Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Room 029 State Capitol, Denver, CO 80203-1784
Phone: (303) 866-3521 • Fax: (303) 866-3855
lcs.ga@state.co.us • leg.colorado.gov/lcs

Memorandum

February 17, 2022

TO: Interested Persons

FROM: Greg Sobetski, Deputy Chief Economist, 303-866-4105

SUBJECT: History of TABOR Refund Mechanisms

Summary

This memorandum provides background information on current and past statutory mechanisms used to refund state revenue in excess of the spending limit contained in the Taxpayer's Bill of Rights (TABOR). TABOR allows the state to use "any reasonable method" for refunds.

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The General Assembly has created and repealed various mechanisms to refund the state TABOR surplus. In total, 21 refund mechanisms have existed in statute since the passage of TABOR in 1992. Eighteen of these mechanisms have been repealed, and three remain in law as of the date of this memorandum. Table 1 on page 9 provides a history of the mechanisms used to refund all TABOR surpluses collected to date.

TABOR Refund Requirement

TABOR,[1] approved by voters in 1992, limits the amount of revenue that the state is permitted to retain and spend or save each year. For more information on TABOR, see the resources available online here.[2]

TABOR requires that revenue collected above the limit for a given fiscal year be refunded in the following fiscal year.[3] The constitution does not require use of any particular refund mechanism, but allows the General Assembly to select "any reasonable method of refunds[…], including temporary tax credits or rate reductions."[4] Further, the constitution does not require that excess revenue be refunded proportionately "when prior payments are impractical to identify or return."[5]

[1]Colo. Const. art. X, § 20.
[2]http://leg.colorado.gov/agencies/legislative-council-staff/tabor
[3]Colo. Const. art. X, § 20 (7)(d).
[4]Colo. Const. art. X, § 20 (1).
[5]Colo. Const. art. X, § 20 (1).

The General Assembly has enacted a total of 21 refund mechanisms since TABOR's adoption in 1992, of which three remain in current law. Senate Bill 10-212 repealed most other TABOR refund mechanisms in law at the time of its passage in 2010. Since then, the earned income tax credit became a permanent tax credit in 2016 and is no longer used as a TABOR refund mechanism, and the property tax exemption reimbursement mechanism was added to state law in 2017. Descriptions of current and past TABOR refund mechanisms are included below. Table 1 on page 9 provides a history of mechanisms used to refund all TABOR surpluses collected to date.

