

Schedule of TABOR Revenue

September 2012



**OFFICE OF THE
STATE AUDITOR**

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The mission of the Office of the State Auditor is to improve the efficiency, effectiveness, and transparency of government for the people of Colorado by providing objective information, quality services, and solution-based recommendations.



September 17, 2012

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the financial report required under Article X, Section 20 of the Colorado Constitution (TABOR) as of June 30, 2012, as certified by the State Controller on August 31, 2012. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. This audit was also 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, and transmit the results to the governor, Joint Budget Committee, Financial Committees of the House of Representatives and the Senate, and the executive director of the Department of Revenue.

A handwritten signature in blue ink, appearing to read "Dianne E. Ray".



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September 17, 2012

The Honorable John W. Hickenlooper
Governor
State of Colorado

The Honorable Cheri Gerou
Chair
Colorado Joint Budget Committee

The Honorable Michael Johnston
Chair
Colorado Senate Finance Committee

The Honorable Brian DelGrosso
Chair
Colorado House Finance Committee

Barbara Brohl
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, 2012, as certified by the State Controller on August 31, 2012. Please find attached the letter of certification from the State Controller, the *Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2012 [Preliminary]*, and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2012*. Our audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and 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. Our full report will be presented to the Legislative Audit Committee in October.

Pursuant to Section 24-77-106.5, C.R.S., for each fiscal year, the State Controller shall prepare a financial report for the purpose of ascertaining the State's compliance with the constitutional provisions of TABOR. Based on the 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 TABOR Revenue Limit) imposed by Article X, Section 20(7)(a) of the Colorado Constitution.



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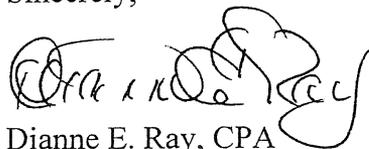
- Amount of state revenues in excess of such limitation the state is authorized to retain and spend pursuant to Section 24-77-103.6, C.R.S.

We conducted a performance audit under generally accepted government auditing standards. The objectives of our audit were to determine (1) whether the Office of the State Controller complied with State Fiscal Policies related to Article X, Section 20 of the Colorado Constitution (TABOR) in preparing the *Schedule of Computations Required Under Article X, Section 20 [Preliminary]* and *Comparison of Nonexempt TABOR Revenues for the Fiscal Year Ended June 30, 2012* (TABOR financial reports) and certification required by Section 24-77-101 through 107, C.R.S., and (2) whether the *Schedule of Computations Required Under Article X, Section 20[Preliminary]* and *Comparison of Nonexempt TABOR Revenues for the Fiscal Year Ended June 30, 2012* were prepared in accordance with Section 24-77-106.5 C.R.S., and are accurate.

Based on the results of our audit, we noted no instances of noncompliance with State Fiscal Policies related to Article X, Section 20 of the Colorado Constitution (TABOR), and we determined that the *Schedule of Computations Required Under Article X, Section 20 [Preliminary]*, the *Comparison of Nonexempt TABOR Revenues for the Fiscal Year Ended June 30, 2012*, and certification by the State Controller dated August 31, 2012, were accurate. However, several adjustments were submitted by departments subsequent to the August 31 certification affecting TABOR revenue for both Fiscal Year 2012 and 2011. Three adjustments increased Fiscal Year 2012 TABOR revenue by a net amount of \$5.8 million, reducing the total under the excess state revenues cap to \$597 million. A fourth adjustment reduced TABOR revenue for Fiscal Year 2011 by \$836,000. As of the date of this letter none of these adjustments are reflected in TABOR revenue for Fiscal Year 2012 reported in the attached *Schedule of Computations Required Under Article X, Section 20[Preliminary]* and *Comparison of Nonexempt TABOR Revenues for the Fiscal Year Ended June 30, 2012*, as certified by the State Controller as of August 31, 2012.

The *Schedule of Computations Required Under Article X, Section 20 of the Constitution (TABOR)[Final]* as of June 30, 2012, and our opinion thereon will be issued in December 2012, after completion of the audit work on the State of Colorado's *Comprehensive Annual Financial Report* for the fiscal year ended June 30, 2012.

Sincerely,



Dianne E. Ray, CPA
Colorado State Auditor

Enc.

State of Colorado



John W. Hickenlooper
Governor

Kathy Nesbitt
Executive Director

Jennifer Okes
Deputy Executive Director

David J. McDermott
State Controller

DPA

**Department of Personnel
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August 31, 2012

The Honorable John W. Hickenlooper
Governor
State of Colorado

The Honorable Brandon C. Shaffer
President of the Senate
Colorado General Assembly

The Honorable Frank McNulty
Speaker of the House
Colorado General Assembly

Barbara Brohl
Executive Director
Colorado Department of Revenue

Dear Sirs and Madam:

Pursuant to CRS 24-77-106.5(1)(b), I hereby certify that for Fiscal Year 2011-12, the unaudited state revenues subject to Article X, Section 20 (TABOR) of the State Constitution are \$10,269,103,335.

A schedule is attached comparing general and program nonexempt TABOR revenues for Fiscal Year 2011-12 to Fiscal Year 2010-11. Total revenues not exempt from TABOR were more than the previous fiscal year by 9.0 percent. The \$10,269,103,335 nonexempt revenue excludes revenues recorded by the Division of Parks, which merged with the Division of Wildlife, a TABOR Enterprise, in Fiscal Year 2011-12. Before application of population and inflation adjustments, the Fiscal Year 2011-12 limit was reduced by \$26,688,898. This represents \$30,836,422 of nonexempt revenue recorded by the Division of Parks in Fiscal Year 2010-11, reduced by \$4,342,886 of revenue recorded by other state agencies which they received from the Division of Parks in Fiscal Year 2010-11. The limit was also reduced by an additional \$195,362 from errors in prior years.

The Schedule of Computations Required Under Article X, Section 20 is also attached. State revenues subject to TABOR for Fiscal Year 2011-12 were over the Fiscal Year Spending limit by \$1,469,050,176 and below the Excess State Revenues Cap by \$602,426,600, after adjustments for qualification and disqualification of enterprises. Preliminarily, no refund of State revenues is required in Fiscal Year 2012-13 related to Fiscal Year 2011-12 revenues subject to TABOR.

