

# COLORADO OFFICE OF THE STATE AUDITOR



## SCHEDULE OF TABOR REVENUE FISCAL YEAR 2018



OCTOBER 2018

PERFORMANCE AUDIT

THE MISSION OF THE OFFICE OF THE STATE AUDITOR  
IS TO IMPROVE GOVERNMENT  
FOR THE PEOPLE OF COLORADO

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# OFFICE OF THE STATE AUDITOR



October 24, 2018

DIANNE E. RAY, CPA

STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the TABOR Financial Report required under Article X, Section 20 of the Colorado Constitution (TABOR) as of June 30, 2018, as certified by the State Controller on August 31, 2018. This audit was conducted pursuant to Section 24-77-106.5, C.R.S., which requires the State Auditor to conduct an audit of the TABOR Financial Report and certification prepared by the State Controller. The report presents our findings and conclusions on our audit.

OFFICE OF THE STATE  
AUDITOR  
1525 SHERMAN STREET  
7TH FLOOR  
DENVER, 80203  
COLORADO

303.869.2800



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# REPORT HIGHLIGHTS



## SCHEDULE OF TABOR REVENUE, FISCAL YEAR 2018      OFFICE OF THE STATE CONTROLLER PERFORMANCE AUDIT, OCTOBER 2018

### AUDIT OBJECTIVE

The objective of our audit was to determine whether the Office of the State Controller complied with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S., in preparing the TABOR Financial Report and the certification required by Section 24-77-106.5, C.R.S.

### CONCLUSION

- We determined that the TABOR Financial Report, as certified by the Office of the State Controller, agreed to the State's underlying accounting records for Fiscal Year 2018 that were contained in the State's accounting system as of August 31, 2018. We noted no exceptions related to the preparation and certification of the TABOR Financial Report in accordance with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S.
- The State Controller's certification is used by the Office of the Governor, the General Assembly, and the Department of Revenue for planning and budgeting purposes and it is important that the correct information be presented.
- Fiscal Year 2018 revenue is over the Excess State Revenues Cap by \$16,202,687; therefore, there is a TABOR refund for Fiscal Year 2018.

### BACKGROUND

#### Schedule of TABOR Revenue:

- The Taxpayer's Bill of Rights (TABOR) was added to the Colorado Constitution in the November 1992 general election.
- TABOR limits are increased based on the annual inflation rate plus the percentage change in Colorado's population growth rate.
- The OSC was required to certify TABOR revenue to the Governor, General Assembly, and the Executive Director of the Department of Revenue no later than September 1, 2018.
- The Office of the State Auditor was required to audit the TABOR Financial Report by September 15, 2018.







September 14, 2018

THE HONORABLE JOHN W. HICKENLOOPER  
GOVERNOR  
STATE OF COLORADO

THE HONORABLE MILLIE HAMNER  
CHAIR  
COLORADO JOINT BUDGET COMMITTEE

THE HONORABLE TIM NEVILLE  
CHAIR  
COLORADO SENATE FINANCE COMMITTEE

THE HONORABLE DAN PABON  
CHAIR  
COLORADO HOUSE FINANCE COMMITTEE

MR. MICHAEL S. HARTMAN  
EXECUTIVE DIRECTOR  
COLORADO DEPARTMENT OF REVENUE

Dear Sirs and Madam:

This letter summarizes the results of our audit of the Taxpayer's Bill of Rights (TABOR) Financial Report as of June 30, 2018, as certified by the State Controller on August 31, 2018. Please find attached the August 31 version of the following: letter of certification from the State Controller, the *Preliminary Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2018*, [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2018*, [Unaudited] (collectively referred to as the TABOR Financial Report). Our audit was conducted under the authority of Section 24-77-106.5, C.R.S., which requires the State Auditor to conduct an audit of the TABOR Financial Report and certification prepared by the State Controller, and report the results no later than September 15.

Pursuant to Section 24-77-106.5, C.R.S., for each fiscal year, the State Controller shall prepare the TABOR Financial Report for the purpose of ascertaining the State's compliance with the constitutional provisions of TABOR. Based on the TABOR Financial Report, the State Controller is required to certify to the Governor, the General Assembly, and the Executive Director of the Department of Revenue no later than September 1st subsequent to the end of the previous fiscal year, the following:



We Set the Standard for Good Government

- Amount of state revenues in excess of the limitation on state fiscal year spending (known as the Fiscal Year Spending Limit) imposed by Article X, Section 20(7)(a) of the Colorado Constitution.
- Amount of state revenues in excess of such limitation the State is authorized to retain and spend pursuant to voter approval of Section 24-77-103.6, C.R.S., (Excess State Revenues Cap).

**OBJECTIVE.** We followed generally accepted government auditing standards when conducting our audit. The objective of our audit was to determine whether the Office of the State Controller complied with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S., in preparing the TABOR Financial Report and the certification required by Section 24-77-106.5 C.R.S.

**CONCLUSION.** Based on the results of our audit, we determined that the TABOR Financial Report, as certified by the Office of the State Controller as of August 31, 2018, agreed to the State's underlying accounting records for Fiscal Year 2018 that were contained in the State's accounting system as of August 31, 2018. We noted no exceptions related to the preparation and certification of the TABOR Financial Report in accordance with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S.

**AUDIT REPORT.** Our full audit report will be presented to the Legislative Audit Committee in November 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "Dianne E. Ray", is written over a light gray rectangular background.