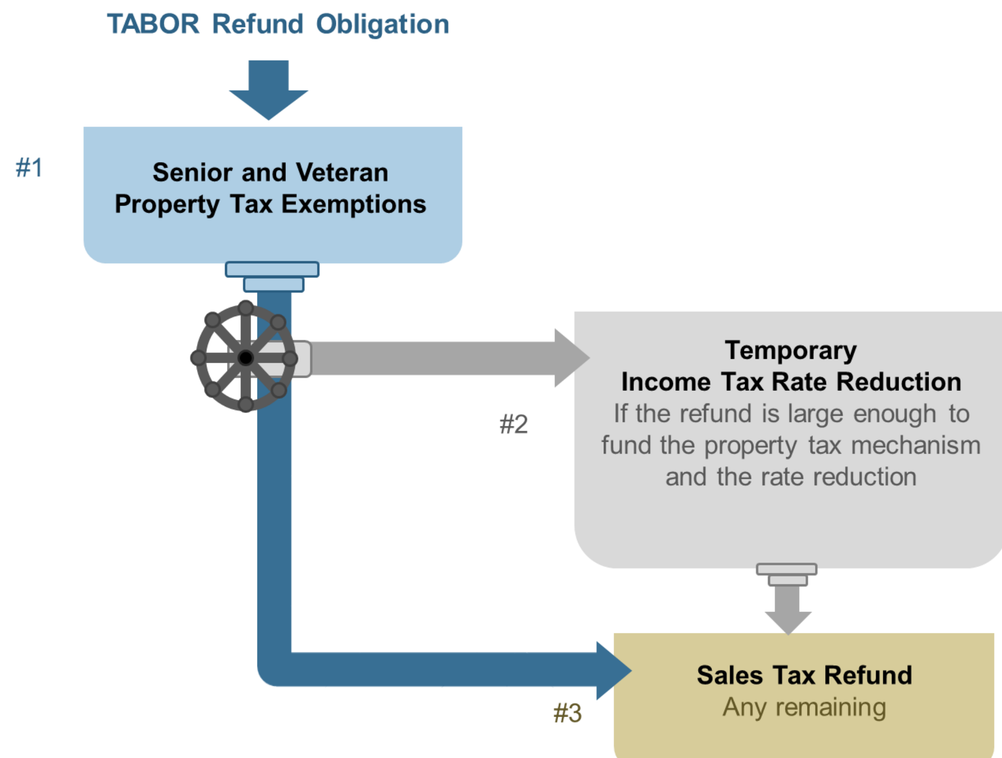
TABOR Refund Mechanisms in Current Law

There are three TABOR refund mechanisms in current state law:

- 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. For information about the current outlook for refunds and the mechanisms expected to be used, see the "TABOR Outlook" section of the current Legislative Council Staff economic and revenue forecast.[6]

Figure 1
Mechanisms for Refunds of Revenue to Taxpayers



[6] Available at: http://leg.colorado.gov/EconomicForecasts

Property tax exemption reimbursement mechanism. Article X, Section 3.5, of the Colorado Constitution allows a property tax exemption for qualifying seniors and veterans with a service-connected disability. The constitutional provision by default exempts 50 percent of the first $200,000 of the senior or veteran's primary residence from taxation. The state is required to reimburse local governments from the state General Fund for their property tax loss resulting from the exemption.

Beginning in FY 2017-18 under Senate Bill 17-267, excess revenue is first refunded via reimbursements to local governments equal to the amount of property tax revenue they lose as a result of the property tax exemptions for seniors and disabled veterans.[7] The amount refunded via this mechanism is the lesser of actual reimbursements or the total refund obligation.

In years when the state incurs a refund obligation less than the required reimbursement, only the portion of the reimbursement equal to the refund obligation is accounted as a TABOR refund. This portion is paid from General Fund revenue set aside in the year when the TABOR surplus was collected. The remaining portion of the reimbursement is financed from revenue collected in the fiscal year when the reimbursement is paid. For example, the bulk of the FY 2017-18 refund obligation was refunded in FY 2018-19 via reimbursements to local governments for exemptions allowed for the 2018 property tax year, while the remaining amount of the exemption was paid from FY 2018-19 General Fund revenue.

In years when the state incurs a refund obligation that exceeds the required reimbursement, the entire amount is accounted as a TABOR refund. A portion of the FY 2018-19 refund obligation was refunded this way, and a portion of the FY 2020-21 refund obligation will be refunded this way.

Temporary income tax rate reduction. The temporary income tax rate reduction refunds revenue via a temporary reduction in the state income tax rate from 4.55 percent to 4.50 percent for individual and corporate income taxpayers.[8] The income tax rate reduction is triggered if and only 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.

When triggered, the income tax rate is reduced in the tax year following the fiscal year in which excess revenue is collected. For example, the reduction was triggered in FY 2018-19, causing the income tax rate to be reduced for tax year 2019. It returned to the usual rate, 4.55 percent, in tax year 2020, because the rate reduction was not triggered for that year. The temporary income tax rate reduction was created under House Bill 05-1194 and was first used in 2019.

Six-tier sales tax refund mechanism. The six-tier sales tax refund[9] refunds any excess amount outstanding after the payment of refunds via the property tax reimbursement mechanism and, if triggered, the temporary income tax rate reduction. While this mechanism refunds sales tax revenue, it appears on income tax forms and the amount refunded is based on the taxpayer's adjusted gross income (AGI).

[7]Section 39-3-209, C.R.S.
[8]Section 39-22-627, C.R.S. The state's usual income tax rate was reduced from 4.63 percent to 4.55 percent for 2020 and later years under Proposition 116, approved by voters at the 2020 General Election.
[9]Sections 39-22-2001, 39-22-2002, and 39-22-2003, C.R.S.