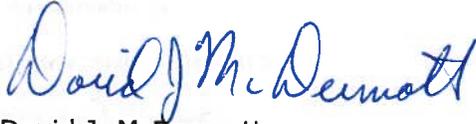
The amounts reported above and in the attached schedules are based on unaudited account balances, and they are therefore subject to change. The State Auditor is required by statute to report on the audit of these amounts by September 15, 2012.

"Working Together to Serve Colorado"

In accordance with the filing requirements contained in the Information Coordination Act enacted in Senate Bill 12-152, we will also distribute the report to the State and Legislative Libraries.

If there are questions concerning the information provided please feel free to contact me.

Sincerely yours,



David J. McDermott
Colorado State Controller

cc: Kathy Nesbitt, Personnel & Administration
Henry Sobanet, OSPB
Reporting & Analysis

STATE OF COLORADO
OFFICE OF THE STATE CONTROLLER
COMPARISON OF NONEXEMPT TABOR REVENUES
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

| | Fiscal Year 2011-12 | Fiscal Year 2010-11 | Increase (Decrease) | Percent Change |
|--|--------------------------|-------------------------|------------------------|-------------------|
| GENERAL REVENUES | | | | |
| Individual Income Tax, Net | \$ 4,610,873,096 | \$ 4,133,408,992 | \$ 477,464,104 | 11.6% |
| Sales and Use Tax, Net | 2,293,563,374 | 2,233,520,637 | 60,042,737 | 2.7% |
| Corporate Income Tax, Net | 459,134,342 | 365,558,281 | 93,576,061 | 25.6% |
| Insurance Taxes | 197,201,583 | 189,648,267 | 7,553,316 | 4.0% |
| Tobacco Products Tax, Net | 55,530,516 | 53,106,933 | 2,423,583 | 4.6% |
| Alcoholic Beverages Tax, Net | 38,366,598 | 36,437,527 | 1,929,071 | 5.3% |
| Fiduciary Income Tax, Net | 23,923,281 | 20,501,197 | 3,422,084 | 16.7% |
| Interest and Investment Income | 14,238,030 | 7,334,213 | 6,903,817 | 94.1% |
| Court and Other Fines | 9,419,468 | 10,102,461 | (682,993) | -6.8% |
| Business Licenses and Permits | 6,601,915 | 4,490,095 | 2,111,820 | 47.0% |
| Miscellaneous Revenue | 2,644,399 | 2,714,892 | (70,493) | -2.6% |
| Gaming and Other Taxes | 594,680 | 491,455 | 103,225 | 21.0% |
| Other General Revenue | 410,177 | 94,577 | 315,600 | 333.7% |
| General Government Service Fees | 350,623 | 269,804 | 80,819 | 30.0% |
| TOTAL GENERAL REVENUES | <u>7,712,852,082</u> | <u>7,057,679,331</u> | <u>655,172,751</u> | <u>9.3%</u> |
| PROGRAM REVENUE | | | | |
| Health Service Fees | 650,338,502 | 488,851,526 | 161,486,976 | 33.0% |
| Fuel and Transportation Taxes, Net | 559,673,030 | 558,967,270 | 705,760 | 0.1% |
| Motor Vehicle Registrations | 229,026,208 | 218,157,499 | 10,868,709 | 5.0% |
| Severance Taxes | 199,437,187 | 140,046,677 | 59,390,510 | 42.4% |
| Court and Other Fines | 168,027,680 | 181,058,567 | (13,030,887) | -7.2% |
| Other Charges For Services | 140,363,044 | 138,273,131 | 2,089,913 | 1.5% |
| Business Licenses and Permits | 128,076,172 | 133,376,253 | (5,300,081) | -4.0% |
| Gaming and Other Taxes | 93,404,297 | 96,150,672 | (2,746,375) | -2.9% |
| Interest and Investment Income | 54,245,055 | 70,925,656 | (16,680,601) | -23.5% |
| Rents and Royalties | 40,971,223 | 33,265,112 | 7,706,111 | 23.2% |
| Local Governments and Authorities | 40,046,106 | 20,233,887 | 19,812,219 | 97.9% |
| General Government Service Fees | 39,508,777 | 38,893,608 | 615,169 | 1.6% |
| Sales and Use Tax, Net | 39,011,747 | 34,236,624 | 4,775,123 | 13.9% |
| Driver's Licenses | 31,610,993 | 31,194,068 | 416,925 | 1.3% |
| Nonbusiness Licenses and Permits | 31,313,531 | 28,268,654 | 3,044,877 | 10.8% |
| Miscellaneous Revenue | 25,074,834 | 37,339,023 | (12,264,189) | -32.8% |
| Certifications and Inspections | 20,636,730 | 21,767,546 | (1,130,816) | -5.2% |
| Employment Taxes | 19,307,097 | 18,610,509 | 696,588 | 3.7% |
| Insurance Taxes | 18,010,187 | 22,480,508 | (4,470,321) | -19.9% |
| Public Safety Service Fees | 10,766,770 | 11,943,862 | (1,177,092) | -9.9% |
| Higher Education Auxiliary Sales and Services | 6,908,220 | 3,789,901 | 3,118,319 | 82.3% |
| Educational Fees | 6,783,915 | 4,869,796 | 1,914,119 | 39.3% |
| Other Program Revenue | 3,709,948 | 3,547,878 | 162,070 | 4.6% |
| TOTAL PROGRAM REVENUES | <u>2,556,251,253</u> | <u>2,336,248,227</u> | <u>220,003,026</u> | <u>9.4%</u> |
| Enterprise Qualified in Fiscal Year : | | | | |
| Division of Parks and Wildlife | - | 30,836,422 | (30,836,422) | -100.0% |
| TOTAL NONEXEMPT REVENUE | <u>10,269,103,335</u> | <u>9,424,763,980</u> | <u>844,339,355</u> | <u>9.0%</u> |
| TOTAL NONEXEMPT REVENUE AND ADJUSTMENTS | <u>\$ 10,269,103,335</u> | <u>\$ 9,424,763,980</u> | <u>\$ 844,339,355</u> | <u>9.0%</u> |

