

Property Tax Trends 2019 and 2020

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Property Taxes and COVID-19

NOTE: Since late February, states have been devising emergency efforts to address the spread of the COVID-19 pandemic and its economic impact. As governments at all levels struggle to limit the damage, efforts and actions continue to evolve daily. Property tax actions reported here are those known as of April 24. Unless noted, all the dates refer to this year, 2020.

Property Taxes: Not Like Income Taxes

In response to the COVID-19 pandemic, states took immediate action to delay income tax filings, necessitated by the income taxes being structured, at least in part, on the federal tax. When the IRS announced that the federal filing date was extended to July 15 from April 15,¹ virtually all states with broad income taxes had to adopt the new filing date.² Providing widespread delays for property taxes is more difficult to achieve as much of the authority rests with local taxing jurisdictions. In addition, property taxes are the foundation of local revenues: any delay in payments could severely interrupt a jurisdiction's ability to provide basic services, including police, fire, and education, or to meet its financial obligations.³ Unlike income tax payments that are withheld from wages over the course of the year, property taxes are generally paid in one or two large installments, which can make the payments burdensome for liquidity constrained taxpayers.⁴ Depending on the payment cycle, this year's taxes may have already been paid or will not be due until much later in the year. For at least ten states, payments were due before the crisis and in six states the payments are not due until December, limiting the need for immediate action.⁵

¹ IRS News Release March 21, 2020.

² It appears that Arkansas requires filing of the 2019 return on April 15, 2020. Seven states impose no income tax and New Hampshire and Tennessee tax only income and dividends.

³ According to the 2017 State and Local Government Finances Census, 97 percent of the property taxes are local revenues and account for half of all local tax revenue and only 30 percent of state and local own source revenue.

⁴ For a discussion of smoothing out property tax payments, see Adam H. Langley, "Improving the Property Tax by Expanding Options for Monthly Payments" Working paper WP18AL1. Cambridge, MA: Lincoln Institute of Land Policy (January 2018).

⁵ In another six states, payment dates are set locally, with no uniform date statewide.

Limited State Role

States have a limited role in administering and collecting the property tax, with much of the responsibility resting with the local jurisdictions. States have recently taken action related to those aspects they oversee. **Indiana**,⁶ **South Carolina**,⁷ **Maryland**,⁸ **Colorado**,⁹ and **Kentucky**¹⁰ have each postponed the deadline for filing the business personal property tax returns. In **Nebraska**, while the business personal property returns are due May 1, no penalty will be assessed if filed after that date. However, if returns are filed after July 15, the taxpayer will not be eligible for the \$10,000 exemption.¹¹

States frequently base qualifications for property tax relief programs, especially residential tax credits, on taxpayers' state and federal income tax filings. In those states, including **Georgia**,¹² **Idaho**,¹³ **Rhode Island**,¹⁴ and **Vermont**,¹⁵ the deadline for requests for relief or submitting documentation has been extended to coincide with filing federal income tax returns.

Not all extensions are tied to the federal tax filings. **Kansas** extended the deadline for filing for homestead or property tax relief refund claims until October 15, although taxpayers are encouraged to file before the end of the extension.¹⁶ **Oregon** extended the deadline for senior citizens and disabled taxpayers to apply for the property tax deferral program for tax year 2020-21 until June 15.¹⁷ **Maine** extended the April 1 application date for several property exemptions, including for homesteads and business equipment, to either the municipality's commitment date or 30 days after the termination of the declared emergency.¹⁸ **Pennsylvania** extended the filing date for the property tax/rent rebate program to December 31 from June 30. While the deadline is

⁶ Indiana Executive Order 20-05 "Helping Hoosiers during the public health emergency declared for the coronavirus disease 2019 outbreak" https://www.in.gov/gov/files/EO_20-05.pdf

⁷ South Carolina Department of Revenue Information Letter #20-4, March 23, 2020.

⁸ Maryland Order of the Governor NO. 20-03-31-01, "Adjusting the timing of certain tax deadlines and oaths of office" March 31, 2020.

⁹ Colorado Executive Order D 2020 022 "Ordering the temporary suspension of certain statutes concerning taxpayer filing requirements for certain taxable property due to the presence of COVID-19" April 2, 2020.

¹⁰ Kentucky Department of Revenue, Coronavirus (COVID-19) Information April 17, 2020.

