

## NOTES TO THE TABOR SCHEDULE OF REQUIRED COMPUTATIONS

### **NOTE 1. PURPOSE OF THE SCHEDULE OF REQUIRED COMPUTATIONS**

The purpose of the Schedule of Required Computations is to determine and document compliance with Title 24 Article 77 of the Colorado Revised Statutes, which is the implementing statute for Article X Section 20 of the State Constitution (TABOR). The report is required to include at a minimum State fiscal year spending, reserves, revenues, and debt. The schedule also includes a calculation of the limit on fiscal year spending, a calculation of the excess State revenues cap under Referendum C (See Note 9), and the amount required to be refunded or the amount of excess revenue retained by law, as well as all related adjustments.

TABOR has many provisions including a requirement for a vote of the people for new taxes or tax rate increases and a limit on the amount of fiscal year spending. Fiscal year spending is defined as District expenditures and reserve increases except those expended from exempt sources, such as gifts, federal funds, damage awards, property sales, reserves, and other items. This definition, while focused on spending is essentially a limitation on revenue retention because reserve increases are unspent revenues. Therefore, the terms fiscal year spending and nonexempt revenue are used interchangeably throughout these notes.

The limit on revenue retention is based on an allowable growth percentage (See Note 12) applied to the lesser of the prior year's revenues or the prior year's limit. Revenues in excess of the limit are required to be refunded to taxpayers unless voters approve retention of the excess. In the 2005 general election, voters approved Referendum C, which allowed the State to retain revenues in excess of the limit for a five-year period. Beginning in Fiscal

Year 2010-11, under Referendum C provisions, revenues are refunded only when they exceed the excess State revenues cap (See Note 9).

### **NOTE 2. 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) for governmental entities except where an irreconcilable difference exists between GAAP, and State statute or the provisions of Article X Section 20 of the State Constitution (TABOR).

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

### **NOTE 3. DEFINITION OF THE DISTRICT**

TABOR defines the District as "the State or any local government, excluding enterprises." It further defines an 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) an institution or group of institutions of higher education that has been designated as an enterprise;

(III) any special purpose authority;

(IV) any organization declared to be a joint governmental entity.

The General Assembly has designated the following as enterprises excluded from the District:

- ◆ State Lottery,
- ◆ College Assist,
- ◆ CollegeInvest,
- ◆ Division of Parks and Wildlife,
- ◆ State Nursing Homes,
- ◆ Division of Correctional Industries,
- ◆ Petroleum Storage Tank Fund,
- ◆ State Fair Authority,
- ◆ Division of Brand Inspection,
- ◆ Clean Screen Authority,
- ◆ Capitol Parking Authority,
- ◆ Statewide Transportation Enterprise,
- ◆ Statewide Bridge Enterprise,
- ◆ Unemployment Insurance Enterprise.

It further established a statutory mechanism that allows governing boards of the institutions of higher education to designate certain auxiliary operations as enterprises, which are also exempt from TABOR. Senate Bill 189 enacted in the 2004 legislative session expanded the authority for each governing board of the State institutions of higher education to designate the entire institution as a TABOR exempt enterprise. The Board of Regents of the University of Colorado designated the entire University of Colorado as an enterprise during Fiscal Year 2004-05, and the remaining boards designated their institution as enterprises in Fiscal Year 2005-06. The

Auraria Higher Education Center Board of Directors did not designate all of its activities as a TABOR enterprise, but it continues to have selected activities designated as a TABOR enterprise.

Although the General Assembly and governing boards have designated certain enterprises as exempt from TABOR, those enterprises must continue to meet the criteria of a government-owned business authorized to issue its own revenue bonds and annually receiving less than 10 percent of its revenue in grants from all Colorado state and local governments combined. The State Fair Authority remained disqualified for Fiscal Year 2014-15.

#### **NOTE 4. 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 Transportation Revenue Anticipation Notes (TRANS) issued by the Colorado Department of Transportation do not constitute debt of the State as defined in Article XI Section 3 of the State Constitution. However, the Supreme Court ruled that the TRANS are a multiple-fiscal year obligation as defined by Article X Section 20 of the State Constitution, thus requiring an approving election before issuance. In November 1999 the voters approved the issuance of \$1.7 billion of TRANS.

