

TABOR Legislative Handbook

CHAPTER ONE: ECONOMIC ISSUES

Colorado has both statutory and constitutional tax and spending limits. The statutory limit began in 1978, and was amended in 1991. The constitutional limit, TABOR (Taxpayers Bill of Rights), passed in 1992. These limits have different impacts on state finance.

I. State tax and spending limits

A. The statutory limit

In 1978, the General Assembly passed a state spending limit of 7% annual growth in general fund (GF) spending. The limit constrained state spending growth for a time. But by the mid-80s, Colorado was in a major economic slump. The private sector contracted, but the public sector grew.

In the 1980s, legislators increased many taxes to finance program expansion. The most significant of these was the 1987 income tax increase. Before 1987, the state income had graduated rates, starting at 3% and rising to 8%. The average collected rate was 4.35%. In 1987, the graduated rate was replaced with a flat 5%. Thus, the average collected rate (the real tax burden) rose from 4.35% to 5%.

Thus, the effective tax rate was increased by 15% over its previous level.

The gas tax rate rose 214%, from 7 cents per gallon to 22 cents per gallon. The gas tax was kept outside the general fund limit.

Citizens petitioned for a stronger constraint. In 1986, 1988, and 1990, tax-limiting ballot issues gained an ever-larger share of the votes. In 1991, the general assembly cut the cap on spending growth from 7% to 6%, but state revenue still grew above 6%; the excess revenue was put into reserves.

B. The TABOR limits

In 1992, the TABOR Amendment, a citizen initiative authored by Douglas Bruce, was adopted by voters. TABOR limits the growth of most state revenue to inflation plus population. *TABOR limits do not apply to federal funds, private gifts, and a few other sources.* TABOR states that already-existing limits (like the statutory 6% cap on general fund spending growth) may be weakened only with voter approval.

The TABOR revenue limit was first exceeded in FY 97, resulting in a \$139 million tax refund the next year. The FY 98 refund was \$563 million. The FY 99 refund is expected to be \$758 million.

TABOR has had a quite different impact on state fiscal policy than has the statutory limit. The statutory limit covers only 40% of the budget (the general fund), and allows excessive growth in recessions and low-inflation, low-growth cycles. (State government spending can increase by 6% even when there is no inflation, and the state private economy is shrinking.) In contrast, TABOR covers about 60% of revenue and mirrors changes in population and inflation. Current TABOR-permitted revenue growth is under 5%. Over the next six years, the state will refund \$5.6 billion in revenues which exceed the TABOR limits.

TABOR also requires taxpayer approval to increase taxes. TABOR has worked exactly as designed, giving taxpayers the final say on proposed tax increases. In 1992, Governor Romer supported a 33% sales tax increase for K-12 schools (raising the state sales tax from 3 cents per dollar to 4 cents per dollars.) The Romer sales tax was soundly defeated by voters. In each of the next six years, the state ballot had either a tax increase or an attempt to circumvent TABOR. All have lost.

In 1997, Denver metro voters rejected a sales tax increase for light rail construction, 58-to-42%. The same year, a state gas tax increase lost 4-1. In 1998, a bid for half of excess revenue to be kept by the state for road and school construction was crushed, 62-to-38%. No state gives citizens more control over revenue decisions than Colorado.

II. The future of state finances under TABOR

A. Unsustainable growth in state spending

The American Enterprise Institute has ranked Colorado's economy as the strongest economy in the nation every year since TABOR passed. The state has increased general fund appropriations 6% per year, though that exceeds the overall growth rate permitted by TABOR. The state has also diverted over \$2 billion of GF money for capital construction. Existing reserves funded these actions. GF spending exceeds revenues because the state is now spending its reserves, an unsustainable policy.

The legislative staff projected state finances to the year 2003-04, based on unrealistic assumptions regarding capital spending. In FY 98, the general assembly moved \$198 million of GF money into capital construction; in FY 99, \$468 million. The legislative staff assumes yearly transfers into the capital budget of \$100 million from 2000 to 2002, and then a zero capital budget from the GF thereafter. But capital spending cannot fall to zero; that would nullify commitments made for highways, prisons, and education.

