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States' Differential Tax Assessment of Agricultural Land Statutes

Colorado

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States' Differential Tax Assessment of Agricultural Land Statutes
State of Colorado

Colo. Rev. Stat. §§ 39-1-10

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§ 39-1-102. Definitions

As used in articles 1 to 13 of this title 39, unless the context otherwise requires:

(1) "Administrator" means the property tax administrator.

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

(1.3) "Agricultural equipment which is used on the farm or ranch in the production of agricultural products":

(a) Means any personal property used on a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, for planting, growing, and harvesting agricultural products or for raising or breeding livestock for the primary purpose of obtaining a monetary profit; and

(b) Includes:

(I) Any mechanical system used on the farm or ranch for the conveyance and storage of animal products in a raw or unprocessed state, regardless of whether or not such mechanical system is affixed to real property; and

(II) Silviculture personal property that is designed, adapted, and used for the planting, growing, maintenance, or harvesting of trees in a raw or unprocessed state.

(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I)(A) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such

land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land. "Agricultural land" also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(B) A residential improvement shall be deemed to be "integral to an agricultural operation" for purposes of sub-subparagraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child of the individual.

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is

actually used for nonagricultural commercial or nonagricultural residential purposes.

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated groundwater granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

(b)(I) Except as provided in subparagraph (II) of this paragraph (b), all other agricultural property that does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.

(II) On and after January 1, 2015, "all other agricultural property" includes greenhouse and nursery production areas used to grow food products, agricultural products, or horticultural stock for wholesale purposes only that originate above the ground.

(c) An assessor must determine, based on sufficient evidence, that a parcel of land does not qualify as agricultural land, as defined in subparagraph (IV) of paragraph (a) of this subsection (1.6), before land may be changed from agricultural land to any other classification.

(d) Notwithstanding any other provision of law to the contrary, property that is used solely for the cultivation of medical marijuana shall not be classified as agricultural land.

(2) "Assessor" means the elected assessor of a county, or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(2.5) “Bed and breakfast” means an overnight lodging establishment, whether owned by a natural person or any legal entity, that is a residential dwelling unit or an appurtenance thereto, in which the innkeeper resides, or that is a building designed but not necessarily occupied as a single family residence that is next to, or directly across the street from, the innkeeper's residence, and in either circumstance, in which:

(a) Lodging accommodations are provided for a fee;

(b) At least one meal per day is provided at no charge other than the fee for the lodging accommodations; and

(c) There are not more than thirteen sleeping rooms available for transient guests.

(3) “Board” means the board of assessment appeals.

(3.1) “Commercial lodging area” means a guest room or a private or shared bathroom within a bed and breakfast that is offered for the exclusive use of paying guests on a nightly or weekly basis. Classification of a guest room or a bathroom as a “commercial lodging area” shall be based on whether at any time during a year such rooms are offered by an innkeeper as nightly or weekly lodging to guests for a fee. Classification shall not be based on the number of days that such rooms are actually occupied by paying guests.

(3.2) “Conservation purpose” means any of the following purposes as set forth in section 170(h) of the federal “Internal Revenue Code of 1986”, as amended:

(a) The preservation of land areas for outdoor recreation, the education of the public, or the protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems; or

(b) The preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the public or is pursuant to a clearly delineated federal, state, or local government conservation policy and where such preservation will yield a significant public benefit.

(3.5) “Farm” means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(4) “Fixtures” means those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto. “Fixtures” includes systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of such building. “Fixtures” does not include machinery, equipment, or other articles related to a commercial or industrial operation which are affixed to the real property for proper utilization of such articles. In addition, for property tax purposes

only, “fixtures” does not include security devices and systems affixed to any residential improvements, including but not limited to security doors, security bars, and alarm systems.

(4.3) “Forest land” means land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. “Forest land” includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. “Forest land” includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide.

(4.4) “Forest management plan” means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fees collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly.

(4.5) “Forest management practices” means practices accepted by professional foresters which control forest establishment, composition, density, and growth for the purpose of producing forest products and associated amenities following sound business methods and technical forestry principles.

(4.6) “Forest trees” means woody plants which have a well-developed stem or stems, which are usually more than twelve feet in height at maturity, and which have a generally well-defined crown.

(5) Repealed by Laws 1983, S.B.6, § 6.

(5.5) (a) “Hotels and motels” means improvements and the land associated with such improvements that are used by a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public and that are predominantly used on an overnight or weekly basis; except that “hotels and motels” does not include:

(I) A residential unit, except for a residential unit that is a hotel unit;

(II) A residential unit that would otherwise be classified as a hotel unit if the residential unit is held as inventory by a developer primarily for sale to customers in the ordinary course of the developer's trade or business, is marketed for sale by the developer, and either has been held by the developer for less than two years since the certificate of occupancy for the residential unit has been issued or is not depreciated under the internal revenue code, as defined in section 39-22-103(5.3), while owned by the developer; or

(III) A residential unit that would otherwise be classified as a hotel unit if the residential unit has been acquired by a lender or an owners' association through foreclosure, a deed in lieu of foreclosure, or a similar transaction, is marketed for sale by the lender or owners' association and is not depreciated under the internal revenue code, as defined in section 39-22-103(5.3), while owned by the lender or owners' association.

(IV) Repealed by Laws 2002, Ch. 332, § 3, eff. Jan. 1, 2003.

(b) If any time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit is owned by any non-hotel unit owner, then, unless a declaration or other express agreement binding on the non-hotel unit owners and the hotel unit owners provides otherwise:

(I) The hotel unit owners shall pay the taxes on the hotel unit not required to be paid by the non-hotel unit owners pursuant to subparagraph (II) of this paragraph (b).

(II) Each non-hotel unit owner shall pay that portion of the taxes on the hotel unit equal to the non-hotel unit owner's ownership or usage percentage of the hotel unit multiplied by the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit was residential real property.

