

COLORADO OFFICE OF THE STATE AUDITOR



SCHEDULE OF TABOR REVENUE FISCAL YEAR 2020



NOVEMBER 2020

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



We Set the Standard for Good Government

November 19, 2020

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, 2020, as certified by the State Controller on September 1, 2020. 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
COLORADO

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REPORT HIGHLIGHTS



SCHEDULE OF TABOR REVENUE,
FISCAL YEAR 2020
PERFORMANCE AUDIT, NOVEMBER 2020

OFFICE OF THE STATE CONTROLLER

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.

CONCLUSIONS

- We determined that the TABOR Financial Report, as certified by the State Controller on September 1, 2020, agreed to the State's underlying accounting records for Fiscal Year 2020, which were contained in the State's accounting system as of September 1, 2020.
- 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.
- Fiscal Year 2020 revenue is under the Excess State Revenues Cap by \$82,542,238; therefore, there is no TABOR refund for Fiscal Year 2020.

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 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.





September 15, 2020

THE HONORABLE JARED POLIS
GOVERNOR
STATE OF COLORADO

THE HONORABLE DANEYA ESGAR
CHAIR
COLORADO JOINT BUDGET COMMITTEE

THE HONORABLE JULIE GONZALES
CHAIR
COLORADO SENATE FINANCE COMMITTEE

THE HONORABLE LESLIE HEROD
CHAIR
COLORADO HOUSE FINANCE COMMITTEE

MS. HEIDI HUMPHREYS
INTERIM EXECUTIVE DIRECTOR
COLORADO DEPARTMENT OF REVENUE

Dear Sir and Mesdames:

This letter summarizes the results of our audit of the Taxpayer's Bill of Rights (TABOR) Financial Report as of June 30, 2020, as certified by the State Controller on September 1, 2020. 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, 2020*, [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2020*, [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 Department of Revenue no later than September 1st subsequent to the end of the previous fiscal year, the following:



We Set the Standard for Good Government

- 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., (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 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. Based on the results of our audit, we determined that the TABOR Financial Report, as certified by the Office of the State Controller as of September 1, 2020, agreed to the State's underlying accounting records for Fiscal Year 2020 that were contained in the State's accounting system as of September 1, 2020. 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". The signature is fluid and cursive, with the first name "Dianne" being more prominent.

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

September 1, 2020

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

Heidi Humphreys
Interim 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 2020 (FY 2020), the State's unaudited Nonexempt District Revenues subject to Article X, Section 20 (TABOR) of the State Constitution as of September 1, 2020 are \$14,866,305,327, which is 0.5% more than in FY 2019. The allowable TABOR growth rate for Nonexempt Revenues is 4.1% for FY 2020. The allowable growth rate includes a population growth rate of 1.4%, and an inflation rate of 2.7%.

The Preliminary Schedule of Computations Required Under Article X, Section 20 (first attachment) includes the computation of nonexempt revenues for FY 2019 and FY 2020 in the top box. The computation of the spending limitation in the bottom box compares FY 2020 nonexempt district revenue with Fiscal Year Spending, and with the Adjusted Excess State Revenues Cap (ESRC).

TABOR Nonexempt District Revenues are below the ESRC by \$82,542,238. Remaining excess revenues from Fiscal Years, 2015, 2018 and 2019 to be refunded total \$143,418,043.

The Nonexempt District Revenues Fiscal Year Spending limit for FY 2020, which, prior to Referendum C was the trigger used for refunding excess revenues to taxpayers, is \$12,241,478,353.

The Comparison of Nonexempt District Revenues (second attachment) compares general and program Nonexempt District Revenues for Fiscal Year 2020 to Fiscal Year 2019. Total nonexempt revenue increased by \$77,885,705 (0.5%) compared with the prior year.



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, 2020. The final audited schedules will be included in the State's Fiscal Year 2020 Comprehensive Annual Financial Report, which is scheduled to be completed in December 2020.