<https://revenue.ky.gov/Pages/2019NovelCoronavirus.aspx>

¹¹ Nebraska Department of Revenue "Nebraska Personal Property Return and Schedule Due" April 17, 2020.

¹² Georgia Department of Revenue, Local Government Services Division Informational Bulletin COVID-19 April 16, 2020.

¹³ Idaho State Tax Commission News Release "Income tax filing and payment deadline now June 15; property tax relief applications new due June 15" March 24, 2020.

¹⁴ Rhode Island Department of Revenue Division of Taxation "Division sets July 15 due date for individuals, certain entities" ADV 2020-11 March 27, 2020.

¹⁵ Vermont Department of Taxes "Vermont Department of Taxes releases guidance for upcoming Vermont tax due dates" Press release March 23, 2020.

¹⁶ Kansas Department of Revenue "Changes to Filing and Payment due dates for Homestead on Property Tax Relief Refund Claims" Notice 20-01, March 23, 2020.

¹⁷ Oregon Department of Revenue, "Revenue Director's Order 2020-02 Tax filing and payment relief granted" April 20, 2020.

¹⁸ Maine Office of Governor, "Governor Mills extends state's property tax exemption deadline" April 1, 2020 <https://www.maine.gov/governor/mills/news/governor-mills-extends-states-property-tax-exemption-deadline-2020-04-01>

extended, the rebates, which will begin to be distributed no earlier than July 1, will be considered when received and processed.¹⁹

Only a few states have taken direct action to extend the due date for payments. **Florida** extended the payment date for local property taxes billed in November to April 15 from March 31, with a similar extension for central assessed taxes on railroad and others.²⁰ The **West Virginia** governor extended the period before the property taxes would be delinquent to May 1 from April 1.²¹ In **Iowa**, the governor's order of disaster emergency extended the grace period before penalty and interest would be imposed.²² The timeframe goes beyond the expiration of the governor's initial order of April 30 to include "any future extension of this suspension."²³ The governor of **Indiana** extended the May 11 spring property tax payment for 60 days, to July 10. This extension, however, does not apply for payments made from escrow accounts or by mortgage companies.²⁴ This allows local governments to receive at least some revenues during this period.

In states where payments are due later in the year, delays may already be in place. For example, in **Maryland**, property taxes are due and payable on July 1, although a grace period is provided such that interest will not be assessed if taxes are paid by September 30.²⁵ In **Wyoming**, half of the taxes are due on and after September 1 and payable on November 10 and the remaining half are due on March 1, payable on May 10. However, if the entire tax is paid on or before December 31, no interest or penalty is applied, even if the first payment has not been paid.²⁶

Providing More Local Options

Legislation enacted earlier this year in **Michigan** was designed to reduce the number of foreclosures for delinquent taxes. The "Pay to Stay" legislation provides local governments with the option to lower the amount of delinquent taxes homeowners need to pay, making it easier to remain in their homes and lowering the government's inventory of foreclosed properties.²⁷ To complement these efforts, the governor's executive order amended the foreclosure orders that have been issued in 2020.²⁸ This order extended the period for paying back taxes to May 29 from March 31 or 30 days after the COVID-19 state of emergency is terminated, whichever is later.²⁹

Connecticut established two optional local programs to support taxpayers. The deferment program allows municipalities to provide taxpayers affected by COVID-19 a 90-day deferment of taxes between March 10 and July 1 – the period of the declared state emergency.

¹⁹ Pennsylvania Department of Revenue, "Property tax/rent rebate program application deadline extended to end of year" March 19, 2020 <https://www.media.pa.gov/Pages/Revenue-Details.aspx?newsid=306>

²⁰ Florida Department of Revenue Office of the Executive Director, Order of Emergency Waiver/Deviation (Order) 320-52-DOR-001 (Property Tax Oversight) March 26, 2020.

²¹ West Virginia Executive Order No. 13-20, March 26, 2020.

²² Iowa Executive Department "Proclamation of Disaster Emergency" April 2, 2020.

²³ Ibid

²⁴ Indiana Executive Order 20-05.