STATE OF COLORADO
SCHEDULE OF COMPUTATIONS REQUIRED
UNDER ARTICLE X, SECTION 20
AS OF JUNE 30, 2012

| | FISCAL YEAR 2010-11 | FISCAL YEAR 2011-12 |
|---|---------------------------------|--------------------------------------|
| COMPUTATION OF NONEXEMPT REVENUES | | |
| Total State Expenditures | \$ 35,809,181,237 | \$ 36,411,286,838 |
| Less Exempt Enterprises Expenses: | | |
| Higher Education Enterprises | 6,842,932,797 | 8,231,140,250 |
| Unemployment Compensation Section | 2,144,256,726 | 1,582,362,326 |
| College Assist | 683,147,763 | 624,272,273 |
| State Lottery | 528,143,599 | 562,295,878 |
| CollegeInvest | 442,627,962 | 426,490,870 |
| Parks and Wildlife Division | 121,102,821 | 187,847,470 |
| Correctional Industries | 67,286,736 | 66,846,550 |
| State Nursing Homes | 53,387,808 | 48,509,487 |
| Petroleum Storage Tank Fund | 36,797,270 | 38,569,901 |
| Statewide Bridge Enterprise | 11,228,233 | 15,955,618 |
| Clean Screen Authority | 6,099,590 | 6,295,836 |
| Brand Board | 4,364,826 | 4,809,670 |
| Statewide Transportation Enterprise | 3,793,121 | 3,225,624 |
| Capitol Parking Authority | 487,594 | 970,847 |
| Subtotal Enterprise Expenses | <u>10,945,656,846</u> | <u>11,799,592,600</u> |
| Total District Expenditures | <u>24,863,524,391</u> | <u>24,611,694,238</u> |
| Less Exempt District Revenues: | | |
| Interfund Transfers | 6,885,268,170 | 6,600,381,317 |
| Federal Funds | 6,918,512,698 | 6,272,469,414 |
| Other Sources and Additions | 677,647,603 | 931,466,371 |
| Voter Approved Revenue Changes | 761,806,776 | 646,185,624 |
| Property Sales | 102,267,933 | 143,730,973 |
| Damage Awards | 99,395,799 | 106,738,221 |
| Gifts | 68,790,202 | 78,800,893 |
| Exempt Investment Income | 18,942,966 | (2,780,995) |
| Subtotal Exempt District Revenues | <u>15,532,632,147</u> | <u>14,776,991,818</u> |
| Nonexempt District Expenditures | 9,330,892,244 | 9,834,702,420 |
| District Reserve/Fund Balance Increase (Decrease) | 93,871,736 | 434,400,915 |
| Excess TABOR Revenues | - | - |
| Total Nonexempt District Revenues | <u>9,424,763,980</u> | <u>10,269,103,335</u> |
| COMPUTATION OF DISTRICT FUND BALANCE CHANGES | | |
| Beginning District Fund Balance | \$ 4,822,971,980 | \$ 4,800,648,746 |
| Prior Period District Fund Balance Adjustments (Qualification)/Disqualification of Enterprises | (3,971,397) (112,223,573) | 26,401,948 (47,724,307) |
| District Reserve/Fund Balance Increase (Decrease) | 93,871,736 | 434,400,915 |
| Retention of Revenues in Excess of the Limit CRS 24-77-103.6(1)(a) | - | - |
| Fund Balance Change | - | - |
| Ending District Fund Balance | <u>\$ 4,800,648,746</u> | <u>\$ 5,213,727,302</u> |
| FISCAL YEAR 2011-12 COMPUTATION OF SPENDING LIMITATIONS | | |
| | FISCAL YEAR SPENDING | EXCESS STATE REVENUES CAP |
| FY 2010-11 Limit | \$ 8,654,191,995 | \$ 10,684,856,218 |
| Errors in Prior Years | (195,362) | - |
| Other Agency Revenues From Qualification of Enterprises | 4,342,886 | 4,342,886 |
| Qualification of Enterprises | (30,836,422) | (30,836,422) |
| FY 2010-11 Adjusted Limit | <u>\$ 8,627,503,097</u> | <u>\$ 10,658,362,682</u> |
| Allowable TABOR Growth Rate | 2.0% | 2.0% |
| FY 2011-12 Unadjusted Limit | \$ 8,800,053,159 | \$ 10,871,529,935 |
| FY 2011-12 Adjusted Limit | 8,800,053,159 | 10,871,529,935 |
| Less Fiscal Year 2011-12 Nonexempt District Revenues | (10,269,103,335) | (10,269,103,335) |
| Corrections of Prior Years' Refunds (Note 12) | - | - |
| Amount (Over)Under Adjusted Limit | <u>\$ (1,469,050,176)</u> | <u>\$ 602,426,600</u> |
| Under(Over) Statement of Prior Years' Refunds Carried Forward to Next Refund Year | | \$ 2,899,667 |
| FY2004-05 Amount in Excess of the Limit - Not Refunded at June 30, 2012 | | \$ 705,716 |
| FY2011-12 Retention of Revenues in Excess of the Limit (not refundable) CRS 24-77-103.6(1)(b) | | \$ 1,469,050,176 |

TABOR Revenue

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 increases in state fiscal year spending to the annual inflation rate plus the percentage change in Colorado's population. The State Controller annually prepares a *Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2012 [Preliminary]*, and the *Schedule of TABOR Revenue [Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2012]* (TABOR financial reports). Based on the TABOR financial reports, the State Controller is required to certify to the governor, general assembly, and the executive director of the department of revenue no later than September 1st following the end of a fiscal year (1) the amount of state revenues in excess of the limitation on state fiscal year spending, and (2) the state revenues in excess of such limitation the state is authorized to retain and spend pursuant to voter approval of Referendum C. The TABOR financial reports are audited concurrently with the state's annual financial statement audit.

