

State of Colorado

Schedule of TABOR Revenue Fiscal Year 2022

Performance Audit

October 2022

2252P



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OFFICE OF THE STATE AUDITOR

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Working to improve government for the people of Colorado.



OFFICE OF THE STATE AUDITOR
KERRI L. HUNTER, CPA, CFE • STATE AUDITOR

October 28, 2022

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Taxpayer's Bill of Rights (TABOR) Financial Report as of June 30, 2022, as certified by the State Controller on September 1, 2022. The audit was conducted pursuant to Section 24-77-106.5, C.R.S., which requires the State Auditor to conduct an annual audit of the TABOR Financial Report and certification prepared by the State Controller. The report presents our findings and conclusions on our audit.

Kerri L. Hunter



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Report Highlights



Schedule of TABOR Revenue

State of Colorado • Office of the State Controller
Performance Audit • October 2022 • 2252P

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Audit Conclusions

- The Office of the State Controller complied with applicable laws, rules, and regulations related to Section 24-77-101 through 108, C.R.S., in preparing the TABOR Financial Report and the certification required by Section 24-77-106.5, C.R.S.
- The TABOR Financial Report, as certified by the State Controller on September 1, 2022, agreed to the State's underlying accounting records for Fiscal Year 2022 that were contained in the State's accounting system as of September 1, 2022.
- Fiscal Year 2022 revenue is over the Excess State Revenues Cap by \$3.7 billion; therefore, there is a TABOR refund for Fiscal Year 2022.

Background

- 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 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.
- The Office of the State Auditor is required to audit the TABOR Financial Report by September 15 of each year.





OFFICE OF THE STATE AUDITOR
KERRI L. HUNTER, CPA, CFE • STATE AUDITOR

September 15, 2022

The Honorable Jared Polis
Governor
State of Colorado

The Honorable Julie McCluskie
Chair
Colorado Joint Budget Committee

The Honorable Julie Gonzales
Chair
Colorado Senate Finance Committee

The Honorable Shannon Bird
Chair
Colorado House Finance Committee

Mr. Mark Ferrandino
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, 2022, as certified by the State Controller on September 1, 2022. Please find attached the September 1 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, 2022*, [Unaudited]; and the *Comparison of Nonexempt TABOR Revenues for the Fiscal Year Ended June 30th, 2022*, [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 annual 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 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 that the State is authorized to retain and spend pursuant to voter approval of Section 24-77-103.6, C.R.S., (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 108, 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, except as noted below, we determined that the TABOR Financial Report, as certified by the State Controller as of September 1, 2022, agreed to the State's underlying accounting records for Fiscal Year 2022 that were contained in the State's accounting system as of September 1, 2022. Except as noted below, 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.

We identified the following exceptions related to the reliability of amounts contained in the TABOR Financial Report as certified on September 1:

- Subsequent to the State Controller's certification of the TABOR Financial Report on September 1, 2022, the Office of the State Controller (OSC) and several departments identified errors that were not reflected in the Financial Report. Netted together, the correction of these errors would result in a decrease of \$5,289,504 in the Fiscal Year 2022 Total Nonexempt District Revenues, a decrease in the Amount (Over)/Under Fiscal Year 2022 Adjusted Limit by \$5,783,727, and a decrease of \$20,251,775 in the Total amount to be refunded in future years.
- The TABOR certification letter submitted by the State Controller incorrectly overstated the Total amount to be refunded in future years by \$337,315 and overstated the Fiscal Year 2021 Adjusted Limit by \$25,135. When combined, these adjustments will decrease the Total amount to be refunded in future years by \$363,003, considering the current year growth rate for the \$25,135 amount.

As noted in the State Controller's certification, the amounts in the TABOR Financial Report are based on unaudited account balances and are subject to change. Adjustments to correct the exceptions noted above are expected to be reflected in the final audited *Schedule of Computation Required Under Article X, Section 20, of the State Constitution (TABOR)*, which will be included in the State's *Fiscal Year 2022 Annual Comprehensive Financial Report*.

Sincerely,



Kerri L. Hunter, CPA
State Auditor
Enc.



COLORADO

Office of the State Controller

Department of Personnel & Administration

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

September 1, 2022

The Honorable Jared S. Polis
Governor
State of Colorado

The Honorable Stephen Fenberg
President of the Senate
Colorado General Assembly

The Honorable Alec Garnett
Speaker of the House
Colorado General Assembly

Mark Ferrandino
Executive Director
Colorado Department of Revenue

Dear Gentlemen:

Pursuant to Section 24-77-106.5(1)(b) C.R.S., I hereby certify that for Fiscal Year 2022 (FY 2022), the State's unaudited Nonexempt District Revenues subject to Article X, Section 20 (TABOR) of the State Constitution as of September 1, 2022 are \$19,747,030,367. The growth rate of Nonexempt District Revenues is 22.1% for FY 2022, which is more than the allowable TABOR growth rate of 2.2% for FY 2022. The allowable growth rate includes population growth of 0.3% and inflation rate of 1.9%.