(III) For purposes of determining the amount due from any hotel unit owner or nonhotel unit owner pursuant to subparagraph (II) of this paragraph (b), the assessor shall, upon the request of any hotel unit owner or non-hotel unit owner, calculate the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit were residential real property. A hotel unit owner or non-hotel unit owner may petition the county board of equalization for review of the assessor's calculation pursuant to the procedures set forth in section 39-10-114. Any appeal from the decision of the county board shall be governed by section 39-10-114.5.

(c) As used in this subsection (5.5):

(I) "Condominium unit" means a unit, as defined in section 38-33.3-103(30), C.R.S., and also includes a time share unit.

(II) "Hotel unit owners" means any person or member of a group of related persons whose ownership and use of a residential unit cause the residential unit to be classified as a hotel unit.

(III) "Hotel units" means more than four residential unit ownership equivalents in a project that are owned, in whole or in part, directly, or indirectly through one or more intermediate entities, by one person or by a group of related persons if the person or group of related persons uses the residential units or parts thereof in connection with a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public predominantly on an overnight or weekly basis. "Hotel unit" means any residential unit included in hotel units. For purposes of this subparagraph (III):

(A) "Control" means the power to direct the business or affairs of an entity through direct or indirect ownership of stock, partnership interests, membership interests, or other forms of beneficial interests.

(B) "Related persons" means individuals who are members of the same family, including only spouses and minor children, or persons who control, are controlled by, or are under common control with each other. Persons are not related persons solely because they engage a common agent to manage or rent their residential units, they are members of an owners' association or similar group, they enter into a tenancy in common or a similar agreement with respect to undivided interests in a residential unit, or any combination of the foregoing.

(IV) "Project" means one or more improvements that contain residential units if the boundaries of the residential units are described in or determined by the same declaration, as defined in section 38-33.3-103(13), C.R.S.

(V) "Residential unit" means a condominium unit, a single-family residence, or a townhome.

(VI) "Non-hotel unit owner" means any owner of a time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit who is not a hotel unit owner with respect to the hotel unit.

(VII) "Residential unit ownership equivalent" means:

(A) In the case of time share units, time share interests or time share use periods in one or more time share units that in the aggregate entitle the owner of such time share interests or time share use periods to three hundred sixty-five days of use in any calendar year or three hundred sixty-six days of use in any calendar year that is a leap year; and

(B) In the case of residential units other than time share units, undivided interests or other ownership interests in one or more such residential units that total one hundred percent. For purposes of this sub-subparagraph (B), any undivided interest or other ownership interest not stated in terms of a percentage of total ownership shall be converted to a percentage of total ownership based on the rights accorded to the holder of the undivided interest or other ownership interest.

(VIII) "Time share unit" means a condominium unit that is divided into time share estates as defined in section 38-33-110(5), C.R.S., or that is subject to a time share use as defined in section 12-61-401(4), C.R.S.

(5.6) "Hotels and motels" as defined in subsection (5.5) of this section shall not include bed and breakfasts.

(6) "Household furnishings" means that personal property, other than fixtures, in residential structures and buildings which is not used for the production of income at any time.

(6.3) "Improvements" means all structures, buildings, fixtures, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.

(6.8) "Independently owned residential solar electric generation facility" means personal property that:

(a) Is located on residential real property;

(b) Is owned by a person other than the owner of the residential real property;

(c) Is installed on the customer's side of the meter;

(d) Is used to produce electricity from solar energy primarily for use in the residential improvements located on the residential real property; and

(e) Has a production capacity of no more than one hundred kilowatts.

(7) Deleted by Laws 2010, Ch. 425, § 1, eff. Aug. 11, 2010.

(7.1) "Innkeeper" means the owner, operator, or manager of a bed and breakfast.

(7.2) “Inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale” means those classes of personal property which are held primarily for sale by a business, farm, or ranch, including components of personal property to be held for sale, or which are held for consumption by a business, farm, or ranch, or which are rented for thirty days or less. For the purposes of this subsection (7.2), “personal property rented for thirty days or less” means personal property rented for thirty days or less which can be returned at the option of the person renting the property, in a transaction on which the sales or use tax is actually collected before being finally sold, whether or not such personal property is subject to depreciation. It is the purpose of the general assembly to exempt “personal property rented for thirty days or less” from property tax because of the similarity of such property to inventories of merchandise held by retail stores. Further, the general assembly intends this exemption to encompass a transaction under a rental agreement in which the customer pays rent in order to use an item for a brief period of time; it is not intended to encompass an equipment lease contract covering a specific period of time and which includes financial penalties for early cancellation. Except for “personal property rented for thirty days or less”, the term “inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale” does not include personal property which is held for rent or lease or is subject to an allowance for depreciation. For property tax years commencing on or after January 1, 1984, the term does include inventory which is owned by and which is in the possession of the manufacturer of such inventory unless:

(a) Such inventory is in the possession of the manufacturer after having previously been leased by the manufacturer to a customer; and

(b) Such manufacturer has not designated such inventory for scrapping, substantial reconditioning, renovating, or remanufacturing in accordance with its customary practices. For the purposes of this paragraph (b), normal maintenance shall not constitute substantial reconditioning, renovating, or remanufacturing.

(7.5) Repealed by Laws 1987, S.B.7, § 1.

(7.7) “Livestock” includes all animals.

(7.8) “Manufactured home” means any preconstructed building unit or combination of preconstructed building units that:

(a) Includes electrical, mechanical, or plumbing services that are fabricated, formed, or assembled at a location other than the residential site of the completed home;

(b) Is designed and used for residential occupancy in either temporary or permanent locations;

(c) Is constructed in compliance with the “National Manufactured Housing Construction and Safety Standards Act of 1974”, 42 U.S.C. sec. 5401 et seq., as amended;

(d) Does not have motive power;

(e) Is not licensed as a vehicle; and

(f) Is eligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.

