

COLORADO OFFICE OF THE STATE AUDITOR



SCHEDULE OF TABOR REVENUE FISCAL YEAR 2019



OCTOBER 2019

PERFORMANCE AUDIT

THE MISSION OF THE OFFICE OF THE STATE AUDITOR
IS TO IMPROVE GOVERNMENT
FOR THE PEOPLE OF COLORADO

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OFFICE OF THE STATE AUDITOR



October 10, 2019

DIANNE E. RAY, CPA

STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the TABOR Financial Report required under Article X, Section 20 of the Colorado Constitution (TABOR) as of June 30, 2019, as certified by the State Controller on August 30, 2019. This audit was conducted pursuant to Section 24-77-106.5, C.R.S., which requires the State Auditor to conduct an audit of the TABOR Financial Report and certification prepared by the State Controller. The report presents our findings and conclusions on our audit.

OFFICE OF THE STATE
AUDITOR
1525 SHERMAN STREET
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DENVER, 80203
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REPORT HIGHLIGHTS



SCHEDULE OF TABOR REVENUE, FISCAL YEAR 2019 OFFICE OF THE STATE CONTROLLER
PERFORMANCE AUDIT, OCTOBER 2019

AUDIT OBJECTIVE

The objective of our audit was to determine whether the Office of the State Controller complied with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S., in preparing the TABOR Financial Report and the certification required by Section 24-77-106.5, C.R.S.

CONCLUSION

- We determined that the TABOR Financial Report, as certified by the State Controller on August 30, 2019, agreed to the State's underlying accounting records for Fiscal Year 2019 that were contained in the State's accounting system as of August 30, 2019. We noted no exceptions related to the preparation and certification of the TABOR Financial Report in accordance with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S.
- The State Controller's certification is used by the Office of the Governor, the General Assembly, and the Department of Revenue for planning and budgeting purposes.
- Fiscal Year 2019 revenue is over the Excess State Revenues Cap by \$428,335,506; therefore, there is a TABOR refund for Fiscal Year 2019.

BACKGROUND

Schedule of TABOR Revenue:

- The Taxpayer's Bill of Rights (TABOR) was added to the Colorado Constitution in the November 1992 general election.
- TABOR limits are increased based on the annual inflation rate plus the percentage change in Colorado's population growth rate.
- The State Controller is required to certify TABOR revenue to the Governor, General Assembly, and the Executive Director of the Department of Revenue no later than September 1 of each year.
- The Office of the State Auditor is required to audit the TABOR Financial Report by September 15 of each year.





September 13, 2019

THE HONORABLE JARED POLIS
GOVERNOR
STATE OF COLORADO

THE HONORABLE DOMINICK MORENO
CHAIR
COLORADO JOINT BUDGET COMMITTEE

THE HONORABLE LOIS COURT
CHAIR
COLORADO SENATE FINANCE COMMITTEE

THE HONORABLE LESLIE HEROD
CHAIR
COLORADO HOUSE FINANCE COMMITTEE

MS. LU CORDOVA
EXECUTIVE DIRECTOR
COLORADO DEPARTMENT OF REVENUE

Dear Sirs and Mesdames:

This letter summarizes the results of our audit of the Taxpayer's Bill of Rights (TABOR) Financial Report as of June 30, 2019, as certified by the State Controller on August 30, 2019. Please find attached the August 30 version of the following: letter of certification from the State Controller, the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2019*, [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2019*, [Unaudited] (collectively referred to as the TABOR Financial Report). Our audit was conducted under the authority of Section 24-77-106.5, C.R.S., which requires the State Auditor to conduct an audit of the TABOR Financial Report and certification prepared by the State Controller, and report the results no later than September 15.

Pursuant to Section 24-77-106.5, C.R.S., for each fiscal year, the State Controller shall prepare the TABOR Financial Report for the purpose of ascertaining the State's compliance with the constitutional provisions of TABOR. Based on the TABOR Financial Report, the State Controller is required to certify to the Governor, the General Assembly, and the Executive Director of the



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Department of Revenue no later than September 1st subsequent to the end of the previous fiscal year, the following:

- Amount of state revenues in excess of the limitation on state fiscal year spending (known as the Fiscal Year Spending Limit) imposed by Article X, Section 20(7)(a) of the Colorado Constitution.
- Amount of state revenues in excess of such limitation the State is authorized to retain and spend pursuant to voter approval of Section 24-77-103.6, C.R.S., (known as the Excess State Revenues Cap).

OBJECTIVE. We followed generally accepted government auditing standards when conducting our audit. The objective of our audit was to determine whether the State Controller complied with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S., in preparing the TABOR Financial Report and the certification required by Section 24-77-106.5 C.R.S.

CONCLUSION. Based on the results of our audit, we determined that the TABOR Financial Report, as certified by the State Controller as of August 30, 2019, agreed to the State's underlying accounting records for Fiscal Year 2019 that were contained in the State's accounting system as of August 30, 2019. We noted no exceptions related to the preparation and certification of the TABOR Financial Report in accordance with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S.

Sincerely,

A handwritten signature in black ink, appearing to read "Dianne E. Ray", written in a cursive style.

Dianne E. Ray, CPA
State Auditor

Enc.