Assuming 6% spending growth, if the state continues to transfer funds into capital projects, the state will exhaust reserve funds and incur a budget deficit. If the transfer is \$468 million per year into capital construction, the state will incur a deficit in two years. If the transfer is \$198 million, the deficit is in six years. \$100 million per year will create a deficit in a decade. A recession will reduce revenue growth and exhaust reserve funds even sooner.

B. Consequences of an irresponsible state fiscal policy

Logic tells us that the TABOR limit on revenue growth, 5% or less per year, must become the constraint on spending growth as well. If general fund spending increases at 6% per year, with transfers of GF surpluses to capital projects, existing reserve funds will disappear. Since the Colorado Constitution requires a balanced budget, the General Assembly must eventually reduce spending growth to the revenue rate permitted by TABOR.

The rapid growth in state spending is not only unsustainable, it is inefficient. Transfers into the capital budget, plus roads, will boost construction spending \$637 million this year, followed by a sharp drop in public works spending. Highway bonds (to be raised under HB99-1325, if approved by the voters in November 1999) will only postpone the inevitable correction, and aggravate it with an additional \$500 million in interest. The state will have to pay very high wages and prices to attract resources for increased construction spending this year, then drastically cut spending once reserves are depleted.

Some members of the General Assembly may assume that when reserves are exhausted and deficits imminent, they can appeal to voters to spend excess TABOR revenue. Given voter support for TABOR when passed in 1992, defeat of seven consecutive tax and spending increases above the TABOR limit, and voter reliance on large yearly refunds, this is a risky strategy. A March 1999 Mind of Colorado survey showed that two-thirds of those polled would vote for TABOR if put on the ballot again.

The legislature must take a more realistic approach to state fiscal policy. Six percent yearly spending increases and the transfer of \$2 billion into capital projects cannot be sustained indefinitely. Voters have sent a clear message that TABOR is a permanent constraint on spending and revenue growth.

TABOR reflects the will of the people to constrain government growth. In this regard, TABOR supplements the balanced budget provisions, debt limits, and budgetary procedures in the original Colorado Constitution. To argue that TABOR does not reflect the will of the people is to deny over a century of our constitutional history.

C. Tax Refunds

Under the TABOR Amendment, the individual income tax accounts for more than 2/3 of the State surplus revenue. The individual and corporate income tax combined account for about 72% of the surplus revenue. The sales tax accounts for 15% and the other miscellaneous taxes and fees account for the remainder of the surplus.

Since 1997, when the TABOR limit was triggered, the state has refunded surplus revenue above the TABOR limit. During the 1999 session the Legislature enacted five bills providing for refunds of the surplus revenue collected under the TABOR Amendment. Three bills were enacted providing refunds estimated at \$694 million for FY 1998-99; and two additional bills were enacted providing total refunds estimated at \$546 million in FY 1999-2000.

The Legislature prioritized these refunds and set dollar limits determining when they would be triggered. When the TABOR surplus exceeds \$50 million, an earned income tax credit is implemented (House Bill 99-1383). When the surplus exceeds \$170 million, a business personal property tax refund is triggered (House Bill 99-1311). At a Tabor surplus of \$220 million, a certain level of dividends, interest, and capital gains are exempt from taxation (House Bill 99-1137). A Tabor surplus of \$260 million triggers a capital gains exemption for capital gains earned from the sale of Colorado assets (House Bill 99-1237). If the surplus is not totally refunded through one of these four mechanisms the excess surplus is refunded via a temporary sales tax refund (House Bill 99-1237).