The mechanism grants taxpayers a refund according to where their AGI falls among six tiers. When the amount to be refunded via this mechanism is large enough to support at least $15 per taxpayer, the Department of Revenue is required to distribute the amount among the tiers as it was distributed for the sales tax refund in tax year 1999. If the amount to be refunded is less than $15 per taxpayer, an equal refund is provided to each taxpayer regardless of income. Under either scenario, taxpayers who file joint returns receive twice the refund amount as taxpayers who file single returns.

Prior to the six-tier sales tax refund mechanism, the General Assembly had approved similar three-tier and four-tier sales tax refund mechanisms. House Bill 99-1001 created the current six-tier sales tax refund, which was first used to refund the FY 1998-99 surplus in tax year 1999.

History of TABOR Refund Mechanisms

Eighteen of the 21 TABOR refund mechanisms created by the General Assembly are no longer used to refund excess revenue; these are described below. Table 1 on page 9 summarizes the mechanisms used to issue the nine state TABOR refunds for surpluses collected between FY 1996-97 and FY 2018-19.

Beginning in 1999, several TABOR refund mechanisms were enacted into law at the same time. To determine which refund mechanisms would be available, laws enacted in 1999, 2000, and 2001 included threshold amounts that a TABOR surplus would be required to reach in order to trigger the refund mechanism. The thresholds were increased each year by the annual percent change in Colorado personal income.

Business personal property tax refund. Enacted pursuant to House Bill 99-1311, this refund was available on income tax returns to taxpayers who paid business personal property tax during the fiscal year for which the refund was allowed. The amount of the refund was equal to the amount of business personal property tax paid up to $500, plus 13.37 percent of business personal property tax paid in excess of $500. House Bill 01-1287 increased the cap for the full refund from $500 to $700 and increased the percentage of tax refunded above $700 from 13.37 percent to 16.00 percent. The refund became available if the state TABOR surplus exceeded a $170 million threshold in FY 1999-00.

The refund was available in tax years 1999 through 2001 to refund TABOR surpluses collected in FY 1998-99, FY 1999-00, and FY 2000-01. In these years, $79.0 million, $78.5 million, and $99.8 million, respectively, were refunded via the business personal property tax refund.

Earned income tax credit. The Colorado earned income tax credit (EITC) [10] was initially created as a TABOR refund mechanism under House Bill 99-1383. The state EITC is based on the federal EITC, which provides a credit to taxpayers who work but do not earn high incomes. Income thresholds are based on the taxpayer's filing status and number of qualifying children. Colorado taxpayers who qualify for the federal credit may claim a state credit equal to up to 10 percent of the federal credit amount.

[10] Section 39-22-123, C.R.S.

The state EITC was initially worth 8.5 percent of the federal EITC under HB 99-1383. This version of the EITC refund mechanism was used to refund $26.4 million of the FY 1999-00 surplus via tax returns for 1999. House Bill 00-1049 increased the value of the state EITC to 10 percent of the federal EITC; this version was used to refund $31.0 million and $32.9 million of the FY 2000-01 and FY 2001-02 surpluses on tax returns for 2000 and 2001, respectively.

Senate Bill 13-001 established a permanent EITC to replace the EITC refund mechanism. The permanent EITC was scheduled to begin in the year following the next year in which the EITC was used to refund a TABOR surplus. The EITC was triggered as a TABOR refund mechanism in tax year 2015; through February 2019, it has refunded $76.2 million of the FY 2014-15 TABOR surplus. The EITC became a permanent income tax credit beginning in 2016, and is no longer a TABOR refund mechanism.

Income tax deduction for capital gains on assets purchased prior to 1994. Enacted pursuant to House Bill 99-1237, this deduction was available to taxpayers earning income from capital gains on assets purchased prior to May 9, 1994. Under preexisting law, capital gains on assets purchased on or after May 9, 1994, and held for at least five years, were not computed as taxable income. HB 99-1237 extended the deduction to capital gains purchased prior to May 9, 1994, if the state TABOR surplus exceeded a $260 million threshold in FY 1999-00.

The deduction was available in tax years 2000 and 2001 to refund the TABOR surplus collected in FY 1999-00 and FY 2000-01. In these years, $111.5 million and $50.5 million, respectively, were refunded via the deduction.