COLORADO

Office of the State Controller

Department of Personnel & Administration

1525 Sherman St., 5th Floor
Denver, CO 80203

August 30, 2019

The Honorable Jared S. Polis
Governor
State of Colorado

The Honorable Leroy Garcia
President of the Senate
Colorado General Assembly

The Honorable KC Becker
Speaker of the House
Colorado General Assembly

Lu Córdova
Executive Director
Colorado Department of Revenue

Dear Ladies and Gentlemen:

Pursuant to Section 24-77-106.5(1)(b) C.R.S., I hereby certify that for Fiscal Year 2019 (FY 2019), the State's unaudited Nonexempt District Revenues subject to Article X, Section 20 (TABOR) of the State Constitution as of August 30, 2019 are \$14,788,419,622. The growth rate of Nonexempt District Revenues is 7.8% for FY 2019, which is more than the allowable TABOR growth rate of 4.8% for FY 2019. The allowable growth rate includes population growth of 1.4% and inflation rate of 3.4%.

The Preliminary Schedule of Computations Required Under Article X, Section 20 (first attachment) includes computation of nonexempt revenues for FY 2018 and FY 2019 in the top box. The computation of the spending limitation in the bottom box compares FY 2019 nonexempt district revenue with Fiscal Year Spending, and with the Adjusted Excess State Revenues Cap (ESRC).

TABOR Nonexempt District Revenues are over the ESRC by \$428,335,506. Section 24-77-103.8(3) C.R.S. requires the State to add any remaining excess revenues not refunded in prior fiscal years to the excess revenues to be refunded for the current fiscal year. Remaining FY 2015 excess revenues to be refunded total \$141,689; therefore, the total amount to be refunded for FY 2019 is \$428,477,195.

The Nonexempt District Revenues Fiscal Year Spending limit for FY 2019, which, prior to Referendum C was the trigger used for refunding excess revenues to taxpayers, is \$11,759,345,200. For FY 2019, the Nonexempt District Revenues subject to TABOR exceeded the Fiscal Year Spending limit by \$3,029,074,422.



The Comparison of Nonexempt District Revenues (second attachment) compares general and program Nonexempt District Revenues for Fiscal Year 2019 to Fiscal Year 2018. Total nonexempt revenue increased by \$1,067,538,896 (7.8%) compared with the prior year. The following four revenue sources accounted for approximately 92.6% of the increased revenue in FY 2019 compared with FY 2018:

- Individual income tax - increased approximately \$596.7 million from FY 2018, reflecting the June Office of State Planning and Budgeting forecast, which projected an 8.3% increase in individual income tax due to strong employment and wage growth.
- Sales and use tax - increased approximately \$163.6 million from FY 2018, primarily reflecting higher economic activity in Colorado.
- Corporate income tax - increased approximately \$119.7 million, reflecting a \$150 million tax settlement in FY 2019 partially offset by accruals due in FY 2020.
- Severance tax - increased by \$108.9 million, primarily due to higher oil and gas prices.

The amounts reported in the attached schedules are based on unaudited account balances, and therefore are subject to change. The State Auditor is required by statute to report on the audit of these preliminary schedules by September 15, 2019. The final audited schedules will be included in the State's Fiscal Year 2019 Comprehensive Annual Financial Report, which is scheduled to be completed in December 2019.

Please contact me if you have questions concerning the information provided.

Sincerely,



Robert Jaros, CPA, MBA, JD
State Controller

Enclosures



STATE OF COLORADO
PRELIMINARY SCHEDULE OF COMPUTATIONS REQUIRED
UNDER ARTICLE X, SECTION 20 -- UNAUDITED
AS OF JUNE 30, 2019

Certification Date: August 30, 2019

	FISCAL YEAR 2018	FISCAL YEAR 2019
COMPUTATION OF NONEXEMPT REVENUES		
Total State Expenditures	\$ 48,097,074,059	\$ 48,374,271,439
Less: Exempt Activity	35,244,203,743	34,833,721,858
Nonexempt District Expenditures	12,852,870,316	13,540,549,581
District Reserve/Fund Balance Increase (Decrease)	868,010,410	1,247,870,041
Total Nonexempt District Revenues	\$ 13,720,880,726	\$ 14,788,419,622
COMPUTATION OF DISTRICT FUND BALANCE CHANGES		
Beginning District Fund Balance	\$ 6,193,393,968	\$ 7,002,966,380
Qualifications, Disqualifications and Other Adjustments	791,062,026	822,211,442
Retention of Revenues in Excess of the Limit CRS 24-77-103 6(1)(a)	18,510,386	428,335,506
Ending District Fund Balance	\$ 7,002,966,380	\$ 8,253,513,328

COMPUTATION OF SPENDING LIMITATIONS	FISCAL YEAR SPENDING	EXCESS STATE REVENUES CAP
Fiscal Year 2018 Limit	\$ 11,220,749,237	\$ 13,702,370,340
Allowable TABOR Growth Rate	4.8%	4.8%
Fiscal Year 2019 Adjusted Limit	\$ 11,759,345,200	\$ 14,360,084,116
Less: Fiscal Year 2019 Nonexempt District Revenues	(14,788,419,622)	(14,788,419,622)
Amount (Over)Under Fiscal Year 2019 Adjusted Limit	\$ (3,029,074,422)	\$ (428,335,506)
Remaining Fiscal Year 2015 Excess Revenue to be Refunded in Future Years		\$ 141,689
Amount to be Refunded for Fiscal Year 2019		\$ 428,477,195
FY 2019 Retention of Revenues in Excess of the Limit (not refundable) C R S. 24-77-103 6(1)(b)		\$ 2,600,738,916

