NOTES TO THE TABOR REPORT

NOTE 1. BASIS OF ACCOUNTING

Pursuant to Article 77 of Title 24, Colorado Revised Statutes, this report is prepared in accordance with generally accepted accounting principles (GAAP) except where an irreconcilable difference exists between GAAP, and state statute or the provisions of Section 20, Article X of the state constitution (TABOR).

The accounting principles used by the State is more fully described in the State's Comprehensive Annual Financial Report available from the State Controller's Office.

NOTE 2. DEFINITION OF THE DISTRICT

TABOR defines the district as "the state or any local government, excluding enter-prises." It further defines enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined."

The General Assembly, for the purpose of implementing TABOR, stated in C.R.S. 24-77-102(16)(a) that "state" means the central civil government of the State of Colorado, which consists of the following:

(I) the legislative, executive, and judicial branches of government established by Article III of the state constitution;

(II) all organs of the branches of government specified in subparagraph (I) of paragraph (a) of this subsection (16), including the departments of the executive branch; the legislative houses and agencies; and the appellate and trial courts and court personnel; and

(III) state institutions of higher education.

(b) "state" does not include:

(I) any enterprise;

(II) any special purpose authority.

The General Assembly has designated the State Lottery, the Guaranteed Student Loan Program, the Division of Correctional Industries, the Division of Wildlife, the State Fair Authority, Colorado Student Obligation Bond Authority, the Clean Screen Authority, the Statewide Tolling Authority, and the State Nursing Homes as enterprises excluded from the district. It further set up a mechanism in statute by which the governing boards of the institutions of higher education could designate certain auxiliary operations as enterprises, also exempt from TABOR.

Although the General Assembly has designated certain enterprises as exempt from TABOR, they must also meet certain criteria annually. The State Fair Authority did not meet those criteria in the previous and current fiscal year. The State Nursing Homes with the exception of the State Nursing at Walsenburg did not meet those criteria in the current year.

NOTE 3. DEBT

Certificates of Participation, which are used by the State for long-term lease purchases, are not considered debt of the State for purposes of this report as provided by C.R.S. 24-30-202(5.5).

In interrogatories submitted by the General Assembly regarding House Bill 99-1325, the Colorado Supreme Court ruled that Revenue Anticipation Notes (RANS) issued by the Colorado Department of Transportation do not constitute debt of the State as defined in Section 3, Article XI of the constitution.

However, the Supreme Court ruled that they are a multiple-fiscal year obligation as defined by Section 20, Article X of the constitution, thus, requiring an election before they could be issued. In November 1999 the voters approved the issuance of $1.7 billion of Transportation RANS.

NOTE 4. EMERGENCY RESERVES

TABOR requires the reservation, for declared emergencies, of 3 percent or more of the Fiscal Year Spending, excluding debt service payments. This requirement for FY 2002-03 is $231,375,350.

The State has designated $51,456,993 of the Tobacco Litigation Settlement Fund, $14,052,212 of the Employment Support Fund, $32,880,638 of the Wildlife Cash Fund, and $84,747,395 of the Severance Tax Trust Fund for this reserve.

The remaining amount of $48,238,112 needed to meet the emergency reserve requirement comes from $137.8 million of Capital Assets, Net of Related Debt, in the Wildlife Fund. In the event of an emergency that exceeded the financial assets in the reserve, these capital assets would have to be liquidated to satisfy the constitutional requirement.

NOTE 5. STATUS OF REFUNDING

There was no refund resulting from the State's computation of Fiscal Year 2002-03 or Fiscal Year 2001-02 fiscal year spending.

A class action suit has been brought against the State seeking damages equal to the cumulative sales tax refund. The State was required to refund $3.25 billion since Fiscal Year 1996-97. The suit alleges that the refund program violates interstate commerce, equal protection and privileges, and immunity clauses of the U.S. Constitution. It also alleges that the TABOR amendment, under which the refund was made, violates the equal protection and due process clauses of the Colorado Constitution.

NOTE 6. CORRECTIONAL INDUSTRIES

The General Assembly in the 2002 Legislative Session moved the Canteen Fund in the Department of Corrections to Correctional Industries, a TABOR exempt enterprise. The effect of this move was to make the Canteen Fund, formerly a fund in the district, into a qualified TABOR enterprise (see Note 13).

