



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Revised Fiscal Note

(replaces fiscal note dated April 29, 2022)

**Drafting Number:** LLS 22-1049 **Date:** May 4, 2022  
**Prime Sponsors:** Sen. Hinrichsen; Rodriguez **Bill Status:** House Finance  
 Rep. Exum; Daugherty **Fiscal Analyst:** Greg Sobetski | 303-866-4105  
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**Bill Topic:** TABOR REFUND MECHANISM FOR FY 2021-22 ONLY

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill creates a new TABOR refund mechanism to refund a portion of excess state revenues collected for FY 2021-22. In FY 2022-23 only, it decreases state revenue, increases state expenditures, and changes how TABOR refunds are paid to taxpayers.

**Appropriation Summary:** For FY 2022-23, the bill requires an appropriation of \$2,578,995 to the Department of Revenue; it currently includes an appropriation of \$2,504,276.

**Fiscal Note Status:** This revised fiscal note reflects the reengrossed bill.

**Table 1**  
**State Fiscal Impacts Under SB 22-233**

		Budget Year FY 2022-23	Out Year FY 2023-24
<b>Revenue</b>	General Fund	(\$30 million to \$40 million)	-
	<b>Total</b>	<b>(\$30 million to \$40 million)</b>	-
<b>Expenditures</b>	General Fund	\$2,578,995	-
	Centrally Appropriated	\$165,827	-
	<b>Total</b>	<b>\$2,744,822</b>	-
	<b>Total FTE</b>	<b>11.5 FTE</b>	-
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	TABOR Refund <sup>1</sup>	(\$30 million to \$40 million)	-
	GF Reserve	\$411,723	-

<sup>1</sup> This is the amount by which the bill reduces the FY 2022-23 TABOR surplus expected to be refunded in FY 2023-24. The bill also changes the mechanisms used to refund the FY 2021-22 TABOR surplus during FY 2022-23, but has no net impact on the amount to be refunded. See the Other Budget Impacts section of this fiscal note.

## **Summary of Legislation**

The bill creates a temporary TABOR refund mechanism to refund a portion of the state's projected FY 2021-22 TABOR surplus. The new refund mechanism refunds \$400 to each eligible taxpayer filing singly, and \$800 to each eligible taxpayer filing jointly. The actual amounts refunded via the mechanism created in this bill may be reduced based on the TABOR surplus that the state actually collects.

**Eligibility.** To be eligible for this refund, a taxpayer must have resided in Colorado for the entirety of the 2021 tax year and be 18 years old as of December 31, 2021. The taxpayer must file their 2021 income tax return or apply for a property tax, rent, or heat credit by June 30, 2022, or must be granted a tax filing extension and file their return by the extension date.

**Order of refund mechanisms.** The mechanism becomes available if the amount of the FY 2021-22 TABOR surplus exceeds the amount required to fully fund projected refunds via the senior and disabled veteran property tax exemptions and the temporary income tax rate reduction from 4.55 percent to 4.50 percent. The mechanism precedes the six-tier sales tax refund for tax year 2022, reducing the amount that would otherwise be refunded using that mechanism.

**Administration.** The Department of Revenue (DOR) is required to certify a list of eligible taxpayers, and any adjustment to the refund amounts, by August 1, 2022. DOR is required to mail refunds to taxpayers no later than September 30, 2022, except that refunds to extension filers must be mailed no later than January 31, 2023.

To facilitate distribution of the refunds, the bill authorizes DOR to share certain taxpayer information with the Department of Personnel and Administration or a third-party vendor; however, this information remains confidential and subject to current law limitations and penalties for disclosure.

Refunds may be garnished for unpaid balances or unpaid debts, and do not constitute a refund or offset of state income taxes for the purpose of determining 2022 federal taxable income.