(7.9) "Minerals in place" means, without exception, metallic and nonmetallic mineral substances of every kind while in the ground.

(8) "Mobile home" means a manufactured home built prior to the adoption of the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended.

(8.3) "Modular home" means any preconstructed factory-built building that:

(a) Is ineligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.;

(b) Is not constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended; and

(c) Is constructed in compliance with building codes adopted by the division of housing in the department of local affairs.

(8.4) "Natural cause" means fire, explosion, flood, tornado, action of the elements, act of war or terror, or similar cause beyond the control of and not caused by the party holding title to the property destroyed.

(8.5) "Not for private gain or corporate profit" means the ownership and use of property whereby no person with any connection to the owner thereof shall receive any pecuniary benefit except for reasonable compensation for services rendered and any excess income over expenses derived from the operation or use of the property and all proceeds from the sale of the property of the owner shall be devoted to the furthering of any exempt purpose.

(8.7) "Perpetual conservation easement" means a conservation easement in gross, as described in article 30.5 of title 38, C.R.S., that qualifies as a perpetual conservation restriction pursuant to section 170(h) of the federal "Internal Revenue Code of 1986", as amended, and any regulations issued thereunder.

(9) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities which are or may become taxpayers by reason of the ownership of taxable real or personal property.

(10) "Personal effects" means such personal property as is or may be worn or carried on

or about the person, and such personal property as is usually associated with the person or customarily used in personal hobby, sporting, or recreational activities and which is not used for the production of income at any time.

(11) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation that are either affixed or not affixed to the real property for proper utilization of such articles. Except as otherwise specified in articles 1 to 13 of this title, any pipeline, telecommunications line, utility line, cable television line, or other similar business asset or article installed through an easement, right-of-way, or leasehold for the purpose of commercial or industrial operation and not for the enhancement of real property shall be deemed to be personal property, including, without limitation, oil and gas distribution and transmission pipelines, gathering system pipelines, flow lines, process lines, and related water pipeline collection, transportation, and distribution systems. Structures and other buildings installed on an easement, right-of-way, or leasehold that are not specifically referenced in this subsection (11) shall be deemed to be improvements pursuant to subsection (6.3) of this section.

(12) "Political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

(12.1) Repealed by Laws 1988, H.B.1016, § 14.

(12.3) and (12.4) Repealed by Laws 1987, S.B.7, § 1.

(12.5) "Professional forester" means any person who has received a bachelor's or higher degree from an accredited school of forestry.

(13) "Property" means both real and personal property.

(13.2) "Qualified organization" means a qualified organization as defined in section 170(h)(3) of the federal "Internal Revenue Code of 1986", as amended.

(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

(14) "Real property" means:

(a) All lands or interests in lands to which title or the right of title has been acquired from the government of the United States or from sovereign authority ratified by treaties entered into by the United States, or from the state;

(b) All mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and

(c) Improvements.

(14.3) "Residential improvements" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use. The term also includes a manufactured home as defined in subsection (7.8) of this section, a mobile home as defined in subsection (8) of this section, and a modular home as defined in subsection (8.3) of this section.

(14.4) (a) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term includes land upon which residential improvements were destroyed by natural cause after the date of the last assessment as established in section 39-1-104(10.2). The term also includes two acres or less of land on which a residential improvement is located where the improvement is not integral to an agricultural operation conducted on such land. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103(10.5).

(b) (I) Notwithstanding section 39-1-103(5)(c) and except as provided in subparagraph
(II) of this paragraph (b), when residential improvements are destroyed, demolished, or relocated as a result of a natural cause on or after January 1, 2010, that, were it not for their destruction, demolition, or relocation due to such natural cause, would have qualified the land upon which the improvements were located as residential land for the following property tax year, the residential land classification shall remain in place for the year of destruction, demolition, or relocation and the two subsequent property tax years. The residential land classification may remain in place for additional subsequent property tax years, not to exceed a total of five subsequent property tax years, if the assessor determines there is evidence the owner intends to rebuild or locate a residential improvement on the land. For purposes of this determination, the assessor may consider, but shall not be limited to considering, a building permit or other land development permit for the land, construction plans for such residential improvement, efforts by the owner to obtain financing for a residential improvement, or ongoing efforts to settle an insurance claim related to the destruction, demolition, or relocation of the residential improvement due to a natural cause.

(II) The residential land classification of the land described in subparagraph (I) of this paragraph (b) shall change according to current use if:

(A) A new residential improvement or part of a new residential improvement is not constructed or placed on the

land in accordance with applicable land use regulations prior to the January 1 after the period described in subparagraph (I) of this paragraph (b), unless the property owner provides documentary evidence to the assessor that during such period a good-faith effort was made to construct or place a new or part of a new residential improvement on the land but that additional time is necessary;

(B) The assessor determines that the classification at the time of destruction, demolition, or relocation as a result of a natural cause was erroneous; or

(C) A change of use has occurred. For purposes of this sub-subparagraph (C), a change of use shall not include the temporary loss of the residential use due to the destruction, demolition, or relocation as a result of a natural cause of the residential improvement.

(c) (I) Notwithstanding section 39-1-103(5)(c) and except as provided in subsection (14.4)(c)(II) of this section, when residential improvements are destroyed, demolished, or relocated on or after January 1, 2018, that, were it not for their destruction, demolition, or relocation, would have qualified the land upon which the improvements were located as residential land for the following property tax year, the residential land classification shall remain in place for the year of destruction, demolition, or relocation and one subsequent property tax year if the assessor determines there is evidence that the owner intends to rebuild or locate a residential improvement on the land. For purposes of this determination, the assessor may consider, but is not limited to considering, a building permit or other land development permit for the land, construction plans for such residential improvement, or efforts by the owner to obtain financing for a residential improvement.