Estimates of the amounts refunded by these different refund mechanisms provide us with clues regarding the motives of politicians in rebating surplus revenues. Most of the total surplus revenue will be refunded through HB 99-1001, the sales tax refund, accounting for 81% and 61% of the total refunds in 1999-00 and 2000-01 respectively. Note that the sales tax accounts for only 15% of the total surplus generated, yet it accounts for most of the refund of that surplus. HB 99-1383 providing for an earned income tax credit has the highest priority in allocating refund monies, but accounts for the smallest share of the total amount refunded, i.e. 4 to 6%. The other refund mechanisms providing refunds to business and individuals are linked to the ownership of property and or the receipt of unearned income will account for one third of the total amount refunded in FY 2000-01.

The obvious question is why the Legislature would come up with such a complicated set of mechanisms to refund surplus revenues. The intent of the TABOR Amendment is straightforward, i.e. surplus revenue should be returned to taxpayers who paid the surplus taxes, either through tax refunds or tax cuts. One would expect the Legislature to design a refund mechanism linked to the income tax which is the major source of the surplus revenue. While there are problems in designing and implementing income tax refunds, there are ample precedents for such refunds at both the state and the federal level. The refund mechanisms that were chosen are designed to achieve a number of objectives beyond the refund of surplus revenue to taxpayers.

One motive is a pragmatic one involving federal tax liabilities. If the refund is linked to the income tax then taxpayers are liable for federal taxes on the amount of the refund. By linking the refund to the sales tax taxpayers may avoid federal tax liability on the amount refunded. However, the legality of this ploy remains to be determined.

We can conjecture about other possible motives of legislators in linking the refunds to taxes other than the income tax. The fact that most of the refund is linked to the sales tax, and that the amount refunded differs by income class leads us to suspect that another motive is the redistribution of income. Individuals receive sales tax refunds based upon their modified adjusted gross income. The amount of sales tax refund received for each income class approximates the percentage of non income state taxes paid by taxpayers in that income tax bracket.

The hypothesis that redistribution of income motivates the refund mechanisms chosen is confirmed by the high priority given to the unearned income tax credit. Some individuals

and families in the lower income classes who paid no income taxes will be eligible for refunds either through the sales tax refund or the earned income tax credit.

The refund linked to the business personal property tax is targeted to small businesses that pay less than \$500 in such taxes. However, all businesses owning personal property will benefit from these refunds. Refunds linked to the receipt of unearned income and to capital gains will benefit investors.

D. Tax Relief

The Legislature in 1999 also chose to offset surplus revenues above the TABOR limit by providing tax relief. Given the source of the surplus revenue we would expect that tax relief would also be linked to the income tax. The Legislature did reduce the income tax rate from 5% to 4 3/4%. The total amount of tax relief provided through this cut in the income tax rate is \$206 million.

The Legislature combined the income tax cut with fifteen other bills providing tax relief. Tax relief is provided to a wide range of different interest groups, and has little to do with the surplus generated.

Again we are confronted with the question why the Legislature has come up with such a complicated set of tax relief bills. The intent of the TABOR Amendment is clear: to return the excess taxation to taxpayers through either tax rebates or tax cuts. Since the income tax accounts for most of the surplus revenue we would expect tax relief to be provided primarily through cuts in income tax rates. However, taxpayers who paid excess income taxation that generated 69% of the surplus revenue will receive only 27% of that surplus revenue in the form of tax relief.

From a taxpayers perspective the most efficient and equitable way to provide this tax relief is through cuts in the income tax rate; that is clearly the intent of the TABOR Amendment. We can pose a counterfactual hypothesis and ask what the impact would have been if the legislature had chosen to cut the income tax rate by a magnitude equal to the surplus revenue generated by the income tax. In this case the cut in the income tax rate would have reduced the surplus revenue not by \$206 million, but rather by \$548 million. Individual income taxes would have been reduced by \$523 million, while corporate income taxes would have been lowered by \$25 million. That compares to the actual reductions of \$189 million for individuals, and \$ 16 million for business.

The TABOR Amendment has had a perverse outcome for budgetary decision making. The generation of surplus revenue has enabled Legislators to benefit specific interest groups through tax refunds, and tax relief, benefits that they could not have achieved through the regular legislative budgetary process. In that sense the TABOR Amendment has resulted in budgetary decisions that are less efficient and less equitable than those that would have been made in the absence of the surplus revenue.