²⁵ Md. Code Ann. Tax-Prop. 10-102(a)

²⁶ Wy. Stat. §39-13-108

²⁷ Michigan Public Act No. 33 of 2020 (HB 5124)

²⁸ Michigan Executive Order 2020-14(COVID-19)

²⁹ Michigan Executive Order 2020-4

Municipalities may also choose to participate in the low interest rate program. Under this program, delinquent property taxes would be subject to lower interest rates for 90 days. Municipalities wanting to participate in either or both programs must notify the state by April 25.³⁰

To address potential budgetary deficits, **Indiana**, as part of Executive Order 20-05, has designed an Advance Funding Program through the Indiana Bond Bank. The program provides an opportunity for local governments to borrow to cover potential cash flow deficits resulting from delayed property tax payments.³¹

In acknowledging the increased costs local governments incur in combating the COVID-19 emergency, a **Montana** relief program allows the state to provide assistance to local governments to help cover the additional costs.³² Under the statute, local governments were required to impose an emergency mill rate in order to apply for federal or state relief. The governor suspended this requirement for relief related to COVID-19 due to concern that strict compliance with the requirement “would prevent, hinder, or delay necessary action in coping with the emergency or disaster” caused by the global COVID-19 pandemic.³³

Local Government Options

Since local governments have primary responsibility for property taxes, the role of governors has been more to encourage local governments to exercise their existing authority to delay imposing interest and penalties for delinquent payments. In **New Hampshire**, the governor issued an executive order authorizing municipalities and counties to use their abatement authority to grant blanket abatements of interest on unpaid property taxes. In addition, the order imposed a temporary prohibition on foreclosures resulting from late payment of property taxes.³⁴ The Department of Revenue in **Georgia** advised local authorities that the existing statute allows local authorities to waive penalties and interest for business personal property.³⁵

In **California**, the state comptroller reminded homeowners of the statutory deadline of April 10 for the second installment of 2019-2020 property taxes.³⁶ San Francisco, San Mateo, and Kern counties, however, shifted the deadline to May 4 – the first business day after the current shelter-in-place order ends. Their action is based on the fact that public buildings are closed and taxpayers unable to pay their taxes in person.³⁷ County treasurer-tax collectors in California have

³⁰ State of Connecticut Executive Order No. 78 April 1, 2020.

³¹ Indiana Executive Order 20-05 also allows local governments to receive advances from the county treasurer or to issue tax anticipation warrants or temporary loans.

³² Mont. Code Ann. §10-3-311

³³ Governor Bullock Memo “Directive implementing Executive Orders 2-2020 and 3-2020 and suspending certain requirements related to local receipt of emergency relief funds” April 7, 2020.

³⁴ New Hampshire Governor Emergency Order #25 Pursuant to Executive Order 2020-04 “Temporary modification of interest penalty for late payment of property taxes” April 3, 2020. N.H. Rev. Stat. Ann.76:16 and 19:12

³⁵ Georgia Department of Revenue Local Government Services Division Informational Bulletin COVID-19, March 23, 2020 citing Georgia Code §48-5-242(c).

³⁶ California State Controller’s Office “Controller Yee reminds homeowners: County governments collect property taxes due April 10” PR20:5 March 20, 2020.

³⁷ California Revenue and Tax Code §2619. Counties have the power to change to the filing deadline by vote of the board of supervisors. City and County of San Francisco Treasurer “Important news about property tax service and

authority to cancel penalties and other charges resulting from tax delinquency on a case-by-case basis if the “failure...is due to reasonable causes and circumstances beyond the taxpayer’s control.”³⁸ They are encouraged to exercise their authority to cancel penalties especially for homeowners and small businesses affected by the COVID-19 pandemic.³⁹ But the California Association of County Treasurers and Tax Collectors warned that “if a large portion of taxpayers don’t pay on April 10, there could be almost immediate and very serious impacts to school obligations and other local financial obligations that are funded through the payment of property taxes.”⁴⁰

Some delays, however, require additional state action to provide local authority. **Massachusetts** quickly enacted legislation retroactive to March 10, 2020 that allows local governments to extend the deadline for tax payments to June 1 instead of May 1. The legislation also prevents the termination of services, such as water, for nonpayment of taxes or charges.⁴¹ **Wisconsin** quickly passed legislation that allows a taxing district, on a case by case basis, to delay interest and penalties on installment payments due April 1 if the full tax payment is received by October 1.⁴² While taxing authorities in **Pennsylvania** set their own payment schedule, recent state legislation provides some flexibility. The legislation allows each jurisdiction (except school districts) to provide a wider window for payments to be eligible for early payment discounts, as long as the period does not extend beyond August 31. In addition, the jurisdictions can waive any fee or penalty if the taxes are paid in full prior to December 31.⁴³ In **New Jersey**, legislation that unanimously passed the Assembly and was sent to the Senate, if enacted, will permit municipalities to provide an extended grace period for quarterly property tax payments, including the one due May 1. The legislation would also allow the state to extend a statewide grace period.⁴⁴