Dianne E. Ray, CPA  
State Auditor

Enc.



# COLORADO

## Office of the State Controller

Department of Personnel  
& Administration

1525 Sherman St.  
Denver, CO 80203

August 31, 2018

The Honorable John W. Hickenlooper  
Governor  
State of Colorado

The Honorable Kevin Grantham  
President of the Senate  
Colorado General Assembly

The Honorable Crisanta Duran  
Speaker of the House  
Colorado General Assembly

Michael Hartman  
Executive Director  
Colorado Department of Revenue

Dear Lady and Gentlemen:

Pursuant to Section 24-77-106.5(1)(b) C.R.S., I hereby certify that for Fiscal Year 2018, the State's unaudited Nonexempt District Revenues subject to Article X, Section 20 (TABOR) of the State Constitution as of August 30, 2018 are \$13,718,573,027. The growth rate of Nonexempt District Revenues is 6.4% for Fiscal Year 2018, which is more than the allowable TABOR growth rate of 4.5% for Fiscal Year 2018. Please see the attached Preliminary Schedule of Computations Required Under Article X, Section 20.

TABOR Nonexempt District Revenues are over the Adjusted Excess State Revenues Cap (ESRC) by \$16,202,687. Section 24-77-103.8(3) C.R.S. requires the State to add any remaining excess revenues not refunded in prior fiscal years to the excess revenues to be refunded for the current fiscal year. Remaining Fiscal Year 2015 excess revenues to be refunded total \$21,326,788; therefore, the total amount to be refunded for Fiscal Year 2018 is \$37,529,475.

The Nonexempt District Revenues Fiscal Year Spending (FYS) limit for Fiscal Year 2018, which, prior to Referendum C, was the trigger used for refunding excess revenues to taxpayers \$11,220,749,237. For Fiscal Year 2018, the Nonexempt District Revenues subject to TABOR exceeded the FYS limit by \$2,497,823,790. Additionally, the Comparison of Nonexempt District Revenues is attached, which compares general and program Nonexempt District Revenues for Fiscal Year 2018 to Fiscal Year 2017. For the year-over-year comparison, individual line items were adjusted and then added back as follows to the Fiscal Year 2018 Nonexempt District Revenue of \$12,891,656,786:

- A decrease of \$24,171,043 for requalification of Western State Colorado University as a TABOR enterprise in Fiscal Year 2017-18, and
- An increase of \$63,514 for revenues received by other agencies from Western State Colorado University related to its requalification.



The amounts reported in the attached schedules are based on unaudited account balances, and therefore are subject to change. The State Auditor is required by statute to report on the audit of these preliminary schedules by September 15, 2018. The final audited schedules will be included in the State's Fiscal Year 2018 Comprehensive Annual Financial Report, which is scheduled to be completed in December 2018.

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

Sincerely yours,



Robert Jaros, CPA, MBA, JD  
Colorado State Controller

cc: June Taylor, Personnel & Administration  
Lauren Larson, Office of State Planning and Budgeting  
Natalie Mullis, Legislative Council



**STATE OF COLORADO**  
**PRELIMINARY SCHEDULE OF COMPUTATIONS REQUIRED**  
**UNDER ARTICLE X, SECTION 20 -- UNAUDITED**  
**AS OF JUNE 30, 2018**

Certification Date: August 31, 2018

	FISCAL YEAR 2016-17	FISCAL YEAR 2017-18
<b>COMPUTATION OF NONEXEMPT REVENUES</b>		
Total State Expenditures	\$ 44,583,527,282	\$ 48,396,514,894
Less: Exempt Activity	31,332,090,026	35,591,141,438
Nonexempt District Expenditures	13,251,437,256	12,805,373,456
District Reserve/Fund Balance Increase (Decrease)	(359,780,470)	913,199,571
<b>Total Nonexempt District Revenues</b>	<b>\$ 12,891,656,786</b>	<b>\$ 13,718,573,027</b>
<b>COMPUTATION OF DISTRICT FUND BALANCE CHANGES</b>		
Beginning District Fund Balance	\$ 6,674,746,577	\$ 6,193,393,968
Qualifications, Disqualifications and Other Adjustments	(481,352,609)	855,259,721
<b>Ending District Fund Balance</b>	<b>\$ 6,193,393,968</b>	<b>\$ 7,048,653,689</b>

COMPUTATION OF SPENDING LIMITATIONS	FISCAL YEAR SPENDING	EXCESS STATE REVENUES CAP
Fiscal Year 2016-17 Limit	\$ 10,761,666,608	\$ 13,327,811,204
Qualification of Enterprises	(24,171,043)	(24,171,043)
Other Adjustments	63,514	63,514
Fiscal Year 2016-17 Adjusted Limit	\$ 10,737,559,079	\$ 13,303,703,675
Allowable TABOR Growth Rate	4.5%	4.5%
Fiscal Year 2017-18 Unadjusted Limit	\$ 11,220,749,237	\$ 13,902,370,340
C.R.S. 24-77-103.6(b)(I)(C)	0	(200,000,000)
Fiscal Year 2017-18 Adjusted Limit	\$ 11,220,749,237	\$ 13,702,370,340
Less: Fiscal Year 2017-18 Nonexempt District Revenues	(13,718,573,027)	(13,718,573,027)
<b>Amount (Over)Under Fiscal Year 2017-18 Adjusted Limit</b>	<b>\$ (2,497,823,790)</b>	<b>\$ (16,202,687)</b>
Remaining Fiscal Year 2014-15 Excess Revenue to be Refunded in Future Years		\$ 21,326,788
Amount to be Refunded for Fiscal Year 2017-18		\$ 37,529,475
FY 2017-18 Retention of Revenues in Excess of the Limit (not refundable) C.R.S. 24-77-103.6(1)(b)		\$ 2,497,823,790