STATE OF COLORADO
OFFICE OF THE STATE CONTROLLER
COMPARISON OF NONEXEMPT TABOR REVENUES
FOR THE FISCAL YEAR ENDED JUNE 30, 2019

	Fiscal Year 2019	Fiscal Year 2018	Increase (Decrease)	Percent Change
GENERAL REVENUES				
Individual Income Tax, Net	\$ 7,554,025,207	\$ 6,957,330,741	\$ 596,694,466	8.6%
Sales and Use Tax, Net	3,399,519,069	3,235,912,170	163,606,899	5.1%
Corporate Income Tax, Net	855,706,743	736,021,976	119,684,767	16.3%
Insurance Taxes	314,663,520	303,594,443	11,069,077	3.6%
Fiduciary Income Tax, Net	64,239,350	48,700,734	15,538,616	31.9%
Tobacco Products Tax, Net	54,840,609	50,982,130	3,858,479	7.6%
Alcoholic Beverages Tax, Net	48,304,172	46,487,583	1,816,589	3.9%
Court and Other Fines	25,517,610	9,203,005	16,314,605	177.3%
Interest and Investment Income	24,560,039	18,123,754	6,436,285	35.5%
Business Licenses and Permits	5,817,416	7,453,344	(1,635,928)	-21.9%
Miscellaneous Revenue	1,559,959	1,598,058	(38,099)	-2.4%
General Government Service Fees	1,020,382	667,032	353,350	53.0%
Gaming and Other Taxes	509,843	516,022	(6,179)	-1.2%
Public Safety Service Fees	55,650	-	55,650	N/A
Other Charges For Services	47,443	42,542	4,901	11.5%
Welfare Service Fees	8,434	-	8,434	N/A
TOTAL GENERAL-FUNDED REVENUES	12,350,395,446	11,416,633,534	933,761,912	8.2%
PROGRAM REVENUES				
Fuel and Transportation Taxes, Net	658,121,910	658,463,068	(341,158)	-0.1%
Motor Vehicle Registrations	280,349,502	280,279,899	69,603	0.0%
Severance Taxes	241,727,089	132,827,140	108,899,949	82.0%
Business Licenses and Permits	181,683,801	175,823,163	5,860,638	3.3%
Court and Other Fines	178,205,261	174,692,569	3,512,692	2.0%
Other Charges For Services	168,598,785	161,187,329	7,411,456	4.6%
Gaming and Other Taxes	105,662,962	105,879,363	(216,401)	-0.2%
Interest and Investment Income	88,757,023	62,050,575	26,706,448	43.0%
Health Service Fees	86,491,292	79,435,462	7,055,830	8.9%
General Government Service Fees	75,704,774	70,193,136	5,511,638	7.9%
Rents and Royalties	64,951,667	60,113,530	4,838,137	8.0%
Miscellaneous Revenue	54,481,376	69,091,036	(14,609,660)	-21.1%
Driver's Licenses	42,278,947	45,855,931	(3,576,984)	-7.8%
Sales and Use Tax, Net	41,112,066	42,921,159	(1,809,093)	-4.2%
Employment Taxes	34,090,799	34,245,305	(154,506)	-0.5%
Nonbusiness Licenses and Permits	30,649,735	34,334,358	(3,684,623)	-10.7%
Local Governments and Authorities	24,220,711	35,465,294	(11,244,583)	-31.7%
Certifications and Inspections	22,102,796	25,091,657	(2,988,861)	-11.9%
Public Safety Service Fees	20,347,834	21,186,165	(838,331)	-4.0%
Insurance Taxes	20,079,543	17,096,515	2,983,028	17.4%
Educational Fees	9,178,478	6,360,490	2,817,988	44.3%
Higher Education Auxiliary Sales and Services	3,935,786	6,437,136	(2,501,350)	-38.9%
Sales of Products	2,312,622	2,969,485	(656,863)	-22.1%
Welfare Service Fees	1,902,015	1,091,995	810,020	74.2%
Alcoholic Beverages Tax, Net	819,571	762,525	57,046	7.5%
Other Excise Taxes, Net	257,238	391,759	(134,521)	-34.3%
Tobacco Products Tax, Net	424	390	34	8.7%
Estate and Inheritance Taxes	169	758	(589)	-77.7%
TOTAL PROGRAM REVENUES	2,438,024,176	2,304,247,192	133,776,984	5.8%
TOTAL NONEXEMPT REVENUE	\$ 14,788,419,622	\$ 13,720,880,726	\$ 1,067,538,896	7.8%

SCHEDULE

OF TABOR REVENUE 2019

OVERVIEW

The Taxpayer's Bill of Rights (TABOR) was added as Article X, Section 20 of the Colorado Constitution in the November 1992 general election. TABOR limits the annual growth in state revenues to the sum of the inflation rate and the percentage change in the State's population; this is called the TABOR growth rate. Any money the State raises above that amount must be returned to the taxpayers.

Section 24-77-106.5, C.R.S., requires the State Controller to prepare and distribute a TABOR Financial Report annually to the Governor, the General Assembly, and the Executive Director of the Department of Revenue no later than September 1 following the end of a fiscal year. The TABOR Financial Report is required to include the following:

- The amount of state revenues in excess of the limitation on state fiscal year spending, and,
- The amount of state revenues in excess of such limitation the State is authorized to retain and spend pursuant to voter approval of Referendum C.