This study concludes that the accumulation of surplus revenue requires a major overhaul of budgetary reporting and decision making to reflect the impact of tax and spending limits on the budgetary process. The reporting recommendations are designed to make the budget more transparent and provide both taxpayers and legislators the information they need to make more rational budgetary decisions. The policy recommendations are designed to bring revenue and expenditures growth into line with tax and spending limits.

III. Responsible state fiscal policy under TABOR

A. Accounting Reforms

The development of an accounting system to provide a comprehensive perspective on the state budget is the first step in unraveling the problems associated with surplus revenues. Such an accounting system would provide the basis for evaluating the efficiency and equity effects of all budgetary decisions.

1. Provide a comprehensive summary report of the total state appropriations and the growth of those appropriations over historical and projected budgetary periods.

The flaw in the current budgetary reporting is the focus on general fund obligations. The accumulation of surplus revenues has permitted legislatures to shift a larger share of revenues into reserve accounts and to use these reserves to fund non general fund expenditures.

Total appropriations, including capital expenditures, have increased much more rapidly than the growth permitted by the TABOR limit. However, this rapid growth in spending is not sustainable under the TABOR Amendment. The failure to report the growth of total appropriations has led to a myopic view of state budgets. Legislators have taken a sanguine view of the rapid growth in total appropriations because they do not understand that in the long run both spending and revenue will be constrained by the TABOR Amendment.

This proposed reform is especially important in the current context in which the governor has proposed financing capital budgets for transportation through debt rather than through current revenues. If taxpayers understood that the current high levels of capital expenditures from current revenues are not sustainable under the TABOR limit, they might be more supportive of these alternative modes of financing such expenditures.

2. Provide a comprehensive summary report of tax expenditures.

A number of states now require extensive reporting of tax expenditures and integration of these reports as part of the budgetary process. For example Virginia now requires an analysis of the fiscal, economic, and policy impact of each exemption as part of their tax expenditures report. Missouri requires the budget office to prepare a cost benefit analysis of selected tax expenditures. While there is considerable debate regarding how much influence these tax expenditures reports have on state fiscal policy, at least these states

recognize the importance of tax expenditures as well as direct expenditures in the budgetary process.

A comprehensive tax expenditures report encompassing the impact of federal as well as state statutes would reveal how revenues are reduced for all income groups through the deductions contained in the tax code. This is especially important in states, such as Colorado, where distributional considerations appear to be paramount in decisions involving the disposition of surplus revenue. Those decisions are currently made ad hoc, without much consideration of the overall impact of the tax code on different income groups.

3. Provide a comprehensive summary report of surplus expenditures consistent with the tax expenditures report.

This recommendation may seem redundant, however, a surplus expenditures report will differ significantly from a tax expenditures report. That report should identify the sources of surplus revenue by the type of tax and the magnitude by which revenues from each tax exceed the limit. Excess taxation should be identified by income class as well as total excess income taxation. This provides a base of reference from which taxpayers and legislators can understand the opportunity cost of not returning the excess taxation to the individual taxpayers who paid the excess taxes. The opportunity cost of surplus expenditures is the lower income taxes that would have been paid if income tax rates were set at levels that do not generate surplus revenue. If legislators choose to expend the surplus revenue in direct expenditures, tax refunds, or other tax cuts, taxpayers will understand the cost to them of such decisions.

This reform is especially important in the current context in which the Governor has proposed an additional income tax cut beyond that passed in the last legislative session. If individual taxpayers understood the true impact of excess income taxation they might be more sympathetic to such proposed tax cuts.

B. Policy Reforms

A responsible state fiscal policy requires a sustainable growth in state spending and revenue. This will only happen when both spending and revenue are growing at rates consistent with the tax and spending limit. To be effective, tax and spending limits must be designed to interdict the generation of surplus revenues. Surplus revenue above the limits cannot be permitted to accumulate in 'off budget' accounts to finance spending at some later point in time. The experience in Colorado suggests that several reforms can accomplish this objective.