**STATE OF COLORADO**  
**OFFICE OF THE STATE CONTROLLER**  
**COMPARISON OF NONEXEMPT TABOR REVENUES**  
**FOR THE FISCAL YEAR ENDED JUNE 30, 2018**  
**UNAUDITED**

	Fiscal Year 2017-18	Fiscal Year 2016-17	Increase (Decrease)	Percent Change
<b>GENERAL REVENUES</b>				
Individual Income Tax, Net	\$ 6,957,330,740	\$ 6,217,352,254	\$ 739,978,486	11.9%
Sales and Use Tax, Net	3,235,912,170	2,986,889,660	249,022,510	8.3%
Corporate Income Tax, Net	736,021,976	467,410,554	268,611,422	57.5%
Insurance Taxes	303,594,443	290,502,910	13,091,533	4.5%
Tobacco Products Tax, Net	50,982,130	57,789,846	(6,807,716)	-11.8%
Fiduciary Income Tax, Net	48,700,734	45,469,559	3,231,175	7.1%
Alcoholic Beverages Tax, Net	46,487,583	44,993,816	1,493,767	3.3%
Interest and Investment Income	18,123,842	14,249,805	3,874,037	27.2%
Court and Other Fines	9,233,967	23,414,532	(14,180,565)	-60.6%
Business Licenses and Permits	7,396,159	5,314,217	2,081,942	39.2%
Miscellaneous Revenue	1,598,058	1,830,729	(232,671)	-12.7%
General Government Service Fees	667,032	315,724	351,308	111.3%
Gaming and Other Taxes	516,022	578,949	(62,927)	-10.9%
Other Charges For Services	42,542	20,081	22,461	111.9%
Estate and Inheritance Taxes	-	(31,700)	31,700	-100.0%
<b>TOTAL GENERAL-FUNDED REVENUES</b>	<b>11,416,607,398</b>	<b>10,156,100,936</b>	<b>1,260,506,462</b>	<b>12.4%</b>
<b>PROGRAM REVENUE</b>				
Fuel and Transportation Taxes, Net	658,167,949	630,990,319	27,177,630	4.3%
Motor Vehicle Registrations	279,990,149	266,685,397	13,304,752	5.0%
Business Licenses and Permits	174,825,313	169,412,205	5,413,108	3.2%
Court and Other Fines	174,692,569	172,313,824	2,378,745	1.4%
Other Charges For Services	161,182,348	153,669,337	7,513,011	4.9%
Severance Taxes	132,426,862	12,619,042	119,807,820	949.4%
Gaming and Other Taxes	105,879,363	102,835,083	3,044,280	3.0%
Health Service Fees	79,435,462	731,250,340	(651,814,878)	-89.1%
General Government Service Fees	70,193,136	63,753,589	6,439,547	10.1%
Miscellaneous Revenue	69,091,036	20,494,813	48,596,223	237.1%
Interest and Investment Income	62,071,223	49,936,280	12,134,943	24.3%
Rents and Royalties	60,113,530	55,339,198	4,774,332	8.6%
Driver's Licenses	45,855,931	42,403,181	3,452,750	8.1%
Sales and Use Tax, Net	42,921,159	64,305,919	(21,384,760)	-33.3%
Local Governments and Authorities	35,465,294	32,432,799	3,032,495	9.4%
Nonbusiness Licenses and Permits	34,333,046	36,379,181	(2,046,135)	-5.6%
Employment Taxes	34,245,305	32,507,078	1,738,227	5.3%
Certifications and Inspections	25,091,657	24,482,392	609,265	2.5%
Public Safety Service Fees	21,186,165	23,419,927	(2,233,762)	-9.5%
Insurance Taxes	17,096,515	11,010,200	6,086,315	55.3%
Educational Fees	6,361,730	6,145,659	216,071	3.5%
Sales of Products	2,969,485	2,538,713	430,772	17.0%
Higher Education Auxiliary Sales and Services	6,122,975	4,554,796	1,568,179	34.4%
Welfare Service Fees	1,091,995	1,008,783	83,212	8.2%
Alcoholic Beverages Tax, Net	762,525	716,447	46,078	6.4%
Other Excise Taxes, Net	391,759	243,381	148,378	61.0%
Estate and Inheritance Taxes	758	-	758	
Tobacco Products Tax, Net	390	438	(48)	-10.9%
<b>TOTAL PROGRAM REVENUES</b>	<b>2,301,965,629</b>	<b>2,711,448,321</b>	<b>(409,482,692)</b>	<b>-15.1%</b>
Requalification of Western State Colorado University as a TABOR Enterprise	-	24,171,043	(24,171,043)	
Other Agency Revenues from Requalification of Western State Colorado University as a TABOR Enterprise	-	(63,514)	63,514	
<b>TOTAL CASH-FUNDED REVENUE</b>	<b>2,301,965,629</b>	<b>2,735,555,850</b>	<b>(433,590,221)</b>	<b>-15.9%</b>
<b>TOTAL NONEXEMPT REVENUE</b>	<b>\$ 13,718,573,027</b>	<b>\$ 12,891,656,786</b>	<b>\$ 826,916,241</b>	<b>6.4%</b>

# SCHEDULE

## OF TABOR REVENUE 2018

### OVERVIEW

The Taxpayer's Bill of Rights (TABOR) was added as Article X, Section 20 of the Colorado Constitution in the November 1992 general election. TABOR limits the annual growth in state revenues to the sum of the inflation rate and the percentage change in the State's population; this is called the TABOR growth rate. Any money the State raises above that amount must be returned to the taxpayers.