The **New York City** Council has proposed a rent deferral and relief program coupled with a targeted property tax deferral for small and non-profit property owners affected by delayed rental payments, as part of the city’s fiscal 2021 budget (beginning July 1). However, to provide such relief, the city would call upon financially secure large property owners to prepay their entire property tax bill on July 1.⁴⁵ Additional deferrals may be available if property tax payments provide sufficient cash flow to fund a low-interest deferral program for small commercial, hotel, and rental apartment building owners who provide rental relief to tenants. Similarly, **Chicago, Illinois** created, in conjunction with other private sponsors, the Chicago Small Business

the second installment deadline from the San Francisco Treasurer’s Office” April 3, 2020. Kern County Treasurer-Tax Collector “April 10 Property tax deadline extended to May 4, 2020” <https://www.kcttc.co.kern.ca.us/>; San Mateo County Treasurer-Tax Collector <https://tax.smogov.org/>

³⁸ California Revenue and Tax Code §4985.2

³⁹ Joint CSAC/ACCTTC statement on COVID-19 and the April 10 Property Tax Deadline, April 4, 2020.

⁴⁰ “California Association of County Treasurers and Tax Collectors (CACTTC) issues the following statement regarding April 10 property tax collections deadline”

⁴¹ Massachusetts Chapter 53 of the Acts of 2020, H. 4598, reported out of House Ways and Means committee on March 27 with the legislation signed by the governor on April 3, 2020.

⁴² Wisconsin 2019 Wisconsin Act 185, Assembly Bill 1038 was introduced April 13 and approved by the governor on April 15, 2020.

⁴³ Pennsylvania Act of April 20, 2020 P.L. 15 SB 841

⁴⁴ New Jersey A 3902. The Assembly bill was introduced March 23 and passed March 25. It remains in the Senate.

⁴⁵ Council of the City of New York letter to Mayor Bill de Blasio, April 7, 2020.

Resiliency Fund to provide liquidity for small businesses, including those who do not have access to traditional lending programs.⁴⁶

Is COVID-19 a Disaster Triggering Additional Relief for “Damaged Property”?

All states and the federal government have issued state of emergency orders related to COVID-19.⁴⁷ Historically, such orders could trigger certain types of property tax relief. In **Washington**, after the governor declared a state of emergency,⁴⁸ King County petitioned the governor for a 30 day extension for property tax payments for 30 days, comparing the pandemic to natural disasters, such as an earthquake or major flood.⁴⁹ Even without the governor’s declaration, county treasurers have authority to grant certain extensions.⁵⁰ Several counties, including King, Kitsap, Pierce, Snohomish, and Whatcom have delayed the first half of property taxes for 30 days from April 30.⁵¹ Several counties have also offered installment plans for property owners financially affected by COVID-19, spreading the payment over six months. These delays apply only to those who pay taxes directly, thus enabling counties to continue receiving some tax revenues from mortgage escrow accounts. The county encourages those who are financially able to pay not only the first installment, but their full year taxes on April 30 to help local governments continue to provide essential services.⁵²

In **Texas**, the chair of the Senate Committee on Property Tax raised this very question. The senator asked the attorney general if property that suffered economic damage because of COVID-19 would qualify for the recently enacted temporary exemption for property damaged by disaster.⁵³ In response, the attorney general opined that a “court would likely conclude that the Legislature intended to limit the exemption to apply to property physically harmed.”⁵⁴

This notion of providing relief for property damaged by COVID-19 may be a lingering issue, as many states currently provide relief for property damaged by a natural disaster. **Minnesota** has extended one program providing relief for the damage attributed to the COVID-19 pandemic, although this does not pertain to property tax relief. Recent legislation in Minnesota amended the state’s disaster recovery loan program for farmers.⁵⁵ The program was expanded to include

⁴⁶ Office of the Mayor, City of Chicago “City of Chicago launches applications for small business resiliency fund as part of unprecedented effort to support local entrepreneurs impacted by COVID-19 outbreak” Press release March 31, 2020.

⁴⁷ Governor Inslee of Washington was the first governor to issue a proclamation declaring a state of emergency on February 29, 2020. Since then all states have issued similar declarations and the president issued disaster declaration for all 50 states by April 12, 2020.

