

# **Bond Case Briefs**

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## **TAX - COLORADO**

### **In Re Interrogatory on House Bill 21-1164 Submitted by Colorado General Assembly**

**Supreme Court of Colorado - May 24, 2021 - P.3d - 2021 WL 2069700 - 2021 CO 34**

General Assembly submitted interrogatory asking whether it could require school districts to gradually eliminate temporary property tax credits without obtaining voter approval.

The Supreme Court held that:

- Supreme Court would exercise original jurisdiction;
- Legislation did not need statewide voter approval; and
- As a matter of first impression, General Assembly was not required to obtain further voter approval before passing the legislation.

Supreme Court would exercise original jurisdiction to consider the General Assembly's petition asking whether it could require school districts to gradually eliminate temporary property tax credits without obtaining voter approval, as interrogatory at issue was connected with pending legislation and directly related to the constitutionality of that legislation, and the legislation presented important questions upon a solemn occasion; absent guidance, state and local school districts will lack certainty as to the appropriate level of school districts' total program mill levies, school districts would risk the costs and delays of legal action and potentially substantial refund obligations under Taxpayer's Bill of Rights (TABOR) if the increases in total program mill levies were ultimately found to be unconstitutional, and individual lawsuits would create substantial unnecessary costs and confusion.

General Assembly's incremental elimination of temporary property tax credits, which were granted to mitigate the effect of the correction of Department of Education's improper advisement that school districts calculate the mill levied in accordance with the Taxpayer's Bill of Rights (TABOR) notwithstanding voter waiver of TABOR requirements, did not need statewide voter approval; districts were responsible for tax rates and increases and were the only entities with the authority to change tax policy within the meaning of TABOR.

General Assembly, consistent with Taxpayer's Bill of Rights (TABOR) requirements, was not required to obtain further voter approval before passing legislation which gradually eliminated temporary property tax credits adopted in prior legislation to mitigate impact of reversal of Colorado Department of Education guidance which advised local school districts to calculate mill levies in accordance with TABOR's growth-plus-inflation limits despite voter waivers of those limits; district voters had validly waived TABOR's revenue limits and necessarily approved the mill levies in effect at the time they voted, and legislation simply effectuated what the voters had already approved and did not permit mill levies above that level.

