



Issue Brief

January 2004

From the Colorado Fiscal Policy Institute

TABOR – A Brief Outline

Main Features of TABOR:

- *Required Election for any tax rate increases* (sec. 4 (a))
- *“Weakening clause”* for existing limits by statute or ordinance (sec. 1)
- *“Spending” (actually revenue) limitations* (sec. 7 (a), (b) and (c))
- *“Tax Policy Change”* resulting in net increase in revenue (sec. 4 (a))
Its legal interpretation
- *Refunds* of “excess revenues” and the mechanisms (sec. 1; 7 (d))
- *Election* to allow district to *keep and spend* excess revenue (sec. 7 (d))
- *Multiple fiscal year obligation (Debt)* only with an election (sec. 4 (b))
- *Preferred Interpretation:* “reasonably restrain growth of government” (sec. 1)

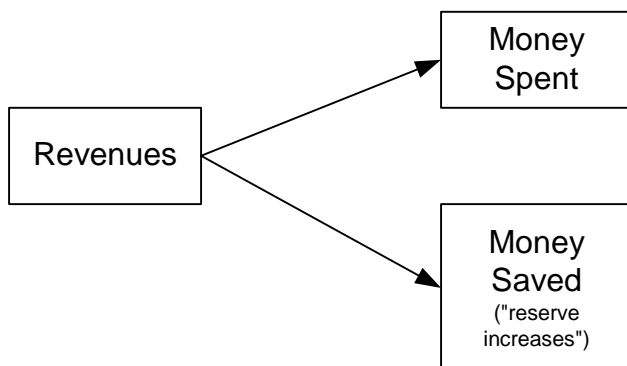
Important Definitions:

“District” – State, counties, cities, school districts, special districts. Excludes enterprises (sec. 2 (b))

“Enterprise” – Government-owned business that receives less than 10% of its support from taxes (sec. 2 (d))

“Spending” means *Revenue* (sec. 2 (e)) because it includes “reserve increases,” meaning money collected but not spent. In accounting:

$$\text{\$ received (revenue)} = \text{\$ spent} + \text{\$ put into reserve (saved)}$$



Thus wherever TABOR uses the term “fiscal year spending,” it actually means revenue, not spending, in the usual sense of that term.

What's excluded from TABOR Revenue (sec. 2 (e)):

Gifts	Damage awards	Reserve transfers
Collections for another gov't.	Property sales	Federal funds
Enterprises (sec. 2 (b) and (d))	Pension contributions	

Allowable growth formula:

Applies to immediate prior year -- *actual* or *formula*, whichever is less (sec. 7(a))

For all districts: *Consumer Price Index* (Denver-Boulder CPI) annual percentage change (sec. 2 (f)) plus:

State of Colorado: *Population* determined by annual federal census estimates, adjusted in decennial census (sec. 7 (a))

School Districts: Percentage change in *student enrollment* (sec. 2 (g))

Local Governments (cities, counties, special districts):

“Net percentage change in actual value of all real property...from construction of taxable real property improvements, minus destruction..., and additions to, minus deletions from, taxable real property.” (sec. 2 (g))

I.e., for local governments, it is *Net New Construction*, not growth in property values (sec. 2 (g)) and sec. 7 (b))

Public (non-taxable) property is not part of the property base (sec. 2 (g)),and *Annexed* property is added in each year.

Separate revenue cap for property taxes (sec. 7 (c)) Local governments must refund property tax revenue even if they do not exceed overall TABOR revenue.

“DeBrucing” (sec. 7 (d))

“Excess shall be refunded unless voters approve a revenue change as an offset.” Voters may approve a “keep and spend” measure. May be indefinite or for a certain number of years.

No district may opt out of any other provision of TABOR..

Intergovernmental transfers are not exempted in the TABOR revenue caps by both levels of government because they are not considered “collections for another government” (sec. 2 (e)).

Ballot language wording for Tax Increases (“shall taxes be increased annually...” maximum amount to be collected, etc.) (sec. 3 (b) (iii) and sec. 3 (c)). Revenue received above the originally estimated amounts must be refunded.