⁴⁸ Washington Proclamation by the governor 20-05 February 29, 2020.

⁴⁹ King County letter to Governor Inslee March 14, 2020 to delay penalties and interest under existing authority Wash. Rev. Code §43.06.220 (2) (e).

⁵⁰ Wash. Rev. Code §84.56.020 (10)

⁵¹ Connie Thompson “Amid coronavirus crisis, some county homeowners to get more time to pay property taxes” KOMO News March 31,2020.

⁵² For example, Asotin County and San Juan County have payment options.

<http://www.co.asotin.wa.us/treasurer/property-tax/>; <https://www.sanjuanco.com/CivicAlerts.aspx?AID=893>

⁵³ Tx. Tax Code §11.35 enacted Acts 2019, Texas Acts of the 86th Leg. Regular Session ch. 1034

⁵⁴ Texas Attorney General Opinion No. KP-0299

⁵⁵ Minnesota Statutes 2019 Supplement, §41.B.047

damage “due to an infectious human disease for which the governor has declared a peacetime emergency...” rather than natural disasters like high winds and floods.⁵⁶

States and local governments have reacted quickly to provide immediate property tax relief. Overall, with the limited role of the states, many of the decisions to provide property tax relief in response to COVID-19 rest with the local governments, the same governments that rely most heavily on these tax revenues. Looking forward, if the pandemic remains a critical health issue, state and local governments may have to implement more significant changes, given the annual property tax cycle and the possible adverse revenue impact.

The “Other” Property Tax – Real Estate Transfer Taxes

Although real estate transfer taxes are not imposed as broadly as property taxes,⁵⁷ in recent years, states have been tinkering with this tax in several ways, especially to fund housing services and programs to reduce homelessness. In ten states and local governments, 2019 and 2020 legislative efforts include changing earmarking or distribution of the transfer tax revenues; restructuring rates, especially on high-value properties; and providing more local options. Not all attempts succeeded. As part of the **Illinois** budget bill, the governor wanted to triple the rate on non-residential properties over \$1 million, however this proposal was cut from the legislation.⁵⁸ The legislature, however, is still considering the request by the mayor of **Chicago** to create a tiered rate structure. The proposal seeks to replace the city’s flat 0.75 percent rate with five brackets, with a lower rate of 0.55 percent for properties under \$500,000.⁵⁹ The rates for the higher brackets increase to 4.0 percent for properties over \$10 million. With this new structure, a quarter of the proceeds are to support housing and services to combat homelessness rather than the current distribution with all funds supporting general government.⁶⁰

Other cities are moving from a flat to a graduated tax. In March, the voters in **San Jose, California** approved a new graduated tax on the transfer of properties of \$2 million or more at a rate of 0.75 percent. The rate increases to 1.5 percent for properties above \$10 million.⁶¹ This new tax is in addition to the city’s existing 0.33 percent flat rate conveyance tax on all properties. Although revenues from both taxes support general government operations, the intent of the new tax is to support affordable housing and housing services to reduce homelessness. An unusual characteristic of this new tax is that, beginning in 2025, the threshold level of \$2 million will be adjusted every five years based on the change in the San Francisco area CPI. At any time, the city council may increase the threshold, but it cannot fall below \$2 million.⁶²

⁵⁶ Minnesota Session Laws 2020 Regular Session Ch. 71 Art 2 §1

⁵⁷ Patricia Atkins, et al. “Real Estate Transfer Taxes: Widely Used, Little Conformity” *State Tax Notes* October 19, 2015

⁵⁸ Illinois SB 0690

⁵⁹ The current rates are \$3.75 per \$500 (0.75%) for the City and \$1.50 per \$500 (0.3%) for the Chicago Transit Authority.