Interest, dividends, and capital gains income tax deduction. Enacted pursuant to House Bill 99-1137, this deduction was available to taxpayers earning income from interest, dividends, and net capital gains. Under HB 99-1137, the amount of the deduction was capped at $1,200 per taxpayer for a single tax year. The cap was raised to $1,500 per taxpayer pursuant to House Bill 00-1171. The deduction became available if the state TABOR surplus exceeded a $350 million threshold in FY 2000-01.

The deduction was available in tax years 2000 and 2001 to refund the TABOR surpluses collected in FY 1999-00 and FY 2000-01. In these years, $44.9 million and $44.3 million, respectively, were refunded via the deduction.

Child care expenses income tax credit. Colorado offers this tax credit in all years; however, an expanded version of the credit was available as a TABOR refund mechanism until it was repealed by Senate Bill 10-212. Pursuant to House Bill 00-1351, the expanded credit was available to taxpayers able to claim a child care expenses tax credit on their federal income tax return, provided that their adjusted gross income was less than $64,000. The expanded credit was equal to 70 percent of the amount claimed on the taxpayer's federal tax return, plus $300 for each qualifying child 12 years of age or younger. The base tax credit is available in all years, but the expanded credit was used as a refund mechanism if and only if the state was required to refund a TABOR surplus.

The expanded credit was available in tax years 2000 and 2001 to refund TABOR surpluses collected in FY 1999-00 and FY 2000-01. In these years, $20.4 million and $25.5 million, respectively, were refunded via the expanded credit.

Private health care income tax credit. Enacted pursuant to House Bill 00-1104, this credit was available to taxpayers who obtained private health insurance and who were not covered by an individual health benefit plan or an employee or group health benefit plan during the tax year for which the credit was claimed. The credit was available only to taxpayers with adjusted gross incomes of less than $25,000, or $35,000 for residents with dependents. The credit was refundable and capped at $500 per taxpayer. It became available if the state TABOR surplus exceeded a $400 million threshold in FY 2000-01.

The credit was available in tax years 2000 and 2001 to refund the TABOR surpluses collected in FY 1999-00 and FY 2000-01. In these years, $2.8 million and $2.4 million, respectively, were refunded via the credit.

Pollution control equipment sales and use tax exemption. Enacted pursuant to House Bill 00-1257, this exemption was available to consumers of pollution control equipment certified by the Division of Administration in the Department of Public Health and Environment (CDPHE). CDPHE was permitted to certify equipment used to eliminate, reduce, or prevent air, water, or other environmental pollution. Equipment for which a certificate was obtained could be sold or used without being assessed state sales or use tax, though local jurisdictions could continue to levy their own taxes. The exemption became available if the state TABOR surplus exceeded a $350 million threshold in FY 2000-01.

The exemption was available in FY 2000-01 and FY 2001-02 to refund the TABOR surpluses collected in FY 1999-00 and FY 2000-01, respectively. In FY 2000-01, the exemption refunded $1.9 million. No taxpayers claimed the exemption in FY 2001-02.

Rural health care provider income tax credit. Enacted pursuant to House Bill 00-1063, this credit was available to health care professionals practicing in rural health care professional shortage areas. The nonrefundable credit was equal to one-third of the balance owed on the provider's student loan and allowed any unused credit to be carried forward for a period of ten years. It became available if the state TABOR surplus exceeded a $285 million threshold in FY 2000-01.

The credit was available in tax years 2000 and 2001 to refund the TABOR surpluses collected in FYs 1999-00 and 2000-01. In these years, $0.1 million and $0.2 million, respectively, were refunded via the credit.

Motor vehicle registration fee reduction. Enacted pursuant to House Bill 00-1227, this fee reduction was available for registrants of all vehicles. Registration fees for passenger vehicles were reduced to $2.50, and registration fees for other vehicles were reduced by 25 percent. Vehicle registration fees are paid to the Highway Users Tax Fund (HUTF). To offset the reduction in transportation funds resulting from the registration fee reduction, the State Treasurer diverted an increased share of state sales and use tax revenue to the HUTF. The reduction became available if the state TABOR surplus exceeded a

$330 million threshold in FY 2000-01. The reduction was available in FY 2001-02 to refund the FY 2000-01 TABOR surplus, and refunded $34.0 million.