## **Background**

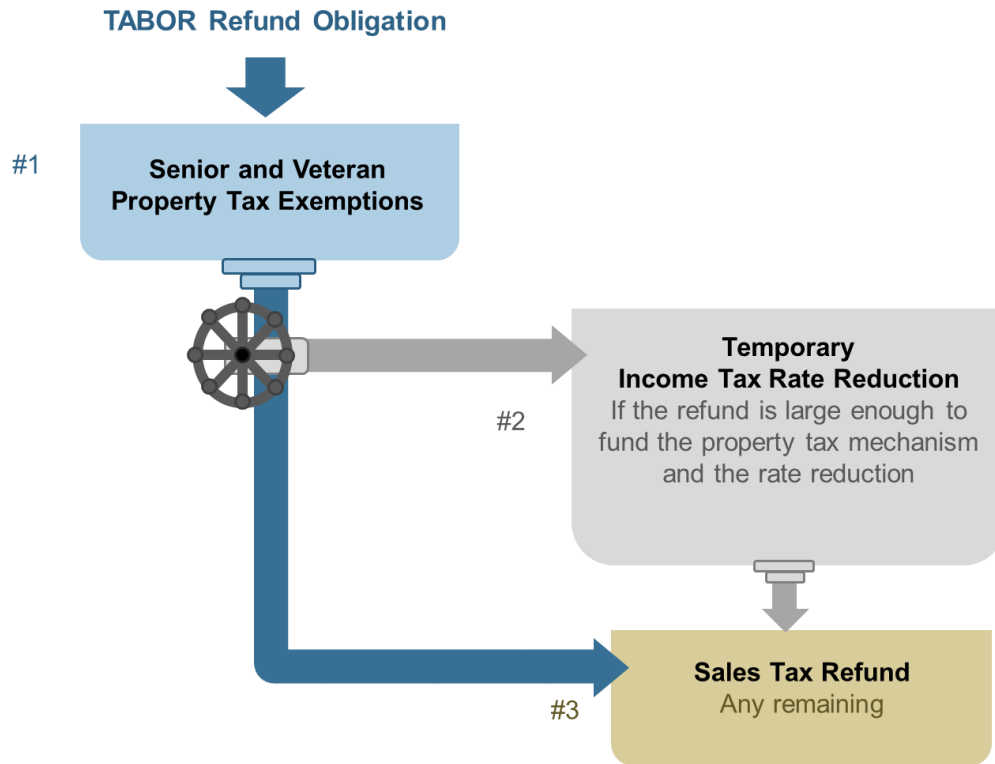
**TABOR refund mechanisms.** TABOR (Colo. Const. art. X, § 20) limits the amount of revenue that the state can retain and spend or save each year, and requires that any excess amount be refunded to taxpayers, unless voters approve a ballot measure allowing the state to retain the excess. TABOR allows the state to use "any reasonable method" for refunds.

Current law contains three TABOR refund mechanisms:

- the property tax exemption reimbursement mechanism;
- the temporary income tax rate reduction; and
- the six-tier sales tax refund mechanism.

Figure 1 shows the order in which these mechanisms are used.

**Figure 1**  
**Current Law Mechanisms for Refunds of Revenue to Taxpayers**



The March 2022 Legislative Council Staff (LCS) forecast anticipates that, under current law, all three mechanisms will be used to refund an expected \$2.0 billion TABOR surplus for FY 2021-22. The amounts expected to be refunded via each mechanism under current law follow:

- \$163.6 million via property tax exemptions;
- \$133.1 million via the temporary income tax rate reduction; and
- \$1,706.5 million via the six-tier sales tax refund.

**Six-tier sales tax refund mechanism.** The temporary mechanism in the bill refunds a portion of revenue that would otherwise be refunded via the six-tier sales tax refund mechanism. The six-tier sales tax refund mechanism grants taxpayers a refund according to where their adjusted gross income (AGI) falls among six tiers. Statute requires the refund amount to be distributed among the six tiers as it was distributed for the sales tax refund in tax year 1999.

For more information about TABOR refund mechanisms, see this LCS research memorandum:

[http://leg.colorado.gov/sites/default/files/r21-97\\_history\\_of\\_tabor\\_refund\\_mechanisms.pdf](http://leg.colorado.gov/sites/default/files/r21-97_history_of_tabor_refund_mechanisms.pdf)

## State Revenue

The bill is expected to decrease General Fund revenue from investment earnings by between \$30 million and \$40 million in FY 2022-23 only. By expediting refunds to taxpayers, the bill decreases General Fund investment earnings that would accrue between the fall of 2022, when the bill requires refunds to be paid, and the spring of 2023, when they would be refunded to taxpayers otherwise. The revenue impact will depend on future rates of return for investments the state would make, and cannot be estimated precisely. Investment earnings are subject to TABOR.

## State Expenditures

The bill increases General Fund expenditures by an estimated \$2,744,822 and 11.5 FTE for FY 2022-23 only. Expenditures are summarized in Table 2 and detailed below.

**Table 2**  
**Expenditures Under SB 22-233**

	FY 2022-23	FY 2023-24
<b>Department of Revenue</b>		
Personal Services	\$564,487	-
Operating Expenses	\$15,525	-
Capital Outlay Costs	\$74,400	-
Computer Programming and Testing	\$196,148	-
Data Reporting and Analysis	\$12,800	-
Document Management and Postage <sup>1</sup>	\$1,715,635	-
Centrally Appropriated Costs <sup>2</sup>	\$165,827	-
<b>Total Cost</b>	<b>\$2,744,822</b>	<b>-</b>
<b>Total FTE</b>	<b>11.5 FTE</b>	<b>-</b>

<sup>1</sup> These costs occur in the Department of Personnel and are paid from reappropriated DOR funds.

<sup>2</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Revenue.** Personnel costs are for additional staff to handle an expected increase in call center contacts between July and December 2022. The 11.5 FTE shown in Table 2 represent 20 staff retained for six months each, and two supervisors retained for nine months. Standard operating and capital outlay costs are included.