Referendum C was approved by the voters in November 2005 and established a new revenue limit, which is referred to as the Excess State Revenues Cap.

The TABOR Financial Report prepared by the Office of the State Controller (OSC) for Fiscal Year 2019 includes the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2019* [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2019* [Unaudited].

AUDIT SCOPE AND METHODOLOGY

This performance audit was conducted in order to comply with statutory requirements. Section 24-77-106.5, C.R.S., requires that the State Auditor conduct an audit of the TABOR Financial Report and certification of excess state revenues prepared by the State Controller. We performed our audit work during the period June 2019 through September 2019.

The reporting for this performance audit includes a letter from the State Auditor reporting on the results of the performance audit. This letter was transmitted in accordance with Section 24-77-106.5(2), C.R.S., to the Governor, Joint Budget Committee, the Finance Committees of the House of Representatives and the Senate, and the Executive Director of the Department of Revenue, on September 13, 2019, along with the

State Controller certification and TABOR Financial Report dated August 30, 2019. We acknowledge the cooperation and assistance provided by the State Controller and staff at the OSC.

The overall objective of our audit was to evaluate the TABOR Financial Report and certification of excess state revenues issued by the State Controller pursuant to regulations related to Article X, Section 20 of the State Constitution (TABOR). Specifically, our objective was to determine whether the OSC complied with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S., in preparing the financial report and certification required by Section 24-77-106.5, C.R.S. We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objective. To accomplish our audit objective, we:

- Identified and documented our consideration of changes to statutory, regulatory, and other legal requirements that impact TABOR and are applicable to the audit and the audit objectives.
- Reviewed, evaluated, and reperformed key calculations used by the OSC in the preparation of its TABOR Financial Report, including TABOR revenues, the anticipated TABOR growth rate, revenues exempt from TABOR requirements, the TABOR Adjusted Spending Limit, and the Excess State Revenues Cap.
- Reviewed reports submitted by state departments and institutions detailing changes in TABOR revenue from prior years, base fiscal year spending, and changes in TABOR enterprise status.
- Reviewed the accounts and transactions that are not included as TABOR revenue and determined whether they met the statutory or voter-approved requirement to be classified as exempt.
- Evaluated and, where appropriate, tested internal controls around the preparation of the TABOR Financial Report by the OSC.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of our annual statewide financial audit that is currently ongoing for Fiscal Year 2019, we will also conduct a financial audit of the final *Schedule of TABOR Revenue and Computations*, with field work scheduled to be completed in December 2019. The results of the financial audit and related work performed over the *Schedule of TABOR Revenue and Computations* are not included in the scope of this performance audit.

OVERALL CONCLUSION

Based on the results of our audit, we determined that the TABOR Financial Report as certified by the State Controller on August 30, 2019, agreed to the State's underlying accounting records for Fiscal Year 2019 that were contained in the State's financial accounting system as of August 30, 2019. We noted no exceptions related to the preparation and certification of the TABOR Financial Report in accordance with applicable laws, rules, and regulations under Sections 24-77-101 through 107, C.R.S.

PREPARATION OF THE FISCAL YEAR 2019 TABOR FINANCIAL REPORT

As required by statute [Section 24-77-106.5, C.R.S.], the OSC annually prepares a TABOR Financial Report and letter of certification that outline state revenues subject to Article X, Section 20 (TABOR) of the State Constitution. The TABOR Financial Report for Fiscal Year 2019, which consists of the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2019* [Unaudited] and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2019* [Unaudited], contains several elements required by statute, including state fiscal year spending, total revenues, reserves (fund balance), revenues the State is allowed to retain and spend pursuant to Referendum C, and debt. The key elements contained in the TABOR Financial Report are further defined below.

TABOR REVENUE LIMIT

Article X, Section 20(7)(a) of the State Constitution contains a formula for calculating the TABOR Revenue Limit which involves multiplying a base amount by the TABOR growth rate. The base amount for the TABOR Revenue Limit is the lesser of either the prior year's revenue or spending limit.

TABOR GROWTH RATE

Article X, Section 20(7)(a) limits the annual growth in state revenues to the sum of the inflation rate and the percentage change in the State's population. For Fiscal Year 2019, the TABOR growth rate was 4.8 percent.

EXCESS STATE REVENUES CAP

In November 2005, Referendum C, which would allow the State to

spend or save the full amount of revenue it collected during a specified subsequent 5-year period, was approved in the general election. During Fiscal Year 2005, the General Assembly enacted House Bill 05-1194 as the enabling legislation for Referendum C, making it effective as of July 1, 2005. Referendum C allowed the State to spend or save the full amount of revenue it collected from Fiscal Years 2006 through 2010 in order to set the spending limit equal to revenue. After this 5-year break, Referendum C allows the State to keep revenue up to a capped amount known as the Excess State Revenues Cap (Cap). Beginning in Fiscal Year 2011, the Cap was equal to the highest amount of revenue that was collected in the 5 previous years, multiplied by the TABOR growth rate. In subsequent years, the Cap is calculated using the previous year's Cap multiplied by the TABOR growth rate. The State is allowed to retain and spend revenue in excess of the TABOR Revenue Limit but must refund revenue above the Cap.

EXEMPT AND NONEXEMPT REVENUE

All revenue collected by the State is included in the TABOR revenue limit calculation or “nonexempt” revenue unless it is exempted under Article X, Section 20(7)(d) as follows:

- Revenue collected by an enterprise which is defined as a government-owned business receiving under 10 percent in grants of annual revenue from state and local governments.
- Voter approved revenue exemptions.