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

Sincerely,

A handwritten signature in black ink that reads "Robert Jaros". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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, 2020

Certification Date: September 1, 2020

	FISCAL YEAR 2019	FISCAL YEAR 2020
COMPUTATION OF NONEXEMPT REVENUES		
Total State Expenditures	\$ 47,709,288,359	\$ 56,755,336,588
Less: Exempt Activity	<u>34,707,536,763</u>	<u>42,840,026,962</u>
Nonexempt District Expenditures	13,001,751,596	13,915,309,626
District Reserve/Fund Balance Increase (Decrease)	<u>1,786,668,026</u>	<u>950,995,701</u>
Total Nonexempt District Revenues	<u>\$ 14,788,419,622</u>	<u>\$ 14,866,305,327</u>
COMPUTATION OF DISTRICT FUND BALANCE CHANGES		
Beginning District Fund Balance	\$ 7,002,966,380	\$ 8,751,906,735
Qualifications, Disqualifications and Other Adjustments	1,320,604,849	1,035,983,620
Retention of Revenues in Excess of the Limit CRS 24-77-103.6(1)(a)	<u>428,335,506</u>	<u>(82,542,238)</u>
Ending District Fund Balance	<u>\$ 8,751,906,735</u>	<u>\$ 9,705,348,117</u>

COMPUTATION OF SPENDING LIMITATIONS	FISCAL YEAR SPENDING	EXCESS STATE REVENUES CAP
Fiscal Year 2019 Limit	\$ 11,759,345,200	\$ 14,360,084,116
Allowable TABOR Growth Rate	4.1%	4.1%
Fiscal Year 2020 Adjusted Limit	\$ 12,241,478,353	\$ 14,948,847,565
Less: Fiscal Year 2020 Nonexempt District Revenues	<u>(14,866,305,327)</u>	<u>(14,866,305,327)</u>
Amount (Over)Under Fiscal Year 2020 Adjusted Limit	<u>\$ (2,624,826,974)</u>	<u>\$ 82,542,238</u>
Amounts remaining in excess of the limit to be refunded in future years (by fiscal year of excess revenue)		
FY 2015		\$ 304,318
FY 2018		2,949,972
FY 2019		<u>140,163,753</u>
Total amount to be refunded in future years		<u>\$ 143,418,043</u>
FY 2020 retention of revenues in excess of the limit (not refundable) C.R.S. 24-77-103.6(1)(b)		\$ (2,624,826,974)

STATE OF COLORADO
OFFICE OF THE STATE CONTROLLER
COMPARISON OF NONEXEMPT TABOR REVENUES
FOR THE FISCAL YEAR ENDED JUNE 30, 2020

	Fiscal Year 2020	Fiscal Year 2019	Increase (Decrease)	Percent Change
GENERAL REVENUES				
Individual Income Tax, Net	\$ 8,032,399,506	\$ 7,554,025,207	\$ 478,374,299	6.3%
Sales and Use Tax, Net	3,406,516,314	3,399,519,069	6,997,245	0.2%
Corporate Income Tax, Net	670,434,333	855,706,743	(185,272,410)	-21.7%
Insurance Taxes	337,417,807	314,663,520	22,754,287	7.2%
Tobacco Products Tax, Net	56,910,411	54,840,609	2,069,802	3.8%
Alcoholic Beverages Tax, Net	50,069,739	48,304,172	1,765,567	3.7%
Interest and Investment Income	29,238,671	24,560,039	4,678,632	19.0%
Fiduciary Income Tax, Net	24,275,951	64,239,350	(39,963,399)	-62.2%
Court and Other Fines	10,172,014	25,517,610	(15,345,596)	-60.1%
Business Licenses and Permits	7,352,054	5,817,416	1,534,638	26.4%
General Government Service Fees	2,371,028	1,020,382	1,350,646	132.4%
Miscellaneous Revenue	2,014,974	1,559,959	455,015	29.2%
Gaming and Other Taxes	348,916	509,843	(160,927)	-31.6%
Welfare Service Fees	19,130	8,434	10,696	126.8%
Other Charges For Services	6,349	47,443	(41,094)	-86.6%
Public Safety Service Fees	-	55,650	(55,650)	-100.0%
TOTAL GENERAL-FUNDED REVENUES	12,629,547,197	12,350,395,446	279,151,751	2.3%
PROGRAM REVENUES				
Fuel and Transportation Taxes, Net	626,572,328	658,121,910	(31,549,582)	-4.8%
Motor Vehicle Registrations	274,372,225	280,349,502	(5,977,277)	-2.1%
Business Licenses and Permits	189,101,472	181,683,801	7,417,671	4.1%
Other Charges For Services	165,603,803	168,598,785	(2,994,982)	-1.8%
Court and Other Fines	161,582,265	178,205,261	(16,622,996)	-9.3%
Severance Taxes	116,842,809	241,727,089	(124,884,280)	-51.7%
Interest and Investment Income	87,678,642	88,757,023	(1,078,381)	-1.2%
Health Service Fees	87,432,522	86,491,292	941,230	1.1%
Miscellaneous Revenue	81,580,926	54,481,376	27,099,550	49.7%
General Government Service Fees	69,097,425	75,704,774	(6,607,349)	-8.7%
Gaming and Other Taxes	68,201,119	105,662,962	(37,461,843)	-35.5%
Rents and Royalties	60,701,670	64,951,667	(4,249,997)	-6.5%
Driver's Licenses	40,293,015	42,278,947	(1,985,932)	-4.7%
Employment Taxes	38,075,619	34,090,799	3,984,820	11.7%
Sales and Use Tax, Net	37,220,152	41,112,066	(3,891,914)	-9.5%
Nonbusiness Licenses and Permits	30,163,475	30,649,735	(486,260)	-1.6%
Certifications and Inspections	24,125,659	22,102,796	2,022,863	9.2%
Insurance Taxes	22,336,255	20,079,543	2,256,712	11.2%
Public Safety Service Fees	20,531,842	20,347,834	184,008	0.9%
Higher Education Auxiliary Sales and Services	10,495,912	3,935,786	6,560,126	166.7%
Local Governments and Authorities	10,489,500	24,220,711	(13,731,211)	-56.7%
Educational Fees	8,572,913	9,178,478	(605,565)	-6.6%
Welfare Service Fees	2,434,777	1,902,015	532,762	28.0%
Sales of Products	2,046,394	2,312,622	(266,228)	-11.5%
Alcoholic Beverages Tax, Net	830,922	819,571	11,351	1.4%
Other Excise Taxes, Net	374,074	257,238	116,836	45.4%
Tobacco Products Tax, Net	415	424	(9)	-2.1%
Estate and Inheritance Taxes	-	169	(169)	-100.0%
TOTAL PROGRAM REVENUES	2,236,758,130	2,438,024,176	(201,266,046)	-8.3%
TOTAL NONEXEMPT REVENUE	\$ 14,866,305,327	\$ 14,788,419,622	\$ 77,885,705	0.5%