Adding the new refund mechanism requires programming and testing in the department's GenTax software system. Programming is performed by a contractor and is estimated to require 400 hours of at the contract rate of \$225/hour. An additional \$106,148 is included for testing in the department's system support office and for user acceptance training. Table 2 also shows expenditures for data reporting and management in the department's Office of Research and Analysis.

Expenditures to print, mail, and process refund payments to taxpayers are estimated at \$1,715,635. This amount includes costs for envelopes, paper, postage, and production processing. These costs occur in Integrated Document Solutions in the Department of Personnel and Administration, and are paid using reappropriated DOR funds.

**State Controller and Legislative Council Staff.** The bill requires the Office of the State Controller and LCS to consult with DOR to determine whether and to what extent the refund amount should be adjusted based on updated projections for the FY 2021-22 TABOR surplus, and on updated projections for the amounts to be refunded via the preceding current law refund mechanisms. This workload increase can be accomplished within existing appropriations.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

## **Other Budget Impacts**

**FY 2021-22 TABOR refunds.** The bill has no net impact on the FY 2021-22 TABOR surplus or on the amount of refunds paid during FY 2022-23. However, the bill changes the distribution of refunds among taxpayers.

*Assumptions.* Full-year resident Colorado taxpayers are expected to file 2,553,000 returns for tax year 2021, including 1,626,000 single returns and 927,000 joint returns. An additional 8,000 property tax, rent, and heat credit applications are expected by June 30, 2022. Based on prior filing patterns, it is estimated that 98 percent of filers will file their returns by the October 17, 2022, extension deadline. Therefore, it is estimated that 2,519,000 taxpayers will qualify for the TABOR refund in this bill, including 1,608,000 single returns and 911,000 joint returns.

Based on the assumptions above, the mechanism in the bill is expected to refund a total of \$1.37 billion. The FY 2021-22 TABOR surplus expected in the March 2022 LCS forecast is sufficient to allow full refunds of \$400 to single filers and \$800 to joint filers. Refunding this amount via the mechanism in the bill correspondingly decreases the amount to be refunded via the six-tier sales tax refund mechanism from \$1.71 billion under current law to \$334 million under the bill.

Table 3 shows changes in the amount refunded via the six-tier sales tax refund mechanism and the mechanism created in this bill among the six income tiers projected to be used for tax year 2022.

**Table 3**  
**Changes in TABOR Refunds by Adjusted Gross Income**  
*FY 2021-22 Surplus Refunded in FY 2022-23*  
*Six-Tier Sales Tax and SB 22-233 Mechanisms Only*

<b>Single Filers</b>					
<b>Income Tiers</b>		<b>Current Law</b>	<b>SB 22-233*</b>	<b>Change</b>	
	up to \$47,000	\$333	\$465	\$132	
\$47,001	to \$94,000	\$445	\$487	\$42	
\$94,001	to \$149,000	\$512	\$500	-\$12	
\$149,001	to \$207,000	\$608	\$519	-\$89	
\$207,001	to \$263,000	\$654	\$528	-\$126	
\$263,001	and up	\$1,053	\$606	-\$447	

<b>Joint Filers</b>					
<b>Income Tiers</b>		<b>Current Law</b>	<b>SB 22-233*</b>	<b>Change</b>	
	up to \$47,000	\$666	\$930	\$264	
\$47,001	to \$94,000	\$890	\$974	\$84	
\$94,001	to \$149,000	\$1,024	\$1,000	-\$24	
\$149,001	to \$207,000	\$1,216	\$1,038	-\$178	
\$207,001	to \$263,000	\$1,308	\$1,056	-\$252	
\$263,001	and up	\$2,106	\$1,212	-\$894	

\* For taxpayers who were full-year residents of Colorado in 2021 and file 2021 taxes by October 17, 2022. Taxpayers who do not meet these criteria receive \$400 less (\$800 less if filing jointly).

**FY 2022-23 TABOR refunds.** The bill is expected to decrease the FY 2022-23 TABOR surplus required to be refunded in FY 2023-24 by between \$30 million and \$40 million, consistent with the decrease in General Fund investment income subject to TABOR identified in the State Revenue section above. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amount shown in Table 1, which will decrease the amount of General Fund available for other purposes.

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## **State Appropriations**

For FY 2022-23, the bill requires a General Fund appropriation of \$2,578,995, and 11.5 FTE, to the Department of Revenue, of which \$1,715,635 should be reappropriated to the Department of Personnel and Administration.

Currently, the bill includes a General Fund appropriation of \$2,504,276, and 3.5 FTE, to the Department of Revenue, and a reappropriation of \$2,111,100 to the Department of Personnel and Administration.

## **State and Local Government Contacts**

Information Technology  
Revenue

Legislative Council Staff Economists  
Treasury

Personnel