Section 24-77-106.5, C.R.S., requires that the State Controller prepare and distribute a TABOR Financial Report annually to the Governor, the General Assembly, and the Executive Director of the Department of Revenue no later than September 1 following the end of a fiscal year. The TABOR Financial Report is required to include the following:

- The amount of state revenues in excess of the limitation on state fiscal year spending, and,
- The amount of state revenues in excess of such limitation the State is authorized to retain and spend pursuant to voter approval of Referendum C.

Referendum C was approved by the voters in November 2005 and established a new revenue limit, which is referred to as the Excess State Revenues Cap.

The TABOR Financial Report prepared by the Office of the State Controller (OSC) for Fiscal Year 2018 includes the *Preliminary Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2018* [Unaudited]; and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2018* [Unaudited].

## AUDIT SCOPE AND METHODOLOGY

This performance audit was conducted in order to comply with statutory requirements. Section 24-77-106.5, C.R.S., requires that the State Auditor conduct an audit of the TABOR Financial Report and certification of excess state revenues prepared by the State Controller. We performed our audit work during the period June 2018 through September 2018.

The reporting for this performance audit includes a letter from the State Auditor reporting on the results of the performance audit. This letter from the State Auditor was transmitted in accordance with Section 24-77-106.5(2), C.R.S., to the Governor, Joint Budget Committee, the Finance Committees of the House of Representatives and the Senate,



and the Executive Director of the Department of Revenue, on September 14, 2018, along with the OSC certification and TABOR Financial Report dated August 31, 2018. We acknowledge the cooperation and assistance provided by the State Controller and staff at the OSC.

The overall objective of our audit was to evaluate the TABOR Financial Report and certification of excess state revenues issued by the State Controller pursuant to regulations related to Article X, Section 20 of the State Constitution (TABOR). Specifically, our objective was to determine whether the OSC complied with applicable laws, rules, and regulations related to Section 24-77-101 through 107, C.R.S., in preparing the financial report and certification required by Section 24-77-106.5, C.R.S. We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objective. To accomplish our audit objective, we:

- Identified and documented our consideration of changes to statutory, regulatory, and other legal requirements that impact TABOR and are applicable to the audit and the audit objectives.
- Reviewed, evaluated, and reperformed key calculations used by the OSC in the preparation of its TABOR Financial Report, including TABOR revenues, the anticipated TABOR growth rate, revenues exempt from TABOR requirements, the TABOR Adjusted Spending Limit, and the Excess State Revenues Cap.
- Reviewed reports submitted by state departments detailing changes in TABOR revenue from prior years, base fiscal year spending, and changes in TABOR enterprise status.
- Reviewed the accounts and transactions that are not included as TABOR revenue and determined whether they met the statutory or voter-approved requirement to be classified as exempt.

- Evaluated and, where appropriate, tested internal controls around the preparation of the TABOR Financial Report by the State Controller.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of our annual statewide financial audit that is currently ongoing for Fiscal Year 2018, we will also conduct a financial audit of the State's financial statements and the final *Schedule of TABOR Revenue and Computations*, with field work scheduled to be completed in December 2018. The objective of the financial audit is to express opinions as to whether the State's basic financial statements and the *Schedule of TABOR Revenue and Computations* are fairly presented, in all material respects, in conformity with generally accepted accounting principles. The results of the financial audit and related work performed over the *Schedule of TABOR Revenue and Computations* are not included in the scope of this performance audit.

## OVERALL CONCLUSION

Based on the results of our audit, we determined that the TABOR Financial Report as certified by the OSC on August 31, 2018, agreed to the State's underlying accounting records for Fiscal Year 2018 that were contained in the State's financial accounting system as of August 31, 2018. We noted no exceptions related to the preparation and certification of the TABOR Financial Report in accordance with applicable laws, rules, and regulations under Sections 24-77-101 through 107, C.R.S.

# PREPARATION OF THE FISCAL YEAR 2018 TABOR FINANCIAL REPORT

As required by statute [Section 24-77-106.5, C.R.S.], the OSC annually prepares a TABOR Financial Report and letter of certification that outline state revenues subject to Article X, Section 20 (TABOR) of the State Constitution. The TABOR Financial Report for Fiscal Year 2018, which consists of the *Preliminary Schedule of Computations Required Under Article X, Section 20 of the State Constitution as of June 30, 2018* [Unaudited] and the *Comparison of Non-Exempt TABOR Revenues for the Fiscal Year Ended June 30, 2018* [Unaudited], contains several elements required by statute, including state fiscal year spending, total revenues, reserves (fund balance), revenues the State is allowed to retain and spend pursuant to Referendum C, and debt. The key elements contained in the TABOR Financial Report are further defined below.

