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TABOR TURNS 30

Thirty Years of Colorado's Taxpayer's Bill of Rights

What States Can Learn from the Gold Standard for State Spending Control

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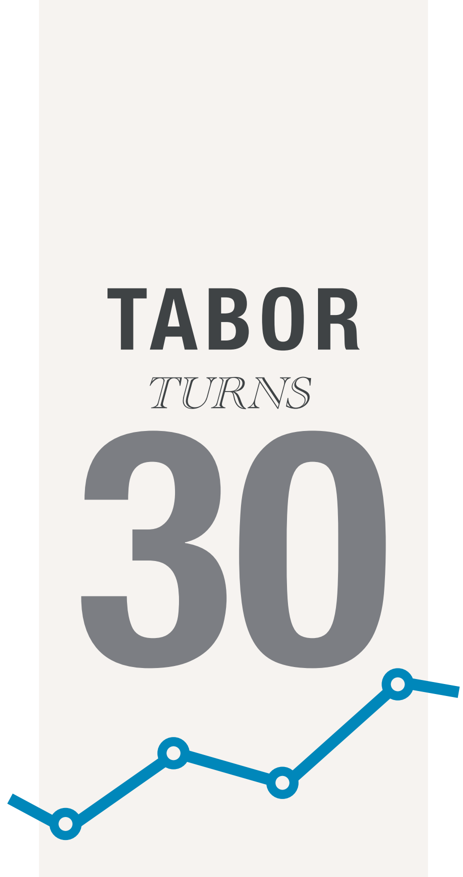

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Barry W. Poulson

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Introduction

This month marks the 30th anniversary of the Colorado Taxpayer's Bill of Rights (TABOR), which was approved by voters in November of 1992. Between fiscal years 1997 and 2007 alone, Colorado taxpayers received $6.7 billion in TABOR-provided tax relief.[1] Colorado was one of the most competitive and fastest-growing economies in the nation during those years.[2] This year, the Colorado General Assembly announced a taxpayer rebate of $3.6 billion in surplus revenue.[3] Surplus revenue is forecast in each of the next two fiscal years as well, $3.0 billion in FY 2022-2023, and $1.6 billion in FY 2023-2024.[4] These rebates are mandated by TABOR, a fiscal rule that limits the growth of revenue and spending at all levels of government and requires that surplus revenue be rebated to taxpayers.[5] The rebate checks will help families disproportionally affected by the coronavirus pandemic pay their bills.

TABOR at 30: Looking Back and Looking Forward

TABOR was enacted by voters in 1992 as an amendment to the Colorado Constitution through citizen initiative. At the time, Governor Roy Romer condemned TABOR, claiming it would cause businesses to flee the state and the economy to collapse. Every year, progressives launch similar attacks against TABOR, and in some years, they introduced ballot measures to rescind or water down the amendment. This year, the Denver Post is going after TABOR laws again, urging legislators to "scrap the antiquated TABOR refund mechanism and find a more equitable way to treat Colorado taxpayers."[6]

It is important to understand why TABOR has been successful and resilient. TABOR is designed to limit the rate of growth in state revenue and spending to the sum of inflation plus the rate of growth in population while allowing a majority of voters to increase the revenue and spending limit when needed. This prevents many new taxes increases. If the state government collects more tax dollars than TABOR allows, the money is returned to taxpayers as a TABOR refund. If any public agency in Colorado intends to spend surplus revenue, increase taxes or fees, or increase debt, it must place the proposed measure on the ballot. This ballot measure must clarify how the funds will be raised and allocated.

It is the nexus between expenditure for a government program and the cost to taxpayers in approving the measure that explains the success of TABOR. As part of the Colorado Tax Commission appointed by Governor Bill Owens, who served from 1999 to 2007, I witnessed firsthand the effectiveness of TABOR. Part of my duties entailed traveling to different Colorado communities and gathering citizens' feedback on proposed reforms in Colorado's tax system. The effectiveness of TABOR became evident to me in 2004 when I traveled to Limon, a small rural community near the Kansas border. Citizens there rejected a ballot measure proposing a large sales tax increase; and later passed a ballot measure calling for a smaller sales tax increase. They understood increasing sales taxes will translate to less state competitiveness and therefore less business. They could not afford a large sales tax increase because ranchers would then buy their feed and supplies elsewhere. Prosperity of the community requires competitive taxes, and TABOR allows citizens to decide how much in taxes they are willing to pay. As we have learned from *Rich States, Poor States* over the past fifteen years, the American people often vote with their feet from one state to another in search of economic opportunity.[7] TABOR empowers citizens to make tax and expenditure decisions and promotes a grassroots approach utilizing local knowledge.