#### **NOTE 5. EMERGENCY RESERVES**

TABOR requires the reservation, for declared emergencies, of 3 percent or more of fiscal year spending, excluding bonded debt service payments. This requirement for FY 2014-15 totals \$375,923,166. At June 30, 2015, the net assets of the following funds were designated

as the reserve, up to the limits set in the Long Appropriations Act:

- ♦ Major Medical Fund – \$83,000,000.
- ♦ Wildlife Cash Fund – \$34,000,000.
- ♦ Perpetual base account of the Severance Tax Fund – \$33,000,000.
- ♦ Colorado Water Conservation Board Construction Fund – \$33,000,000.
- ♦ Controlled Maintenance Trust Fund – \$68,328,000.
- ♦ Unclaimed Property Tourism Promotion Trust Fund - \$5,000,000.

The 2014 legislative session Long Appropriations Act designated up to \$105,172,000 of State properties as the remainder of the Fiscal Year 2014-15 emergency reserve. The estimate of the needed reserve was based on the December 2014 revenue estimate prepared by Legislative Council. Because revenues subject to the TABOR reserve requirement were more than estimated, the amount designated for the reserve was \$13,834,608 less than required by the State Constitution. There is no process by which the General Assembly can adjust the designated reserve after the end of the legislative session when the total TABOR revenues are finally known. In the event of an emergency that exceeds the financial assets in the reserve, the designated Wildlife Cash Fund capital assets and general capital assets would have to be liquidated to meet the constitutional requirement.

#### **NOTE 6. STATUS OF REFUNDING**

When refunds are required they are distributed to individual State taxpayers based on a statutory mechanism as discussed in Note 16. The Department of Revenue makes distributions of the TABOR refund through the income tax refund process using estimates of the number of taxpayers expected to qualify for the TABOR refund. Because the exact number of qualifying taxpayers cannot be known in advance, the

estimates may result in over or under distribution of the required refund throughout the four-year period allowed for amended tax returns.

As required by statute, under-distributions of refunds are carried forward to subsequent years and added to the required refund. Over-distributions of refunds are also carried forward to subsequent years and are used to offset any future refund liability. The statute requires the over/under refund carry forward to be applied in the year following the year in which the refund is required to be made, which results in a two year lag between the recording of the excess revenue and the adjustment for over or under refunds of those excess revenues.

At the beginning of Fiscal Year 2014-15 the State had an outstanding TABOR refund liability of \$705,716 related to Fiscal Year 2004-05 nonexempt revenues in excess of the limit. It also had a \$2,899,667 carry forward of prior years' net understatement of refunds. These amounts, combined with the current fiscal year's excess revenue of \$169,740,274 are required to be refunded in Fiscal Year 2015-16. The total amount of the refund liability at June 30, 2015 is \$173,345,657.

#### **NOTE 7. OTHER SOURCES AND ADDITIONS**

The \$567.1 million reported in this line item primarily comprises: \$339.6 million of pension and other employee benefit trust fund investment earnings and additions by participants; \$110.3 million of permanent and trust fund additions; \$94.5 million of prior year expense reimbursements and rebates; \$16.4 million of local government expenditures recorded by the State as revenues and expenditures to meet grant matching-funds requirements; \$2.0 million of inter-fund transfers; \$1.9 million of insurance recovery proceeds; and \$2.4 million of other revenue.

**NOTE 8. VOTER APPROVED REVENUE CHANGES**

When State voters approve a revenue change, the resulting revenues are exempt from the TABOR limit on fiscal year spending. The following revenue changes were approved by voters:

- ♦ In the 1998 general election, voters approved a citizen-initiated law, C.R.S. 25-8-501.1 – Regulation of Commercial Hog Facilities, which instituted a permit fee. The State collected \$295,109 and \$274,023 from this exempt source in Fiscal Years 2014-15 and 2013-14, respectively.
- ♦ In the 2000 general election, voters approved a citizen-initiated 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 recorded \$1,755,780 and \$3,174,259 including interest and unrealized gains/losses from this revenue source in Fiscal Years 2014-15 and 2013-14, respectively.
- ♦ In the 2000 general election, voters approved a citizen-initiated amendment that added Section 17 to Article IX of the State Constitution. This amendment created the State Education Fund and diverted the revenues from a tax of one-third of one percent on taxable income of individuals, corporations, estates, and trusts from the General Fund to the State Education Fund. It also exempted the revenue from TABOR. The amendment was effective January 1, 2001, and resulted in \$527,913,909 and \$490,420,006 of tax revenues, interest, and unrealized gains/losses, being excluded from fiscal year spending in Fiscal Years 2014-15 and 2013-14, respectively.
- ♦ In the 2004 general election, voters approved a citizen-initiated amendment that added Section 21 to Article X of the State Constitution. The amendment authorized additional cigarette and tobacco taxes (3.2 cents per cigarette and 20 percent of manufacturer’s list price for other tobacco products) effective January 1, 2005. The amendment specified the use of the tax revenue generated for specific health related programs, and it exempted the revenue from the TABOR limitations. The State recorded \$145,902,309 and \$141,063,587 of tax revenues, interest, transfers, and unrealized gains/losses from this exempt source in Fiscal Year 2014-15 and 2013-14, respectively.
- ♦ In the 2005 general election, Colorado voters approved Referendum C – a measure referred to the voters by the Legislature. The referendum allowed the State to retain revenues in excess of the TABOR limit for a period of five years, and it stated that the excess revenue retained qualified as a voter approved revenue change. However, in order to determine the amount retained, the Schedule of Required Computations includes the retained amount as nonexempt revenue. Therefore, the retained amount is not reported in this note as a voter approved revenue change (See Note 9).
- ♦ In the 2008 general election, voters approved an amendment required to implement locally approved changes to the parameters for Limited Gaming under Section 9(7) of Article XVIII of the Colorado Constitution. This amendment allowed the residents of Central City, Black Hawk, and Cripple Creek to vote to extend casino hours, approve additional games and increase the maximum single bet limit. It required distribution of most of the gaming tax revenue that resulted from the new gaming limits to Colorado community colleges and to gaming cities and counties, and it exempted the new revenue from state

and local revenue and spending limits. The State collected \$12,034,922 and \$9,664,337 of extended limited gaming revenue in Fiscal Year 2014-15 and 2013-14, respectively.

- ♦ In the 2013 general election, Colorado voters approved Proposition AA, a measure referred to the voters by the Legislature. The proposition authorized a 15 percent state excise tax on the average wholesale price of retail marijuana, and, in addition to the existing 2.9 percent state sales tax, an additional 10 percent state sales tax on retail marijuana and retail marijuana products, effective January 1, 2014. The amendment specified the use of the excise tax revenue generated for public school construction (for the first \$40.0 million collected) with any additional excise revenue generated to be used for marijuana regulation.

For the additional state sales tax, 15 percent of the revenues generated are allocated to the cities and counties that allow retail marijuana sales to consumers. The measure was silent as to the use of the revenue by cities and counties. In addition, the remaining amount of sales tax revenue generated is to be used for health, public safety, and education costs, in addition to funding the regulatory structure. The excise tax and additional sales tax revenue are exempted from the TABOR limitations.

The State recorded \$24,034,273 in state excise tax and \$42,062,370 of additional state sales tax revenues from these exempt sources in Fiscal Year 2014-15.

**NOTE 9. REFERENDUM C**

Referendum C was placed on the ballot by the General Assembly and was approved by the voters in the November 2005 election. It contained the following provisions:

- ♦ The State was authorized to retain and spend all revenues in excess of the limit on fiscal year spending after July 1, 2005, and before July 1, 2010 (five fiscal years). The authorization constituted a voter approved revenue change.
- ♦ After July 1, 2010, the State is allowed to retain revenues in excess of the limit on fiscal year spending up to a newly defined excess State revenues cap (ESRC). The excess State revenues cap is the highest population and inflation-adjusted nonexempt revenue amount in the period from July 1, 2005, to June 30, 2010, also adjusted for qualification and disqualification of enterprises. This provision effectively disabled the ratchet down provision of TABOR during the five-year period. (The ratchet down is a term used to describe the TABOR provision that requires each year's base for calculating the limit to be the lesser of the prior year's revenues or the prior year's limit.)
- ♦ A General Fund Exempt Account was created within the General Fund to consist of the retained revenues for each fiscal year of the retention period. The Legislature shall appropriate the moneys in the account for health care, education (including related capital projects), firefighter and police pension funding (for local governments), and strategic transportation projects.
- ♦ The Director of Research of the Legislative Council is required to report the amount of revenues retained with a description of how the retained revenues were expended.
- ♦ The State Controller's annual report demonstrating compliance with the statutes implementing TABOR is required to include the amount of revenues that the State is authorized to retain and expend.