## TABOR REVENUE LIMIT

Article X, Section 20(7)(a) of the State Constitution contains a formula for calculating the TABOR Revenue Limit which involves multiplying a base amount by the TABOR growth rate. The base amount for the TABOR Revenue Limit is the lesser of either the prior year's revenue or spending limit.

## TABOR GROWTH RATE

Article X, Section 20(7)(a) limits the annual growth in state revenues to the sum of the inflation rate and the percentage change in the State's population. For Fiscal Year 2018, the TABOR growth rate was 4.5 percent.

## EXCESS STATE REVENUES CAP

In November 2005, Referendum C, which would allow the State to spend or save the full amount of revenue it collected during a specified subsequent 5-year period, was approved in the general election. During Fiscal Year 2005, the General Assembly enacted House Bill 05-1194 as the enabling legislation for Referendum C, making it effective as of July 1, 2005. Referendum C allowed the State to spend or save the full amount of revenue it collected from Fiscal Years 2006 through 2010 in order to set the spending limit equal to revenue. After this 5-year break, Referendum C allows the State to keep revenue up to a capped amount known as the Excess State Revenues Cap (Cap). Beginning in Fiscal Year 2011, the Cap was equal to the highest amount of revenue that was collected in the 5 previous years, multiplied by the TABOR growth rate. In subsequent years, the Cap is calculated using the previous year's Cap multiplied by the TABOR growth rate. The State is allowed to retain and spend revenue in excess of the TABOR Revenue Limit but must refund revenue above the Cap.

## EXEMPT AND NONEXEMPT REVENUE

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

- Revenue collected by an enterprise which is defined as a government-owned business receiving under 10 percent in grants of annual revenue from state and local governments.
- Voter approved revenue exemptions.

## FISCAL YEAR 2018 TABOR REVENUE

We reviewed the State Controller's computations of the Fiscal Year 2018 TABOR Revenues and Excess State Revenues Cap (Cap). The following figures in EXHIBIT 1.1 show TABOR revenue, the TABOR

Cap, and calculated revenue over the Cap as certified by the OSC for Fiscal Year 2018:

EXHIBIT 1.1. STATE OF COLORADO TABOR REVENUE, EXCESS STATE REVENUES CAP, AND REVENUE OVER THE EXCESS STATE REVENUES CAP FISCAL YEAR 2018	
FISCAL YEAR 2018 TABOR REVENUE	\$ 13,718,573,027
TOTAL FISCAL YEAR 2018 EXCESS STATE REVENUES CAP	(13,702,370,340)
FISCAL YEAR 2018 REVENUE OVER/(UNDER) EXCESS STATE REVENUES CAP	\$ 16,202,687
SOURCE: Office of the State Auditor analysis of the Office of the State Controller's data.	

Article X, Section 20(7)(d) of the State Constitution says that if non-exempt TABOR revenue exceeds the Cap in a fiscal year, the excess revenue will be refunded in the next fiscal year. For Fiscal Year 2018, revenue was over the Cap by approximately \$16.2 million and a refund will be issued in Fiscal Year 2019.

## REFUNDING

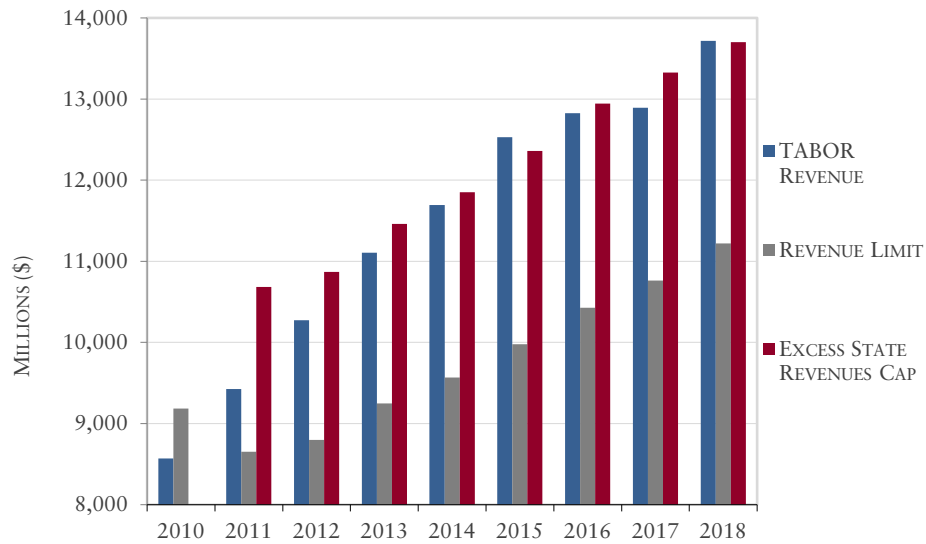
There are two mechanisms for refunding excess state revenues: the property tax exemption reimbursement established by Senate Bill 17-267 and a temporary cut in income tax rate from 4.63 percent to 4.50 percent established under House Bill 05-1317. The property tax exemption reimbursement mechanism is applied first and the remaining refund mechanism is only used if the amount of the TABOR refund exceeds the total reimbursement for the property tax exemptions. The Fiscal Year 2018 excess state revenues will be fully refunded through the property tax exemption reimbursement. APPENDIX B provides more detail regarding current refunding mechanisms.