⁶⁰ Illinois SB 3243

⁶¹ San Jose, California Measure E March 2020

⁶² San Jose Resolution # 79325 adopted December 3, 2019

New York State built on the flat high-end **New York City** supplemental tax, known as the mansion tax, that applies to high-value residential properties.⁶³ The 2019 change leaves in place the 1 percent rate for properties between \$1 million and \$2 million, and adds seven brackets with rates increasing to 3.9 percent for properties valued over \$25 million.⁶⁴ In addition to changes to the city’s mansion tax, the state increased its transfer tax rate on residential properties of \$3 million or more to 0.65 percent, while it remains at 0.4 percent for sale prices below \$3 million.⁶⁵ In light of the COVID-19 outbreak, New York City will waive penalties on late returns filed between March 15 and April 25.⁶⁶

Washington State made major changes to its real estate excise tax. The 2019 legislation eliminated the flat rate transfer tax, replacing it with a graduated structure for all sales except the transfer of agricultural land, timberland, and conservation land.⁶⁷ The rates for the four brackets range from 1.1 percent to 3 percent and are applied marginally. The lowest bracket is for the first \$500,000 of consideration, and the highest bracket is for transfers over \$3 million. Because of graduated marginal rates, the effective tax rate on a transfer of a \$5 million property is 2.4 percent.

A unique characteristic of Washington’s tax is that the brackets will be adjusted beginning in 2022 and then every four years. The change will be based on the growth in the Consumer Price Index for All Urban Consumers (CPI-U) for shelter over the same period. The state also rebalanced the distribution of the funds, with less going to the general fund (79.4 percent instead of 92.3 percent) and a greater share going to the educational legacy (17.5 percent increased from 4.1 percent) until July 2023.⁶⁸ In other legislation, Washington expanded eligible activities to be funded from the optional local real estate excise tax to include affordable housing projects and facilities for those experiencing homelessness.⁶⁹

Like Washington, **Connecticut** adopted a change in marginal rates to be applied to residential properties by adding a new bracket for sales over \$2.5 million.

Washington, DC increased rates for both the recordation tax and transfer tax on the transfer of non-owner occupied residential property when the sales price is greater than \$2 million. Beginning with the 2020 fiscal year, the recordation tax rate is increased to 5.0 percent while the rate remains 2.2 percent for properties below the threshold. The transfer tax rate for the same properties is increased 1.05 percent for a total rate of 2.50 percent.⁷⁰ Revenues from these taxes will continue to be split, with 15 percent going to the Housing Production Trust Fund and the remainder allocated to the District’s general fund.

⁶³ New York State Tax Law §1402-A

⁶⁴ New York State Tax Law §1402-B

⁶⁵ New York State Budget 2021 SB 7508.

⁶⁶ New York City Department of Finance Memorandum “Real property transfer tax filing extensions and the COVID-19 outbreak” 20-4 March 20 2020.

⁶⁷ Washington ESSB 5998 Transfers of agricultural, timber, and conservation lands are excluded from the new rates, rather these transfers are subject to the 1.28 percent flat rate.

⁶⁸ There were smaller changes in the distributions to the public works assistance and city-county assistance. After July 2023 education legacy reverts to earlier level and public works increases.

⁶⁹ Washington EHB 1219 Ch. 73 Laws of 2019

⁷⁰ D.C. Law 23-16 (Act 23-92)

West Virginia is changing the way it distributes state revenues from its property transfer tax in order to benefit counties. Counties will receive larger proportions of the revenues from the tax. Beginning in fiscal year 2022, counties will retain 10 percent of tax collected, this percentage increasing 10 percent each year, while the remaining funds are deposited in the state’s general fund.⁷¹

A few of the proposals offered by governors are still being considered in the legislature. In **Massachusetts**, the governor has requested a “modest increase” in the deeds excise from 0.4 percent to 0.6 percent. The revenues from the increase would be earmarked in a special fund, the Global Warming Solutions Trust Fund, to be used for grants to local governments for investment in climate-smart infrastructure.⁷² In the 2021 budget **Rhode Island**’s governor is seeking a new tier for properties over \$500,000 at twice the current rate. The revenues generated from this new tier are dedicated to affordable and workforce housing initiatives, including incentives for local governments.⁷³ **Oregon**’s governor has proposed a constitutional amendment authorizing a new state transfer charge, with the funds to be used for affordable housing.⁷⁴ The amendment is needed to undo the 2012 Measure 79 amendment to the constitution that prohibits real estate transfer taxes.⁷⁵ If the legislature approves the resolution and the voters adopt the amendment, the tax would be imposed on transfers above \$500,000 of taxable value, with the possibility to adjust the threshold for inflation.