FISCAL YEAR 2019 TABOR REVENUE

We reviewed the State Controller's computations of the Fiscal Year 2019 TABOR revenues and Cap. The following figures in EXHIBIT 1.1 show TABOR revenue, the TABOR Cap, and calculated revenue over the Cap as certified by the State Controller for Fiscal Year 2019:

**EXHIBIT 1.1. STATE OF COLORADO
TABOR REVENUE, EXCESS STATE REVENUES CAP, AND
REVENUE OVER THE EXCESS STATE REVENUES CAP
FISCAL YEAR 2019**

TABOR REVENUE	\$14,788,419,622
EXCESS STATE REVENUES CAP	(14,360,084,116)
REVENUE OVER/(UNDER) EXCESS STATE REVENUES CAP	\$428,335,506
SOURCE: Office of the State Auditor analysis of the Office of the State Controller's data.	

Article X, Section 20(7)(d) of the State Constitution says that if non-exempt TABOR revenue exceeds the Cap in a fiscal year, the excess revenue will be refunded in the next fiscal year. For Fiscal Year 2019, revenue was over the Cap by approximately \$428.3 million and a refund will be issued in Fiscal Year 2020.

REFUNDING

There are currently three mechanisms available for refunding excess state revenues:

- **PROPERTY TAX EXEMPTION REIMBURSEMENT.** Under this first mechanism, reimbursements will be made to local governments to offset their property tax losses resulting from the senior homestead exemption and the disabled veterans' property tax exemption. In 2000, voters approved an amendment to the State Constitution [Article X, Section 3.5], which established a property tax exemption for qualifying seniors and disabled veterans. Specifically, these taxpayers receive an annual property tax exemption of 50 percent of the first \$200,000 of the value of their primary residence. Senate Bill 17-267 established this as the first refund mechanism used for refunding excess state revenues. The *June 2019 Economic & Revenue Forecast*, published by the Colorado Legislative Council Staff, estimates total senior and disabled veteran property tax exemptions to total \$153.2 million for Fiscal Year 2019-2020.
- **TEMPORARY INCOME TAX RATE REDUCTION.** Under this mechanism, the state income tax rate would be temporarily reduced from the current rate of 4.63 percent to 4.50 percent in the tax year following

the fiscal year surplus. The temporary income tax rate reduction is the second potential refund mechanism. This mechanism is only triggered if the refund obligation exceeds the amount of the property tax reimbursement mechanism by at least the amount of the reduction in revenue expected to result from the reduction in the income tax rate. In other words, this refund mechanism is only used when, after refunding the property tax exemptions, the remaining excess state revenue is greater than or equal to the amount of revenues the state would lose by reducing the income tax rate from 4.63 percent to 4.5 percent. If the remaining excess revenue is not sufficient to fund this refund mechanism, the remaining excess revenue is paid out through the six-tier sales tax refund mechanism. The temporary income tax rate reduction was created under House Bill 05-1194.

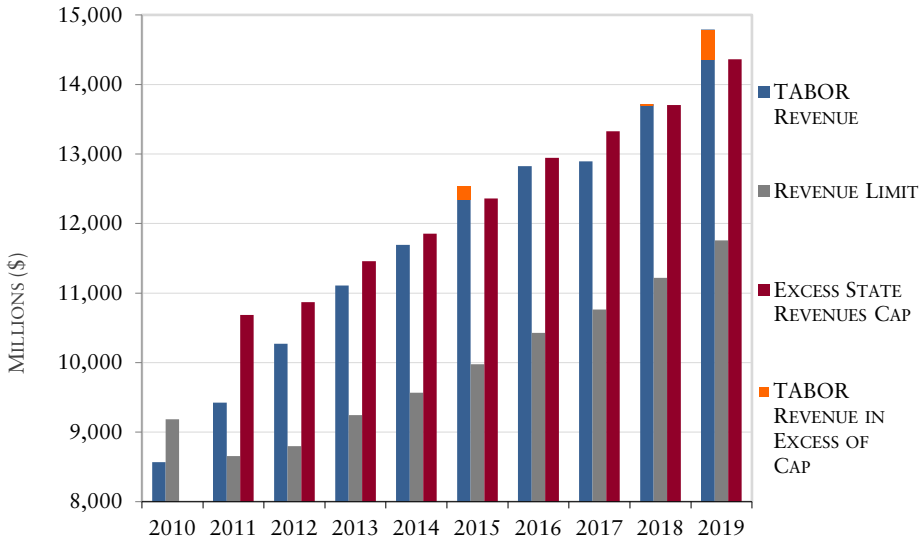
- **SIX-TIER SALES TAX REFUND.** Under this last mechanism, taxpayers will receive a state sales tax refund based on where their adjusted gross income falls among six adjusted gross income tiers. The refund is distributed to the six tiers when the TABOR surplus is large enough to support at least a \$15 refund for each Colorado income taxpayer. If the surplus is less than \$15 per taxpayer, an equal refund is provided to each taxpayer regardless of income. The six-tier sales tax refund mechanism was created under House Bill 99-1001.

Prior to Fiscal Year 2019, the temporary income tax rate reduction had not yet been used as a refund mechanism. The Fiscal Year 2019 excess state revenues is expected to trigger all three refund mechanisms.