## REVENUE LIMIT

EXHIBIT 1.2 shows a comparison of TABOR revenue, the TABOR Revenue Limit, and the Excess State Revenues Cap for the Fiscal Years 2010 to 2018. Beginning in Fiscal Year 2011, the State was allowed to keep revenues above the TABOR Revenue Limit and below the Excess State Revenue Cap as set forth in Referendum C. Since the enactment

of Referendum C, Fiscal Year 2015 was the only other year that revenues exceeded the Excess State Revenue Cap and a TABOR refund was triggered.

**EXHIBIT 1.2. STATE OF COLORADO  
TABOR REVENUE VS. REVENUE LIMIT  
AND THE EXCESS STATE REVENUES CAP  
FISCAL YEARS 2010 TO 2018**



SOURCE: Schedules of Computations Required Under Article X, Section 20 for Fiscal Years 2010-2018. Office of the State Auditor analysis of the Office of the State Controller's data.

# APPENDIX A





# DESCRIPTION OF REVENUE CATEGORIES

The revenue categories described in APPENDIX A correspond to the categories presented on the Comparison of Nonexempt TABOR Revenues – PAGE 14.

## INCOME TAX

### *Individual Income Tax, Net*

Taxes paid on wages, unearned income, and other income of individuals, net of refunds on property tax credits, income tax intercepts (e.g., IRS and child support), tax checkoffs, and Amendment 23 transfers to the State Education Fund.

### *Corporate Income Tax, Net*

Taxes based on the net profits of corporations net of Amendment 23 transfers to the State Education Fund.

### *Fiduciary Income Tax, Net*

Taxes on trust and estate income net of Amendment 23 transfers to the State Education Fund.

## EXCISE TAX

### *Sales Tax, Net*

Taxes collected by retailers on consumer purchases of tangible personal property net of refunds.

### *Use Tax, Net*

Taxes remitted by the end consumer of tangible personal property purchased at retail prices net of refunds.

*Tobacco Products Tax, Net*

Taxes on the sale, use, consumption, handling, or distribution of tobacco products net of refunds.

*Alcoholic Beverages Tax, Net*

Taxes collected from retailers who sell alcohol products net of refunds.

*Other Excise Taxes, Net*

Taxes for occupational license renewals and certain penalties net of refunds.

## OTHER TAXES

*Fuel and Transportation Taxes, Net*

Gross ton mileage tax on motor carriers and taxes on diesel, gasoline, aviation jet fuel, aviation gasoline, and other fuels net of refunds.

*Insurance Taxes*

Taxes on insurance premiums collected by insurance companies net of refunds.

*Gaming and Other Taxes*

Taxes on gaming facilities based on percentages of income net of refunds.

*Employment Taxes, Net*

Employment taxes paid by employers for funding unemployment benefits net of refunds.

*Severance Taxes*

Mineral extraction taxes, net of refunds on coal, oil and gas, molybdenum, and metallic minerals net of refunds.

*Estate and Inheritance Taxes*

Taxes collected on the assets of estates net of refunds.

**LICENSES, PERMITS, AND FEES***Health Service Fees*

Hospital Provider Fees and other fees collected for health services including laboratory test fees, genetic testing, vital records fees, and children's health plan premiums.

*Motor Vehicle Registrations*

Collection of fees for license plates, tags, and registrations.

*Business Licenses and Permits*

Licenses and permits for special functions of a business (e.g., alcoholic beverage licenses, tobacco products licenses, business registrations, health licenses, child care licenses, and waste management permits).

*Other Charges for Services*

Various fees, the majority of which are collected by Public Utilities Commission, the Division of Banking, and the Oil and Gas Conservation Fund, which are used to ensure compliance with applicable regulations.

*General Government Service Fees*

Service charges by various agencies to the public (e.g., filing fees charged by the Department of State, charges by the Motor Vehicle Division for driving record inquiries, and certain fees charged by the Department of Agriculture and Department of Natural Resources).

*Educational Fees*

Conference fees and teacher certification fees collected primarily by the Department of Education.

*Driver's Licenses*

Fees for driver's licenses and ID cards.

*Nonbusiness Licenses and Permits*

Includes licenses and permits for environmental response surcharges, park passes, motorcycle operator safety training, waste tire recycling, etc.

*Public Safety Service Fees*

Fees for firefighter response, fire service education and training, and search and rescue fees.

*Certifications and Inspections*

Emission inspection stickers, emission registration, emission inspection station licenses, and other related fees.

*Welfare Service Fees*

Child abuse registry fees.

## OTHER REVENUE

*Court and Other Fines*

Fines and forfeits levied by the courts.

*Miscellaneous Revenue*

Revenue not included in another category.

*Interest and Investment Income*

Interest income, finance charges, and gains/losses on investments.

*Rents and Royalties*

Income from the lease of state land to private parties.

*Local Governments and Authorities*

Funds from counties, cities, special districts, etc., primarily in the form of grants.

*Higher Education Auxiliary Sales and Services*

Revenue from library fees, internal service center fees, athletic camp fees.

*Sales of Products*

Sales of publications, maps, materials, and supplies.



# APPENDIX B





# DESCRIPTION OF TABOR REVENUE REFUNDING MECHANISMS

## PROPERTY TAX EXEMPTION REIMBURSEMENT

Reimbursements will be made to local governments to offset their property tax losses resulting from the senior homestead exemption and the disabled veterans' property tax exemption. The second refunding mechanism listed below is only available if the amount of the TABOR refund exceeds the total reimbursement for these exemptions.