Hawaii is considering a proposal to impose a surcharge on the state’s existing conveyance tax, intended to address the rapid resale, or “flipping,” of homes that are believed to contribute to the increase in housing prices (SB 2040). This proposed surcharge would be imposed on the sale of residential property by owners who are not eligible for the county’s homeowner’s exemption.⁷⁶ The surcharge would be imposed on properties sold within five years. The surcharge would be 25 percent of the net proceeds from the sale of the property. Revenues from this tax would be distributed among three state funds: 10 percent paid into the land conservation fund, 50 percent paid into the rental housing revolving fund, and the remainder would be deposited in the state’s general fund. This also may raise constitutional issues concerning the state prohibition on imposing an ad valorem tax.

Ballot Measures – New, Redo, and Undo

Often changes to property and property-related taxes require voter approval. As mentioned above, **Oregon** must receive voter approval to undo the 2012 constitutional amendment that

⁷¹ West Virginia HB 2967

⁷² Massachusetts SB10

⁷³ Rhode Island 2020-H-7171

⁷⁴ The proposal, HJR203, is pending in the legislature.

⁷⁵ Prior to the constitutional prohibition, Washington County had authority to and had adopted a local transfer tax, which would be unaffected if the state tax were to be imposed.

⁷⁶ To qualify as a homeowner, for example, in Honolulu the owner must occupy the home for 270 days, register to vote, and file an income tax return as a resident of the state of Hawaii with a Honolulu address.

prohibits the state from imposing a transfer tax. The earlier amendment followed the Great Recession and its dramatic reduction in property values. With recent rising housing prices and increasing homelessness, the governor filed a resolution to amend the constitution to allow the state to impose a transfer tax on high-value properties, with the revenues dedicated to address the crisis.⁷⁷

In 2020, voters in **Colorado** may have an opportunity to vote to repeal the Taxpayer's Bill of Rights (TABOR). The 1992 initiative approved by the voters amended the constitution, adding Article X section 20 that limits revenue growth for both the state and local governments. This year's initiative, Ballot #3, is straightforward and would repeal TABOR in its entirety. The Colorado Supreme Court found that this complies with the state requirement that an initiative address a single subject.⁷⁸ This finding allows the proponents to go forward with collecting signatures to qualify the initiative for the ballot this fall.

This year, voters in **California** are likely to have at least one opportunity to yet again modify Proposition 13, passed in 1978.⁷⁹ A 2020 initiative seeks to split the property tax roll with most commercial and industrial property assessments no longer restricted to the annual 2 percent growth limit set out in Proposition 13. If approved, these properties would be taxed based on fair market value, with an exemption for personal property of small businesses. The increased revenues would be split between schools (40 percent) and local governments (60 percent).⁸⁰ If this measure fails, a similar proposal is currently circulating for signatures and could, if qualified, appear on a ballot in 2022.⁸¹

This backup preparation is reflective of the second measure that has qualified to appear on the November 2020 ballot. The second initiative would remove restrictions for seniors and others, allowing for wider transfer of the Proposition 13 tax assessment to a replacement residence.⁸² This year's proposal, with some modification, is similar to the 2018 ballot measure Proposition 5 that was defeated with a vote 60 percent against to 40 percent in favor.

North Dakota may have an opportunity this year to adopt a constitutional amendment to prohibit all property taxes, except to support prior issued debt. The amendment would require the state to replace revenue from the property tax with payments to local governments equal to no less than the current amount they receive from the property tax. The initiative, currently being circulated for signatures, is similar to the 2012 Measure 2 that sought to eliminate the property

⁷⁷ Dirk VanderHart, "Gov. Kate Brown Wants Voters to Approve Tax for Affordable Housing" OPB January 28, 2020 <https://www.opb.org/news/article/oregon-governor-kate-brown-voters-real-estate-tax-decision/>

⁷⁸ Colorado Supreme Court 2019 CO 57 No. 19SA25, *In re Ballot Title #3-Title Setting-Single Subject Requirement-Ballot Initiative* June 17, 2019

⁷⁹ The initiative is eligible for the ballot and will become qualified 131 days prior to the next statewide general election. California Secretary of State, Eligible Statewide Initiative Measures <https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/eligible-statewide-initiative-measures/>

⁸⁰ Initiative 1851 (17-0055, Amdt. #1)

⁸¹ Initiative 1870 (19-0008A1)

⁸² Initiative 1864 (19-0003) The validity of the signatures is currently being verified. If a sufficient number of signatures are valid, the measure will be eligible for the ballot and will become qualified for the ballot on the 131st day prior to the statewide general election.

tax, which was soundly defeated. To qualify for this November ballot, signatures must be collected by July 6.⁸³