REVENUE LIMIT

EXHIBIT 1.2 shows a graphical comparison of TABOR revenue, the TABOR Revenue Limit, and the Excess State Revenues Cap for the Fiscal Years 2010 to 2019. Beginning in Fiscal Year 2011, the State was allowed to keep revenues above the TABOR Revenue Limit and below the Excess State Revenue Cap as set forth in Referendum C. Since the enactment of Referendum C, revenues exceeded the Excess State Revenue Cap and a TABOR refund was triggered for Fiscal Years 2015, 2018, and 2019.

EXHIBIT 1.2. STATE OF COLORADO
TABOR REVENUE VS. REVENUE LIMIT
AND THE EXCESS STATE REVENUES CAP
FISCAL YEARS 2010 TO 2019



SOURCE: Schedules of Computations Required Under Article X, Section 20 for Fiscal Years 2010-2019. Office of the State Auditor analysis of the Office of the State Controller's data.



APPENDIX A



DESCRIPTION OF REVENUE CATEGORIES

The revenue categories described in APPENDIX A correspond to the categories presented on the Comparison of Nonexempt TABOR Revenues—PAGE 8.

INCOME TAX

Individual Income Tax, Net

Taxes paid on wages, unearned income, and other income of individuals, net of refunds on property tax credits, income tax intercepts (e.g., IRS and child support), tax checkoffs, and Amendment 23 transfers to the State Education Fund.

Corporate Income Tax, Net

Taxes based on the net profits of corporations net of Amendment 23 transfers to the State Education Fund.

Fiduciary Income Tax, Net

Taxes on trust and estate income net of Amendment 23 transfers to the State Education Fund.

EXCISE TAX

Sales Tax, Net

Taxes collected by retailers on consumer purchases of tangible personal property net of refunds.

Use Tax, Net

Taxes remitted by the end consumer of tangible personal property purchased at retail prices net of refunds.

Tobacco Products Tax, Net

Taxes on the sale, use, consumption, handling, or distribution of tobacco products net of refunds.

Alcoholic Beverages Tax, Net

Taxes collected from retailers who sell alcohol products net of refunds.

Other Excise Taxes, Net

Taxes for occupational license renewals and certain penalties net of refunds.

OTHER TAXES

Fuel and Transportation Taxes, Net

Gross ton mileage tax on motor carriers and taxes on diesel, gasoline, aviation jet fuel, aviation gasoline, and other fuels net of refunds.

Insurance Taxes

Taxes on insurance premiums collected by insurance companies net of refunds.

Gaming and Other Taxes

Taxes on gaming facilities based on percentages of income net of refunds.

Employment Taxes, Net

Employment taxes paid by employers for funding unemployment benefits net of refunds.

Severance Taxes

Mineral extraction taxes on coal, oil and gas, molybdenum, and metallic minerals net of refunds.

Estate and Inheritance Taxes

Taxes collected on the assets of estates net of refunds.

LICENSES, PERMITS, AND FEES*Health Service Fees*

Healthcare Affordability and Sustainability Fees and other fees collected for health services including laboratory test fees, genetic testing, vital records fees, and children's health plan premiums.

Motor Vehicle Registrations

Collection of fees for license plates, tags, and registrations.

Business Licenses and Permits

Licenses and permits for special functions of a business (e.g., alcoholic beverage licenses, tobacco products licenses, business registrations, health licenses, child care licenses, and waste management permits).

Other Charges for Services

Various fees, the majority of which are collected by Public Utilities Commission, the Division of Banking, and the Oil and Gas Conservation Fund, which are used to ensure compliance with applicable regulations.

General Government Service Fees

Service charges by various agencies to the public (e.g., filing fees charged by the Department of State, charges by the Motor Vehicle Division for driving record inquiries, and certain fees charged by the Department of Agriculture and Department of Natural Resources).

Educational Fees

Conference fees and teacher certification fees collected primarily by the Department of Education.

Driver's Licenses

Fees for driver's licenses and ID cards.

Nonbusiness Licenses and Permits

Includes licenses and permits for environmental response surcharges, park passes, motorcycle operator safety training, waste tire recycling, etc.

Public Safety Service Fees

Fees for firefighter response, fire service education and training, and search and rescue fees.

Certifications and Inspections

Emission inspection stickers, emission registration, emission inspection station licenses, and other related fees.

Welfare Service Fees

Child abuse registry fees.

OTHER REVENUE

Court and Other Fines

Fines and forfeits levied by the courts.

Miscellaneous Revenue

Revenue not included in another category.

Interest and Investment Income

Interest income, finance charges, and gains/losses on investments.

Rents and Royalties

Income from the lease of state land to private parties.

Local Governments and Authorities

Funds from counties, cities, special districts, etc., primarily in the form of grants.

Higher Education Auxiliary Sales and Services

Revenue from library fees, internal service center fees, athletic camp fees.

Sales of Products

Sales of publications, maps, materials, and supplies.



APPENDIX B



TABOR HISTORY: FISCAL YEARS 1993 - 2019

The following provides highlights of certain legislation or voter-approved changes affecting the Office of the State Controller's *Schedule of Computations Required Under Article X, Section 20* contained in this report. The fiscal year in which the change was effective and a brief summary of the legislation or voter-approved change is provided below.

1993

VOTER APPROVAL. The Taxpayer's Bill of Rights (TABOR) was added as Article X, Section 20 of the Colorado Constitution in the November 1992 general election. TABOR limits increases in the State's revenue to the annual inflation rate plus the percentage change in Colorado's population unless voters approve a revenue change.