Audit Scope and Methodology

This performance audit was conducted in response to statutory requirements. Specifically, Section 24-77-106.5, C.R.S., requires the State Auditor conduct an audit of the financial report and certification of excess state revenues prepared by the State Controller. We performed our audit work during the period June 2012 through September 2012. We acknowledge the cooperation and assistance provided by the State Controller and staff at the Office of the State Controller.

The overall objective of our audit was to evaluate the TABOR financial reports and certification issued by the State Controller pursuant to Section 24-77-101 through 107, C.R.S. Specifically, we determined:

- Whether the Office of the State Controller complied with State Fiscal Policies related to Article X, Section 20 of the State Constitution (TABOR) in preparing the TABOR financial reports and certification of excess state revenues.

- Whether schedules contained in the TABOR financial reports and certification of excess state revenues prepared in accordance with Section 24-77-106.5, C.R.S. are accurately stated.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls are described in the audit findings and recommendations.

To accomplish our audit objectives, we:

- Researched applicable state laws and regulations.
- Determined the accuracy of key calculations in the Office of the State Controller's certification of state excess revenues, including TABOR revenues, the anticipated TABOR growth rate, exempted revenues and enterprises, the TABOR Adjusted Spending Limit, and the Excess State Revenues Cap.
- Reviewed reports submitted by state agencies detailing changes in TABOR revenue for prior years, base fiscal year spending, changes in TABOR enterprise status, and proposed financial statement post-closing entries. We verified the changes were appropriate and accurately reflected in the TABOR financial reports.
- Reviewed the logic and accuracy of computations used by the Office of the State Controller to prepare the *Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2012 [Preliminary]*, and the *Schedule of TABOR Revenue [Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2012]*.

We conducted this performance audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States. 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.

Based on the results of our audit, we noted no instances of noncompliance with State Fiscal Policies related to Article X, Section 20 of the Colorado Constitution (TABOR), and we determined that the *Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2012 [Preliminary]* and the *Schedule of TABOR Revenue [Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2012]* and certification of excess state revenues by the State Controller dated August 31, 2012 were accurate. However, we noted that

several adjustments were received by the Office of the State Controller subsequent to certification of the TABOR financial reports that affected TABOR revenue for Fiscal Years 2011 and 2012; those adjustments are described in the next section.

The *Schedule of Computations Required Under Article X, Section 20 of the Constitution (TABOR)[Final] as of June 30, 2012*, and our opinion thereon will be issued after the State of Colorado's *Comprehensive Annual Financial Report* for the year ended June 30, 2012, has been completed in December 2012.

Fiscal Year 2012 TABOR Revenue

For Fiscal Year 2012, TABOR revenue was \$10,269,103,335, as certified by the State Controller on August 31, 2012. However, we noted that several adjustments were received by the Office of the State Controller subsequent to certification of the TABOR financial reports that affected TABOR revenue for Fiscal Years 2011 and 2012. Three adjustments increased Fiscal Year 2012 TABOR revenue by a net amount of \$5.8 million, reducing the total under the Excess State Revenues Cap, as discussed below, to \$597 million. A fourth adjustment reduced TABOR revenue for Fiscal Year 2011 by \$836,000. None of these adjustments are reflected in TABOR revenue for Fiscal Year 2012 reported in the attached *Schedule of Computations Required Under Article X, Section 20[Preliminary]* and the *Schedule of TABOR Revenue [Comparison of Nonexempt TABOR Revenues for the Fiscal Year Ended June 30, 2012]*, and related certification of excess state revenues by the State Controller as of August 31, 2012.

Commencing in Fiscal Year 2011, the State is allowed to retain and spend the amount of revenue in excess of the TABOR Revenue Limit and up to the "Excess State Revenues Cap." The "Excess State Revenues Cap" is defined as the highest total state TABOR revenue earned between Fiscal Years 2006 and 2010, adjusted for inflation and population growth for each subsequent year, the qualification/disqualification of enterprises, and debt service changes.

Calculation of the Fiscal Year TABOR Revenue Limit continues to apply, but the new Excess State Revenues Cap replaces it as the limit that triggers taxpayer refunds. The following audited figures show the TABOR revenue, TABOR Revenue Limit, TABOR Excess State Revenues Cap, and revenue under the Excess State Revenues Cap for Fiscal Year 2012:

| | | |
|--|---------------------------|-------------------------|
| Fiscal Year 2012 TABOR Revenue | | \$10,269,103,335 |
| (Less): Fiscal Year 2012 TABOR Revenue Limit | \$ (8,800,053,159) | |
| (Less): Fiscal Year 2012 Excess of TABOR Revenue Limit Allowed to Retain and Spend | <u>\$ (2,071,476,776)</u> | |
| Total Fiscal Year 2012 Excess State Revenues Cap | | <u>(10,871,529,935)</u> |
| Fiscal Year 2012 Revenue (Under) Over the Excess State Revenues Cap | | <u>\$ (602,426,600)</u> |

The effect of Referendum C (see Referendum C section below) causes Fiscal Year 2012 revenue to be under the Excess State Revenues Cap by approximately \$602 million. Therefore, there is no TABOR refund for Fiscal Year 2012.

Prior Year Refunds

Article X, Section 20(7)(d) of the State Constitution states that “if revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset.” The State is not limited to refunding solely from general funds or ratably from those revenue sources in excess of the limit. Article X, Section 20(1) also states, “...districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return.”

Prior to the passage of Referendum C (see Referendum C section below), the excess revenue was refunded to the taxpayers through a variety of means. With the enactment of Senate Bill 10-212, only one mechanism for refunding state surplus revenues with a threshold amount remains, the earned income tax credit. If there were any surplus revenues remaining after the earned income tax credit threshold level was met, the remainder would be refunded through a tiered sales tax refund. Appendices B1 and B2 provide more detail regarding refunding mechanisms.

