A BILL FOR AN ACT

CONCERNING THE PROPERTY TAX EXEMPTION FOR PROPERTY USED AS AN INTEGRAL PART OF A CHILD CARE CENTER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Under the state constitution, property that is used solely and exclusively for charitable purposes is exempt from property tax, unless otherwise provided by general law. Under this constitutional authority, there is currently an exemption for property used as an integral part of a child care center. Section 2 of the bill modifies this exemption by repealing the requirement that the property must be owned for strictly
charitable purposes and not for private gain or corporate profit, and that the property must be irrevocably dedicated to a charitable purpose. These changes allow property that is used by a tenant or subtenant to operate a child care center to be eligible for the exemption, and the bill specifies that in such case, only the operator's use is to be considered for purposes of determining whether the property is eligible for the exemption.

Section 3 requires such an operator, or the operator's authorized agent, to sign the exemption application form and to provide the property tax administrator with any requested information related to the exemption. Sections 4 and 5 make conforming amendments.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 5 of article X of the state constitution provides that property that is used solely and exclusively for strictly charitable purposes is exempt from property tax, unless otherwise provided by law;

(b) Under its constitutional authority to limit or modify this exemption, the general assembly originally established a property tax exemption that is more stringent than the constitutional requirement by mandating ownership and irrevocable dedication of property in order for a child care center's property to qualify for the statutory exemption;

(c) The state constitution requires only use for a strictly charitable purpose and not ownership or irrevocable dedication of property to qualify for the exemption;

(d) The act modifies the child care center exemption by repealing the statutory ownership and irrevocable dedication requirements, which are not expressly required by the state constitution;

(e) As such, whether property qualifies for the child care center exemption will depend on whether it is used solely and exclusively for the charitable purpose of operating a qualified child care facility;
(f) These changes allow property that is used by a tenant or subtenant to operate a qualified child care center for strictly charitable purposes to be eligible for the exemption;

(g) This policy change recognizes the critical link between child care, economic development, and security for Colorado's families; and

(h) Providing this property tax exemption for landlords may incentivize new spaces or reduced rents for tenants operating these types of child care centers and could help reverse the loss of child care spots in communities around the state and help workers, especially women, return to work.

SECTION 2. In Colorado Revised Statutes, 39-3-110, amend (1) introductory portion, (1)(f), (1)(g), and (1.5); and repeal (1)(h) as follows:

39-3-110. Property - integral part of child care center - charitable purposes - exemption - limitations. (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is used as an integral part of a child care center:

(f) The operation of which does not materially enhance, directly or indirectly, the private gain of any individual except as reasonable compensation for services rendered or goods furnished; AND

(g) The property of which is claimed for exemption does not exceed the amount of property reasonably necessary for the accomplishment of the exempt purpose. and

(h) The property of which is irrevocably dedicated to a charitable purpose.
(1.5) (a) No requirement shall be imposed that use of property, which is otherwise exempt pursuant to the provisions of this section, shall benefit the people of Colorado in order to qualify for said exemption.

(b) If a child care center is operated by a person other than the owner of the property, then the other person's use of the property is the sole basis for determining whether the property meets the requirements for the exemption set forth in subsection (1) of this section.

SECTION 3. In Colorado Revised Statutes, 39-2-117, amend (1)(b)(I) as follows:

39-2-117. Applications for exemption - review - annual reports - procedures - rules. (1) (b) (I) Any users of real and personal property for which exemption from general taxation is requested pursuant to any of the provisions of sections 39-3-107 to 39-3-113.5 may be required to provide such information as the property tax administrator determines to be necessary. If a claim is made for an exemption under section 39-3-110, and the child care center is operated by a person other than the owner of the property, then the other person, or the other person's authorized agent, must:

(A) Also sign the owner's application form required by subsection (1)(a)(I) of this section, or any other form prescribed and furnished by the administrator, under the penalty of perjury in the second degree; and

(B) Provide the administrator with any requested information related to the exemption.

SECTION 4. In Colorado Revised Statutes, amend 39-3-101 as follows:
39-3-101. Legislative declaration - presumption of charitable purpose. The general assembly recognizes that only the judiciary may make a final decision as to whether or not any given property is used for charitable purposes within the meaning of the Colorado constitution; nevertheless, in order to guide members of the public and public officials alike in the making of their day-to-day decisions and to assist in the avoidance of litigation, the general assembly hereby finds, declares, and determines that the uses of property which are set forth in this part 1 as uses for charitable purposes benefit the people of Colorado and lessen the burdens of government by performing services which government would otherwise be required to perform. Therefore, property used for such purposes shall be presumed to be owned and used, as applicable, solely and exclusively for strictly charitable purposes and not for private gain or corporate profit, if applicable, and, consequently, property used for such purposes is entitled to be exempt from the levy and collection of property tax pursuant to the provisions of this part 1 and the Colorado constitution. This legislative finding, declaration, determination, and presumption shall not be questioned by the administrator and shall be entitled to great weight in any and every court.

SECTION 5. In Colorado Revised Statutes, 39-3-116, amend (1) and (2) introductory portion; and add (2.5) as follows:

39-3-116. Combination use of property - charitable, religious, and educational purposes - exemption - limitations. (1) Except as otherwise provided in this section, property, real and personal, which is used, or owned and used, as applicable, by the owner thereof or by any other person or organization solely and exclusively for any combination of the purposes specified in sections 39-3-106 to 39-3-113.5, subject to
the limitations and requirements in said sections, including but not limited
to the requirement that property not be owned or used for private or
corporate gain or profit, shall be exempt from the levy and collection
of property tax. No requirement shall be imposed that use of property
which is otherwise exempt pursuant to any of said sections shall
benefit the people of Colorado in order to qualify for said exemption.
Property which is otherwise exempt pursuant to the provisions of
this section shall be subject to the provisions of section 39-3-129
relating to the proportional valuation of exempt property if such property
is partially leased, loaned, or otherwise made available for a portion of
any calendar year to any business conducted for profit.

(2) Except as set forth in subsection (2.5) of this section,
in the event that such property is used by any person or organization other
than the owner:

(2.5) Subsection (2) of this section does not apply to
property that is used as an integral part of a child care center
operated by a person or organization other than the owner of
the property and that qualifies for an exemption under section
39-3-110.

SECTION 6. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly; except that, if a referendum petition is filed pursuant
to section 1 (3) of article V of the state constitution against this act or an
item, section, or part of this act within such period, then the act, item,
section, or part will not take effect unless approved by the people at the
general election to be held in November 2022 and, in such case, will take
effect on the date of the official declaration of the vote thereon by the
governor.

(2) This act applies to property tax years commencing after the
applicable effective date of this act.