(II) The residential land classification of the land described in subsection (14.4)(c)(I) of this section shall change according to current use if:

(A) A new residential improvement or part of a new residential improvement is not constructed or placed on the land in accordance with applicable land use regulations prior to the January 1 after the period described in subsection (14.4)(c)(I) of this section;

(B) The assessor determines that the classification of the land at the time of the destruction, demolition, or relocation was erroneous; or

(C) A change of use has occurred. For purposes of this subsection (14.4)(c)(II)(C), a change of use shall not include the temporary loss of the residential use due to the

destruction, demolition, or relocation of the residential improvement.

(14.6) "Residential real property" means residential land and residential improvements but does not include hotels and motels as defined in subsection (5.5) of this section.

(15) Repealed by Laws 1983, H.B.1016, § 11.

(15.5) (a) "School" means:

(I) An educational institution having a curriculum comparable to that of a publicly supported elementary or secondary school or college, or any combination thereof, and requiring daily attendance; or

(II) An institution that is licensed as a child care center pursuant to article 6 of title 26, C.R.S., that is:

(A) Operated by and as an integral part of a not-for-profit educational institution that meets the requirements of subparagraph (I) of this paragraph (a); or

(B) A not-for-profit institution that offers an educational program for not more than six hours per day and that employs educators trained in preschool through eighth grade educational instruction and is licensed by the appropriate state agency and that is not otherwise qualified as a school under this paragraph (a) or as a religious institution.

(b) "School" includes any educational institution that meets the requirements set forth in subparagraph (I) or (II) of paragraph (a) of this subsection (15.5), even if such educational institution maintains hours of operation in excess of the minimum hour requirements of section 22-32-109(1)(n)(I), C.R.S.

(16) "Taxable property" means all property, real and personal, not expressly exempted from taxation by law.

(17) "Treasurer" means the elected treasurer of a county or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(18) "Works of art" means those items of personal property that are original creations of visual art, including, but not limited to:

(a) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;

(b) Paintings or drawings;

(c) Mosaics;

(d) Photographs;

(e) Crafts made from clay, fiber and textiles, wood, metal, plastics, or any other material, or any combination thereof;

(f) Calligraphy;

(g) Mixed media composed of any combination of forms or media; or

(h) Unique architectural embellishments.

§ 39-1-103. Actual value determined--when

(1) The valuation for assessment of producing mines and nonproducing mining claims shall be determined as provided in article 6 of this title.

(2) The valuation for assessment of leaseholds and lands producing oil or gas shall be determined as provided in article 7 of this title.

(3) The actual value for property tax purposes of the operating property and plant of all public utilities doing business in this state shall be determined by the administrator, as provided in article 4 of this title.

(4) (a) Repealed by Laws 1983, H.B.1016, § 11.

(b) The valuation for assessment of mobile homes shall be determined as provided in section 39-5-203.

(5) (a) All real and personal property shall be appraised and the actual value thereof for property tax purposes determined by the assessor of the county wherein such property is located. The actual value of such property, other than agricultural lands exclusive of building improvements thereon and other than residential real property and other than producing mines and lands or leaseholds producing oil or gas, shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal. The assessor shall consider and document all elements of such approaches that are applicable prior to a determination of actual value. Despite any orders of the state board of equalization, no assessor shall arbitrarily increase the valuations for assessment of all parcels represented within the abstract of a county or within a class or subclass of parcels on that abstract by a common multiple in response to the order of said board. If an assessor is required, pursuant to the order of said board, to increase or decrease valuations for assessment, such changes shall be made only upon individual valuations for assessment of each and every parcel, using each of the approaches to appraisal specified in this paragraph (a), if applicable. The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the

earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent. Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or nonagricultural residential purposes, that portion shall be valued according to such use. Nothing in this subsection (5) shall be construed to require or permit the reclassification of agricultural land or improvements, including residential property, due solely to subjecting the land to a perpetual conservation easement. The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal. The valuation for assessment of producing mines and of lands or leaseholds producing oil or gas shall be determined pursuant to articles 6 and 7 of this title.

(b) If, having considered the three approaches prescribed in paragraph (a) of this subsection (5), at the sole discretion of the assessor the use of the three approaches to value cannot accurately determine the actual value of any parcel of taxable property, or in the opinion of the assessor the application of the three approaches to value does not result in uniform, just, and equalized valuation, then the actual value thereof shall be determined by comparison of the surface use of such property with a similar surface use.

(c) Except as provided in section 39-1-102(14.4)(b) or 39-1-102(14.4)(c) and in subsections (5)(e) and (5)(f) of this section, once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous. The property owner shall endeavor to comply with the reasonable requests of the assessor to supply information which cannot be ascertained independently but which is necessary to determine actual use and properly classify the property when the assessor has evidence that there has been a change in the use of the property. Failure to supply such information shall not be the sole reason for reclassifying the property. Any such request for such information shall be accompanied by a notice that states that failure on the part of the property owner to supply such information will not be used as the sole reason for reclassifying the property in question. Subject to the availability of funds under the assessor's budget for such purpose, no later than May 1 of each year, the assessor shall inform each person whose property has been reclassified from agricultural land to any other classification of property of the reasons for such reclassification including, but not limited to, the basis for the determination that the actual use of the property has changed or that the classification of such property is erroneous.

(d) If a parcel of land is classified as agricultural land as defined in section 39-1102(1.6)(a)(III) and the perpetual conservation easement is terminated, violated, or substantially modified so that the easement

is no longer granted exclusively for conservation purposes, the assessor may reassess the land retroactively for a period of seven years and the additional taxes, if any, that would have been levied on the land during the seven year period prior to the termination, violation, or modification shall become due.