1. Cut Tax Rates to Bring Revenue Growth in Line With The Tax and Spending Limit.

The most efficient and equitable way to reduce surplus revenue and bring revenue and spending growth in line with the tax and spending limit is through a tax cut. A tax cut

obviates the need for the Legislature to debate the disposition of the surplus revenue and all of the lobbying that accompanies that process.

There should be a direct relationship between the reduction in tax rates and the source of surplus revenue generated. For states, such as Colorado, where income taxes are the major source of surplus revenue this calls for a reduction in income tax rates. A permanent cut in income tax rates to 4 1/4% could eliminate most if not all of these surpluses and obviate the need for debate in the legislature every year for the foreseeable future over what to do with surplus revenues.

A permanent tax cut is superior to a temporary tax cut because it will reduce administrative costs.

But, there is a more fundamental reason for the superiority of the permanent tax cut, and this is because of the way that this affects peoples incentives. People perceive a permanent tax cut as increasing their lifetime income. As a result a permanent tax cut significantly increases peoples incentives to work, save, invest, and engage in productive activity. The resulting supply side effects increase income and the tax base, partially offsetting the effects of lower tax rates on tax revenues. Numerous studies at the state and national level support this argument, including our own work on Colorado tax reform. In contrast, because temporary tax cuts are perceived as short term and at the whim of the legislature they do not have positive supply side effects comparable to permanent tax cuts.

Governor Owens has proposed additional cuts in the income tax rate by \$100 million in the coming year. However, even with this proposed tax cut the income tax rates will remain above the revenue neutral rate, and will continue to generate substantial surplus revenues over the forecast period. A cut in income tax rates to 4 1/4% would reduce the income tax burden to the revenue neutral level that existed when the flat 5% rate was adopted, and would eliminate most if not all of the surplus revenue in the budget.

2. Remove discretionary Power From the Legislature in Triggering Tax Cuts

A reduction in tax rates should be automatically triggered when the state generates surplus revenue. The most effective way to do this is through a triggering clause in the tax and spending limit. For example when a state generates surplus revenue in excess of the limit the clause would required a reduction in tax rates in the subsequent period sufficient to eliminate the surplus revenue. If the state continues to generate surplus revenue in a subsequent time period the reduction in tax rates should automatically become permanent.

An escape clause can be incorporated in the tax and spending limit to allow legislators to temporarily exceed the limits with a super majority vote. Voter approval should be required to exceed the limit beyond one year. Legislators should also have the option of seeking voter approval to change the tax and spending limit. However, they should not

have the power to seek voter approval for specific surplus expenditures, whether in the form of direct expenditures, refunds, or tax cuts.

3. Reduce The Growth of Spending in Line With the Revenue Growth Permitted by Tabor

The state must eventually reduce spending growth consistent with the TABOR limits imposed on revenue growth. With current fiscal policies this will happen in a very inefficient and irresponsible way, i.e. by exhausting reserves and incurring a deficit. There is a responsible and efficient way to bring spending growth roughly in line with the limits imposed by the TABOR amendment, and that is through sequestration.

With sequestration, spending growth for every state agency could be capped at 5% across the board. A moratorium could be placed on new capital projects, and spending for old projects capped at 5% per year. Sequestration could be maintained until total appropriations growth is held to 5% or less, consistent with the revenue growth permitted by TABOR, and with a stable reserve fund of 5% to 7% of total appropriations. Only then should the legislature be permitted to exercise discretionary power over state spending.

With general fund expenditures growth capped at 5% this will free up more funds for capital projects than would be possible with general fund expenditures growing at the current 6% limit. Further, we would expect transfers into the capital budget to be based upon a sustainable level of capital expenditures. Current policies will result in a rapid growth followed by a sharp decline in capital expenditures, which as we have argued, is very inefficient. A sustainable level of capital expenditures will permit the state to plan and implement a capital budget over the long run. The result will be more equity as well as efficiency, as competing capital project proposals are considered in the context of long range planning.