Nebraska has struggled to reduce its tax burden. The governor's State of the State address in 2018 included tax reform as a key priority, introducing the Nebraska Property Tax Relief and Opportunity Act directed towards restructuring the property tax credit,⁸⁴ but the legislature has yet to successfully enact such measures. This year, a solution may rest with the voters. A proposed ballot measure would provide a tax credit on the state's income tax for 35 percent of property taxes paid.⁸⁵ The proponents are now circulating the petition for signatures and have until July 2 to gather the required number of signatures to be eligible for inclusion on the November 2020 ballot.⁸⁶ However, as of April 13, 2020, the organization behind the amendment, TRUE Nebraskans, has suspended its petition drive because of the federal requirements for social distancing and limited gatherings in response to the COVID-19 outbreak.⁸⁷

Pending legislation in **Hawaii** seeks to allow the state to impose a surcharge on local property taxes on property near transit stations to fund infrastructure.⁸⁸ Granting such authority requires a constitutional amendment. Currently under the constitution, counties have exclusive authority to impose taxation on real property.⁸⁹ In 2018, the state sought to impose a similar property tax surcharge to fund increased teacher salaries.⁹⁰ However, the Hawaii Supreme Court invalidated the proposal as the legislative wording was vague and possibly misleading. Because of the late date of the decision, the measure could not be taken off the ballot. Therefore, the court decreed that "any votes for or against the measure will not be counted and will have no impact."⁹¹ Perhaps this year's proposal will be on the ballot.

Vacancy Taxes – A New Trend?

During the California primary election in March 2020, **San Francisco, California** voters approved Proposition D to add a new tax on vacant commercial properties in neighborhood commercial districts.⁹² The board of supervisors proposed the new tax to address the growing

⁸³ North Dakota Secretary of State, Amendment to Article X

<https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=119&ptIPKID=1#content-start>

⁸⁴ Governor Pete Ricketts State of the State Address, January 10, 2018 The Nebraska Property Tax Relief and Opportunity Act, LB 974

⁸⁵ Property Tax Relief petition <https://sos.nebraska.gov/sites/sos.nebraska.gov/files/doc/elections/2018/tax-relief.pdf>

⁸⁶ Paul Hammel "Property tax petition drive turns attention to Nebraska's urban areas" *Omaha World-Herald* October 7, 2019.

⁸⁷ TRUE Nebraskans "Thank you for your support" April 13, 2020 <https://truenebraskans.com/>

⁸⁸ Hawaii S.B. No. 2074. As of February 25, 2020, the Senate Ways and Means committee has deferred the measure.

⁸⁹ Hawaii constitution Art VIII, §3

⁹⁰ The specific legislation for a constitutional amendment would have allowed the state to enact legislation to impose a surcharge on investment real property. The state supreme court voided the proposed amendment as being vague and misleading.

⁹¹ *City and County of Honolulu; County of Hawaii, County of Maui; County of Kauai vs. State of Hawaii* SCPW-18-0000733 October 19, 2018.

⁹² The tax is not citywide, but applied to about 30 of neighborhood commercial corridors, according to Trisha Thadani, "SF 'vacancy tax' to fight empty storefronts headed to March ballot" *San Francisco Chronical* November 22, 2019.

number of street-level empty retail space. While the cause of such a large vacancy rate is unclear—whether growth of on-line shopping, the city’s complex permitting, or just the high cost of doing business—voters supported the new tax by a 70 percent favorable vote (a two-thirds majority is needed to impose a new tax). Beginning in tax year 2021, the rate will be imposed on frontage at \$250 per linear foot. The rate doubles if the property is vacant the second year and can rise to \$1,000 for longer-term vacancy.⁹³ The revenues from this new tax are earmarked to assist small businesses in the city.

Hawaii is considering imposing a conveyance tax as a way to address rising house prices and vacant homes. The legislature is considering two proposals—one to create a new tax, the other a surcharge on the existing conveyance tax; SB 2216 and SB 2040, respectively (the latter is described on p. 9). The new tax, called the “Empty Homes Tax,” would impose a tax when a residential property that has been used for fewer than 50 days is sold. The tax would be imposed on the county’s assessed value at 5 percent. This reliance on the county’s taxable values, and imposition of the tax on property owners, may raise constitutional questions. According to Article VII §3, “all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties....” If passed, the new tax will not take effect until July 1, 2050.

⁹³ Proposition D Vacant Property Tax