

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 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 2012-13.

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 2012-13 totals \$333,220,227. At June 30, 2013, 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 – \$92,500,000.
- ♦ 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 – \$23,000,000. The \$23,000,000 designation by the Legislature has been reduced by \$20,150,000 since that amount was transferred out of the TABOR emergency reserve to the Disaster Emergency Fund per the Governor’s Executive Orders to pay the cost of fighting wildfires in the State.
- ♦ Unclaimed Property Tourism Promotion Trust Fund - \$5,000,000.

The 2012 legislative session Long Appropriations Act designated up to \$102,200,000 of State properties as the remainder of the Fiscal Year 2012-13 emergency reserve. The estimate of the needed reserve was based on the December 2012 revenue estimate prepared by Legislative Council. Because the revenues subject to the TABOR reserve requirement were more than estimated, the amount designated for the reserve was \$10,520,227 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 exceeded the financial assets in the reserve, the designated Wildlife Cash Fund capital assets and general capital assets would have had 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 the 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 2012-13 the State had an outstanding TABOR refund liability of \$705,716 related to Fiscal Year 2004-05 nonexempt revenues in excess of the limit. Because of late filed and amended tax returns, the State may continue to adjust the outstanding unrefunded balance for up to four years after the excess revenues are recorded. At the end of Fiscal Year 2012-13, the same \$705,716 liability remained to be refunded. Since Referendum C precluded refunds through Fiscal Year 2009-10, and the State has not exceeded the excess State revenues cap in Fiscal Years 2010-11, 2011-12, or 2012-13 the unrefunded balance is being carried forward on the Schedule of Required Computations and will be added to the next refund that is required by Referendum C, TABOR, and the related implementing statutes.

NOTE 7. OTHER SOURCES AND ADDITIONS

The \$740.1 million reported in this line item primarily comprises: \$316.3 million of pension

and other employee benefit trust fund investment earnings and additions by participants; \$236.3 million of Certificate of Participation (COPs) proceeds, \$176.6 million of permanent and trust fund additions, reimbursements of prior year expenditures, reversions, and other miscellaneous exempt revenues; and \$10.9 million of local government expenditures recorded by the State as revenues and expenditures to meet grant matching-funds requirements.

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 \$273,073 and \$276,258 from this exempt source in Fiscal Years 2012-13 and 2011-12, 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 \$3,770,714 and \$6,453,341 including interest and unrealized gains/losses from this revenue source in Fiscal Years 2012-13 and 2011-12, 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 \$487,610,257 and \$411,729,626 of tax revenues, interest, and unrealized gains/losses, being excluded from fiscal year spending in Fiscal Years 2012-13 and 2011-12, 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 \$145,591,105 and \$149,464,082 of tax revenues, interest, transfers, and unrealized gains/losses from this exempt source in Fiscal Year 2012-13 and 2011-12, 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 elections, 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 \$9,591,704 and \$9,401,325 of extended limited gaming revenue in Fiscal Year 2012-13 and 2011-12, respectively.

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 ESRC 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 \$7,697,478,533; \$3,593,602,662 during the initial five-year revenue retention period, and an additional \$4,103,875,871 as a result of the ESRC limit exceeding the Fiscal Year Spending limit in Fiscal Years 2010-11, 2011-12 and 2012-13.

NOTE 10. 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 11. PRIOR-PERIOD DISTRICT
FUND BALANCE
ADJUSTMENTS**

The prior period adjustments of fund balance reported in the State's Comprehensive Annual Financial Report, increased the TABOR District fund balances in total by \$13,106,626 as follows:

- ♦ The Department of Personnel and Administration decreased the district's beginning net assets by \$19,777 when it paid Western State Colorado University to assume responsibility for claims and liabilities in the General Liability Fund that would otherwise have been current liabilities of the fund in Fiscal Year 2011-13.
- ♦ The State Historical Society increased the district's beginning net assets by \$547,428 when corrected entries were recorded related to errors in bonds and Certificates of Participation in prior fiscal years.
- ♦ The State Land Board, within the Department of Natural Resources, increased the district's beginning net assets by \$578,975. The Land Board failed to record leasing activity for the Loveland Technology Center and the School Fund in Fiscal Year 2011-12. The Department recorded the deferred gains as an increase to beginning fund balance in Fiscal Year 2012-13.
- ♦ The Colorado Water Conservation Board, within the Department of Natural Resources, increased the district's beginning net assets by \$12,000,000. The Water Conservation Board reclassified a water purchase that occurred in Fiscal Year

2011-12 from an asset used in its operations to resale inventory.

**NOTE 12. 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 5.4 percent allowable growth rate comprises a 1.7 percent increase for population growth (census date population for 2011 compared to calendar year estimated population for 2010) and a 3.7 percent increase for inflation.

**NOTE 13. SPENDING LIMIT
ADJUSTMENTS**

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

**A. ADJUSTMENTS RELATED TO
FISCAL YEAR SPENDING**

In Fiscal Year 2012-13, the State decreased the fiscal year spending limit base by \$27,736,497 before applying the 5.4 percent allowable growth rate as follows:

Beginning in Fiscal Year 2012-13, the State changed the methodology used in recording bad debt expense based on GASB Q&A 7.40.3 and 7.72.2. This guidance requires that the amount recorded in bad debt expense be reflected as an adjustment to revenues, rather than as an expense. The following adjustments were made as a result:

- ♦ The Department of Labor and Employment overstated Fiscal Year 2008-09 nonexempt revenue by \$5,994,886 and in Fiscal Year 2009-10 by \$20,222,838. These adjustments did not require any prior period adjustments in Fiscal Year 2012-13, as they did not impact net assets as of June 30, 2013.
- ♦ Fort Lewis College, part of the Department of Higher Education, overstated Fiscal Year 2008-09 nonexempt revenue by \$104,930 and in Fiscal Year 2009-10 by \$94,736. These adjustments did not require any prior period adjustments in Fiscal Year 2012-13, as they did not impact net assets as of June 30, 2013.
- ♦ Colorado Mesa University, part of the Department of Higher Education, overstated Fiscal Year 2009-10 nonexempt revenue by \$99,022. This adjustment did not require a prior period adjustment in Fiscal Year 2012-13, as it did not impact net assets as of June 30, 2013.