(e) (I) Except as provided in subparagraph (II) of this paragraph (e) and in paragraph (f) of this subsection (5), if a parcel of land is classified as agricultural land as defined in section 39-1-102(1.6) and the productivity of such parcel of land is destroyed by a natural cause on or after January 1, 2012, so that, were it not for the destruction of the productivity of the land by a natural cause, the land would have qualified as agricultural land for the following property tax year, the agricultural land classification shall remain in place for the year of destruction and the four subsequent property tax years so long as the assessor receives evidence from the owner that the owner is in the process of rehabilitating the productivity of the land for agricultural use. Such evidence includes, but is not limited to, removing debris, removing contaminants, restoring fences and agricultural structures, reseeding, providing water for livestock, or contouring the land suitable for agricultural use.

(II) The agricultural land classification of the land described in subparagraph (I) of this paragraph (e) must change according to current use if:

(A) The productivity of the land is not rehabilitated for agricultural use prior to the January 1 after the period described in subparagraph (I) of this paragraph (e), unless the property owner provides documentary evidence to the assessor that during such period a good-faith effort was made to rehabilitate the productivity of the land for agricultural use but that additional time is necessary;

(B) The assessor determines that the classification at the time of destruction of the productivity of the land as a result of a natural cause was erroneous; or

(C) A change of use has occurred. For purposes of this sub-subparagraph (C), a change of use does not include the temporary loss of agricultural classification of the land as a result of the destruction of the productivity of the land by a natural cause.

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), if a parcel of land is classified as agricultural land as defined in section 39-1-102(1.6)(a)(II) and the productivity of the parcel of land is destroyed by a natural cause on or after January 1, 2012, so that, were it not for the destruction of the productivity of the land by a natural cause, the land would have qualified as agricultural land for the following

property tax year, the agricultural land classification shall remain in place notwithstanding the length of the rehabilitation period specified in subparagraph (I) of paragraph (e) of this subsection (5) so long as the owner is in compliance with an approved forest management plan and is on the list provided by the Colorado state forest service as having such a plan.

(II) The agricultural land classification of the land described in subparagraph (I) of this paragraph (f) must change according to current use if:

(A) The assessor determines that the classification at the time of destruction of the productivity of the land as a result of a natural cause was erroneous; or

(B) A change of use has occurred. For purposes of this sub-subparagraph (B), a change of use does not include the temporary loss of agricultural classification of the land as a result of the destruction of the productivity of the land by a natural cause.

(6) Repealed by Laws 1983, S.B.6, § 6.

(7) Repealed by Laws 1987, S.B.7, § 1.

(8) In any case in which sales prices of comparable properties within any class or subclass are utilized when considering the market approach to appraisal in the determination of actual value of any taxable property, the following limitations and conditions shall apply:

(a) (I) Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes. In order to obtain a reasonable sample and to reduce sudden price changes or fluctuations, all sales shall be included in the sample that reasonably reflect a true or typical sales price during the period specified in section 39-1-104(10.2). Sales of personal property exempt pursuant to the provisions of sections 39-3-102, 39-3-103, and 39-3-119 to 39-3-122 shall not be included in any such sample.

(II) Because of the unique characteristics and limited number of oil shale mineral interests, a minimum of five arm's-length sales of reasonably comparable oil shale mineral interests shall be required to constitute a market for purposes of utilization of the market approach to appraisal in determining the actual value of nonproducing oil shale mineral interests.

(b) Each such sale included in the sample shall be coded to indicate a typical, negotiated sale, as screened and verified by the assessor.

(c) All such coded, typical sales samples shall be supplied to the administrator for the performance of his duties.

(d) In no event shall a sales ratio be established or utilized for any class or subclass of property unless and until there have been at least thirty such coded, typical sales or at least five percent of all properties in such class or subclass within the county have been sold and verified by the assessor as coded, typical sales, whichever amount is greater. When such minimum requirement has not been met but typical sales within any such class or subclass indicate that valuations in the class or subclass are too high or too low, such fact shall be reported to the state board of equalization, which board may order an independent appraisal study in such county.

(e) Repealed by Laws 1990, H.B.90-1018, § 41.

(f) Such true and typical sales shall include only those sales which have been determined on an individual basis to reflect the selling price of the real property only or which have been adjusted on an individual basis to reflect the selling price of the real property only.

(9) (a) In the case of an improvement which is used as a residential dwelling unit and is also used for any other purpose, the actual value and valuation for assessment of such improvement shall be determined as provided in this paragraph (a). The actual value of each portion of the improvement shall be determined by application of the appropriate approaches to appraisal specified in subsection (5) of this section. The actual value of the land containing such an improvement shall be determined by application of the appropriate approaches to appraisal specified in subsection (5) of this section. The land containing such an improvement shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvement is allocated bears to the total actual value of the improvement. The appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land and of the improvement.

(b) In the case of land containing more than one improvement, one of which is a residential dwelling unit, the determination of which class the land shall be allocated to shall be based upon the predominant or primary use to which the land is put in compliance with land use regulations. If multiuse is permitted by land use regulations, the land shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvements are allocated bears to the combined actual value of the improvements; the appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land.

(10) Common property or common elements within a common interest community as defined in the “Colorado Common Interest Ownership Act”, article 33.3 of title 38, C.R.S., shall be appraised and valued pursuant to the provisions of section 38-33.3-105, C.R.S.

(10.5) (a) The general assembly hereby finds and declares that bed and breakfasts are unique mixed-use properties; that all areas of a bed and breakfast, except for the commercial lodging area, are shared and common areas that allow innkeepers and guests to interact in a residential setting; that the land on which a bed and breakfast is located and that is used in conjunction with the bed and breakfast is primarily residential in nature; and that there appears to exist a wide disparity in how assessors classify the different portions of bed and breakfasts.