Revenue Reductions

There were no permanent tax cuts enacted during the 2012 Legislative Session. In prior years, voters have approved changes that lower revenue subject to TABOR. The table below shows all voter-approved changes, the year of voter approval, and the related decrease in Fiscal Years 2012 and 2011 TABOR revenue:

| Impact of Voter-Approved Revenue Changes on TABOR Revenue | | |
|---|----------------------------------|-------------------------|
| Constitutional Amendment (Year of Approval) | Decrease in TABOR Revenue | |
| | Fiscal Year 2012 | Fiscal Year 2011 |
| Amendment 23 (2000) Creates the State Education Fund, which receives all state revenue collected from a tax of 1/3 of 1 percent of federal taxable income as follows: | | |
| Individual income taxes | \$378,082,178 | \$340,910,000 |
| Corporate income taxes | 33,937,797 | 28,326,000 |
| <u>Fiduciary income taxes</u> | <u>1,466,327</u> | <u>1,263,000</u> |
| Total for Amendment 23 | \$413,486,302 | \$370,499,000 |
| Amendment 14 (1998) Assesses a fee on housed commercial swine feeding operations. | \$276,257 | \$269,040 |
| Amendment 20 (2000) Assesses an application fee to obtain a Medical Marijuana identification card. | \$6,256,274 | \$9,684,182 |
| Amendment 35 (2004) Assesses a statewide tax on cigarette and tobacco products. | \$147,207,790 | \$145,104,459 |
| Amendment 50 (2008) Assesses a tax on extended limited gaming. | \$9,401,325 | \$9,654,448 |
| Total Reductions in TABOR Revenue | \$576,627,948 | \$535,211,129 |
| Source: Office of the State Auditor's analysis of the Office of the State Controller's data. Amounts do not include transfers, interest, or unrealized gains and losses. | | |

Adjustments to Refunds

Article X, Section 20(7)(a) of the State Constitution requires the TABOR Revenue Limit to be the lesser of the prior fiscal year's actual revenue adjusted for inflation and the change in population, or the prior fiscal year's TABOR Revenue Limit adjusted for inflation and the change in population.

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. During our Fiscal Year 2012 audit, no overrefund was identified in the previous Fiscal Years 2006 through 2011 that would affect the TABOR revenue in excess of the Excess State Revenues Cap for Fiscal Year 2012.

In Fiscal Year 2006, the Office of the State Controller identified and posted prior year adjustments totaling \$2,871,444 that increased the Fiscal Year 2005 TABOR refund liability. In Fiscal Year 2008, \$28,223 in adjustments was identified that increased the Fiscal Year 2005 TABOR refund liability. In Fiscal Year 2012, there were no adjustments identified that impact prior years' TABOR refund liability. Section 24-77-103.8, C.R.S., states that "any amount of state revenues in excess of the limitation on state fiscal year spending for the 2001-02 fiscal year and for every fiscal year thereafter that voters statewide did not authorize the state to retain and spend and that are required to be refunded pursuant to section 20(7)(d) of article X of the state constitution, but that are not refunded by the state as required...shall be added to and refunded with subsequent fiscal years' state revenues in excess of the limitation on state fiscal year spending that are required to be refunded..." As a result, \$2,899,667 is being carried forward as a liability on the State's financial statements, which will be paid out in the next refund year.

Referendum C

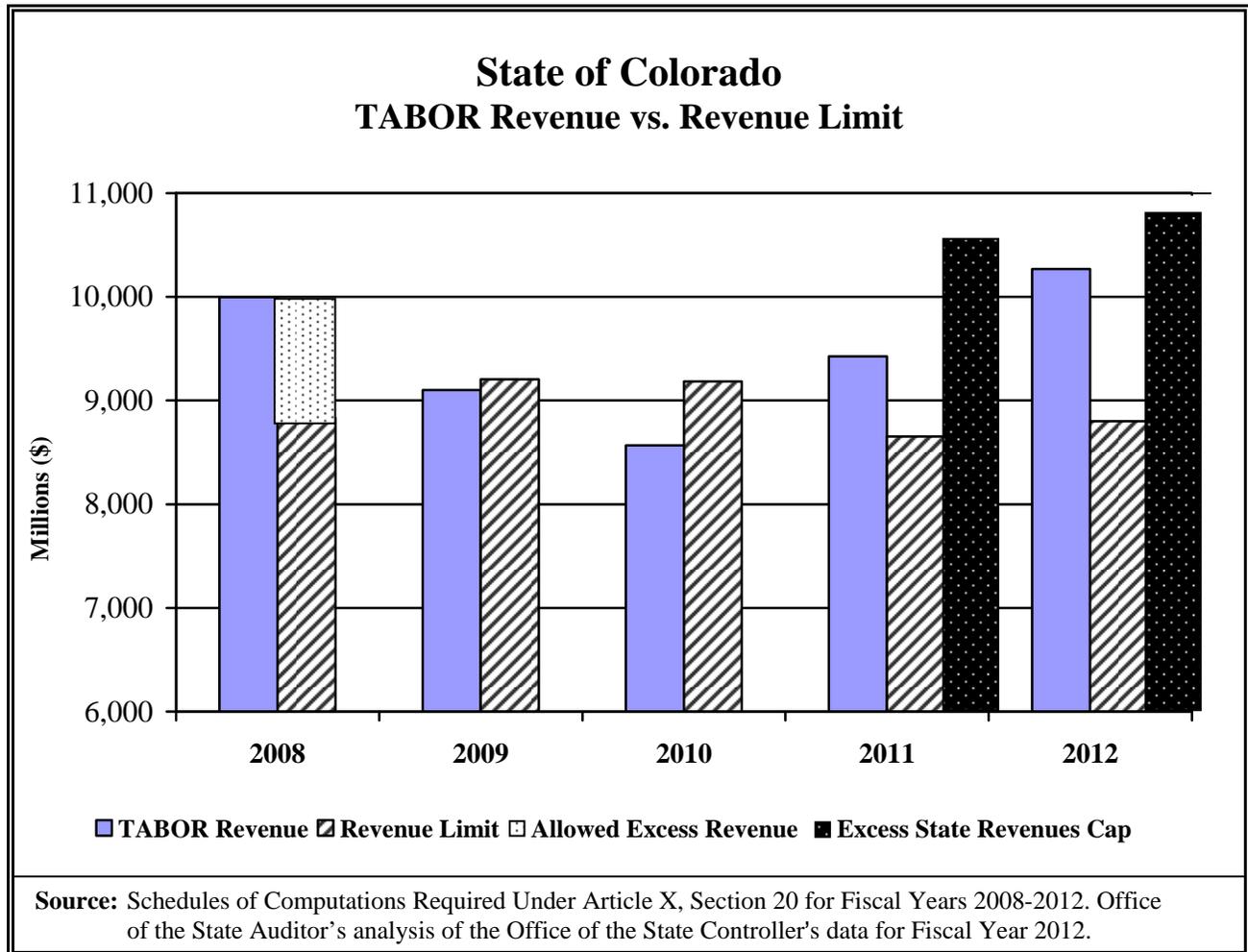
During Fiscal Year 2005, the General Assembly enacted House Bill 05-1194, which was the enabling legislation for Referendum C. In November 2005, Referendum C was approved by a vote of the people and became effective as of July 1, 2005. Referendum C allowed the State to retain and expend all revenue in excess of the TABOR Revenue Limit for each of the five fiscal years commencing with Fiscal Year 2006, and changed the basis on which TABOR refunds are calculated.