Over the years, hundreds of such ballot measures have been presented to Colorado voters. At the local level, these ballot measures pass most of the time, as it did in Limon. If citizens are presented with a specific government project, and a strong case is made where the costs of the project are justified, citizens are more likely to approve the measure. However, at the state level very few of these ballot measures have been approved. Usually, this can be attributed to the significant increase in taxes and/or debt to fund an amorphous combination of state programs proposed by the ballot measures. Surveys conducted by our Commission revealed citizens think the government wastes money at all levels, and the state wastes most of the taxpayer dollars they spend.

Most states have enacted some form of tax and expenditure limit (TEL), but not all of these fiscal rules have not been effective in constraining the growth in state revenue and spending. In most states, TELs are poorly designed compared to TABOR. However, even when they are well designed, politicians have found many ways to circumvent or rescind the TELs.

The Gann Amendment in California is a prime example of a failed TEL. The Gann Amendment had many of the same provisions as TABOR, but special interests in the state were able to influence politicians who then watered down the TEL restrictions. Politicians earmarked revenue for many state programs exempt from the Gann limit, rendering the limit ineffective in constraining spending. A comparison of the performance of the California and Colorado economies reveals the importance of an effective TEL. In California, state revenue and spending increase more rapidly than state income, especially during periods of rapid economic growth. When the economy experiences a recession and slower economic growth, the state incurs deficits and accumulates debt. Total debt in California has increased sharply at all levels of government, and some local governments have defaulted on their debt.[8] The state government, on the other hand, has not defaulted, but this is due to its reliance on federal bailouts.[9] In California, fiscal decisions are made by politicians dominated by special interests, and as a result, citizens and businesses are fleeing to other states with lower tax and debt burdens.[10]

In Colorado, TABOR has resulted in more stable growth in state revenue and spending, even during recent economic crises. TABOR prevents state revenue and spending from growing more rapidly than state income. As a result, the state has not incurred deficits or accumulated debt as much as other states, like California. Citizens in Colorado have rejected large increases in state income taxes and debt. Like most states, Colorado has a problem with unfunded liabilities in state pension and OPEB plans but has attempted to address this problem. Following the enactment of TABOR, Colorado earned a reputation for having a strong tax climate for business. The state also quickly achieved one of the highest rates of growth in income and employment. While the state's economic performance has been strong, policy changes have harmed Colorado's economic outlook, which has fallen to 22nd in the nation, according to *Rich States, Poor States*.[11]

Rebate checks this year are a tangible reminder to politicians and special interests that taxpayers are in charge of fiscal policy in Colorado. A contrast between rebate mechanisms in Colorado compared to that in California reveals why TABOR is such an effective TEL. The mechanism for rebating surplus revenue to taxpayers is specified in TABOR law. Historically, three mechanisms have been used, including property tax exemptions for seniors and veterans with disabilities, a temporary reduction in income tax rates (4.55% to 4.5%), and a six-tiered sales tax refund tied to taxpayer incomes. Two decades ago, surplus revenue over the TABOR limit was perceived as excess taxation, and tax rebates were designed to return the surplus revenue to the taxpayers who paid the excess taxes. Linking tax rebates to taxpayers' income and marginal income tax rates and returning the excess taxes to the citizens was consistent with the original intent of the TABOR Amendment.

In the current fiscal year, a temporary refund mechanism was passed by the Legislature in which most of the current fiscal year's surplus revenue will be rebated through direct payments to taxpayers. These direct payments are scheduled to be $750 for single-filing taxpayers and $1,500 for households filing jointly.[12] The decision to refund surplus revenue through direct payments to taxpayers reflects a shift in the Legislature as Colorado has transitioned from a red state to a blue state. Too many lawmakers in the Colorado Legislature now wish to circumvent the rebate of surplus revenue to citizens rather than protect TABOR as a critical part of the state constitution.

There is nothing in the TABOR Amendment or the Colorado Constitution that sanctions the use of tax rebate mechanisms to redistribute income from higher-income taxpayers to lower-income taxpayers. The temporary tax rebate mechanism chosen by the Legislature this year is a violation of the property rights of Colorado citizens under the due process clause of the U.S. Constitution. Such 'takings' have been successfully challenged in several landmark cases decided by the U.S. Supreme Court and several lower federal courts.[13] The most recent case was struck down in December 2021, originally filed 10 years prior, was struck down by Federal Court of Appeals for the 10th Circuit.[14] Unfortunately, challenging violations of TABOR in the Colorado Supreme Court have often failed because that court has chosen a narrow interpretation of TABOR.[15] Indeed, taxpayer organizations are now skeptical and therefore reluctant to challenge violations of TABOR because this narrow interpretation has weakened Constitutional law.