(b) Therefore, notwithstanding any other provision of this article, a bed and breakfast shall be assessed as provided in this subsection (10.5). The commercial lodging area of a bed and breakfast shall be assessed at the rate for nonagricultural or nonresidential improvements. Any part of the bed and breakfast that is not a commercial lodging area shall be considered a residential improvement and assessed accordingly. The actual value of each portion of the bed and breakfast shall be determined by the application of the appropriate approaches to appraisal specified in subsection (5) of this section. The actual value of the land containing a bed and breakfast shall be determined by the application of the appropriate approaches to appraisal specified in subsection (5) of this section. The land containing a bed and breakfast shall be assessed as follows:

(I) The portion of land directly underneath a bed and breakfast shall be assessed pursuant to the procedures pertaining to land set forth in subsection (9) of this section.

(II) There shall be a rebuttable presumption that all remaining land shall be assessed as residential land. Such presumption shall only be overcome if there is a nonresidential use not reasonably associated with the operation of the bed and breakfast on some portion of the remaining land, in which case, such portion of the remaining land shall be assessed as nonresidential land.

(III) Subparagraphs (I) and (II) of this paragraph (b) shall not apply to agricultural land.

(11) The general assembly hereby declares that consideration by assessing officers of the cost approach, market approach, and income approach to the appraisal of real property has resulted in valuations of minerals in place which are neither uniform, nor just and equal, because of wide variations within the same locality in quality and quantity of mineral deposits, if any, because of uncertainty in the existence or extent of such deposits, because of difficulty in measuring acquisition or replacement costs, or because of speculative value judgments when minerals in place are not income producing. Therefore, in the absence of preponderant evidence shown by the assessing officer that the use of the cost approach, market approach, and income approach result in uniform and just and equal valuation, minerals in place are not to be considered in determining the actual value of real property.

(12) In any case in which the income approach is utilized in the determination of the actual value of any nonproducing oil shale mineral interests, the following limitations and conditions shall apply:

(a) The assessor shall capitalize the annual rental income for such nonproducing mineral interests at a capitalization rate of thirteen percent. If nonproducing mineral interests are unleased, the assessor shall use the annual rental as defined in paragraph (b) of this subsection (12).

(b) For the purposes of this subsection (12), "annual rental" means annual rental payments, or other compensatory payments payable for the right to hold a mineral interest, which payments are fixed and certain in amount and payable periodically over a fixed period calculated on a twelve-month basis. "Annual rental" shall be the representative annual rental for such mineral interests leased within the county or the area, and "annual rental" does not include royalty payments, advanced royalty payments, bonus payments, or minimum royalty payments covering periods when the mineral interests are not in production, even though said payments may be fixed and certain in amount and payable periodically. For the purposes of this paragraph (b), "royalty payments", "advanced royalty payments", and "minimum royalty payments" mean payments attributable to a portion of the current or future mineral production of a mineral interest, paid for the privilege of producing minerals, and "bonus payments" means compensation paid as consideration for the granting of a mineral lease or other compensatory payments which are payable regardless of the extent of use of the mineral interest and which are fixed and certain in amount and may be payable in one or more periodical increments over a fixed period.

(13) (a) The general assembly hereby finds and declares that, in the consideration of the cost approach, market approach, and income approach to the appraisal of personal property by assessing officers, the cost approach shall establish the maximum value of property if all costs incurred in the acquisition and installation of such property are fully and completely disclosed by the property owner to the assessing officer.

(b) Therefore, in the assessment of taxable personal property, the assessing officer shall consider the value derived from the cost approach to be the maximum value of the property if the property owner has timely filed his declaration and the declaration contains all relevant information pertaining to the valuation of the property and, also includes, a full disclosure of all costs incurred in the acquisition and installation of all personal property owned by or in the possession of the taxpayer.

(c) Assessing officers shall consider the cost approach to the appraisal of property, pursuant to the provisions of this subsection (13), in good faith and shall deny the use of the cost approach only upon just cause that the requirements set forth in this subsection (13) and in section 39-5-116 have not been complied with by a taxpayer. If it is determined at any time that an assessing officer wrongly denied the use of the cost approach, such assessing officer shall be held liable for all costs incurred by the taxpayer

in protesting such assessment based on such denial. However, nothing in this subsection (13) shall preclude the assessing officers from considering the market approach or income approach to the appraisal of personal property when such consideration would result in a lower value of the property and when such valuation is based on independent information obtained by the assessing officers.

(14) (a) The general assembly hereby finds and declares that, in determining the actual value of vacant land, there appears to exist a wide disparity in the treatment of vacant land by the assessing officers of the various counties; that the methods of appraisal currently being utilized by assessing officers for such valuation remain unclear; and that such assessing officers are provided detailed information concerning the appraisal of vacant land in the manuals, appraisal procedures, and instructions prepared and published by the administrator.

(b) The assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by the provisions of section 3 of article X of the state constitution in determining the actual value of vacant land. When using the market approach to appraisal in determining the actual value of vacant land as of the assessment date, assessing officers shall take into account, but need not limit their consideration to, the following factors: The anticipated market absorption rate, the size and location of such land, the direct costs of development, any amenities, any site improvements, access, and use. When using anticipated market absorption rates, the assessing officers shall use appropriate discount factors in determining the present worth of vacant land until eighty percent of the lots within an approved plat have been sold and shall include all vacant land in the approved plat. For purposes of such discounting, direct costs of development shall be taken into account. The use of present worth shall reflect the anticipated market absorption rate for the lots within such plat, but such time period shall not generally exceed thirty years. For purposes of this paragraph (b), no indirect costs of development, including, but not limited to, costs relating to marketing, overhead, or profit, shall be considered or taken into account.