The Preliminary Schedule of Computations Required Under Article X, Section 20 (first attachment) includes computation of nonexempt revenues for FY 2021 and FY 2022 in the top box. The computation of the spending limitation in the bottom box compares FY 2022 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 \$3,734,634,514. 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, 2018, 2019 and 2021 excess revenues to be refunded total \$133,769,928; therefore, the total amount to be refunded for FY 2022 is \$3,868,404,442. Senate Bill 22-233 signed in May 2022 called for a special refund of excess TABOR revenue of \$750 for individual filers and \$1,500 for joint filers. As of August 31, 2022, the State remitted over \$2.5 billion in refunds to eligible taxpayers.

The Nonexempt District Revenues Fiscal Year Spending limit for FY 2022, which, prior to Referendum C was the trigger used for refunding excess revenues to taxpayers, is



\$12,929,782,977. For FY 2022, the Nonexempt District Revenues subject to TABOR exceeded the Fiscal Year Spending limit by \$6,817,247,390.

The Comparison of Nonexempt District Revenues (second attachment) compares general and program Nonexempt District Revenues for Fiscal Year 2022 to Fiscal Year 2021. Total nonexempt revenue increased by \$3,577,251,074 (22.1%) compared with the prior year. The following four revenue sources accounted for approximately 93.9% of the increased revenue in FY 2022 compared with FY 2021:

- Individual income tax - increased approximately \$2,006.5 million from FY 2021, reflecting a similar change in the June Office of State Planning and Budgeting forecast, which projected an 21.0% increase in individual income tax due to a tight labor market, wage growth and profits in pass through businesses.
- Sales and use tax - increased approximately \$689.3 million from FY 2021, primarily reflecting higher economic activity in Colorado.
- Corporate income tax - increased approximately \$351.5 million due to a growth in profits.
- Severance tax - increased by \$309.9 million, primarily due to higher oil and gas prices and increased production.

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, 2022. The final audited schedules will be included in the State's Fiscal Year 2022 Annual Comprehensive Financial Report, which is scheduled to be completed in December 2022.

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
AS OF JUNE 30, 2022**

Certification Date: September 1, 2022

	FISCAL YEAR 2021	FISCAL YEAR 2022
COMPUTATION OF NONEXEMPT REVENUES		
Total State Expenditures	\$ 67,186,300,966	\$ 67,481,847,253
Less: Exempt Activity	54,898,683,743	52,240,392,836
Nonexempt District Expenditures	12,287,617,223	15,241,454,417
District Reserve/Fund Balance Increase (Decrease)	3,882,162,070	4,505,575,950
Total Nonexempt District Revenues	\$ 16,169,779,293	\$ 19,747,030,367
COMPUTATION OF DISTRICT FUND BALANCE CHANGES		
Beginning District Fund Balance	\$ 9,860,230,346	\$ 13,823,736,938
Qualifications, Disqualifications and Other Adjustments	3,438,050,912	770,941,436
Retention of Revenues in Excess of the Limit CRS 24-77-103.6(1)(a)	525,455,680	3,734,634,514
Ending District Fund Balance	\$ 13,823,736,938	\$ 18,329,312,888

COMPUTATION OF SPENDING LIMITATIONS	FISCAL YEAR SPENDING	EXCESS STATE REVENUES CAP
Fiscal Year 2021 Limit	\$ 12,628,068,353	\$ 15,644,323,613
Other Agency Prior Year Revenues from Disqualified Enterprises	(249,356)	(249,356)
Qualification of Enterprises	(2,762,957)	(2,762,957)
Fiscal Year 2021 Adjusted Limit	\$ 12,625,056,040	\$ 15,641,311,300
Allowable TABOR Growth Rate	2.2%	2.2%
Fiscal Year 2022 Unadjusted Limit	\$ 12,902,807,273	\$ 15,985,420,149
Disqualification of Enterprises	26,975,704	26,975,704
Fiscal Year 2022 Adjusted Limit	\$ 12,929,782,977	\$ 16,012,395,853
Less: Fiscal Year 2022 Nonexempt District Revenues	(19,747,030,367)	(19,747,030,367)
Amount (Over)Under Fiscal Year 2022 Adjusted Limit	\$ (6,817,247,390)	\$ (3,734,634,514)
Amounts remaining in excess of the limit to be refunded in future years (by fiscal year of excess revenue)		
FY 2015		\$ 266,633
FY 2018		308,721
FY 2019		23,037,478
FY 2021		110,157,096
FY 2022		3,734,634,514
Total amount to be refunded in future years		\$ 3,868,404,442
FY 2022 retention of revenues in excess of the limit (not refundable) C.R.S. 24-77-103.6(1)(b)		\$ 3,082,612,876

STATE OF COLORADO
OFFICE OF THE STATE CONTROLLER
COMPARISON OF NONEXEMPT TABOR REVENUES
FOR THE FISCAL YEAR ENDED JUNE 30, 2022