With the end of the Referendum C five-year excess revenue retention period, the State was subject to an ESRC starting in Fiscal Year 2010-

11. Calculation of the original TABOR limit continues to apply, but the ESRC replaces the previous TABOR limit for triggering taxpayer refunds.

Since the inception of Referendum C in Fiscal Year 2005-06 the State has retained \$12,376,623,897; \$3,593,602,662 during the initial five-year revenue retention period, and an additional \$8,783,021,235 as a result of the ESRC limit exceeding the Fiscal Year Spending limit in Fiscal Years 2010-11 through 2014-15.

**NOTE 10. TABOR ELECTION PROVISIONS**

Article X Section 20 of the State Constitution (TABOR) provides that if the first year of a tax increase exceeds the Blue Book estimate for those taxes, the State must refund the combined excess of tax revenues generated. Any excess must be refunded to the taxpayers in the next fiscal year, unless the State receives voter approval to keep the revenue.

Two estimates must be provided to voters upon approval of a new tax: 1) an estimate of total state revenue subject to the TABOR spending limit and 2) an estimate of revenue from the new tax. If actual revenue exceeds either estimate, the State must issue a refund of the excess up to the amount collected from the new tax.

In 2012, voters approved Amendment 64 legalizing the sale and use of retail marijuana. Later, a “Yes” vote on Proposition AA authorized the State to collect excise and sales taxes on retail marijuana. In Fiscal Year 2014-15 total revenue subject to TABOR limits exceeded the 2015 Blue Book Estimate of \$12.08 billion by approximately \$270 million. Revenue from retail marijuana taxes was \$1.0 below the estimate. That being the case, the state would nevertheless have been required to

refund \$66.1 million of retail marijuana sales and excise tax revenue.

In the general election held in November 2015, voters approved Proposition BB allowing the State to retain and spend the \$66.1 million of revenue, exempting marijuana tax revenue from TABOR spending limits.

**NOTE 11. DISTRICT RESERVES**

District reserves are the cumulative fund balances of the State reported in the State’s Comprehensive Annual Financial Report at the fund level rather than the government-wide level. District reserves therefore exclude capital assets, liabilities that are not recorded in governmental funds at the fund level (primarily long-term liabilities), as well as net assets of the TABOR enterprises. The majority of these funds include balances not available for general appropriation due to legal and contractual restrictions.

**NOTE 12. PRIOR PERIOD DISTRICT FUND BALANCE ADJUSTMENTS**

Total Prior Period District Fund Balance Adjustments decreased the TABOR District fund balances in total by \$347,542,331.

**A. PRIOR PERIOD ADJUSTMENTS**

The prior period adjustment of fund balance reported in the State’s Comprehensive Annual Financial Report decreased the TABOR District fund balance by \$6,625,696 as follows:

The Department of Health Care Policy and Financing decreased the district’s beginning net assets by \$6,625,696 for having misstated, in the prior year, the Home Clinical Pastoral Education receivable due from the federal government.

## **B. ACCOUNTING CHANGES**

As reported in the State's Comprehensive Annual Financial Report, during Fiscal Year 2014-15, the State implemented GASB Statement No. 68 – Accounting and Financial Reporting for Pensions – an Amendment of GASB Statement No. 27. As a result of this implementation, the beginning net assets of the District were decreased by \$340,916,635 by recording the State's share of the Colorado Public Employees' Retirement Association's (PERA) calendar year 2014 net pension liability, and contributions to PERA from January 1, 2014 to June 30, 2014.

### **NOTE 13. SOURCES OF TABOR GROWTH LIMIT**

The allowable percentage increase in State fiscal year spending equals the sum of inflation and the percentage change in State population in the calendar year ending six months prior to the start of the fiscal year. 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 4.3 percent allowable growth rate comprises a 1.5 percent increase for population growth (census date population for 2013 compared to census date population for 2012) and a 2.8 percent increase for inflation.

### **NOTE 14. SPENDING LIMIT ADJUSTMENTS**

With the addition of the excess State revenue cap calculation, adjustments may impact Fiscal Year Spending, the ESRC, or both.