Citizens have clearly expressed their support for the TABOR Amendment, and have rejected attempts by the state government to increase taxes and spend surplus revenue above the TABOR limit. The TABOR Amendment has some quirks that need to be fixed, but the state government also needs to learn to live with the TABOR constraints. Sequestration would serve as a wake up call to the legislature that we are in a new era of hard budget constraints. None of us like to live within our budget, but that is a fact of life in the public as well as the private sector.

Again, Governor Owens has suggested a compromise solution that is certainly worthy of consideration. During the coming year general fund expenditures would be capped at 5%. That would provide some breathing room for the legislature to get expenditures on track with that permitted by the TABOR Amendment. It would also give both the Governor and the legislature an opportunity to assess the long run implications of the TABOR limits for total appropriations, including capital expenditures, as well as General Fund expenditures.

4. Maintain a Rainy Day Fund Equal to 5-7% of General Fund Expenditures

This year the general fund reserve will accumulate to \$901 million, which is equal to more than 20% of general fund expenditures. There is only one other state that has accumulated reserves of this magnitude relative to their budget. Most states maintain reserve or rainy day funds equal to about 5% to 7% of their budget. However, as we have shown, Colorado's reserve funds will be entirely dissipated with current rates of growth in state spending.

Colorado should maintain reserve funds comparable to other states, i.e. equal to 5% to 7% of general fund expenditures. This will permit the state to maintain a more stable level of expenditures in periods of emergency or economic downturn. That, of course, is the purpose of such rainy day funds. Those who argue that Colorado cannot afford a tax cut because of the demands for revenue in future periods of economic downturn, ignore the important role that reserve funds can play in sustaining state spending. The result will be a more stable growth in state expenditures over the business cycle. Such 'consumption smoothing' in state expenditures is more efficient than the stop and go spending policies pursued in states without rain day funds. But, the key to maintaining reserve funds in Colorado will be to bring both spending growth and revenue growth into line with the TABOR limit.

5. Stop Playing Games in the Budgetary Decisions Involving Tax and Spending Limits

There are several budgetary procedures now practiced by the Legislature that amount to nothing short of fraud in terms of the legal intent of our tax and spending limits. General fund expenditures have actually grown more rapidly than the statutory limit in the 1990's due to exceptions from the limit. These exceptions include final court orders, new programs resulting from federal mandates, and Medicaid over expenditures. In a kind of shell game, these exceptions from the limit then become part of the base for calculating the limit in the following year.

The state has chosen not to finance the refunds under the TABOR Amendment with surplus revenue generated in the current year, but rather to use the following year surplus. This obviously allows the legislature to defer the financing surplus refunds for one year, but is not consistent with the intent of the TABOR Amendment. If banks do not allow us to kite checks why should we allow the legislature to do so?

CHAPTER TWO: LEGAL ISSUES

A. What are the main features of TABOR (Article X, section 20, Colorado Constitution) that affect the state?

- Voter approval for new taxes and tax rate increases.

- Voter approval for increases in multi-year debt “or other financial obligation whatsoever.”
- Voter approval for revenue increases above inflation + population. (The limit excludes federal funds, gifts, etc.) Excess revenue must be returned to voters unless they vote to let the state keep it.
- Debt/revenue limits do not apply to enterprises (government-owned businesses that can issue their own revenue bonds and have a government subsidy under 10%). The various “authorities” are not exempted.
- Annual state election date for tax votes; no votes at odd times. Election notices are required on all ballot issues, and the election notices must include comments from proponents and opponents.
- “Other limits on district revenue, spending, and debt may be weakened only by future voter approval.”

Section 1 of TABOR requires that TABOR’s “preferred interpretation shall reasonably restrain most of the growth of government.” If there are two plausible ways of reading TABOR, section 1 mandates the reading that limits the size of government more and makes it harder to raise taxes and spend revenue.