Income tax deduction for capital gains on assets sold in 2001 and later. Enacted pursuant to House Bill 00-1209, this deduction was available to taxpayers earning income from capital gains on transactions occurring on or after January 1, 2001. In order to qualify for the deduction, the taxpayer must have held the asset for a period of more than one year and less than five years; assets held for more than five years qualified for a deduction available under preexisting law. HB 00-1209 extended this deduction if the state TABOR surplus exceeded a $430 million threshold in FY 2000-01. The deduction was available in tax year 2001 to refund the FY 2000-01 TABOR surplus, and refunded $27.7 million.

Heavy-duty truck sales and use tax rate reduction. Enacted pursuant to House Bill 00-1259, this rate reduction was available to consumers of trucks with gross vehicle weight ratings of 26,000 pounds or greater. When in effect, the sales and use tax on heavy-duty trucks was reduced from the 2.90 percent rate assessed on other tangible personal property to 0.01 percent. The rate reduction became available if the state TABOR surplus exceeded a $350 million threshold in FY 2000-01. The reduction was available in FY 2001-02 to refund the FY 2000-01 TABOR surplus, and refunded $5.2 million.

Charitable contributions income tax deduction. Enacted pursuant to House Bill 00-1053, this deduction was available to taxpayers who made more than $500 in charitable contributions but took the standard deduction, rather than the itemized deduction, on their federal income tax return. The deduction was equal to the amount of contributions in excess of $500 that the taxpayer could have claimed as an itemized deduction on a federal return. The deduction became available if the state TABOR surplus exceeded a $350 million threshold in FY 2000-01. House Bill 05-1125 lowered the threshold to $100 million in FY 2006-07. Under Senate Bill 10-212, the deduction is no longer a TABOR refund mechanism but is instead a permanent deduction available on state income tax returns. The deduction was available in tax year 2001 to refund the FY 2000-01 TABOR surplus, and refunded $2.9 million.

Income tax credit for contributions to individual development accounts. Enacted pursuant to House Bill 00-1361, this credit was available to taxpayers who made matching contributions to individual development accounts. Taxpayers with adjusted gross incomes less than or equal to 200 percent of the federal poverty level could create accounts to finance postsecondary education, and taxpayers with adjusted gross incomes less than or equal to 80 percent of the area median income could create accounts to finance the purchase of a home. Money deposited in accounts was eligible to be matched with donor contributions, and donors were eligible to receive the tax credit if the state incurred a sufficient TABOR surplus. The credit was equal to 25 percent of donor contributions, up to $100,000, and the total amount of credit allowed to all donors was capped at $5 million for a single tax year. The credit became available if the state TABOR surplus exceeded a $190 million surplus in FY 2000-01. The credit was available in tax year 2001 to refund the FY 2000-01 TABOR surplus, and refunded $10,816.

High Technology Scholarship Program income tax credit. Enacted pursuant to House Bill 00-1355, this credit was available to taxpayers contributing to the Colorado High Technology Scholarship

Program. The credit was equal to 25 percent of contributions, but not to exceed 15 percent of the taxpayer's income tax liability. The credit became available if the state TABOR surplus exceeded a $330 million threshold in FY 2000-01. The credit was available in tax year 2001 to refund the FY 2000-01 TABOR surplus, and refunded $3,343.

Agricultural value-added income tax credit. Enacted pursuant to House Bill 01-1086, this credit was available to eligible applicants for agricultural value-added tax credits. Credits were awarded by the Colorado Agricultural Value-Added Development Board in an amount equal to 50 percent of the applicant's investment in value-added agricultural cooperatives, up to $15,000 per applicant and $1.5 million per project. The credit became available if the state TABOR surplus exceeded a $400 million threshold in FY 2000-01. The credit was available in tax year 2001 to refund the FY 2000-01 TABOR surplus, and refunded $0.5 million.