Prohibited taxes (sec. 8 (a)):

Real estate transfer tax State property tax Local income tax

New tax rates or definitions of taxable income do not become effective until the following year (sec. 8 (a)).

Income taxes must be at one rate – a flat tax, prohibiting graduated income taxes (sec. 8 (a)).

What is “ratcheting” and why does it occur?

Ratcheting occurs because of the way in which each year’s “base” is established and how it is used to calculate the next year’s allowable revenue. Sec. 7 (a), (b) and (c) state, “the maximum annual percentage change in fiscal year spending [that is, revenue] equals Inflation plus”: change in

- Population (State)
- Enrollment (School)
- Net new construction (Local)

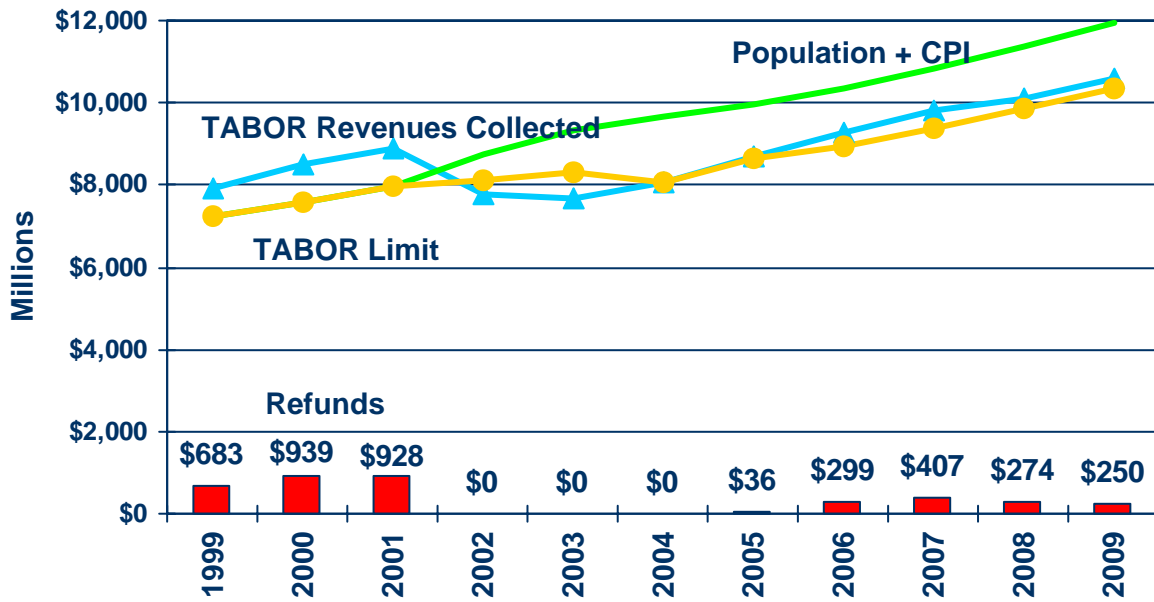
This means that the formula is applied to the immediate past year’s revenue. It does not mean last year’s *allowable* growth plus the formula, but rather last year’s *actual* revenue plus the formula. And since in a year following a refund year the amount that is allowed to keep and spend is *after the refunded dollars are removed*, the lesser of the two (actual or formula) becomes the following year’s base. Consider two scenarios:

Case A: In a year when actual revenue comes in below what the
Formula allows, the next year’s formula is applied to the lower (actual) figure.