B. Nine frequently-raised legislative issues

1. “Can we cut taxes temporarily, then raise them later without an election?” Only if the tax cuts are “for refunds” of excess or illegal revenue (TABOR sect. 1). Taxes cannot be cut temporarily to *forego* revenue and then raised later without a vote. The government cannot “refund” what it has not received. While TABOR section 4a cites the section 1 exception regarding the need for voter approval, the exception is only “for refunds.”

2. “Can we pass income tax credits?” No. Section 8a says that any income tax law change after 1992 requires taxation at one rate (the rate is currently 5%). There is an exception to the one-rate rule, namely “excluding refund tax credits or voter-approved tax credits.” Thus, tax credits must be voter-approved unless they refund money the state has *already received*. See the definition of “refund” in any dictionary: “to pay back; to repay; to return.”

3. “Can we give money to local governments outside TABOR limits?” No. State aid to local governments is not legally exempt from TABOR. A grant is also covered by the 6% appropriations limit (the Bird-Arveschoug law), which TABOR section 1 says cannot be weakened except by voter approval. This includes plans to give the tobacco settlement to local governments.

4. “Can we weaken state laws that limit local government finances?” Not without *state* voter approval. See TABOR section 1. To move from an absolute limit on spending, revenue,

and debt to one that can be weakened by local voter approval weakens the state limit, requiring *state voter* approval. It is nonsensical to assert that local voters can change state law.

5. “What about the excess revenue from a previous year that was not refunded?” The money is “revenue ...kept illegally,” which “shall be refunded with 10% annual simple interest from the initial conduct,” plus attorney fees.

As a statute of limitations, taxpayers have four full fiscal years to file suit for the money (so no one could sue 20 years from now for a mistake made this year).

The interest is due as a penalty for not refunding the excess revenue “in the next fiscal year” after the year of excess. (TABOR section 7d). The unpaid principal amount does not just roll over to the next year, interest-free. There is no good faith exception for TABOR violations; creating a good faith exception is not the “preferred interpretation (which) shall reasonably restrain most the growth of government.” (TABOR section 1).

6. “Can the state increase the revenue base by starting new programs?” No. The former state controller claimed “it’s only fair” that when the state absorbed NE and NW junior colleges into the state system, that the TABOR base should be increased for the cost of providing the services. If that were true, government could decide its own size by absorbing ever more programs, thus defeating the purpose of TABOR.

TABOR section 7a says the growth of the base is limited to inflation plus population, plus revenue approved by state voters. The only exception to that is in section 7d for changes in enterprise status. A property-tax receiving junior college is not an enterprise (a self-sufficient business) because businesses cannot collect property taxes. Nor are those colleges, as now funded by the state, enterprises. The \$10 million per year is “illegally kept,” and must be refunded with 10% interest per year. (TABOR section 1.)

7. “Did the state properly define ‘local growth’ in Senate Bill 93-74, which implemented TABOR?” No. The local growth factor for local governments is a percentage change defined in TABOR section 2g. The denominator is “actual value of all real property.” The statute defined “all” as meaning “some” real property, in order to increase the allowable rate of increase in violation of TABOR (1/40th is a faster rate of growth than 1/50th).

For example, the state excluded government property from the calculation. All local governments have been following the statute, not the plain language of TABOR, and overcollecting revenue. Any local “revenue collected, kept, or spent illegally” must be returned with 10% interest per year.

8. “Did the state properly limit who could file election notice comments for local elections?” No. TABOR section 3b-v requires a summary of “written comments filed with the election officer” by the deadline. It also says “the election officer shall maintain and accurately summarize *all* other relevant written comments.”

The state cannot limit the source or pool of pro-taxpayer comments to registered voters in the jurisdiction. The U.S. Supreme Court has ruled (twice) that Colorado violated First Amendment rights to free speech and petition by limiting the pool of available petition gatherers, including an arbitrary requirement that they be registered electors. Election notice comments are another form of free speech, which cannot be denied based on source. The issue is the merits of the argument, not the characteristics of its proponent. If a business owner lives in a different city than his business, he still has a right to state his objection to a tax increase that affects his business.

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