1997 AND 1998

REFUNDS. The TABOR Revenue Limit was exceeded for the first time during the fiscal year ended June 30, 1997, and again for fiscal year ended June 30, 1998. The General Assembly decided to distribute the entire excess from general funds as a sales tax credit on each full-year resident's individual tax return.

1999–2001

CONSTITUTIONAL AMENDMENT. Amendment 14 was approved by the voters in November 1998 and authorized a permit fee that is exempt from TABOR for the regulation of commercial hog facilities.

REFUNDS. TABOR revenue exceeded the TABOR Revenue Limit for each of these years, resulting in refunds. In 1999, the excess was refunded through three mechanisms; in 2000, nine mechanisms were used, and in 2001, the excess was refunded through 17 mechanisms.

REVENUE REDUCTIONS. During the period, there were several revenue reductions enacted that lowered the amount of TABOR revenue to be received in subsequent years. The most significant reduction was the lowering of income tax rates effective January 1, 1999, for individuals, estates, and trusts from 5 percent to 4.75 percent, and a further reduction effective January 1, 2000, of the rate to 4.63 percent. Effective January 1, 2001, the sales tax rate was reduced from 3 percent to 2.9 percent. Other permanent tax reductions include the establishment of low-income housing owner credits, redevelopment incentives for contaminated property, sales and use tax exemptions for certain agricultural items, unemployment insurance tax credits, and oil and gas severance tax exemptions.

2001

CONSTITUTIONAL AMENDMENTS. Voters approved changes that lowered revenue subject to TABOR requirements through multiple constitutional amendments. The amendment having the largest impact on decreasing revenue subject to TABOR was Amendment 23, passed in November 2000. The Amendment created the State Education Fund, funded through a transfer of an amount equivalent to a tax of 1/3 of 1 percent of federal taxable income. This essentially reduced the State's TABOR revenue by the amount of the transfer. At this same time, voters also approved Amendment 20 that authorized a TABOR exempt fee for patients receiving an identification card for the medical use of marijuana. The resulting revenues are TABOR exempt.

2002

GROWTH DIVIDEND. TABOR states that the TABOR Revenue Limit will be the lesser of the current fiscal year's revenue or the prior fiscal year's TABOR Revenue Limit adjusted by the population growth and the inflation rate. The population growth is adjusted every decade to match the federal census. Based on the 2000 census, it was determined that the federal government underestimated Colorado's population during the 1990s, resulting in the State issuing greater TABOR refunds than required.

In 2002, the General Assembly enacted Senate Bill 02-179 to account for underestimates of population growth in prior years, adding a carry-forward mechanism for a census-related adjustment in population growth. This can be applied to future calculations of the TABOR Revenue Limit for up to 9 years. This carry-forward is referred to as the growth dividend. The growth dividend determined from the 2000 census allowed the State to raise the TABOR Revenue Limit by \$565.3 million. This amount was fully utilized during Fiscal Years 2004 and 2005.

2004

QUALIFIED ENTERPRISES. The TABOR amendment allows qualified enterprises to be exempt from TABOR requirements. Over the years, the General Assembly has enacted statutes to designate certain state entities as TABOR-exempt enterprises. One of the most significant of these bills was Senate Bill 04-189, which enabled higher education governing boards to designate a qualified institution or group of institutions to be exempt from TABOR requirements. In 2004, the University of Colorado was approved as a TABOR-exempt enterprise. In 2005, 10 additional higher education institutions were approved as TABOR-exempt enterprises. Once designated as a TABOR-exempt enterprise, the institution will retain the designation as long as it continues to meet the requirements for an enterprise.

2005

CONSTITUTIONAL AMENDMENT. Amendment 35 was passed by voters in November 2004. The Amendment assesses a statewide TABOR-exempt tax of 64 cents per pack of cigarettes and 20 percent on tobacco products. The Amendment requires that the revenue be used for health care services and tobacco education and cessation programs.

2006–2008

REFERENDUM C. Referendum C was approved by the voters in the November 2005 election. Referendum C allowed the State to retain and

spend all revenue in excess of the TABOR Revenue Limit annually for 5 fiscal years starting with Fiscal Year 2006. After July 1, 2010, the State was allowed to retain revenues in excess of the TABOR Revenue Limit up to a newly defined “Excess State Revenues Cap.” The Excess State Revenues Cap is defined as the highest total state revenue earned between Fiscal Years 2006 and 2010, adjusted for inflation and population growth for each subsequent year.

For Fiscal Years 2006, 2007, and 2008, the amounts of excess revenue that the State was allowed to retain and spend were \$1,116,134,410, \$1,308,040,131, and \$1,169,428,121, respectively, for a 3-year total of \$3,593,602,662. The funds retained by the State were to be applied toward education; healthcare; roads, bridges, and other strategic transportation projects; and retirement plans for firefighters and police officers. TABOR Revenue did not exceed the TABOR Revenue Limit in Fiscal Years 2009 and 2010.

OVERREFUNDS. Prior to July 1, 2005, state statutes provided a mechanism to apply refunds paid in excess of the TABOR refund liability (“overrefunds”) for one fiscal year against the following year’s TABOR refund liability, if one exists. Effective Fiscal Year 2005 under House Bill 05-1310, the State Controller was required to make two types of adjustments in Fiscal Year 2005 related to overrefunds that were paid during Fiscal Years 2002 through 2004. First, House Bill 05-1310 required the State Controller to change the methodology for calculating the TABOR Revenue Limit for Fiscal Years 2002 through 2004 by applying the overrefunds after the TABOR Revenue Limit was set. This resulted in an increase of \$92.7 million to the Fiscal Year 2005 TABOR Revenue Limit.

