



TAX ABATEMENT

**YOU CAN'T AFFORD
NOT TO CHALLENGE
YOUR PROPERTY
TAXES IN COLORADO**

For Commercial and
Retail Property Owners,
Tax Abatement Matters

A WHITE PAPER PRESENTED BY



Robert Hill Law

PROPERTY TAX EXPERT



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For Commercial and
Retail Property Owners,
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Most property owners simply pay their property taxes every year. Even when they suspect the assessments and tax levels are higher than they should be, for most commercial or residential property owners it seems easier to simply pay the taxes and move on. Often, the thought of appealing their tax assessments never crosses their minds.

However, the assessment of your property value might not be in line with the actual value. A simple oversight from the tax assessors could be costly to you or your business every year. Sometimes, we have seen actual values at only 25% to 50% of the value given by assessors. Challenging your assessment could reduce your property tax assessment by half or more.

Since Colorado has some of the friendliest laws in the country for taxpayers seeking abatement, the process is much simpler than you might think.

With the high stakes and the simplicity of the process, you cannot afford NOT to appeal your tax assessment in Colorado.



WHAT IS ABATEMENT?

Abatement is the process by which a taxpayer can contest and obtain a refund for an overage of tax assessment caused by an overly high valuation of the property. It is a simple process and, if handled correctly by professionals, could succeed for you.

Colorado's Revised Statutes state this about the rules and processes involved with abatement and refunds.¹

Although there are numerous legally complicated definitions available, abatement is as simple as this:

- The property assessor valued your property over what a willing buyer would pay you;
- The high assessment resulted in a tax bill for the property in excess its actual value;
- You contest the valuation and resulting tax.
- The state reimburses you for the overage.

This process is called “abatement.”

THE BENEFITS OF FILING IN COLORADO

More than perhaps any other state in the country, Colorado provides its residents and property owners with numerous advantages with property tax abatement and refunds.

IN COLORADO, YOU CAN:



OBTAIN A REFUND AFTER YOU HAVE FILED YOUR TAX RETURN

In most states you must start the abatement process before you file your tax schedules and pay your property taxes. This means that once you pay your property taxes, your opportunity to appeal your property valuations is no longer available. In Colorado, however, you can still begin the abatement process even after you have paid your taxes.



LOOK-BACK UP TO TWO FISCAL YEARS

This is another area where Colorado benefits its property owners. You can look back and contest property valuations for the past two years rather than just the previous year, as in many other states.

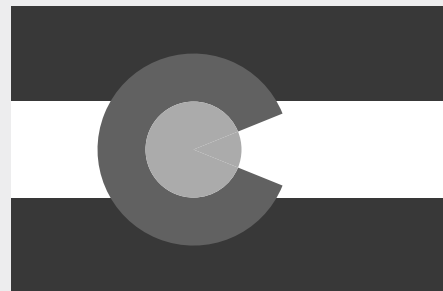
COLORADO



ENTER THE ABATEMENT PROCESS AND OBTAIN A REFUND WITH NO ACTUAL CLERICAL OR ASSESSMENT ERRORS

Most abatements are only available for property owners who can show there was serious procedural error in filing, paperwork or in the actual assessment. In those states, changing market conditions and other non-error-based problems are not considered adequate justification for an abatement. In Colorado, there is no need for clerical error; you can make the argument that changing market conditions changed the value of the property.

With these Colorado-specific advantages, double-check your property valuation in consultation with a property tax expert like Robert Hill Law.



IMPORTANT BUSINESS PROPERTY TAX PRINCIPLES IN COLORADO

There are numerous important principles to understand about property taxation, especially with businesses:

MARKET VALUE

In Colorado, taxing of business personal property and real property is based on market value, and the laws in Colorado proscribe any business personal property valuation for tax that exceeds market value.ⁱⁱ

DETERMINING MARKET VALUE FOR COMMERCIAL OR INDUSTRIAL REAL PROPERTY

Colorado uses three primary approaches to determine the market value of a commercial property:



The Sales Comparison Approach

The sales comparison approach uses sale prices of similar properties to determine value of a property. The properties used to compare with the property should be similar in size, location, highest and best use, and other market factors.



The Cost Approach

This approach determines the cost (including labor and materials) to replace the property, then subtracts the accumulated depreciation from that initial cost to arrive at a value.



The Income Approach

The income approach capitalizes the net income to estimate the present value of future benefits to be derived from the property.

The assessor chooses which approach seems most appropriate in a assessment. According to Douglass County, the decision “comes down to identifying the factors that would influence an investor’s decision-making process.”ⁱⁱⁱ

A critical aspect of many successful appeals has been a challenge to the approach used by the assessor to determine a property’s value.

VOLATILE MARKET CONDITIONS

Changes in government leadership, political turmoil, a global pandemic and other major upheavals in our normal operations all have an influence on the market. These factors influence the basic principles of supply and demand, which will change market conditions – and changing market conditions will change the value of a property.