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.

Revenue Limit

We reviewed the State Controller's computations of the TABOR Revenue Limit and the Excess State Revenues Cap. For Fiscal Year 2012, the TABOR Revenue Limit is \$8,800,053,159 and the Excess State Revenues Cap is \$10,871,529,935.

The chart on the following page compares the TABOR Revenue Limit computed each year to the TABOR revenue from Fiscal Year 2008 to Fiscal Year 2012. As of Fiscal Year 2011, both the TABOR Revenue Limit and the Excess State Revenues Cap will be calculated independently. However, the State will be allowed to retain and spend the amount of revenue in excess of the TABOR Revenue Limit and up to the Excess State Revenues Cap as set forth in Referendum C.



Sources of TABOR Revenue

There are two types of revenue subject to the growth limitations set forth in TABOR—general funds and cash funds. General funds primarily include revenue from the general taxing authority of the State, such as individual and corporate income taxes. Cash funds generally include revenue from fees and other sources that are to be used for specific programs, such as education service fees and fuel/transportation taxes. General funds increased by 9.3 percent in Fiscal Year 2012, while cash funds increased by 9.4 percent in Fiscal Year 2012. Overall, TABOR revenue increased by 9.0 percent in Fiscal Year 2012.

The following tables show the major sources of revenue in Fiscal Year 2012, with comparative figures for Fiscal Year 2011, separated by general-funded and cash-funded revenue. The *Schedule of TABOR Revenue* on page 17 combines the general-funded and cash-funded revenue presented on pages 15 and 16, respectively.

**State of Colorado
Sources of TABOR Revenue
General-Funded Revenue
June 30, 2012**

| | Fiscal Year 2012 | Fiscal Year 2011 | 2011 to 2012 % Change |
|---|-----------------------------|-----------------------------|----------------------------------|
| GENERAL-FUNDED Revenue | | | |
| Individual Income Tax, Net ¹ | \$4,610,873,096 | \$4,133,408,992 | 11.6% |
| Sales and Use Tax, Net | 2,293,563,374 | 2,233,520,637 | 2.7 |
| Corporate Income Tax, Net ¹ | 459,134,342 | 365,558,281 | 25.6 |
| Insurance Taxes, Net | 197,201,583 | 189,648,267 | 4.0 |
| Tobacco Products Tax, Net | 55,530,516 | 53,106,933 | 4.6 |
| Alcoholic Beverages Tax, Net | 38,366,598 | 36,437,527 | 5.3 |
| Fiduciary Income Tax, Net ¹ | 23,923,281 | 20,501,197 | 16.7 |
| Interest and Investment Income | 14,238,030 | 7,334,213 | 94.1 |
| Court and Other Fines | 9,419,468 | 10,102,461 | -6.8 |
| Business Licenses and Permits | 6,601,915 | 4,490,095 | 47.0 |
| Miscellaneous Revenue | 2,644,399 | 2,714,892 | -2.6 |
| Gaming and Other Taxes | 594,680 | 491,455 | 21.0 |
| Other General Revenue ² | 410,177 | 94,577 | 333.7 |
| General Government Service Fees | 350,623 | 269,804 | 30.0 |
| TOTAL GENERAL-FUNDED REVENUE | \$7,712,852,082 | \$7,057,679,331 | 9.3% |

Source: Office of the State Auditor's analysis of the Office of the State Controller's data.

¹ Net of Amendment 23 transfers interest, gains and losses, and other financial sources.

² Includes Nonbusiness Licenses and Permits, Estate and Inheritance Taxes, Certifications and Inspections, Sales of Product, Child Welfare Service Fees, and Other Charges for Services.

State of Colorado
Sources of TABOR Revenue (continued)
Cash-Funded Revenue
June 30, 2012