## TEMPORARY INCOME TAX RATE REDUCTION

Under the temporary income tax rate reduction mechanism, the state income tax rate would be temporarily reduced from the current rate of 4.63 percent to 4.50 percent for any year following a year in which the amount of excess state revenues to be reimbursed is greater than the property tax exemption. The temporary income tax rate reduction was created under House Bill 05-1317 and has not yet been used as a TABOR refund mechanism.



# APPENDIX C



# TABOR HISTORY: FISCAL YEARS 1993 - 2018

The following provides highlights of certain legislation or voter-approved changes affecting the Office of the State Controller's *Schedule of Computations Required Under Article X, Section 20* contained in this report. The fiscal year in which the change was effective and a brief summary of the legislation or voter-approved change is provided below.

## 1993

**VOTER APPROVAL.** The Taxpayer's Bill of Rights (TABOR) was added as Article X, Section 20 of the Colorado Constitution in the November 1992 general election. TABOR limits increases in the State's revenue to the annual inflation rate plus the percentage change in Colorado's population unless voters approve a revenue change.

## 1997 AND 1998

**REFUNDS.** The TABOR Revenue Limit was exceeded for the first time during the fiscal year ended June 30, 1997, and again for fiscal year ended June 30, 1998. The General Assembly decided to distribute the entire excess from general funds as a sales tax credit on each full-year resident's individual tax return.

## 1999—2001

**REFUNDS.** TABOR revenue exceeded the TABOR Revenue Limit for each of these years, resulting in refunds. In 1999, the excess was refunded through three mechanisms; in 2000, nine mechanisms were used, and in 2001, the excess was refunded through 17 mechanisms.

**REVENUE REDUCTIONS.** During the period, there were several revenue reductions enacted that lowered the amount of TABOR revenue to be received in subsequent years. The most significant reduction was the lowering of income tax rates effective January 1, 1999, for individuals,

estates, and trusts from 5 percent to 4.75 percent, and a further reduction effective January 1, 2000, of the rate to 4.63 percent. Effective January 1, 2001, the sales tax rate was reduced from 3 percent to 2.9 percent. Other permanent tax reductions include the establishment of low-income housing owner credits, redevelopment incentives for contaminated property, sales and use tax exemptions for certain agricultural items, unemployment insurance tax credits, and oil and gas severance tax exemptions.

**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 TABOR exempt fee for patients receiving an identification card for the medical use of marijuana. The resulting revenues are TABOR exempt.

## 2002

**GROWTH DIVIDEND.** TABOR states that the TABOR Revenue Limit will be the lesser of the current fiscal year's revenue or the prior fiscal year's TABOR Revenue Limit adjusted by the population growth and the inflation 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 the State issuing greater TABOR refunds than required.

In 2002, the General Assembly enacted Senate Bill 02-179 to account for underestimates of population growth in prior years, adding a carry-forward mechanism for a census-related adjustment in population growth. This can be applied to future calculations of the TABOR Revenue Limit for up to 9 years. This carry-forward is referred to as the growth dividend. The growth dividend determined from the 2000 census allowed the State to raise the TABOR Revenue Limit by \$565.3 million. This amount was fully utilized during Fiscal Years 2004 and 2005.

## 2004

**QUALIFIED ENTERPRISES.** The TABOR amendment allows qualified enterprises to be exempt from TABOR requirements. Over the years, the General Assembly has enacted statutes to designate certain state entities as TABOR-exempt enterprises. One of the most significant of these bills was Senate Bill 04-189, which enabled higher education governing boards to designate a qualified institution or group of institutions to be exempt from TABOR requirements. In 2004, the University of Colorado was approved as a TABOR-exempt enterprise. In 2005, 10 additional higher education institutions were approved as TABOR-exempt enterprises. Once designated as a TABOR-exempt enterprise, the institution will retain the designation as long as it continues to meet the requirements for an enterprise.

## 2005 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 Revenue 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 TABOR Revenue Limit up to a newly defined “Excess State Revenues Cap.” The Excess State Revenues Cap is defined as the highest total state revenue earned between Fiscal Years 2006 and 2010, adjusted for inflation and population growth for each subsequent year.

For Fiscal Years 2006, 2007, and 2008, the amounts of excess revenue that the State was allowed to retain and spend were \$1,116,134,410, \$1,308,040,131, and \$1,169,428,121, respectively, for a 3-year total of \$3,593,602,662. The funds retained by the State were to be applied toward education; healthcare; roads, bridges, and other strategic transportation projects; and retirement plans for firefighters and police officers. TABOR Revenue did not exceed the TABOR Revenue Limit in Fiscal Years 2009 and 2010.

**CONSTITUTIONAL AMENDMENT.** Amendment 35 was passed by voters in November 2004. The Amendment assesses a statewide TABOR-exempt tax of 64 cents per pack of cigarettes and 20 percent on tobacco products. The Amendment requires that the revenue be used for health care services and tobacco education and cessation programs.