	Fiscal Year 2022	Fiscal Year 2021	Increase (Decrease)	Percent Change
GENERAL REVENUES				
Individual Income Tax, Net	\$ 10,558,696,296	\$ 8,552,154,048	\$ 2,006,542,248	23.5%
Sales and Use Tax, Net	4,321,563,487	3,632,266,905	689,296,582	19.0%
Corporate Income Tax, Net	1,469,314,785	1,117,777,059	351,537,726	31.4%
Insurance Taxes	390,176,232	336,301,330	53,874,902	16.0%
Fiduciary Income Tax, Net	146,666,016	117,201,679	29,464,337	25.1%
Interest and Investment Income	65,385,157	46,783,615	18,601,542	39.8%
Alcoholic Beverages Tax, Net	56,340,487	53,362,690	2,977,797	5.6%
Tobacco Products Tax, Net	52,613,504	59,176,733	(6,563,229)	-11.1%
Business Licenses and Permits	6,273,319	3,834,353	2,438,966	63.6%
Court and Other Fines	6,130,218	7,578,922	(1,448,704)	-19.1%
Miscellaneous Revenue	1,644,108	1,595,493	48,615	3.0%
Gaming and Other Taxes	414,131	327,147	86,984	26.6%
General Government Service Fees	177,069	1,420,418	(1,243,349)	-87.5%
Welfare Service Fees	21,404	22,599	(1,195)	-5.3%
Other Charges For Services	9,535	10,384	(849)	-8.2%
TOTAL GENERAL-FUNDED REVENUES	17,075,425,748	13,929,813,375	3,145,612,373	22.6%
PROGRAM REVENUES				
Fuel and Transportation Taxes, Net	636,262,629	595,714,024	40,548,605	6.8%
Severance Taxes	314,626,169	4,701,881	309,924,288	6591.5%
Motor Vehicle Registrations	291,688,617	273,598,137	18,098,480	6.6%
Business Licenses and Permits	207,246,310	199,840,438	7,405,872	3.7%
Court and Other Fines	173,284,903	168,529,288	4,755,615	2.8%
General Government Service Fees	163,706,601	100,251,353	63,455,248	63.3%
Other Charges For Services	162,297,724	162,442,854	(145,131)	-0.1%
Gaming and Other Taxes	114,973,451	101,142,250	13,831,201	13.7%
Health Service Fees	81,599,299	83,596,966	(1,997,667)	-2.4%
Rents and Royalties	67,846,135	67,460,344	385,791	0.6%
Miscellaneous Revenue	61,890,649	151,328,491	(89,437,842)	-59.1%
Interest and Investment Income	61,215,095	51,175,747	10,039,348	19.6%
Sales and Use Tax, Net	54,978,007	30,226,241	24,751,766	81.9%
Employment Taxes	48,729,715	40,153,832	8,575,883	21.4%
Driver's Licenses	48,100,964	44,191,549	3,909,415	8.8%
Insurance Taxes	43,955,565	51,506,197	(7,550,632)	-14.7%
Public Safety Service Fees	41,532,302	34,182,940	7,349,362	21.5%
Nonbusiness Licenses and Permits	34,073,120	33,158,813	914,307	2.8%
Educational Fees	21,812,922	25,960,317	(4,147,395)	-16.0%
Certifications and Inspections	25,196,168	24,691,511	504,657	2.0%
Local Governments and Authorities	7,804,978	13,027,169	(5,222,191)	-40.1%
Higher Education Auxiliary Sales and Services	3,189,889	3,028,053	161,836	5.3%
Welfare Service Fees	2,965,173	1,914,821	1,050,352	54.9%
Sales of Products	1,409,742	1,138,495	271,247	23.8%
Alcoholic Beverages Tax, Net	814,146	833,360	(19,214)	-2.3%
Other Excise Taxes, Net	404,176	306,011	98,165	32.1%
Tobacco Products Tax, Net	170	210	(40)	-19.0%
TOTAL PROGRAM REVENUES	2,671,604,619	2,264,093,292	407,511,327	18.0%
Prior Year Errors		1,925,035	(1,925,035)	
Qualification of Enterprises		(2,762,957)	2,762,957	
Disqualification of Enterprises		(23,289,452)	23,289,452	
TOTAL NONEXEMPT REVENUE	\$ 19,747,030,367	\$ 16,169,779,293	\$ 3,577,251,074	22.1%

Schedule of TABOR Revenue 2022

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 2022 includes the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2022* [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2022* [Unaudited]. As noted in the State's Controller's Certification, the amounts in the TABOR Financial Report are based on unaudited account balances and are subject to change. Any adjustments are expected to be reflected in the final audited *Schedule of Computation Required Under Article X, Section 20, of the State Constitution (TABOR)*, which will be included in the State's *Fiscal Year 2022 Annual Comprehensive Financial Report*, with audit work expected to be completed in December 2022.

TABOR enterprises are designated in one of two ways. The first method is by statute. The second method is exclusive to higher education enterprises and Section 23-5-10.7, C.R.S., which specifies enterprise designation occurs through the institution's governing boards. If an enterprise is designated by statute or an institution's governing board, the enterprise still must annually meet additional

requirements. These additional requirements are defined by Section 24-77-102 C.R.S. which indicates that the enterprise must: (1) be a government-owned business that has the authority to issue its own revenue bonds and (2) receives less than 10% of its total annual revenues in grants from all state and local governments in Colorado combined.

Audit Purpose, Scope, and Methodology

We conducted this performance audit pursuant to Section 24-77-106.5, C.R.S., which 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 July 2022 through September 2022. We appreciate the cooperation and assistance provided by the State Controller and OSC staff during this audit.

We conducted this performance 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.

The reporting for this performance audit includes a letter dated September 15, 2022, from the State Auditor that summarized 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 15, 2022, along with the State Controller certification and TABOR Financial Report dated September 1, 2022.

