

# Considerations for the Task Force Concerning Tax Policy

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# Topics to be Discussed

## 1. General Description of TABOR

- **Art. X, §20 (4)(a):** Prior Voter Approval for Certain Tax Changes
- **Art. X, §20 (7):** Fiscal Year Spending Limit

## 2. Potential TABOR Issues for each of the 5 Areas of Study

# Article X, §20 of the Colo. Const.

**Section 20. The Taxpayer's Bill of Rights. (1) General provisions.** This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval...

a/k/a TABOR

# Prior Voter Approval

## TABOR (4)(a)

### **Section 20. The Taxpayer's Bill of Rights.**

**(4) Required elections.** Starting November 4, 1992, districts must have voter approval in advance for:

(a) ~~Unless (1) or (6) applies,~~ any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

# Prior Voter Approval

## TABOR (4)(a)

### **Any New Tax...**

Examples: Retail marijuana sales and excise taxes (Proposition AA); Sports betting tax (Proposition DD); Nicotine products tax (Proposition EE).

*HCA Healthone v. City of Lone Tree, 197 P.3d 236 (Colo. App. 2008).*

- Expansion of a use tax on construction materials to all tangible personal property was a new tax.

# Prior Voter Approval

## TABOR (4)(a)

### **Tax Rate Increase,**

- A mathematical figure for calculating a tax, usually expressed as a percentage
- Amendment 35 and Proposition EE increased the tax rates for cigarettes and OTP.

### **Mill Levy above that for the Prior Year,**

- Property tax = actual value x assessment rate x **mill levy**
- A local government's property tax rate increase.

# Prior Voter Approval

## TABOR (4)(a)

### **Valuation for Assessment Ratio Increase for a Property Class,**

- Property tax = actual value x **assessment rate** x mill levy
- Applies after Amendment B
- Applies to the class, not individuals

# Prior Voter Approval

## TABOR (4)(a)

### **... Or Extension of an Expiring Tax,**

- No state taxes are set to expire.
- Example: Sales taxes imposed by special districts.



# Prior Voter Approval

## TABOR (4)(a)

**... Or a Tax Policy Change Directly Causing a Net Tax Revenue Gain to any District.**

- Only applies to changes made by the General Assembly and not to ministerial changes by Department of Revenue. *See Huber v. Colo. Mining Ass'n.*, 240 P.3d 453 (Colo. 2011).
- What is a tax policy?

# Prior Voter Approval

## TABOR (4)(a)

**39-21-402. Definitions.** (3) “Tax policy” refers to decisions by the state or local governments regarding taxes that have or may be levied, and includes an analysis of the benefits and burdens of the state’s overall tax structure with respect to the promotion of certainty, fairness, adequacy, transparency, and administrative ease.

# Prior Voter Approval

## TABOR (4)(a)

- What is a tax policy?
  - An undefined catch-all phrase to encompass any district action that is the equivalent of a new tax or tax rate increase that would not be covered by the more specific requirements listed before it
  - A high level overall plan
  - A significant change

# Prior Voter Approval

## TABOR (4)(a)

1. Does the change relate to the imposition of a tax being created, repealed, or amended in a manner that results in a modification of the standards or rules governing the imposition of the tax?

Examples: Repealing a tax credit, adding an add-back to the definition of taxable income, suspending a tax exemption.

# Prior Voter Approval

## TABOR (4)(a)

2. Does it directly increase tax revenue?
  - Based on the fiscal note
  - May include the net of several changes
  - Must “directly cause” the increase
  - Applies for an increase to “any district”

# Prior Voter Approval

## TABOR (4)(a)

3. Is there precedent that supports not referring the measure?

- *Mesa County Bd. of Comm'rs v. State*, 203 P.3d 519, 530 (Colo. 2009).
- *TABOR Found. v. Reg'l Transp. Dist.*, 416 P.3d 101 (Colo. 2018).