Foster care expenses income tax credit. Enacted pursuant to House Bill 01-1313, this credit was available to each resident individual taxpayer operating a foster care home who incurred nonreimbursed expenses in connection with the operation of the home. The credit was capped at $500 per home, and became available if the state TABOR surplus exceeded a $200 million threshold in FY 2001-02. The credit was available in tax year 2001 to refund the FY 2000-01 TABOR surplus, and refunded $0.2 million.

Research and development property sales and use tax refund. Enacted pursuant to House Bill 01-1081, this refund would have been available to taxpayers who paid sales and use tax on tangible personal property used in Colorado for scientific research and development. For FY 2004-05 and subsequent years, the refund would have been equal to the amount of sales and use tax paid on research and development property. The refund was to become available if the state TABOR surplus exceeded a $358.4 million threshold in FY 2001-02. Because the state did not collect a sufficiently large TABOR surplus while the refund was in statute, it never became available.

Income tax credit for contributions to the Colorado Institute of Technology. House Bill 00-1052 created an income tax credit equal to 15 percent of contributions made by taxpayers to the Colorado Institute for Telecommunication Education. However, before the credit became available, Senate Bill 00-183 repealed and reenacted the statutory authority for the institute, changing its name to the Colorado Institute of Technology. Since the Colorado Institute for Telecommunication Education no longer existed in statute, no credits were allowed to be taken for contributions that were made during the 2001 income tax year, when the TABOR surplus would have otherwise triggered the credit. House Bill 02-1059 updated the statute with the correct name. The credit was to become available if the state TABOR surplus exceeded a $350 million threshold in FY 2001-02. Because the state did not collect a sufficiently large TABOR surplus while the corrected credit was in statute, it never became available.

Table 1
TABOR Refund Mechanisms Used to Refund All TABOR Surpluses to Date
Dollars in millions; columns indicate the fiscal year when the surplus was collected

Current Law Mechanisms	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 04-05	FY 14-15	FY 17-18	FY 18-19
Property Tax Reimbursements	Enacted in 2017.							$39.5	$151.2
(Six-Tier) Sales Tax Refund	$136.8	$569.8	$623.3	$749.2	$576.7	$41.1	$61.7	-	-
Income Tax Rate Reduction	Enacted in 2005.						-	-	$259.4

Historical Mechanisms	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 04-05	FY 14-15	FY 17-18	FY 18-19
Business Personal Property Tax	Est. 1999.	$79.0	$78.5	$99.8	Repealed under SB 10-212.			
Earned Income Tax Credit	Est. 1999.	$26.4	$31.0	$32.9	-	$76.2	Repealed*	
Capital Gains Assets Before 1994	Est. 1999.	-	$111.5	$50.5				
Interest, Dividends, and Capital Gains	Est. 1999.	-	$44.9	$44.3				
Child Care Expenses Credit	Enacted in 2000.		$20.4	$25.5				
Private Health Care Credit	Enacted in 2000.		$2.8	$2.4				
Pollution Control Equipment Sales Tax	Enacted in 2000.		$1.9	$0.0				
Rural Health Care Provider Credit	Enacted in 2000.		$0.1	$0.2				
Motor Vehicle Registration Fee	Enacted in 2000.		-	$34.0				
Capital Gains Sales Beginning 2001	Enacted in 2000.		-	$27.7	These mechanisms were repealed under SB 10-212 or prior legislation.*			
Heavy-Duty Truck Sales and Use Tax	Enacted in 2000.		-	$5.2				
Charitable Contributions Deduction	Enacted in 2000.		-	$2.9				
Individual Development Accounts	Enacted in 2000.		-	<$0.1				
High Technology Scholarship Program	Enacted in 2000.		-	<$0.1				
Agricultural Value-Added Credit	Enacted in 2001.			$0.5				
Foster Care Expenses Credit	Enacted in 2001.			$0.2				
Research and Development Sales Tax	Mechanism never became available.							
Contributions - CO Inst. of Technology	Mechanism never became available.							

Sources: Department of Revenue, Department of Local Affairs, Office of the State Controller, Office of the State Auditor, and Legislative Council Staff.
**The charitable contributions deduction was converted to a permanent tax deduction under SB 10-212, and the earned income tax credit was converted to a permanent tax credit under SB 13-001.*