The overall objective of our performance 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 key objective was to determine whether the State Controller complied with applicable laws, rules, and regulations related to Section 24-77-101 through 108, 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. We also determined and reported on which State institutions of higher education met the criteria for TABOR enterprise status in the current fiscal year and what their projections are for meeting the criteria in the subsequent fiscal year, according to the definition in Article X, Section 20(2)(d) of the Colorado Constitution. To accomplish our audit objectives, we performed the following audit work:

- 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. This included tying amounts on the TABOR Financial Report to the underlying accounting records as of September 1, 2022.
- Reviewed reports submitted by state departments and institutions of higher education detailing changes in TABOR revenue from prior years, base fiscal year spending, and changes in TABOR enterprise status.
- Reviewed the revenue accounts that are not included in the TABOR Financial Report as TABOR revenue and determined whether they met the statutory or voter-approved requirement to be classified as exempt.
- Obtained and compiled information from each State institution of higher education on their current revenue and expenditure information, and obtained projections for the same activity in the next year and determined whether the institution received and expects to receive next fiscal year under 10 percent of annual revenue in grants from all Colorado state and local governments combined.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives.

We communicated certain deficiencies in internal control that were not significant to the objectives of the audit but warranted OSC management's attention in a separate letter dated in October 28, 2022.

Our conclusions on the effectiveness of those controls that were significant to our audit objectives, as well as specific details about the audit work supporting our conclusions are described in the remainder of this report. The State Controller and members of his staff reviewed a draft of this report. We have incorporated the OSC's comments into the report where relevant.

Overall Conclusion

Based on the results of our audit, except as noted below, we determined that the TABOR Financial Report, as certified by the State Controller on September 1, 2022, agreed to the State's underlying accounting records for Fiscal Year 2022 that were contained in the State's financial accounting system as of September 1, 2022. Except as noted below, 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.

We identified the following exceptions related to the reliability of amounts contained in the TABOR Financial Report as certified on September 1:

- Subsequent to the State Controller's certification of the TABOR Financial Report on September 1, 2022, the Office of the State Controller (OSC) and several departments identified errors that were not reflected in the Financial Report. Netted together, the correction of these errors would result in a decrease of \$5,289,504 in the Fiscal Year 2022 Total Nonexempt District Revenues, a decrease in the Amount (Over)/Under Fiscal Year 2022 Adjusted Limit by \$5,783,727, and a decrease of \$20,251,775 in the Total amount to be refunded in future years.
- The TABOR certification letter submitted by the State Controller incorrectly overstated the Total amount to be refunded in future years by \$337,315 and overstated the Fiscal Year 2021 Adjusted Limit by \$25,135. When combined, these adjustments will decrease the Total amount to be refunded in future years by \$363,003, considering the current year growth rate for the \$25,135 amount.

As noted in the State Controller's certification, the amounts in the TABOR Financial Report are based on unaudited account balances and are subject to change. Adjustments to correct the exceptions noted above are expected to be reflected in the final audited *Schedule of Computation Required Under Article X, Section 20, of the State Constitution (TABOR)*, which will be included in the State's *Fiscal Year 2022 Annual Comprehensive Financial Report*.

We obtained an understanding of internal controls that were significant within the context of our audit objectives and evaluated the effectiveness of internal control in relation to the State Controller's preparation of the financial report, and found no significant deficiencies.

We also obtained and compiled information from each State institution of higher education to determine their TABOR enterprise status and found that nine of the 10 institutions met the definition of TABOR enterprise for Fiscal Year 2022 and all 10 institutions are projected to meet the definition for Fiscal Year 2023. Fiscal Year 2022 revenue from the nine qualifying state institutions of higher education was reported as TABOR exempt revenue and the revenue from the one disqualified state institution of higher education was reported as TABOR nonexempt revenue. See Appendix C for more information.

Preparation of the Fiscal Year 2022 TABOR Financial Report

As required by statute [Section 24-77-106.5, C.R.S.], the State Controller 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 2022, which consists of the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2022 [Unaudited]* and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended*

June 30, 2022 [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 2022, the TABOR growth rate was 2.2 percent.

Excess State Revenue 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.

Exempt and Nonexempt Revenue

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

- Revenue collected by a TABOR enterprise.
- Voter approved revenue exemptions.

Fiscal Year 2022 TABOR Revenue

We reviewed the State Controller's computations of the Fiscal Year 2022 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 2022:

Exhibit 1.1

TABOR Revenue, Excess State Revenues Cap, and Revenue Over the Excess State Revenues Cap Fiscal Year 2022

	OSC Certified Amounts	Audited Amounts	Difference
TABOR Revenue	\$19,747,030,367	\$19,741,740,863	\$5,289,504
Excess State Revenues Cap	\$(16,012,395,853)	\$(16,012,864,388)	\$468,535
Revenue Over/(Under) Excess State Revenues Cap	\$3,734,634,514	\$3,728,876,476	\$5,758,038

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 2022, revenue was above the Cap by approximately \$3.7 billion and the refund has been/will be issued in Fiscal Year 2023.

Refunding

There are currently four mechanisms available for refunding excess state revenues. The following are those mechanisms in the order the mechanism will apply for refunds:

- **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 2022 Economic & Revenue Forecast*, published by the Colorado Legislative Council Staff, estimates property tax exemptions to total \$162.1 million for Fiscal Year 2023.