NOTE 7. CLEAN SCREEN AUTHORITY

The General Assembly in the 2002 Legislative Session created the Clean Screen Authority in the Department of Revenue. The purpose of this TABOR exempt enterprise is to provide remote sensing of vehicle exhaust emissions in order to comply with clean air requirements.

NOTE 8. STATE NURSING HOMES DISQUALIFICATION

In Fiscal Year 2002-03 the State Nursing Homes, with the exception of the State Nursing Home at Walsenburg, were disqualified as a group because of a substantial capital contribution by the state to the Fitzsimmons State Nursing Home. The addition of the Fiscal Year 2002-03 non-exempt revenues of the Nursing Homes to the district revenues increased the allowable spending limit by $23,425,560.

The State Nursing Home at Walsenburg is operated by the Huerfano County Hospital and not the state, thus it was not included in the disqualification.

NOTE 9. OTHER SOURCES AND ADDITIONS

This line item consists primarily of $442.5 million of refunding bond proceeds for highway construction, $614.4 million of investment and pension trust fund additions by participants, and $22.6 million of reimbursements of prior year expenditures.

Other sources include $12.2 million in capital lease financing, $7.1 million from the Great Outdoors Colorado Authority to the Department of Natural Resources, $7.1 million in accounts payable reversions and $22.7 million in other exempt revenues and required governmental accounting entries.

NOTE 10. VOTER APPROVED REVENUE CHANGES

The voters in the 1998 general election approved an initiated law, C.R.S. 25-8-501.1, Regulation of Commercial Hog Facilities, adopting the permit fee. The State collected $145,803 and $233,495 from this revenue in Fiscal Years 2002-03, and 2001-02, respectively.

The voters in the 2000 general election approved an amendment that added Section 14 to Article XVIII of the state constitution. This amendment allowed the use of marijuana for medical purposes and authorized the Department of Public Health and Environment to charge a fee for the issuance of a permit for such purpose. The State collected $33,937 and $27,889 from this revenue in Fiscal Years 2002-03 and 2001-02, respectively

The voters in the 2000 general election approved an amendment that added Section 17 to Article IX of the state constitution. This amendment created the State Education Fund and shifted the revenues from a tax of one-third of one percent on taxable income of individuals, corporations, estates, and trusts to this fund. It also exempted that revenue from TABOR.

The amendment was effective January 1, 2001 and resulted in $245,226,044 and $289,112,326 of revenues being excluded from Fiscal Year Spending in Fiscal Years 2002-03 and 2001-02, respectively.

NOTE 11. DISTRICT RESERVES

District reserves are the cumulative fund balances of the State, excluding the capital assets and non-fund liabilities of the governmental funds and fund balances of the exempt enterprises. The majority of these fund balances are not available for appropriation due to legal and contractual restrictions.

Net adjustments of $433,902 to the beginning fund balances occurred for various reasons. This amount consists of two prior period adjustments. In Fiscal Year 2002-03 the Department of Regulatory Agencies accrued $1,866,370 in revenue related to prior years. Thus, increasing the beginning district reserve balance by that amount.

Additionally, in Fiscal Year 2001-02, the State Controller's Office eliminated $1,432,468 of intrafund payables between the district and the Higher Education Enterprises in its normal financial statement preparation process. The effect of that was to overstate the district beginning fund balance by that same amount. Thus, the beginning fund balance was reduced by the $1,432,468 in Fiscal Year 2002-03 to correct for this previous year overstatement.

Qualification of enterprises consisted of the reduction of $7,058,674 for the assets of the Canteen Fund that became part of Correctional Industries on July 1, 2002 (see Note 6), and increased by $8,812,418 for the assets of the nursing homes that were disqualified as TABOR enterprises (see Note 8).

NOTE 12. SPENDING LIMIT ADJUSTMENTS

The amount of $(2,292,298) for spending limit adjustments is the net result of two errors in Fiscal Year 2001-02 revenues. The Department of Revenue overstated TABOR revenues $4,158,668 by originally classifying Elderly Property Tax/Rent/Heat

Rebate as an expenditure instead of a refund of tax revenue.

The Department of Regulatory Agencies understated Fiscal Year 2001-02 revenue by not accruing $1,866,370 in professional license fees allocable to that year.

It is the policy of the state to correct the Fiscal Year Spending Limit base for any known errors that occurred in prior years even if they were not material to the state's financial statements.