(b) (I) For purposes of this subsection (14), “vacant land” means any lot, parcel, site, or tract of land upon which no buildings or fixtures, other than minor structures, are located. “Vacant land” may include land with site improvements. “Vacant land” includes land that is part of a development tract or subdivision when using present worth discounting in the market approach to appraisal; however, “vacant land” shall not include any lots within such subdivision or any portion of such development tract that improvements, other than site improvements or minor structures, have been erected upon or affixed thereto. “Vacant land” does not include agricultural land, producing oil and gas properties, severed mineral interests, and all mines, whether producing or nonproducing.

(II) For purposes of this subsection (14):

(A) "Minor structures" means improvements that do not add value to the land on which they are located and that are not suitable to be used for and are not actually used for any commercial, residential, or agricultural purpose.

(B) "Site improvements" means streets with curbs and gutters, culverts and other sewage and drainage facilities, and utility easements and hookups for individual lots or parcels.

(d) As soon after the assessment date as may be practicable, the assessor shall mail or deliver two copies of a subdivision land valuation questionnaire for each approved plat within the county to the last-known address of the subdivision developer known or believed to own vacant land within such approved plat. Such questionnaire shall be designed to elicit information vital to determining the present worth of vacant land within such approved plat. Such subdivision developer or his agent shall answer all questions to the best of his ability, attaching such exhibits or statements thereto as may be necessary, and shall sign and return the original copy thereof to the assessor no later than the March 20 subsequent to the assessment date. All information provided by the subdivision developer in such questionnaire shall be kept confidential by the assessor; except that the assessor shall make such information available to the person conducting any valuation for assessment study pursuant to section 39-1-104(16) and his employees and the property tax administrator and his employees.

(e) If any subdivision developer fails to complete and file one or more questionnaires by March 20, then the assessor may determine the actual value of the taxable vacant land within an approved plat which is owned by such subdivision developer on the basis of the best information available to and obtainable by the assessor.

(15) The general assembly hereby finds and declares that assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by section 3 of article X of the state constitution in determining the actual value of taxable property. In the absence of evidence shown by the assessing officer that the use of the cost approach, market approach, and income approach to appraisal requires the modification of the actual value of taxable property for the first year of a reassessment cycle in order to result in uniform and just and equal valuation for the second year of a reassessment cycle, the assessing officer shall consider the actual value of any taxable property for the first year of a reassessment cycle, as may have been adjusted as a result of protests and appeals, if any, prior to the assessment date of the second year of a reassessment cycle, to be the actual value of such taxable property for the second year of a reassessment cycle.

(16) (a) The general assembly hereby finds and declares that in the consideration of the cost approach, market approach, and income approach to appraisal for the valuation of superfund water treatment facilities, the cost approach to appraisal does not adequately reflect characteristics specific to superfund

water treatment facilities that negatively impact the value of such facilities, including, but not limited to, the lack of income producing ability and the absence of any market for sale of superfund water treatment facilities. Therefore, in the assessment of superfund water treatment facilities, the income approach to appraisal shall be considered the primary indicator of value and the cost approach or market approach to appraisal shall be used only if the value determined under the cost approach or market approach is less than the value determined under the income approach to appraisal. For the purposes of determining the actual value of superfund water treatment facilities as of the assessment date using the income approach to appraisal, the assessing officer shall capitalize the actual income generated by the facility during the calendar year preceding the assessment date at the rate of ten percent per annum.

(b) For purposes of this subsection (16), "superfund water treatment facilities" means real and personal property that is:

(I) Installed and constructed pursuant to an agreement with or an order of the federal government or the state or any of its political subdivisions and to satisfy the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601, et seq., as amended; and

(II) Operated for the purpose of eliminating, reducing, controlling, or disposing of pollutants, as defined in section 25-8-103(15), C.R.S., that could alter the physical, chemical, biological, or radiological integrity of state waters if released into state waters.

(17) (a) The general assembly declares that the valuation of possessory interests in exempt properties is uncertain and highly speculative and that the following specific standards for the appropriate consideration of the cost approach, the market approach, and the income approach to appraisal in the valuation of possessory interests must be provided by statute and applied in the valuation of possessory interests to eliminate the unjust and unequalized valuations that would result in the absence of specific standards:

(I) The actual value of any possessory interest of the lessee or permittee of lands owned by the United States and leased or permitted for use for ski area recreational purposes in connection with a business conducted for profit shall be determined by capitalizing at an appropriate rate the annual fee paid to the United States by the lessee or permittee of such land for the use thereof in the immediately preceding calendar year, adjusted to the level of value using a factor or factors to be published by the administrator pursuant to the same procedures and principles as are provided for property in section 39-1-104(12.3)(a)(I). The rate used to capitalize any fee pursuant to this subparagraph (I) shall include an appropriate rate of return, an appropriate adjustment for the applicable property tax rate, and an appropriate adjustment to reflect the portion of the fee, if any, required

to be paid over by the United States to the state of Colorado and its political subdivisions.

(II) (A) Except for possessory interests in land leased or permitted for use for ski area recreational purposes valued in accordance with subparagraph (I)
of this paragraph (a) and except as otherwise provided in subparagraph (III) of this paragraph (a), the actual value of a possessory interest in land, improvements, or personal property shall be determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal. When the cost or income approach to appraisal is applicable, the actual value of the possessory interest shall be determined by the present value of the reasonably estimated future annual rents or fees required to be paid by the holder of the possessory interest to the owner of the underlying real or personal property through the stated initial term of the lease or other instrument granting the possessory interest; except that the actual value of a possessory interest in agricultural land, including land leased by the state board of land commissioners other than land leased pursuant to section 36-1-120.5, C.R.S., shall be the actual amount of the annual rent paid for the property tax year. The rents or fees used to determine the actual value of a possessory interest under the cost or income approach to appraisal shall be the actual contract rents or fees reasonably expected to be paid to the owner of the underlying real or personal property unless it is shown that the actual contract rents or fees to be paid for the possessory interest being valued are not representative of the market rents or fees paid for that type of real or personal property, in which case the market rents or fees shall be substituted for the actual contract rents or fees.