| | Fiscal Year 2012 | Fiscal Year 2011 | 2011 to 2012 % Change |
|---|-----------------------------|-----------------------------|----------------------------------|
| CASH-FUNDED REVENUE | | | |
| Health Service Fees | \$ 650,338,502 | \$ 488,851,526 | 33.0% |
| Fuel and Transportation Taxes, Net | 559,673,030 | 558,967,270 | 0.1 |
| Motor Vehicle Registrations | 229,026,208 | 218,157,499 | 5.0 |
| Severance Taxes | 199,437,187 | 140,046,677 | 42.4 |
| Court and Other Fines | 168,027,680 | 181,058,567 | -7.2 |
| Other Charges For Services | 140,363,044 | 138,273,131 | 1.5 |
| Business Licenses and Permits | 128,076,172 | 133,376,253 | -4.0 |
| Gaming and Other Taxes | 93,404,297 | 96,150,672 | -2.9 |
| Interest and Investment Income | 54,245,055 | 70,925,656 | -23.5 |
| Rents and Royalties | 40,971,223 | 33,265,112 | 23.2 |
| Local Governments and Authorities | 40,046,106 | 20,233,887 | 97.9 |
| General Government Service Fees | 39,508,777 | 38,893,608 | 1.6 |
| Sales and Use Tax, Net | 39,011,747 | 34,236,624 | 13.9 |
| Driver's Licenses | 31,610,993 | 31,194,068 | 1.3 |
| Nonbusiness Licenses and Permits | 31,313,531 | 28,268,654 | 10.8 |
| Miscellaneous Revenue | 25,074,834 | 37,339,023 | -32.8 |
| Certifications and Inspections | 20,636,730 | 21,767,546 | -5.2 |
| Employment Taxes | 19,307,097 | 18,610,509 | 3.7 |
| Insurance Taxes | 18,010,187 | 22,480,508 | -19.9 |
| Public Safety Service Fees | 10,766,770 | 11,943,862 | -9.9 |
| Higher Education Auxiliary Sales and Services | 6,908,220 | 3,789,901 | 82.3 |
| Educational Fees | 6,783,915 | 4,869,796 | 39.3 |
| Other Cash-Funded Revenue ¹ | 3,709,948 | 3,547,878 | 4.6 |
| TOTAL CASH-FUNDED REVENUE | \$ 2,556,251,253 | \$ 2,336,248,227 | 9.4% |
| QUALIFICATION OF ENTERPRISES | | | |
| Division of Parks and Wildlife ² | - | \$30,836,422 | -100% |
| TOTAL NONEXEMPT REVENUE | \$ 10,269,103,335 | \$ 9,424,763,980 | 9.0% |

Source: Office of the State Auditor's analysis of the Office of the State Controller's data.

¹ Includes Sales of Products; Child Welfare Service Fees; Alcoholic Beverage Tax, Net; Other Excise Taxes, Net; Disproportionate Share Providers; and Tobacco Products Tax, Net.

² Division of Parks and Wildlife qualified for TABOR enterprise status in Fiscal Year 2012.

**STATE OF COLORADO
SCHEDULE OF TABOR REVENUE
FOR THE FISCAL YEAR ENDED JUNE 30, 2012**

| | Fiscal Year 2011-12 | Fiscal Year 2010-11 | Increase (Decrease) | 2011 to 2012 % Change |
|---|--------------------------|-------------------------|------------------------|--------------------------|
| Individual Income Taxes, Net | \$ 4,610,873,096 | \$ 4,133,408,992 | \$ 477,464,104 | 11.6% |
| Corporate Income Taxes, Net | 459,175,733 | 365,558,281 | 93,617,452 | 25.6% |
| Fiduciary Income Taxes, Net | 23,923,281 | 20,501,197 | 3,422,084 | 16.7% |
| TOTAL INCOME TAX | 5,093,972,110 | 4,519,468,470 | 574,503,640 | 12.7% |
| Sales Tax, Net | 2,131,971,652 | 2,077,563,157 | 54,408,495 | 2.6% |
| Use Tax, Net | 200,562,079 | 190,194,104 | 10,367,975 | 5.5% |
| Tobacco Products Tax, Net | 55,530,989 | 53,107,339 | 2,423,650 | 4.6% |
| Alcoholic Beverages Tax, Net | 39,032,280 | 37,063,013 | 1,969,267 | 5.3% |
| Other Excise Taxes, Net | 304,595 | 201,511 | 103,084 | 51.2% |
| TOTAL EXCISE TAX | 2,427,401,595 | 2,358,129,124 | 69,272,471 | 2.9% |
| Fuel and Transportation Taxes, Net | 559,673,030 | 558,967,270 | 705,760 | 0.1% |
| Insurance Taxes | 215,211,770 | 212,128,775 | 3,082,995 | 1.5% |
| Severance Taxes | 199,437,187 | 140,046,677 | 59,390,510 | 42.4% |
| Gaming and Other Taxes | 93,998,977 | 96,642,127 | (2,643,150) | -2.7% |
| Employment Taxes | 19,307,097 | 18,610,520 | 696,577 | 3.7% |
| Estate and Inheritance Taxes | 289,719 | (49,659) | 339,378 | -683.4% |
| TOTAL OTHER TAXES | 1,087,917,780 | 1,026,345,710 | 61,572,070 | 6.0% |
| Health Service Fees | 650,338,502 | 488,851,526 | 161,486,976 | 33.0% |
| Motor Vehicle Registrations | 229,026,208 | 218,157,499 | 10,868,709 | 5.0% |
| Other Charges for Services | 140,361,991 | 138,272,422 | 2,089,569 | 1.5% |
| Business Licenses and Permits | 134,678,087 | 137,866,348 | (3,188,261) | -2.3% |
| General Government Service Fees | 39,859,400 | 39,163,412 | 695,988 | 1.8% |
| Driver's Licenses | 31,610,993 | 31,194,068 | 416,925 | 1.3% |
| Nonbusiness Licenses and Permits | 31,412,223 | 28,372,725 | 3,039,498 | 10.7% |
| Certifications and Inspections | 20,658,555 | 21,788,906 | (1,130,351) | -5.2% |
| Public Safety Service Fees | 10,766,770 | 11,943,862 | (1,177,092) | -9.9% |
| Educational Fees | 6,783,915 | 4,869,796 | 1,914,119 | 39.3% |
| Welfare Service Fees | 882,879 | 806,490 | 76,389 | 9.5% |
| TOTAL LICENSES, PERMITS, AND FEES | 1,296,379,523 | 1,121,287,054 | 175,092,469 | 15.6% |
| Court and Other Fines | 177,447,148 | 191,161,028 | (13,713,880) | -7.2% |
| Interest and Investment Income | 68,483,085 | 78,259,869 | (9,776,784) | -12.5% |
| Rents and Royalties | 40,971,223 | 33,265,112 | 7,706,111 | 23.2% |
| Local Governments and Authorities | 40,046,106 | 20,233,887 | 19,812,219 | 97.9% |
| Miscellaneous Revenue | 27,721,732 | 40,059,321 | (12,337,589) | -30.8% |
| Higher Education Auxiliary Sales and Services | 6,908,220 | 3,789,901 | 3,118,319 | 82.3% |
| Sales of Products | 1,854,813 | 1,928,082 | (73,269) | -3.8% |
| TOTAL OTHER REVENUE | 363,432,327 | 368,697,200 | (5,264,873) | -1.4% |
| SUBTOTAL TABOR REVENUE BEFORE QUALIFICATION OF TABOR ENTERPRISES | 10,269,103,335 | 9,393,927,558 | 875,175,777 | 9.3% |
| Division of Parks and Wildlife | | 30,836,422 | (30,836,422) | -100.0% |
| TOTAL QUALIFICATION OF TABOR ENTERPRISES | | 30,836,422 | (30,836,422) | -100.0% |
| TOTAL TABOR REVENUE | \$ 10,269,103,335 | \$ 9,424,763,980 | \$ 844,339,355 | 9.0% |