NOTE 13. ENTERPRISE QUALIFICATION

TABOR specifies that qualification and disqualification of enterprises shall change the district bases.

The Canteen Fund in the Department of Corrections became qualified on July 1, 2002. The Fiscal Year 2001-02 TABOR base was reduced by $10,572,979, which is the amount of the Canteen Fund's 2001-02 TABOR non-exempt revenues. This removes the Canteen Fund from the base before the TABOR growth limit is applied.

NOTE 14. SOURCES OF TABOR GROWTH LIMITS

The allowable increase in state fiscal year spending equals the sum of inflation and the percentage change in state population in the prior calendar year, adjusted for voter approved revenue changes. Inflation is defined in C.R.S. 24-77-102(8) as "the percentage change in the consumer price index for the Denver-Boulder Consolidated Metropolitan Statistical Area For All Urban Consumers, All Goods, as published by the U.S. Department of Labor."

The percentage change for calendar year 2001 used in this report was provided by the Office of State Planning and Budgeting and consisted of 2.2 percent for population growth and 4.7 percent for inflation.

NOTE 15. GROWTH DIVIDEND

The 2000 Federal Census adjusted the change in the State's population between 1999 and 2000 by 6.0 percent to account for a larger than estimated population change in the State during the 1990s. If the estimates of the State's population change had been more accurate then the State would have been able to retain larger amounts of the TABOR non-exempt revenues to meet the needs generated by this growth.

Thus, the General Assembly passed legislation in the 2002 Session that recaptures the revenues lost because of the error in the population estimates. This is commonly referred to as the growth dividend. The growth limit of 6.9 percent between Fiscal Years 2001-02 and 2002-03 presented in the Schedule represents only the current inflation and population portion of the allowable growth. The 6.0 percent population adjustment that could be included will be preserved by the state and used to increase the allowable growth in the future. The state may retain the growth dividend until the 6.0 percent is exhausted, or until the current decade lapses, whichever occurs first.

NOTE 16. FUTURE REFUNDS

In the 1999 regular session, the General Assembly enacted mechanisms to refund Fiscal Year 1998-99 and subsequent years' excess revenue. In succeeding sessions the General Assembly has enacted additional mechanisms to refund the excess revenue. The laws enacted to refund the TABOR liability are:

1. An earned income tax credit of 10 percent.
2. An income tax credit for foster parents.
3. A business personal property tax credit.

4. An income tax credit for qualified individuals who save for post-secondary education, purchase a first home, or start a business.
5. An interest, dividend, and capital gains exclusion up to $1,200 for individuals and $2,400 for couples.
6. An income deduction for capital gains taken on assets purchased prior to May 9, 1994 and held for at least five years.
7. An income tax credit to health and dental care providers who practice in certain rural areas.
8. An income tax credit that is a percentage of the federal child care credit.
9. A reduction in the annual registration fees for motor vehicles.
10. An income tax credit for contributions to high technology scholarships.
11. An additional income tax deduction of another $300 ($600 for a couple) for interest, dividend, and capital gains over that listed above.
12. A sales tax refund when that tax is above a rate of 0.01 percent and is imposed on new or used commercial trucks or other vehicles that are used in interstate commerce and have a gross weight of more than 26,000 pounds.
13. An income tax deduction for charitable contributions in excess of $500 made by individuals who claim the standard deduction.
14. A sales tax exemption for certain pollution control devices.
15. An income tax credit for contributions to the Colorado Institute for Telecommunications Education.
16. An income tax credit for the cost of health benefit plans not paid by the employer or deducted from the individual's federal adjusted gross income.
17. An income tax credit for eligible agricultural value-added cooperatives.
18. An expansion of the capital gains modification to include capital gains realized in tax years beginning on or after January 1, 1999, as well as a reduction of the holding period from five years to one year.
19. Any remaining amount is given to all full-year Colorado residents 18 years and older as a refund of sales taxes.

    The sales tax refund is a fixed amount for each of six tiers of federal adjusted gross income. The Department of Revenue calculates the amount of the individual refund for each tier as a statutory percentage of the total sales tax refund divided by the number of anticipated taxpayers in each tier.

Since the State does not have excess revenues in Fiscal Year 2002-03 none of the statutory refund mechanisms will be used until the State is required to make a refund of future year's excess revenues.