**OVERREFUNDS.** Prior to July 1, 2005, state statutes provided a mechanism to apply refunds paid in excess of the TABOR refund liability (“overrefunds”) for one fiscal year against the following year’s TABOR refund liability, if one exists. Effective Fiscal Year 2005 under House Bill 05-1310, the State Controller was required to make two types of adjustments in Fiscal Year 2005 related to overrefunds that were paid during Fiscal Years 2002 through 2004. First, House Bill 05-1310 required the State Controller to change the methodology for calculating the TABOR Revenue Limit for Fiscal Years 2002 through 2004 by applying the overrefunds after the TABOR Revenue Limit was set. This resulted in an increase of \$92.7 million to the Fiscal Year 2005 TABOR Revenue Limit.

In addition, the State Controller was required to reduce the Fiscal Year 2005 TABOR revenue in excess of the TABOR Revenue Limit for the total amount of overrefunds paid during Fiscal Years 2002 through 2004. This resulted in a \$127.8 million reduction to the TABOR refund liability for Fiscal Year 2005.

House Bill 05-1310 requires that, in Fiscal Year 2006 and future years, TABOR revenue in excess of the TABOR Revenue Limit be reduced by



any amounts overrefunded in the prior year. Any unused amount is to be carried forward and decrease future refund liabilities until the excess is depleted.

## 2009

**CONSTITUTIONAL AMENDMENT.** Amendment 50 was passed by voters in November 2008. The Amendment made several revisions to gaming limits. Casinos pay taxes on income from gaming and pay various fees and fines which are exempt from TABOR. Most of the revenue the state receives from new gaming limits is to be used for financial aid and classroom instruction at the state's community colleges and distributed to the gaming communities.

## 2011

**REFUND MECHANISMS.** The General Assembly enacted Senate Bill 10-212, which repealed all of the following TABOR surplus refund mechanisms except for the Earned Income Tax Credit and the Six-Tier Sales Tax Refund, effective July 1, 2010:

REFUNDING MECHANISM	ORIGINAL THRESHOLD <sup>2</sup>
Earned Income Tax Credit <sup>1</sup>	\$ 50,000,000
Charitable Contributions Deduction	\$ 100,000,000
Foster Parents Credit	\$ 200,000,000
Business Personal Property Tax Credit	\$ 170,000,000
Child Care Credits	\$ 290,000,000
Tangible Personal Property Used for Research and Development	\$ 358,400,000
Motor Vehicle Registration Fees	\$ 330,000,000
High Technology Scholarship Program Credit	\$ 330,000,000
Interest, Dividends, and Capital Gains Deduction	\$ 350,000,000
Pollution Control Provisions	\$ 350,000,000
Interstate Commerce Sales and Use Tax Refund	\$ 350,000,000
Agriculture Value-Added Development Credit	\$ 400,000,000
Cost of Health Benefits Credit	\$ 400,000,000
6-Tier Sales Tax Refund <sup>1</sup>	Remaining Excess
<sup>1</sup> Still in effect under current law.	
<sup>2</sup> Thresholds are adjusted annually by the personal income growth rate for Colorado.	

For any year in which a refund of TABOR surplus revenue is required, the only remaining refund mechanism with a threshold in statute is the

Earned Income Tax Credit. In addition, House Bill 05-1317 created a TABOR refund mechanism (the Temporary Income Tax Rate Reduction) that—starting with income tax year 2011—reduces the state income tax rate from the rate of 4.63 percent to 4.50 percent when the state experiences a revenue surplus large enough to support the rate reduction. The Temporary Income Tax Rate Reduction follows the Earned Income Tax Credit refund mechanism.

## 2013-2014

**EARNED INCOME TAX CREDIT.** The General Assembly enacted Senate Bill 13-001 which establishes a permanent Earned Income Tax Credit (EITC) to replace the EITC TABOR refund mechanism. The EITC provides credit to individuals that work but do not earn high incomes. Taxpayers who qualify for the federal credit may claim a state credit equal to up to 10 percent of the federal credit amount. The permanent EITC begins the year following the first year the EITC TABOR refund mechanism is triggered.

**CONSTITUTIONAL AMENDMENT.** Amendment 64 “Use and Regulation of Marijuana,” passed in November 2012, required the general assembly to enact a TABOR exempt excise tax to be levied upon wholesale sales of marijuana. The Amendment requires that the first \$40 million raised annually goes to school capital construction. Proposition AA “Retail Marijuana Taxes,” passed in November 2013, assesses a statewide TABOR-exempt tax of 15 percent excise tax to be levied upon wholesale sales of marijuana.

## 2015

**REFUNDS.** TABOR revenue exceeded the TABOR Revenue Limit for Fiscal Year 2015 resulting in a refund. The excess was refunded through two mechanisms including the Six-Tier Sales Tax Refund and the Earned Income Tax Credit (EITC). The EITC became permanent after it was triggered and will no longer be considered a TABOR refund mechanism going forward.

## 2017

**SUSTAINABILITY OF RURAL COLORADO.** The General Assembly enacted Senate Bill 17-267 which abolishes the Hospital Provider Fee and replaces it with the Healthcare Affordability and Sustainability Fee. The fee will be collected by the Healthcare Affordability and Sustainability Enterprise and will be TABOR exempt. The bill also requires the Excess State Revenue Cap under Referendum C to be reduced by \$200 million in Fiscal Year 2018. Refund mechanisms were also changed as a result of the bill. In a TABOR refund year, reimbursements paid to local governments in support of the senior homestead and disabled veterans property tax exemptions are applied as the first refund mechanism triggered. The second refund mechanism, a temporary income tax reduction, will only take effect after the property tax exemptions are fully applied.