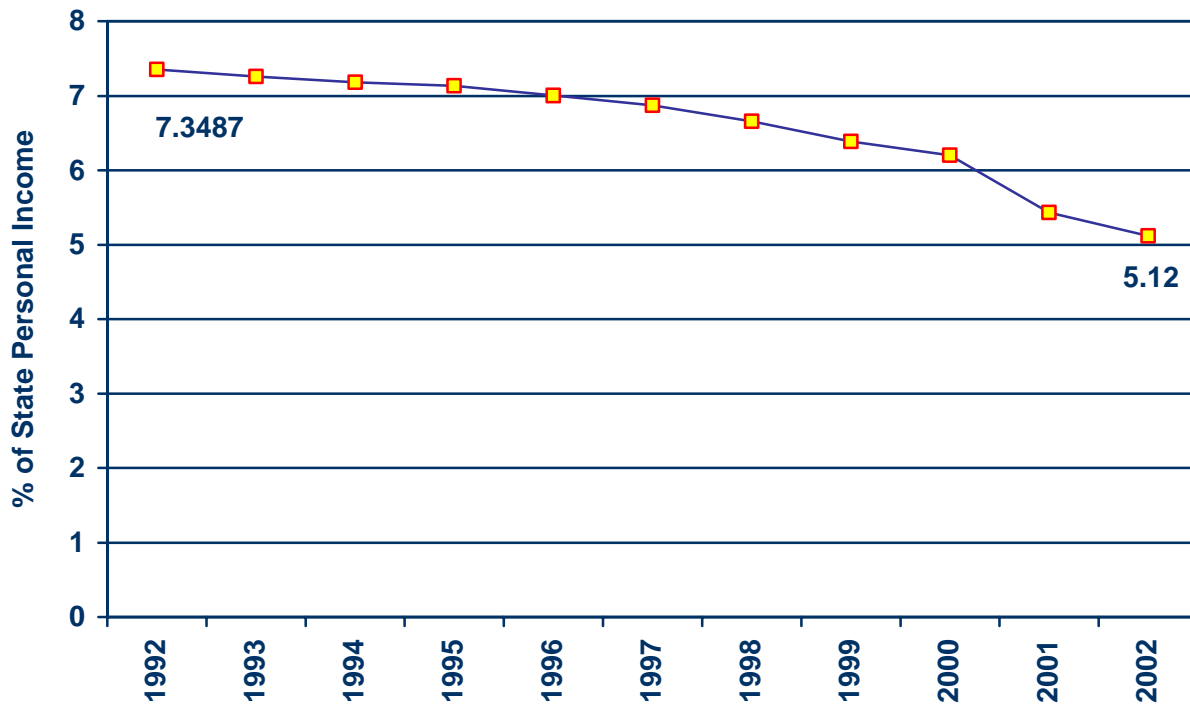
Case B: In a year when “excess” revenue is received, it is refunded to taxpayers, and thus again,
the lower, post-refund figure is used as next year’s base.

For the State, since 1992, there have been 5 fiscal years of refunds (FY 1997-2001), and 6 fiscal years (FY 1993-96 and FY 2002-03) where actual revenues came in below the allowable formula. In two of those fiscal years (FY 2002-03), revenues actually fell (cumulative –17%). In the other four, revenues grew but by less than the formula. Thus, *in fewer than half the years* since TABOR, state revenue was allowed to grow at the formula. Over the long term, the size of government does not keep up with the formula in TABOR. State & local government in Colorado has shrunk as a percentage of the economy (see graphs below).

TABOR Ratchet Effect



TABOR and Growth in Government



Source: Bell Policy Center, 2003

What about the State's 6% Spending limit?

In the “weakening clause” (sec. 1), TABOR locks in place pre-existing limits by requiring an election to weaken them. Prior to 1992, the Legislature by statute limited General Fund operations appropriations to 6% above the prior year. So, the State must comply with both the revenue limits as described above, and this 6% spending limit. In effect, the State faces two independent and unrelated revenue and spending limits. Any revenue received within the revenue limits but over the spending limits may be kept but only used for non-operating purposes.

The 3% Emergency Reserve:

- 3% of TABOR revenues must be set aside at all times
- May not be used for economic conditions, reserve shortfalls
- Must be paid back the following year – not exempt from the next year’s limits
- Other existing reserves may be designated the TABOR reserve (dual-purpose), as long as the TABOR emergency reserve requirements are complied with.
- Does not function as a “rainy day fund”

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