- **Temporary Income Tax Rate Reduction.** Under this second mechanism, the state income tax rate would be temporarily reduced from the base rate of 4.55 percent to 4.50 percent in the tax year following the fiscal year surplus. 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 4.55 percent to 4.50 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.
- **Temporary Refund of Excess State Revenue from All Sources.** The legislature created a temporary refund mechanism applicable only for the Fiscal Year 2022 refund through Senate Bill 22-233. This bill required the State to distribute a standard amount, up to 85% of the refund amount, directly to taxpayers based on income tax returns filed for Fiscal Year 2021. Based on the requirements in the bill, the Department of Revenue set the refund amounts at \$750 for single taxpayers, and \$1,500 for taxpayers who file jointly. The bill also required the Department of Revenue to distribute the refunds by September 30, 2022, for qualified taxpayers that submitted tax returns by April 18, 2022, or by January 31, 2023 for those qualified taxpayers that submitted tax returns by the extended deadline of October 15, 2022.
- **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.

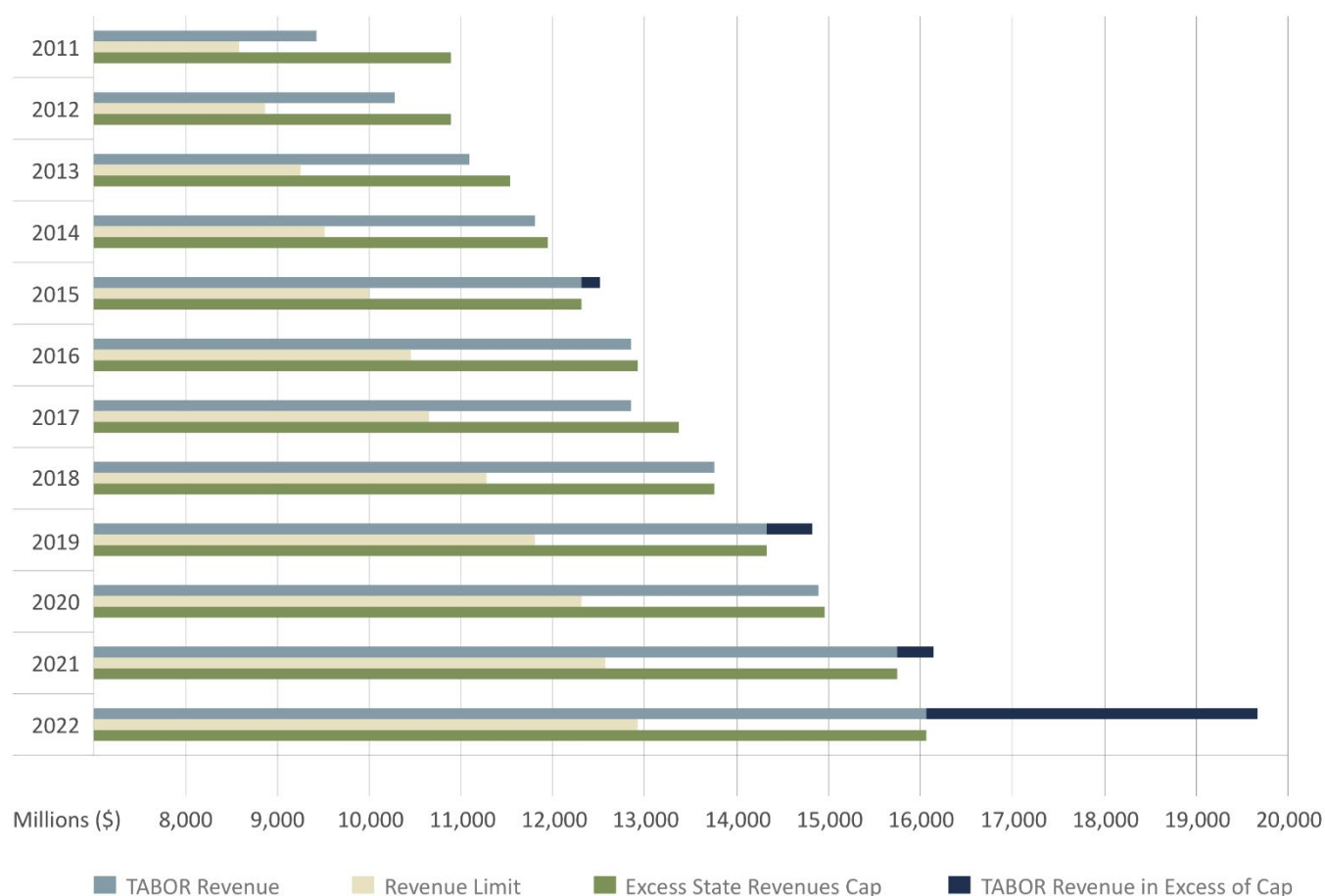
At the beginning of Fiscal Year 2022, the State had an outstanding TABOR refund liability of about \$133.8 million from Fiscal Years 2015, 2018, 2019, and 2021 excess TABOR revenues, including adjustments. Section 24-77-103.8(3), C.R.S. requires that any unpaid refund liability from previous fiscal years shall be carried forward as a TABOR refund liability and refunded with subsequent fiscal years' state revenues that are required to be refunded.

At June 30, 2022, the TABOR refund liability amount was \$3,868,404,442. The Fiscal Year 2022 excess state revenues are expected to trigger all four 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 2011 to 2022. 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, 2019, 2021, and 2022.