The Fiscal Year 2008-09 allowable growth of 5.8 percent was applied to the Fiscal Year 2008-09 errors, resulting in a net reduction of \$6,453,605. The Fiscal Year 2009-10 allowable growth of 1.2 percent was applied to the adjustments for that Fiscal Year and the \$20,416,596, resulting in a reduction of \$27,192,644. The Fiscal Year 2011-12 growth rate of 2.0 percent was applied to the \$27,192,644, resulting in a reduction of \$27,736,497. The Fiscal Year 2012-13 growth rate of 5.4 percent is applied on the face of the Schedule of Computations.

**B. ADJUSTMENTS RELATED TO
EXCESS STATE REVENUES CAP**

In Fiscal Year 2012-13, there were no adjustments to the excess State revenues cap (ESRC) before the application of the 5.4 allowable growth rate.

**NOTE 14. 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).

During Fiscal Year 2012-13, the State Forest Service – Wildfire Functions was transferred from Colorado State University (a designated TABOR enterprise) to the Department of Public Safety (nonexempt from TABOR). The following adjustments have been made:

- ♦ The Fiscal Year 2012-13 unadjusted fiscal year spending limit and the unadjusted excess State revenues cap were decreased by \$197,000 to remove Fiscal Year 2011-12 nonexempt revenue recorded by State agencies that received payments from the State Forest Service – Wildfire Functions. This adjustment is necessary so that the revenue counted in the Fiscal Year 2011-12 fiscal year spending limit is comparable to the Fiscal Year 2012-13 nonexempt district revenues. Because the State Forest Service-Wildfire Functions is not a qualified TABOR enterprise in Fiscal Year 2012-13, payments received from the Wildfire Functions are internal to the State’s TABOR district, and therefore, not counted against the Fiscal Year 2012-13 fiscal year spending limit. This adjustment removed from the base the comparable revenues received by state agencies in Fiscal Year 2011-12 and is shown on the Other Agency Prior Year Revenues from Disqualified Enterprises line.
- ♦ The Fiscal Year 2012-13 unadjusted fiscal year spending limit and the unadjusted excess State revenues cap was increased by \$1,987,464 in order to make the disqualification of the State Forest Service – Wildfire Functions neutral in regard to measuring excess fiscal year spending. Since the program was counted as a TABOR exempt enterprise in Fiscal Year 2011-12, the revenues were not counted in the prior fiscal year and were not reflected in the base (prior to this adjustment). For Fiscal Year 2012-13, the revenues are counted, since the Department of Public Safety is part of the District. In order for the two years to be comparable, the revenues

for the State Forest Service – Wildfire Functions for Fiscal Year 2012-13 have been added to the unadjusted fiscal year spending limit and are shown on the Disqualification of Enterprises line.

On January 31, 2013, the Colorado Geological Survey was transferred from the Department of Natural Resources to the Colorado School of Mines, a TABOR enterprise. With this transfer, the Colorado Geological Survey is a qualified TABOR enterprise. Due to this transfer, the following adjustments have been made:

- ♦ The Qualification of Enterprises line, and the Other Agency Revenues From Qualification of Enterprises line in the Fiscal Year 2012-13 Computation of Spending Limitations section of the report show (\$99,355) and \$80,333 respectively, which are both related to the transfer of the Colorado Geological Survey. Because the transfer was made mid-year, these amounts are only reflecting partial year activity, with the remainder being reflected in the next fiscal year.

The Qualification/Disqualification of Enterprises line in the Computation of District Fund Balance Changes section on the Schedule of Required Computations shows a net increase in fund balance of \$5,850,621. Of this amount, an increase of \$6,721,283 was related to the transfer of the Wildfire Functions, and (\$870,662) was related to the transfer of Colorado Geological Survey.

NOTE 15. 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 2012-13, no errors were identified that affected the prior year TABOR refunds that are being carried forward under Referendum C. The \$2,899,667 of net understatement of prior year refunds will be refunded in the first fiscal year in which the State is required to distribute a TABOR refund.

The unrefunded amount of \$705,716 from Fiscal Year 2004-05 will also be refunded at that time.

NOTE 16. 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. The Department of Revenue reported that after the adjustment for personal income the earned income tax credit mechanism will be applied when the refund exceeds \$94.5 million.

After application of the 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.

Due to total nonexempt district revenues falling below the excess State revenues cap, there was no refund required for Fiscal Year 2012-13, and therefore, none of the refund mechanisms discussed above were active in Fiscal Year 2012-13.

NOTE 17. SUBSEQUENT EVENTS

On November 5, 2013, the voters of the State of Colorado approved Proposition AA, which established an excise tax and a special sales tax on retail marijuana. These taxes are not subject to the limitations on revenue, spending or appropriations contained in Section 20 of Article X of the State Constitution (TABOR).