979	27.4
Sales of food for off-premises consumption (net of food stamps)	1979	144.1
Lodging for permanent residents	1959	N/A
Sales and purchases of neat cattle, sheep, lambs, poultry, swine and goats	1943	15.7
Sales of feed for livestock; seeds and orchard trees	1945	14.9
Special fuel for farm vehicles	1977	1.1
Farm auction close-out sales	1945	N/A
Purchases of machinery or machine tools used in manufacturing process	1979	17.1
Energy used for industrial, manufacturing, and similar purposes	1937	4.7
Nuclear fuel when deemed a wholesale sale	1982	0.0
New and used commercial trucks and trailers purchased in Colorado for use outside Colorado or in interstate commerce	1976	0.9
Sales of motor vehicles by nonresidents purchased for use by nonresidents outside Colorado	1977	0.1
Property for use in food manufacturing when such property becomes part of the product or is left unfit for further use	1982	0.3
Property transferred by a supplier to out of state vendors for use in selling products at wholesale by the supplier	1978	0.2
Property brought into the state for testing, modification, or inspection if the use is outside of the state and the testing period is no longer than 90 days	1977	0.2
Sales of any article, containers or bags to a retailer or vendor of food if provided to the consumer without a separate charge	1978	0.2
Refractory materials and carbon electrodes used manufacturing iron and steel, and inorganic chemicals used in processing uranium-vanadium ores	1982	0.2
Value of meals furnished to employees of food service establishments free or at reduced rates and considered part of their incomes	1978	0.1
Sales to residents of a bordering state within twenty miles of the state border if the bordering state does not have a state sales tax	1963	0.0

**TABLE 5-1 (Cont.)
COLORADO SALES TAX EXEMPTIONS**

<u>Provision</u>	<u>Date Enacted</u>	<u>Estimated FY 91 Revenue Loss (millions)</u>
Sales of construction materials to a common carrier by rail	1977	0.0
Certain sales of assets in business formation or dissolution	1977	2.6
Forty-eight percent of purchase price of factory built housing (excludes the approximate labor value of such housing)	1979	0.1
Sales of personal property through vending machines of 15 cents or less	1986	0.0
Sales of aircraft used or purchased for use in interstate commerce by commercial airlines	1984	0.0
Tangible property becoming an ingredient or component part of the product or service manufactured	1935	1.0
Leases of personal property for three years or less if tax is paid upon original acquisition	1977	0.0
Newspapers	1943	2.5
Newspaper advertising supplements	1985	1.2
Printers ink and newsprint	1943	4.1
Food purchased with federal food stamps or funds from the supplemental food program for women, infants, and children	1987	0.0
Sales of construction and building materials for use by contractors on public works projects used by tax-exempt organizations	1979	NA
Sales of precious metal bullion and coins	1990	0.2
Sales of aircraft component parts	1991	*
Adds machinery and machine tools used in mining in enterprise zones to list of tax exempt purchases	1991	*
Direct mail advertising materials distributed by persons engaged solely and exclusively in providing cooperative direct mail advertising	1990	Insignificant
Sales of livestock for breeding	1943	Insignificant
Sales of live fish for stocking	1970	Insignificant
Sales of straw for livestock bedding	1961	Insignificant
Sales of straw for poultry bedding	1979	Insignificant
TOTAL		\$366.8

* First year impact is in FY 1992.

NA - Not available.

SOURCE: Colorado Department of Revenue estimates.