SCHEDULE

OF TABOR REVENUE 2020

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.
- 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 2020 includes the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2020* [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2020* [Unaudited].

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 June 2020 through September 2020. We appreciate the cooperation and assistance provided by the State Controller and staff at the OSC 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 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 15, 2020, along with the State Controller certification and TABOR Financial Report dated September 1, 2020.

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 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 re-performed 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 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 and transactions 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.

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. Specifically, our work related to internal control included the following components and underlying principles based on guidance issued by the U.S. Government Accountability Office:

EXHIBIT 1.1. SIGNIFICANT INTERNAL CONTROL COMPONENTS AND UNDERLYING PRINCIPLES REVIEWED DURING THE AUDIT

Control Activities <ul style="list-style-type: none"> • Design Control Activities • Design Activities for the Information System • Implement Control Activities 	Information and Communication <ul style="list-style-type: none"> • Use Quality Information • Communicate Internally • Communicate Externally
Risk Assessment <ul style="list-style-type: none"> • Identify, Analyze, and Respond to Change 	Monitoring <ul style="list-style-type: none"> • Evaluate Issues and Remediate Deficiencies

SOURCE: U.S. Government Accountability Office, Standards for Internal Control in the Federal Government (Green Book).

We found no deficiencies in internal control that were significant to the objectives of the audit. We communicated certain deficiencies in internal control that were not significant to the objectives of the audit, but warranted the State Controller's attention in a separate letter dated November 19, 2020.

The State Controller and members of his staff reviewed a draft of this report and had no comments or changes.

As part of our annual statewide financial audit that is currently ongoing for Fiscal Year 2020, we will also conduct a financial audit of the final *Schedule of TABOR Revenue and Computations*, contained within the Comprehensive Annual Financial Report, with field work scheduled to be completed in January 2021.

OVERALL CONCLUSION

Based on the results of our performance audit, we determined that the TABOR Financial Report, as certified by the State Controller on September 1, 2020, agreed to the State's underlying accounting records for Fiscal Year 2020 that were contained in the State's financial accounting system as of September 1, 2020. 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 2020 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 2020, which consists of the *Preliminary Schedule of Computations Required Under Article X, Section 20 as of June 30, 2020* [Unaudited] and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2020* [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 2020, the TABOR growth rate was 4.1 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 a TABOR “enterprise,” which is a government-owned business receiving less than 10 percent in grants of annual revenue from state and local governments.
- Voter approved revenue exemptions.