Exhibit 1.2
State of Colorado TABOR Revenue vs.
Revenue Limit and the Excess State Revenue Cap
Fiscal Years 2011 to 2022



Source: Schedules of Computations Required Under Article X, Section 20 for Fiscal Years 2011-2022. 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 (Comparison)—PAGE 8. Revenues within the Comparison are presented in two categories, General Revenues and Program Revenues. The General Revenues are revenues within the General Fund and Program Revenues are from cash funded activities.

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

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.

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, sports betting operation fees and 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. Examples of these revenues include transfers between funds.

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. These revenues are Auraria Higher Education Center (AHEC) charges to other higher education institutions for these services. During Fiscal Year 2022, AHEC's Tivoli activity received more than 10 percent of funding from the State and as a result it partially lost its exempt enterprise status.

Sales of Products

Sales of publications, maps, materials, and supplies.



Appendix B



TABOR History

Fiscal Years 1993–2022

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. Second, 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 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 Excess State Revenues Cap 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 Excess State Revenues Cap for Fiscal Year 2018, resulting in a refund. The excess was refunded through the property tax exemption reimbursement mechanism.

2019

Refunds. TABOR revenue exceeded the TABOR Excess State Revenues Cap for Fiscal Year 2019, resulting in a refund. The excess was refunded through the property tax exemption reimbursement mechanism and the income tax reduction mechanism.

In the 2019 statewide election, Colorado voters approved Proposition DD, a measure referred to the voters by the Legislature in House Bill 19-1327. The proposition allowed the State to tax the proceeds of sports betting activity and to use the revenue to fund State water projects and included in TABOR revenues.

2020

Refunds. Total nonexempt district revenues were below the Excess State Revenues Cap, resulting in no refund.

Enterprises. The General Assembly passed Senate Bill 20-215, Health Insurance Affordability Enterprise, at the end of Fiscal Year 2020. The Bill establishes the Health Insurance Affordability Enterprise, a TABOR enterprise for purposes of Section 20 of Article X of the state constitution, that is authorized to assess a Health Insurance Affordability fee (insurer fee) on certain health insurers and a special assessment (hospital assessment) on hospitals to administer the Health Insurance Affordability fees and special assessment charges.

2021

Enterprises. In the 2020 general election, Colorado voters approved Proposition 117 that became effective December 31, 2020. The proposition required that any state enterprise with revenue from fees over \$100 million in its first five years must be approved by voters at a statewide election. In 2022, the legislature passed House Bill 22-1400 to update and clarify the information from the Proposition. The bill clarifies that certain higher education institutions that previously qualified as enterprises do not require voter approval in order to requalify as enterprises if they happen to lose enterprise status in a given year.

Exempt Fees. In the 2020 general election, Colorado voters approved Proposition EE that took effect January 1, 2021. The proposition increased taxes on nicotine products including vaping products and set a minimum price for cigarettes. These increased taxes are exempt from the TABOR limit.

Excess State Revenues Cap. The General Assembly passed Senate Bill 21-260, Sustainability of the Transportation System, at the end of Fiscal Year 2021. This bill is codified in Section 24-77-103.6(6)(b)(I)(F), C.R.S. The bill raises the state's revenue limit beginning in Fiscal Year 2021 to an amount calculated as the Fiscal Year 2020 excess state revenues cap plus an additional \$224,957,602.

The Fiscal Year 2021 calculated amount was then carried forward and adjusted for inflation, change in population, newly qualified or disqualified enterprises, and debt service changes. This was designed to reverse the \$200 million reduction of the TABOR limit from Senate Bill 17-267 which was adjusted for inflation and population growth. This amount was shown as an adjustment to the excess state revenues cap on the State Controller's September 1, 2021 TABOR certification.

New Enterprises, Agency, and Fees. Senate Bill 21-260 created four new enterprises: the Community Access Enterprise within the Colorado Energy Office, the Clean Fleet Enterprise within the Colorado Department of Public Health and Environment, the Clean Transit Enterprise within the Colorado Department of Transportation (CDOT), and the Nonattainment Area Pollution Mitigation Enterprise within CDOT. The Statewide Bridge Enterprise's name was also changed to the Statewide Bridge and Tunnel Enterprise. All of these enterprises are exempt from the TABOR limit. The bill created a new branch of CDOT called the Environmental Justice and Equity Brand which will work with disproportionately impacted communities on the planning, study, and delivery of transportation projects. Senate Bill 21-260 also created new fees on gasoline and diesel fuel, retail deliveries, passenger rides, electric motor vehicle registration, and short-term vehicle rentals which are subject to TABOR limits. Senate Bill 21-154 created the 988 Crisis Hotline Enterprise within the Department of Human Services. The enterprise is funded by fees imposed on phone service providers.

2022

Refunds. TABOR revenue exceeded the TABOR Excess State Revenues Cap for Fiscal Year 2022, resulting in a refund. The excess was mainly refunded through the temporary taxpayer refund mechanism. Specifically, in Fiscal Year 2022, the General Assembly passed Senate Bill 22-233 to create a temporary refund mechanism for TABOR refunds. The temporary refund mechanism provides a refund in an identical amount to each qualified resident individual in the State based on the 2021 individual income tax filings.