ECONOMIC OBSOLESCENCE (EO)

This is one of the most important factors in Colorado. Economic obsolescence is a simple concept that refers to the “loss of value resulting from external economic factors to an asset or group of assets.”^{iv} EO can be caused by changes in the general economy, shifting market

trends, increased competition and other factors outside of the property owner’s control. The supply and demand chart below is an important aspect of EO.

Although EO is difficult to determine exactly in any one case, Colorado law is clear that “physical, functional, and economic obsolescence shall be considered in determining actual value,”^v and, “once obsolescence becomes manifest, any decision as to value requires due allowance for such, as an ingredient of correct value.”^{vi}

This caselaw establishes that assessors need to consider EO in their assessments.

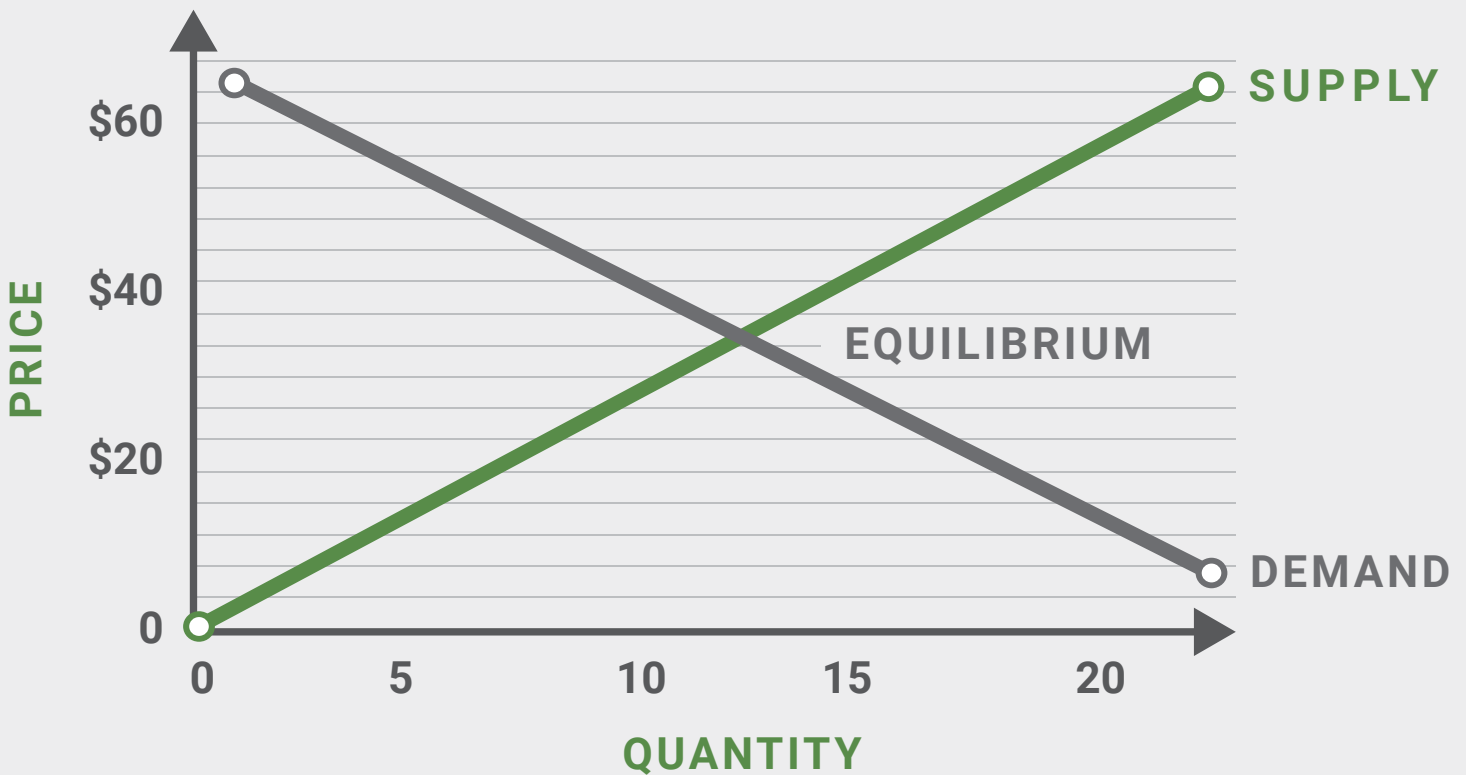


SUPPLY AND DEMAND

Supply and demand is a basic economic concept that describes the relationship between selling and buying. There is a complex relationship between how much of a resource is available and how much people will pay for something.

Conceptually, a balance emerges between supply and demand to land on an equilibrium between quantity and price.

SUPPLY AND DEMAND ILLUSTRATION



The equilibrium in supply and demand is not static, as many external factors will influence this chart, affecting values throughout a business's real property values.

SUPPLY AND DEMAND (CONTINUED)

When something shakes up the economy, the supply and demand chart needs to be reconsidered and evaluated anew. These changes in supply and demand values should include a re-evaluation of your property value and the resulting tax payments.

At minimum, until our current economic market settles on a set of re-pricing structures for real estate (post COVID-19), and property values become clear through fee simple market sales, everyone should challenge their tax assessments---especially in a place such as Colorado which will accept market evidence of pricing up to two years after the fact.