In addition, the State Controller was required to reduce the Fiscal Year 2005 TABOR revenue in excess of the TABOR Revenue Limit for the total amount of overrefunds paid during Fiscal Years 2002 through 2004. This resulted in a \$127.8 million reduction to the TABOR refund liability for Fiscal Year 2005.

House Bill 05-1310 requires that, in Fiscal Year 2006 and future years, TABOR revenue in excess of the TABOR Revenue Limit be reduced by any amounts overrefunded in the prior year. Any unused amount is to be carried forward and decrease future refund liabilities until the excess is depleted.

2009

CONSTITUTIONAL AMENDMENT. Amendment 50 was passed by voters in November 2008. The Amendment made several revisions to gaming limits. Casinos pay taxes on income from gaming and pay various fees and fines which are exempt from TABOR. Most of the revenue the state receives from new gaming limits is to be used for financial aid and classroom instruction at the state's community colleges and distributed to the gaming communities.

2011

REFUND MECHANISMS. The General Assembly enacted Senate Bill 10-212, which repealed all of the following TABOR surplus refund mechanisms except for the Earned Income Tax Credit and the Six-Tier Sales Tax Refund, effective July 1, 2010:

REFUNDING MECHANISM	ORIGINAL THRESHOLD ²
Earned Income Tax Credit ¹	\$ 50,000,000
Charitable Contributions Deduction	\$ 100,000,000
Foster Parents Credit	\$ 200,000,000
Business Personal Property Tax Credit	\$ 170,000,000
Child Care Credits	\$ 290,000,000
Tangible Personal Property Used for Research and Development	\$ 358,400,000
Motor Vehicle Registration Fees	\$ 330,000,000
High Technology Scholarship Program Credit	\$ 330,000,000
Interest, Dividends, and Capital Gains Deduction	\$ 350,000,000
Pollution Control Provisions	\$ 350,000,000
Interstate Commerce Sales and Use Tax Refund	\$ 350,000,000
Agriculture Value-Added Development Credit	\$ 400,000,000
Cost of Health Benefits Credit	\$ 400,000,000
6-Tier Sales Tax Refund ¹	Remaining Excess

¹ Still in effect under current law.

² Thresholds are adjusted annually by the personal income growth rate for Colorado.

For any year in which a refund of TABOR surplus revenue is required, the only remaining refund mechanism with a threshold in statute is the Earned Income Tax Credit. In addition, House Bill 05-1317 created a TABOR refund mechanism (the Temporary Income Tax Rate Reduction) that—starting with income tax year 2011—reduces the state income tax rate from the rate of 4.63 percent to 4.50 percent when the state experiences a revenue surplus large enough to support the rate reduction. The Temporary Income Tax Rate Reduction follows the Earned Income Tax Credit refund mechanism.

2013–2014

EARNED INCOME TAX CREDIT. The General Assembly enacted Senate Bill 13-001 which establishes a permanent Earned Income Tax Credit (EITC) to replace the EITC TABOR refund mechanism. The EITC provides credit to individuals that work but do not earn high incomes. Taxpayers who qualify for the federal credit may claim a state credit equal to up to 10 percent of the federal credit amount. The permanent EITC begins the year following the first year the EITC TABOR refund mechanism is triggered.

CONSTITUTIONAL AMENDMENT. Amendment 64 “Use and Regulation of Marijuana,” passed in November 2012, required the general assembly to enact a TABOR exempt excise tax to be levied upon wholesale sales of marijuana. The Amendment requires that the first \$40 million raised annually goes to school capital construction. Proposition AA “Retail Marijuana Taxes,” passed in November 2013, assesses a statewide TABOR-exempt tax of 15 percent excise tax to be levied upon wholesale sales of marijuana.

2015

REFUNDS. TABOR revenue exceeded the TABOR Revenue Limit for Fiscal Year 2015 resulting in a refund. The excess was refunded through two mechanisms including the Six-Tier Sales Tax Refund and the Earned Income Tax Credit (EITC). The EITC became permanent after

it was triggered and will no longer be considered a TABOR refund mechanism going forward.

2017

SUSTAINABILITY OF RURAL COLORADO. The General Assembly enacted Senate Bill 17-267 which abolishes the Hospital Provider Fee and replaces it with the Healthcare Affordability and Sustainability Fee. The fee will be collected by the Healthcare Affordability and Sustainability Enterprise and will be TABOR exempt. The bill also requires the Excess State Revenue Cap under Referendum C to be reduced by \$200 million in Fiscal Year 2018. Refund mechanisms were also changed as a result of the bill. In a TABOR refund year, reimbursements paid to local governments in support of the senior homestead and disabled veterans property tax exemptions are applied as the first refund mechanism triggered. The second and third refund mechanisms, the Temporary Income Tax Rate Reduction and Six-Tier Sales Tax Refund, will only take effect after the property tax exemptions are fully applied.

2018

REFUNDS. TABOR revenue exceeded the TABOR Revenue Limit for Fiscal Year 2018 resulting in a refund. The excess was refunded through the property tax exemption reimbursement mechanism.