New Enterprises. Senate Bill 22-198 created the Orphaned Wells Mitigation Enterprise within the Department of Natural Resources. Enterprise designation means the activity is exempt from TABOR limits, if certain requirements are met (i.e. enterprise created by statute or a higher education institution with the governing board, and in addition to either of these requirements, being authorized to issue its own revenue bonds and received less than 10 percent of its annual revenue in grants from all Colorado State and local governments combined).



Appendix C



Higher Education Enterprise Status for Fiscal Year 2022 with Projections for Fiscal Year 2023

Under Section 23-5-101.7(2), C.R.S., a state institution of higher education governing board may designate its respective institution(s) as an enterprise for purposes of Article X, Section 20 of the Colorado Constitution (Taxpayer's Bill of Rights or TABOR). Article X, Section 20(2)(d), defines a TABOR enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined." Entities that meet the definition of a TABOR-exempt enterprise are exempt from the revenue growth and spending limitations of TABOR.

The Office of the State Auditor and the Legislative Audit Committee (LAC) reviewed and approved the initial TABOR enterprise designation of each higher education institution listed below in prior years:

- Adams State University
- Colorado Community College System
- Colorado School of Mines
- Colorado State University System
- Fort Lewis College
- Colorado Mesa University
- Metropolitan State University of Denver
- University of Colorado System
- University of Northern Colorado
- Western State Colorado University

Section 23-5-101.7(4)(a), C.R.S., states that a higher education institution's TABOR enterprise designation "...shall not terminate, expire, or be rescinded as long as the institution or group of institutions meets the requirements for an enterprise." Determination of continuing enterprise status is made at the end of each fiscal year after final financial information is known. This memo provides the final enterprise status of the 10 institutions listed above for Fiscal Year 2022, and their projected enterprise status for Fiscal Year 2023.

Final Enterprise Status for Fiscal Year 2022

During Fiscal Year 2022, all higher education institutions reported that they received some level of direct financial support from the State. Exhibit C.1 shows the amount of revenue earned and state and local support received by the higher education enterprises for Fiscal Year 2022. Exhibit C.1 also shows that nine of the 10 institutions received less than 10 percent of their total revenue from the State and/or local sources, and thereby qualified for TABOR-exempt enterprise status. Adams State University received more than 10 percent in state and local support, and therefore did not qualify for TABOR-exempt enterprise status for Fiscal Year 2022. Notwithstanding the provisions of Proposition 117, the House Bill 22-1400, clarified voter approval is not required to re-designate the institution as an enterprise if the institution disqualifies as an enterprise after January 1, 2021.

Exhibit C.1
Higher Education TABOR-Exempt Enterprise Status
Actual Revenues and State and Local Support
Fiscal Year 2022

	Total Revenue	State Support General Fund Appropriation Spent (Note 1)	State Allocation of PERA Direct Distribution (Note 2)	State Support Capital Appropriation Spent (Note 3)	Other State and Local Support (Note 4)	Total State and Local Support	Total Support as a Percentage of Total Revenue
Adams State University	\$ 74,760,451	\$ -	\$ 242,523	\$ 9,003,716	\$ 292,323	\$ 9,538,562	12.8%
Colorado Community College System	\$ 856,518,374	\$ 5,462,309	\$ 6,536,929	\$ 17,218,884	\$ 4,275,590 (Note 5)	\$ 33,493,712	3.9%
Colorado School of Mines	\$ 360,503,765	\$ -	\$ 1,693,940	\$ (1,067,741) (Note 6)	\$ 5,518,677	\$ 6,144,876	1.7%
Colorado State University System	\$ 1,534,404,391	\$ -	\$ 3,751,370	\$ 13,921,028	\$ 31,853,631 (Note 7)	\$ 49,526,029	3.2%
Fort Lewis College	\$ 94,780,772	\$ -	\$ 190,113	\$ 1,875,776	\$ 687,618	\$ 2,753,507	2.9%
Colorado Mesa University	\$ 206,653,044	\$ -	\$ 364,204	\$ 13,139,648	\$ 3,127,872 (Note 8)	\$ 16,631,724	8.0%
Metropolitan State University of Denver	\$ 306,112,896	\$ -	\$ 930,139	\$ 1,600,542	\$ 185,570 (Note 9)	\$ 2,716,251	0.9%
University of Colorado System	\$ 5,511,320,320	\$ -	\$ 7,603,131	\$ 6,149,416	\$ 37,858,246 (Note 10)	\$ 51,610,793	0.9%
University of Northern Colorado	\$ 237,957,522	\$ -	\$ 613,471	\$ 1,723,435	\$ 3,462,066 (Note 11)	\$ 5,798,972	2.4%
Western State Colorado University	\$ 140,529,039	\$ -	\$ 136,515	\$ 1,836,412	\$ 1,963,560	\$ 3,936,487	2.8%