After the pandemic, for example, how much will the use of commercial property like office spaces return to business as usual? Without clear answers to this type of question, there is no way to be sure of a fair valuation of your property.

Until you know what your property is worth in the current economy, you can't afford not to appeal and discover what professionals like those at Robert Hill Law have to say.



WHAT YOU NEED TO KNOW

At bottom, what you as a property owner need to know is:

- You should have a fair tax obligation based on an accurate property value assessment.
- Part of your property assessment should be a consideration of volatile market conditions and economic obsolescence.
- You may appeal your tax assessment in Colorado if the assessor does not take economic obsolescence and other market conditions into account in the valuation.
- A successful appeal could cause lower assessment and a lower tax obligation.

THE ABATEMENT PROCESS

The process of abatement is probably simpler than you might think. It is an administrative process with no legal proceedings and no court involved.

Although the process can vary slightly between counties, the process for abatement in Boulder County indicates how it would likely proceed throughout the state:



FILE AN ABATEMENT PETITION

This petition is filed with the county assessor in your county, and it usually needs to be filed within two years of the time of your assessment. This petition is relatively simple.



RECOMMENDATION

During the recommendation period, the assessor's office will look through the petition and supporting documentation and recommend approval, partial approval or denial.



RESOLUTION

If your petition is accepted, you will either receive a refund from the county treasurer in your county if you have paid taxes on the property or, if you have not yet paid those taxes, you will receive a corrected tax notice from the treasurer's office. If the abated amount is more than \$10,000, it will require approval from the state property tax administrator of Colorado.



APPEAL

If your abatement petition is not accepted, you must appeal to the Colorado Board of Assessment.^{vii}

Although each step involves some nuance and possible complication, an experienced attorney can walk you through the process to make sure you get through it painlessly and your rights are protected.

THE APPEALS PROCESS

If you have to appeal your case, the process becomes more complicated. An appeal to the Board of Assessment Appeals (BAA) looks more like a legal process, with sworn statements, witness testimony and cross-examinations. The Colorado Department of Local Affairs gives a helpful high-level outline of the process:



OPENING STATEMENT

In your opening statement you will describe your property, make a brief statement of why you think the assessment is inaccurate and present the evidence to prove your position. This evidence can include witness testimony and exhibits.



CROSS-EXAMINATION

After your opening statement, the respondent (which is the county) may ask questions of the witnesses who testified in the opening statement.



DIRECT TESTIMONY

After cross-examination, the respondent can present its case, including evidence and witness testimony, similar to the opening statement.



CROSS-EXAMINATION

You, the petitioner, can cross-examine the respondent's witnesses.



REDIRECT

After you have questioned the witnesses, the county can ask questions of its witnesses on any subjects raised during the cross-examination.



CLOSING STATEMENTS

Both parties may briefly state to summarize their arguments.

After the hearing, the board will attempt to decide within 30 days.^{viii}

BENEFITS OF THE ABATEMENT PROCESS

Filing for abatement in Colorado through Robert Hill and Robert Hill Law creates benefits including:



No filing fees.



No attorney fees.



We take abatement cases on a contingency fee basis, which means our fee is a percentage of the refund we obtain for you. There is no financial risk for the person filing the abatement application.



It provides a direct means of speaking with your assessor about your previous assessment, given market conditions that have arisen since your initial assessment.



Assessors like this process because it does not embarrass them. They can fix your property taxes without feeling like they are being challenged.



CONCLUSION

While most commercial and residential property owners do not take the time to examine or challenge their property value assessments, you should. There is no cost to do so, and it could help you avoid overpaying your taxes. With the amount you could save, you can't afford not to seek an abatement.

ABOUT ROBERT A. HILL

Attorney Robert Hill is a leader in property tax appeals in Minnesota and throughout the country. He understands the importance of tax appeals. This is a high stakes area of law, so he focuses all his attention on this one type of claim.

He has been helping clients with property tax appeals and other related issues for more than 30 years.

Robert Hill has spent his entire career offering the same quality legal representation that gets results. Clients often save hundreds of thousands of dollars, even millions, due to Robert's dedication to and knowledge of his area of law.

From challenging appraisals and classifications to commercial property tax abatement issues, Mr. Hill provides comprehensive legal service in the area of property tax law, backed by more than three decades of experience.



Founding Partner,
Robert Hill Law





SOURCES

ⁱ CO Rev Stat § 39-1-113 (2016)

ⁱⁱ City and County of Denver v. Bd. of Assessment Appeals (Colo. 1993)

ⁱⁱⁱ <https://www.douglas.co.us/documents/commercial-property.p>

^{iv} VRC. "Economic Obsolescence: Discover loss of value caused by external factors."

^v C.R.S. § 39-104(12.3)(a)(II)

^{vi} Colo. & Utah Coal Co. v. Rorex, (Colo. 1962)

^{vii} <https://bit.ly/2Z54CK2>

^{viii} Colorado Department of Local Affairs, What to Expect at Your Hearing.



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