Contrasting the tax rebate mechanisms in Colorado under TABOR with those in California is very important. This year, Governor Gavin Newsom announced that California will rebate $17 billion to California citizens from discretionary surplus revenue. While California has surplus revenue, that surplus is not the result of constraints imposed by the Gann Amendment. The California legislature has weakened the Gann Amendment such that it is no longer an effective constraint on state spending. Tax rebates from discretionary budget surpluses set a higher base for future budgets. This builds a structural deficit into the budget and has a negative impact on economic growth in the long term.

In California, families will receive up to $1,050 in rebates. These rebates are linked to family size, and families with more dependents will receive more rebate money. Rebates are also linked to income, and families with lower incomes will receive more rebate money than families with higher incomes. Using tax rebates to redistribute income from higher-income families to lower-income families and families with more dependents, has a negative impact on incentives. These tax rebates will put pressure on the California Legislature to use rebates to redistribute income to lower-income families in future years.

Conclusion

In Colorado, the rebate of surplus revenue reflects the effectiveness of TABOR, while in California the rebate of surplus revenue is a symptom of the failures of the Gann Amendment to withstand political challenges. In California, the absence of an effective TEL means that government is too big, too expensive, and too intrusive in the lives of citizens. While California's TEL serves as a cautionary tale, there are other examples of successful TELs, such as Michigan's Headlee Amendment, which was passed by citizen initiative in 1978.[16]

The tax rebates received by Colorado citizens this year is a reminder that surplus revenue represents excess taxes they have paid and is not simply revenue left to the discretion of politicians and special interests. The receipt of tax rebates, totaling $8.2 billion since TABOR passed in 1992, has strengthened Colorado citizens confidence in the TABOR Amendment over the years.[17] In Colorado, citizens can determine how many government programs and projects they want and are willing to pay for. Colorado citizens will not give up their control of fiscal policy, despite the attacks of politicians, special interests, and the media.

References

1. *Rich States, Poor States – 3rd Edition: https://www.richstatespoorstates.org/app/uploads/2017/04/RSPS-3rd-Edition.pdf*

2. *Rich States, Poor States: Colorado (Website): https://www.richstatespoorstates.org/states/CO/*

3. *Frank, John "Colorado Taxpayer Refund Will Nearly Double as State Revenue Surges," Axios: June 21, 2022: https://www.axios.com/local/denver/2022/06/21/colorado-tabor-refunds-summer-2022-budget*

4. *Sobetski, Greg "June 2022: Economic & Revenue Forecast." Colorado Legislative Council Staff: June 21, 2022, https://leg.colorado.gov/sites/default/files/images/lcs/june22forecast.pdf*

5. *TABOR is the basis for model TEL legislation adopted by the American Legislative Exchange Council (ALEC). This year Texas enacted a TABOR style TEL, and four more states have introduced this legislation.*

6. *The Denver Post Editorial Board, "Finally a TABOR Refund That's Good for You," The Denver Post: April 25, 2022, https://www.denverpost.com/2022/04/25/colorado-tabor-refund-400-800-income-taxes/*

7. *Rich States, Poor States (Press Release), "2022 State Economic Competitiveness Rankings Reveal Taxpayers Voting with Their Feet, ALEC: April 18, 2022. https://alec.org/press-release/2022-state-economic-competitiveness-rankings-reveal-taxpayers-voting-with-their-feet/*

8. *Delisle, Elizabeth Cove, "Economic and Budget Issue Brief: Fiscal Stress Faced by Local Governments," Congressional Budget Office; December 2010. https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/reports/12-09-municipalitiesbrief.pdf*

9. *Michel, Adam N., "State Bailouts Create Poor Incentives, Do Not Fix Underlying Problems," The Heritage Foundation: April 17 2010. https://www.heritage.org/sites/default/files/2020-04/BG3488.pdf*

10. *Rich States, Poor States: California (Website): https://www.richstatespoorstates.org/states/CA/*

11. *Rich States, Poor States: Colorado (Website): https://www.richstatespoorstates.org/states/CO/*

12. *Colorado Cash Back Website: https://tax.colorado.gov/cash-back*

13. *For a comprehensive list of the lawsuits against TABOR see the TABOR Foundation. https://thetaborfoundation.org/legal-issues/*

14. *Karlik, Michael, "10th Circuit dismisses lawsuit challenging validity of TABOR," Colorado Politics, December 13, 2021. https://www.coloradopolitics.com/courts/10th-circuit-dismisses-tabor-suit/article_2cd11722-5c3d-11ec-b962-abf02649db74.html*

15. *TABOR Foundation, see note 10.*

16. *ALEC Fiscal Rules: Michigan: https://www.fiscalrules.org/state/michigan/*

17. *Calculation by Colorado Legislative Council Staff: November 1, 2022.*

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