FISCAL YEAR 2020 TABOR REVENUE

We reviewed the State Controller's computations of the Fiscal Year 2020 TABOR revenues and Cap. The figures in EXHIBIT 1.2 show TABOR revenue, the Cap, and calculated revenue exceeding the Cap, as certified by the State Controller for Fiscal Year 2020.

EXHIBIT 1.2. STATE OF COLORADO TABOR REVENUE, EXCESS STATE REVENUES CAP, AND REVENUE OVER THE EXCESS STATE REVENUES CAP FISCAL YEAR 2020

TABOR REVENUE	\$14,866,305,327
EXCESS STATE REVENUES CAP	(14,948,847,565)
REVENUE OVER/(UNDER) EXCESS STATE REVENUES CAP	\$(82,542,238)

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 2020, revenue was less than the Cap by approximately \$82.5 million and no refund will be issued in Fiscal Year 2021.

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 2020 Economic & Revenue Forecast*, published by the Colorado Legislative Council Staff, estimates total senior and disabled veteran property tax exemptions to total \$163.8 million for Fiscal Year 2020-2021.

- **TEMPORARY INCOME TAX RATE REDUCTION.** Under this second 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. 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.

At the beginning of Fiscal Year 2020, the State had an outstanding TABOR refund liability of \$431,684,567 from Fiscal Year 2015, Fiscal Year 2018, and Fiscal Year 2019 excess TABOR revenues, and adjustments from Fiscal Year 2015 and Fiscal Year 2018. 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

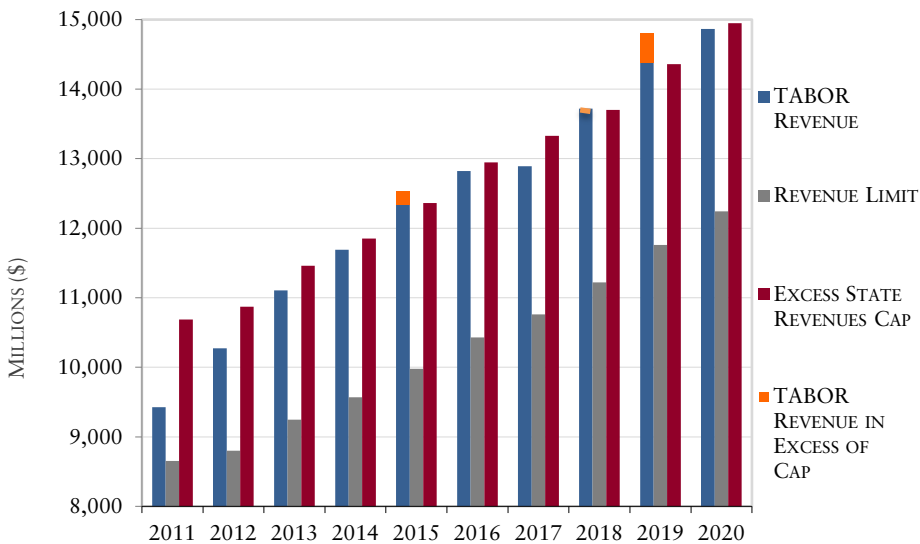
are required to be refunded. During Fiscal Year 2020, \$94,771 was refunded from the Fiscal Year 2015 liability: \$92,284 through the earned income tax credit mechanism and \$2,487 through the six-tier sales tax refund mechanism; and \$288,171,753 was refunded from the Fiscal Year 2019 liability: \$140,789,518 through the property tax reimbursement mechanism and \$147,382,235 through the income tax reduction mechanism.

At June 30, 2020, the State had an outstanding TABOR refund liability of \$143,418,043. Since the Fiscal Year 2020 total nonexempt district revenues were below the excess State revenue cap, the remaining balance of excess TABOR revenues from prior years will be refunded in future years.

REVENUE LIMIT

EXHIBIT 1.3 shows a graphical comparison of TABOR revenue, the TABOR Revenue Limit, and the Excess State Revenues Cap for the Fiscal Years 2011 to 2020. 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 1.3. STATE OF COLORADO
TABOR REVENUE VS. REVENUE LIMIT
AND THE EXCESS STATE REVENUES CAP
FISCAL YEARS 2011 TO 2020



SOURCE: Schedules of Computations Required Under Article X, Section 20 for Fiscal Years 2011-2020. 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 (see 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 1993–2020

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 who 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 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 HB 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.

2020

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

The General Assembly passed House 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.