Source: Office of the State Controller.

Appendices

Appendix A

Description of Revenue Categories

The revenue categories described in Appendix A correspond to the categories presented on the Schedule of TABOR Revenue, page 11.

| Category | Description |
|----------------------------|--|
| 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. |

| Category | Description |
|------------------------------------|---|
| 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, Net | Taxes on insurance premiums collected by insurance companies net of refunds. |
| Severance Taxes, Net | Mineral extraction taxes, net of refunds on coal, oil and gas, molybdenum, and metallic minerals net of refunds. |
| Gaming and Other Taxes, Net | Taxes on gaming facilities based on percentages of income net of refunds. |
| Employment Taxes, Net | Employment insurance paid by employers for funding unemployment benefits net of refunds. |
| Estate and Inheritance Taxes, Net | Taxes collected on the assets of estates net of refunds. |
| LICENSES, PERMITS, AND FEES | |
| Health Service Fees | 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. |

| Category | Description |
|----------------------------------|--|
| 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. |
| 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). |
| 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). |
| Driver's Licenses | Fees for driver's licenses and ID cards. |
| Nonbusiness Licenses and Permits | Environmental response surcharges, park passes, motorcycle operator safety training, waste tire recycling, etc. |
| Certifications and Inspections | Emission inspection stickers, emission registration, emission inspection station licenses, and other fees. |
| Public Safety Service Fees | Fees for firefighter response, fire service education and training, search and rescue fund fees. |
| Educational Fees | Conference fees and teacher certification fees collected primarily by the Department of Education. |
| Child Welfare Service Fees | Child abuse registry fees. |

| Category | Description |
|---|--|
| OTHER REVENUE | |
| Court and Other Fines | Fines and forfeits levied by the courts. |
| 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. |
| Miscellaneous Revenue | Revenue not included in another category. |
| 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 B1

Description of Refunding Mechanisms

| Mechanism (Effective Date) | Description |
|---|---|
| Earned Income Credit (January 1, 1999) | When excess TABOR revenue exceeds \$50 million annually adjusted by personal income growth rate for Colorado, an earned income credit of 10 percent of the taxpayer's federal earned income tax credit may be claimed. |
| Sales Tax Refund (January 1, 1999) | When there is excess TABOR revenue after the above mechanisms have been applied, a tiered income bracket system will be used to distribute the excess sales tax as a credit to be taken on individual income tax returns. |

Appendix B2

Refunding Mechanism Thresholds

(As applicable to Fiscal Year 2012)

| Refunding Mechanism | Original Threshold | Fiscal Year 2012 Threshold ¹ |
|---|--------------------------------|---|
| Earned Income Credit | \$ 50,000,000 | \$86,100,000 |
| Sales Tax Refund | Remaining Excess TABOR Revenue | Remaining Excess TABOR Revenue |
| <p>Source: Office of the State Auditor's analysis of Department of Revenue data.</p> <p>¹Thresholds are adjusted annually by the personal income growth rate for Colorado. With the enactment of Senate Bill 10-212, the earned income tax credit became the only mechanism with a threshold for refunding state surplus revenues. Any remaining surplus revenues after the earned income tax credit threshold would be refunded through a tiered sales tax refund.</p> | | |

Appendix C

TABOR History: Fiscal Years 1993 - 2006

The following provides highlights of certain legislation or voter-approved changes affecting the Office of the State Controller's *Schedule of TABOR Revenue* 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 spending 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

Refunds. TABOR revenue exceeded the spending 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 15 mechanisms. The table on the following page indicates the original threshold for each refunding mechanism:

| Refunding Mechanism | Original Threshold |
|--|---------------------------|
| Earned Income Credit | \$ 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 |
| Sales Tax Refund | Remaining Excess |
| Source: Office of the State Auditor's analysis of Department of Revenue data. | |

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.

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.

2001

Constitutional Amendments. Voters approved changes that lowered revenue subject to TABOR requirements through some 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 reduces the State's TABOR revenue by the amount of the transfer. At this same time, voters also approved Amendment 20 that authorized a 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 spending limit will be the lesser of the current fiscal year's revenue or the prior fiscal year's TABOR spending limit adjusted by the population growth and the inflation factor. 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 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 spending limitation 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 spending 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 and 2006

Referendum C. Referendum C was approved by the voters in the November 2005 election. Referendum C allows the State to retain and spend all revenue in excess of the TABOR limit annually for 5 fiscal years starting with Fiscal Year 2006. After July 1, 2010, the State is allowed to retain revenues in excess of the limit on fiscal year spending 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.

Constitutional Amendment. Amendment 35 passed in November 2004 and 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.

Overrefunds. Prior to July 1, 2005, state statutes provided a mechanism to apply refunds paid in excess of the TABOR refund liability (“overrefunds”) for 1 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 change the methodology for calculating the limit on state fiscal year spending for 2002 through 2004 by applying the overrefunds after the spending limit is set. This resulted in an increase of \$92.7 million to the Fiscal Year 2005 spending limit.

In addition, the State Controller was required to reduce the Fiscal Year 2005 TABOR revenue in excess of the spending 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 limit on fiscal year spending 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.

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