- Source: Office of the State Auditor analysis of institution-provided financial information.
- Note 1: Appropriations of \$4,500,000 for Colorado First Customized Job Training, and \$962,309 for Occupational Education for CCCS.
- Note 2: PERA distribution pursuant to Section 24-51-414(1), C.R.S. for Fiscal Year 2022 allocated to the higher education institutions by the Office of the State Controller.
- Note 3: Capital funds used during Fiscal Year 2022 and may not equal capital funds appropriated for any one year.
- Note 4: State support received from annual lease payments for capital projects financed by state certificates of participation, other state support, and local government support.
- Note 5: Local government support includes approximately \$1.3 million in tax support from Moffat and Rangely for Colorado Northwestern Community College and \$800,000 in marijuana tax funds from Pueblo County for Pueblo Community College.
- Note 6: The Colorado School of Mines has a negative state capital appropriation of \$(1,067,741). Mines returned previously received state appropriated capital funds for a cancelled project in Fiscal Year 2022.
- Note 7: State support includes \$9,860,000 to construct several facilities at the National Western Center.
- Note 8: Local government support includes \$700,000 from the City of Grand Junction and Mesa County pledged for debt service for Colorado Mesa University.
- Note 9: Local government support includes \$185,570 for partnership with Denver public schools (DPS), to provide tutors for DPS regional summer school sites for credit recovery, and partnership with the city and county of Denver and MSU Denver to support cue's 21st century college readiness program.
- Note 10: State support includes \$23,475,572 from the Tobacco Litigation Settlement Moneys Health Education Fund and Marijuana research for the University of Colorado. Other state support also consists of \$11,263,461 received from annual lease payments for capital project financed by state Certificates of Participation related to the Anschutz Medical Campus.
- Note 11: Local government support includes \$174,043 in funds from the City of Greeley, City and County of Denver, and Aims Community College.

Projected TABOR Enterprise Status for Fiscal Year 2023

Exhibit C.2 shows the estimated amount of revenue expected to be earned and state and local support expected to be received by higher education enterprises in Fiscal Year 2023, as reported by each higher education institution. Based on current projections, all of the institutions are expected to be below the 10 percent threshold for Fiscal Year 2023.

Exhibit C.2 Higher Education TABOR-Exempt Enterprise Status Actual Revenues and State and Local Support Fiscal Year 2023

	Total Revenue	State Support General Fund Appropriation Spent (Note 1)	State Allocation of PERA Direct Distribution (Note 2)	State Support Capital Appropriation Spent (Note 3)	Other State and Local Support (Note 4)	Total State and Local Support	Total Support as a Percentage of Total Revenue
Adams State University	\$ 62,963,438	\$ -	\$ 250,000	\$ 4,886,403	\$ 286,392	\$ 5,422,795	8.6%
Colorado Community College System	\$ 899,344,292	\$ 5,462,309	\$ 6,841,000	\$ 8,295,519	\$ 4,065,076 (Note 5)	\$ 24,663,904	2.7%
Colorado School of Mines	\$ 435,923,324	\$ -	\$ 1,700,000	\$ 0	\$ 8,156,348	\$ 9,856,348	2.3%
Colorado State University System	\$ 1,823,325,027	\$ -	\$ 3,800,000	\$ 11,384,867	\$ 40,479,056 (Note 6)	\$ 55,663,923	3.1%
Fort Lewis College	\$ 100,788,941	\$ -	\$ 195,000	\$ 1,624,412	\$ 2,304,472	\$ 4,123,884	4.1%
Colorado Mesa University	\$ 186,987,165	\$ -	\$ 367,000	\$ 8,555,761	\$ 2,125,830 (Note 7)	\$ 11,048,590	5.9%
Metropolitan State University of Denver	\$ 271,307,957	\$ -	\$ 930,000	\$ 14,145,000	\$ 185,570 (Note 8)	\$ 15,260,570	5.6%
University of Colorado System	\$ 5,314,077,331	\$ -	\$ 7,603,000	\$ 41,641,071	\$ 38,396,990 (Note 9)	\$ 87,641,061	1.6%
University of Northern Colorado	\$ 198,506,226	\$ -	\$ 650,000	\$ 4,486,112	\$ 2,797,518 (Note 10)	\$ 7,933,630	4.0%
Western State Colorado University	\$ 69,050,259	\$ -	\$ 137,000	\$ 1,753,806	\$ 1,910,160	\$ 3,800,966	5.5%

Source: Office of the State Auditor analysis of Fiscal Year 2023 information provided by each higher education institution.

Note 1: Appropriations of \$4,500,000 for Colorado First Customized Job Training, and \$962,309 for Occupational Education for CCCS.

Note 2: Estimated PERA direct distribution allocation pursuant to Section 24-51-414(1), C.R.S.

Note 3: Estimated capital funds to be used during Fiscal Year 2023 which may not equal capital funds appropriated for any one year.

Note 4: State support received from annual lease payments for capital projects financed by state certificates of participation, other state appropriations, and local government support.

Note 5: Local government support includes approximately \$1.3 million in tax support from Moffat and Rangely for Colorado Northwestern Community College and \$800,000 in marijuana tax funds from Pueblo County for Pueblo Community College.

Note 6: State support includes \$17,496,791 to construct several facilities at the National Western Center.

Note 7: Local government support, includes \$700,000 from the City of Grand Junction and Mesa County pledged for debt service for Colorado Mesa University.

Note 8: Local government support includes \$185,570 for local grants in partnership with the City and County of Denver and Metropolitan State University of Denver.

Note 9: State support includes the estimated amount of \$15,206,425 from the Tobacco Litigation Settlement Moneys Health Education Fund to the Anschutz Medical Campus, \$6,750,000 from the Marijuana Tax Cash Fund to the Anschutz Medical Campus, and \$13,359,570 for Certificates of Participation related to the Anschutz Medical Campus.

Note 10: Local government support, includes \$93,657 in funds from the City of Greeley, Weld County, and Aims Community College.





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