# Prior Voter Approval

## TABOR (4)(a)

### ***TABOR Found. v. Reg'l Transp. Dist***

- A legislative change causing only an incidental and de minimis revenue increase is not a new tax or tax policy change.
  - The revenue increase was incidental to the purpose of simplifying the collection and administration of taxes and relieving confusion and vendor's administrative burden.
  - De minimis: 1% of the SCFD's tax revenue and budget, and less than .6% of RTD's tax revenue and 1/1000 of its overall budget

# Prior Voter Approval

## TABOR (4)(a)

### ***Mesa County Bd. of Comm'rs v. State***

- De minimis exception
- We find that a "tax policy change directly causing a net tax revenue gain" only requires voter approval when the revenue gain exceeds the limits dictated by subsection (7).

The state is expected to exceed the TABOR state fiscal year spending limit for the immediate future



# Election Provisions

## TABOR (3)

### **Election Provisions**

- Must begin “Shall state taxes be increased (first, or if phased in, final, full fiscal year dollar increase) annually...”
- Blue Book estimates includes estimates that may be binding for the first year
- May be referred in odd-numbered year election

# Fiscal Year Spending Limit

## TABOR (7)

(7) **Spending limits.** (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.

# Fiscal Year Spending Limit

## TABOR (7)

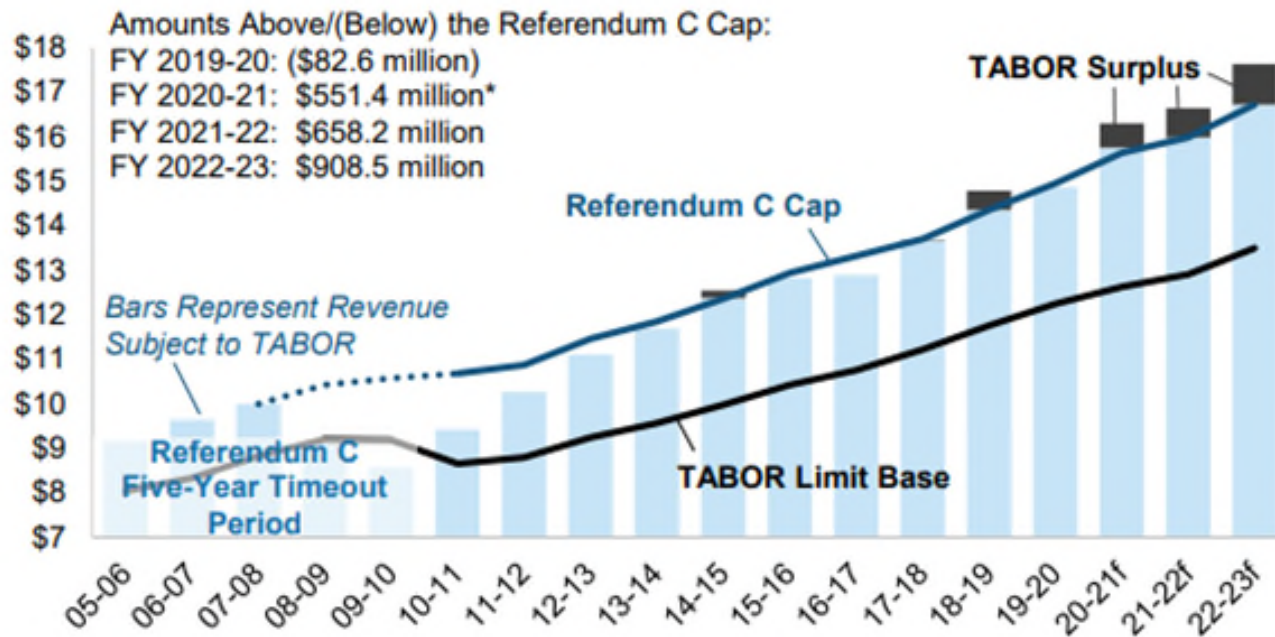
(7) **Spending limits.** (d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset.