In Fiscal Year 2014-15, there was a \$961,845 adjustment to decrease both Fiscal Year 2013-14 Tabor Spending and the ESRC before application of the 4.3% allowable growth rate. The purpose of these reductions was to eliminate a non-comparability problem

between fiscal years caused a change in accounting methodology, due to implementation of a new enterprise resource planning system (the "system") in Fiscal Year 2014-15. The change in methodology is described by an example.

In the State's financial operations, a single expenditure is often made from a budget line containing multiple funding sources. The previous system's limitations however, allowed that expenditure to be paid from only one of the funding sources. To work around this limitation, when multiple cash funds were to be the source of a single payment, cash from those funds would have to be transferred as revenue to the General Fund. The General Fund would then pay the expenditure. In that type of transaction, whenever revenue in the General Fund was transferred from a Tabor enterprise, that revenue became an addition to the Tabor revenue base. In Fiscal Year 2014-15 with the State's new system, transfers of revenue from cash funds to the General Fund, made solely in order to expend funds from multiple sources, became unnecessary because the new system is capable of recording such transactions.

Since the State's new system is designed to manage single payments from multiple sources, a new accounting methodology was implemented for the type of scenario described above, whereby each funding source in an expenditure transaction is reduced by its proportional share of the appropriated budget.

The \$961,845 reduction to the Fiscal Year 2013-14 bases, before application of the allowable growth rate, was made to eliminate the non-comparability problem in Tabor revenue between the prior year fiscal year and current year fiscal year. Tabor revenue was higher in Fiscal Year 2014 than in Fiscal Year 2015 due to transfers of cash from Tabor enterprises that were unnecessary in the current year.

**NOTE 15. ENTERPRISE  
QUALIFICATION AND  
DISQUALIFICATION**

The TABOR amendment to the State Constitution specifies that qualification and disqualification of enterprises shall change the District base. In order to ensure comparability between the base and current year nonexempt revenue, when an activity qualifies as an enterprise the base is reduced by the activity's prior year nonexempt revenue offset by revenue that would have been counted as nonexempt due to the activity's interaction with other State agencies. When a TABOR enterprise becomes disqualified, its current year nonexempt revenue is added to the base after application of the population and inflation growth adjustment and its prior year payments to other State agencies are removed from the base (before application of the allowable growth rate).

The Qualification/Disqualification of Enterprises line in the Computation of District Fund Balance Changes section shows a net increase in fund balance of \$132,818, an adjustment to the prior year District fund balance for the disqualification of certain activities at Adams State University.

Apart from the adjustment noted above, there were no changes during Fiscal Year 2014-15 in the enterprise status of any state entity.

**NOTE 16. TREATMENT OF AMOUNTS  
HELD FOR FUTURE REFUND**

CRS 24-77-103.5 requires that errors in the amount to be refunded be corrected in the year that they are discovered. In Fiscal Year 2014-15, no errors were identified that affected the prior year TABOR refunds being carried forward under Referendum C. The \$2,899,667 carry forward of prior years' net understatement of refunds, along with \$705,716 of TABOR refunds payable from excess amounts over the Fiscal Year 2004-05 Spending Limit and the

current year \$169,740,274 amount in excess of the revenue cap will be refunded in Fiscal Year 2015-16.

**NOTE 17. FUTURE REFUNDS**

In the 2010 legislative session, Senate Bill 212 removed all prior alternative mechanisms for refunding TABOR revenues in excess of the fiscal year spending limit except for the earned income tax credit refund mechanism. Also passed in the 2010 session, House Bill 10-1002 created a temporary income tax rate reduction, applicable beginning in Fiscal Year 2010-11, as an additional refunding mechanism.

On October 1, 2015, the Department of Revenue reported that for the 2015 tax year, the earned income tax credit mechanism would be applied when the refund exceeded \$97.7 million. After 2015 the Earned Income Tax Credit becomes permanent and will no longer be a TABOR refund mechanism.

After application of a temporary income tax rate reduction from 4.63 percent to 4.50 percent and the earned income tax credit mechanism, any remaining amount is distributed to all full-year Colorado residents 18 years and older as a refund of sales taxes. When the refund is estimated to be under \$15 for each qualified taxpayer, an identical amount is refunded to each qualified taxpayer. When the sales tax refund is estimated to be over \$15 for each qualified taxpayer, a fixed amount is set 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.