(B) The rents or fees taken into account under the cost or income approach to appraisal under sub-subparagraph (A) of this subparagraph (II) shall exclude that portion of the rents and fees required to be paid for all rights other than the exclusive right to use and possess the land, improvements, or personal property. Such rents or fees to be excluded shall include, but shall not be limited to, any portion of such rents or fees attributable to any of the following: Nonexclusive rights to use and possess public property, such as roads, rights-of-way, easements, and common areas; rights to conduct a business, as determined in accordance with guidelines to be published by the administrator; income of the holder of the possessory interest that is not directly derived from and directly related to the use or occupancy of the possessory interest; any amount paid under a timber sales contract or similar agreement for the purchase of timber or for the right to acquire and remove timber; and reimbursement to the owner of the underlying real or personal property of the reasonable

costs of operating, maintaining, and repairing the land, improvements, or personal property to which the possessory interest pertains, regardless of whether such costs are separately stated, provided that the types of such costs can be identified with reasonable certainty from the documents granting the possessory interest. The actual value of the possessory interest so determined shall be adjusted to the taxable level of value using a factor or factors to be published by the administrator pursuant to the same procedures and principles as are provided for personal property in section 39-1104(12.3)(a)(I).

(III) Subparagraphs (I) and (II) of this paragraph (a) shall not apply to any management contract. In the case of a management contract, the possessory interest shall be presumed to have no actual value. For purposes of this subparagraph (III), “management contract” means a contract that meets all of the following criteria:

(A) The government owner of the real or personal property subject to the contract directly or indirectly provides the management contractor all funds to operate the real or personal property;

(B) The government owns all of the real or personal property used in the operation of the real or personal property subject to the contract;

(C) The government maintains control over the amount of profit the management contractor can realize or sets the prices charged by the management contractor, or the management contractor's exclusive obligation is to operate and manage the real or personal property for which the management contractor receives a fee;

(D) The government reserves the right to use the real or personal property when it is not being managed or operated by the management contractor;

(E) The management contractor has no leasehold or similar interest in the real or personal property;

(F) To the extent the management contractor manages a manufacturing process for the government on the real property subject to the contract, the government owns all or substantially all of the personal property used in the process; and

(G) The real or personal property is maintained and repaired at the expense of the government.

(b) This subsection (17) shall not apply to and shall not be construed to affect or change the valuation of public utilities pursuant to article 4 of this title, the valuation of equities in state lands pursuant to section 39-5-106, the valuation of mines pursuant to article 6 or any other article of this title, or the valuation of oil and gas leaseholds and lands pursuant to article 7 of this title.

(18) (a) The general assembly hereby finds and declares that real property that is located in a district in which limited gaming is authorized but that is not used for limited gaming may be unfairly valued by comparison of said real property with real property that is used for limited gaming. The general assembly further finds that real property that is located in a gaming district may be reasonably used for purposes other than limited gaming, that such alternative uses may be beneficial in strengthening the economies of gaming districts, and that such alternative uses should be encouraged. In addition, the general assembly finds that applying the cost and market approaches to appraisal in valuing real property that is located in a limited gaming district but that is not used for limited gaming may result in an unfairly high valuation of real property that is reasonably used for a purpose other than limited gaming. Therefore, the provisions of this subsection (18) shall govern the classification and valuation of real property that is located within a gaming district but that is not used for limited gaming.

(b) For property tax years beginning on or after January 1, 1999, if the actual use as of the assessment date of any real property that is located in a limited gaming district but that is not used for limited gaming is used as residential real property, the real property shall be classified as residential real property, and the assessing officer shall determine the actual value of said real property as of the assessment date by applying the market approach to appraisal. If, due to the limited number of real properties located within a limited gaming district that are not used for limited gaming and that are used as residential real property, comparable valuation data is not available from within a limited gaming district to determine adequately the actual value of real property located within said limited gaming district that is not used for limited gaming and that is used as residential real property, notwithstanding any law to the contrary, the assessing officer shall consider sales of reasonably comparable residential real property located inside and outside of any limited gaming district for purposes of utilization of the market approach to appraisal in determining the actual value of said real property located within a limited gaming district that is not used for limited gaming and that is used as residential real property.

(c) For property tax years beginning on or after January 1, 1999, if the actual use as of the assessment date of any real property that is located in a limited gaming district is not for limited gaming or as residential real property, including but not limited to vacant land, the real property shall be classified as nongaming real property, and the assessing officer shall determine the actual value of said real property as of the assessment date by giving appropriate consideration to the cost, market, and income approaches to appraisal. If, due to the limited number of real properties located within a limited gaming district that are not used for limited gaming or as residential

real property, comparable valuation data is not available from within a limited gaming district to determine adequately the actual value of real property located within said limited gaming district that is not used for limited gaming or as residential real property, notwithstanding any law to the contrary, the assessing officer shall:

(I) Consider sales of reasonably comparable real property that is not used as residential property located inside and outside of any limited gaming district for purposes of utilization of the market approach to appraisal in determining the actual value of real property located within a limited gaming district that is not used for limited gaming or as residential real property; and

(II) Consider reasonably comparable real property that is not used as residential property located inside and outside of any limited gaming district for purposes of utilization of the income approach to appraisal in determining the actual value of real property located within a limited gaming district that is not used for limited gaming or as residential real property.

(d) For purposes of this subsection (18), real property is considered to be "used for limited gaming" if the owner or lessee of the real property holds a retail gaming license issued pursuant to part 5 of article 30 of title 44, and if the owner or lessee actually uses the real property in offering limited gaming for play or for administrative support services related to providing limited gaming or makes the real property available for other uses by persons who are engaged in limited gaming for play, including but not limited to using the property for parking, for a restaurant, or for a hotel or motel.