- Revenue above the limit must be refunded

# Fiscal Year Spending Limit

## TABOR (7)

**Figure 2**  
**TABOR Revenue, TABOR Limit Base, and the Referendum C Cap**  
*Dollars in Billions*



Source: Office of the State Controller and Legislative Council Staff. f = Forecast.  
 \*Refunds for the FY 2021-22 surplus will be adjusted for overrefunds in prior years.

# Fiscal Year Spending Limit

## TABOR (7)

### Potential effect of revenue changes:

#### -- Tax Increases

- The state can retain and spend the revenue from a voter-approved revenue change.
- Any tax change that increases revenue but does not require prior voter approval increases the state's refund obligation, which is made from the General Fund.

#### -- Tax Decreases

- For near term, may only reduce refunds

# Issues for Study

## Income Tax Based on AGI

### **Applying the state income tax to federal adjusted gross income rather than federal taxable income**

#### **Background**

- Under §§39-22-104 and 39-22-301, C.R.S., the starting point for state income tax is federal taxable income, which is the amount of income that is subject to federal tax.
- State then has additions and subtractions (deductions)
- Proposal would de-couple from the federal adjustments that apply to federal AGI.

# Issues for Study

## Income Tax Based on AGI

### **TABOR Issues**

- Is prior voter approval required under TABOR (4)(a)?
  - Is it a tax policy change? Will there be a revenue increase to the state?
- Will the recommendation increase the TABOR refund?
- **TABOR (8)(a):** Neither an income tax rate increase *nor a new state definition of taxable income* shall apply before the next tax year.

# Issues for Study

## Homestead Exemption

### **Homestead exemptions for senior citizens and veterans with a disability**

#### **Background**

- Under Article X, § 3.5 of the Colorado Constitution, 50% of the first \$200,000 of actual value for qualifying owner-occupiers is exempt from taxation.
- General Assembly may raise or lower amount of actual property subject to the exemption
- State is required to reimburse local governments for lost property tax revenue



# Issues for Study

## Homestead Exemption

### **TABOR Issues**

- If proposal is to amend the constitution, TABOR still applies.
- Is prior voter approval required under TABOR (4)(a)?
  - Is it a tax policy change? Will there be a revenue increase to the state or local governments?
- How does the change impact TABOR refunds?
  - §39-2-209, C.R.S., state reimbursement is a refund mechanism

# Issues for Study

## Enterprise Zones

**The geographic extent of enterprise zones within Colorado, and options for their continuation or discontinuation**

### **Background**

- The zones are created in article 30 of title 39, C.R.S., within the state and are designed to increase economic opportunities in urban and rural areas.
- Includes special income tax credits and sales and use tax exemptions for certain business investments or economic development projects

# Issues for Study

## Enterprise Zones

### **TABOR Issues**

- Is a geographic area extended or retracted?
- Is prior voter approval required under TABOR (4)(a)?
  - Is it a tax policy change?
  - Will there be a revenue increase to the state or local governments?

# Issues for Study

## Short-term rentals property tax

### **Property tax treatment of short-term rentals**

#### **Background**

- A property that is available for overnight lodging for rent for a period of less than 30 days
- VRBO.com or AirBnB.com
- Properties are classified as residential real property, as defined in §39-1-102 (14.3), C.R.S.

# Issues for Study

## Short-term rentals property tax

### **TABOR Issues**

- Is prior voter approval required under TABOR (4)(a)?
  - Would the proposal require voter approval for an assessment rate increase or as a tax policy change causing a net tax revenue gain to any district?
- **TABOR (8)(a):** New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed.
- **TABOR (8)(c):** Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal

# Issues for Study

## Sales Tax on Services

### **Options for expanding the sales and use tax to apply to services**

#### **Background**

- The state sales tax is generally imposed on retail sales of tangible personal property and a few services such as telephone service, rooms and accommodations, and certain utility services.
- There is no state sales tax currently imposed on most services.

# Issues for Study

## Sales Tax on Services

### **TABOR Issues**

- Is prior voter approval required under TABOR (4)(a)?
  - Is it a new tax?
  - Is it a tax policy change causing a net tax revenue gain to any district?
- Will the recommendation increase the TABOR refund?



# The End

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