Colorado Legislative Council Staff

ISSUE BRIEF

Number 15-07 A Legislative Council Publication March 19, 2015

MARIJUANA TABOR REFUND

by Larson Silbaugh

Colorado's Taxpayer's Bill of Rights (TABOR) requires voter approval of any new taxes. Prior to voter approval, it also requires that voters receive estimates of state spending without new taxes and the new tax revenue. Proposition AA, which authorized the 10 percent sales tax and the 15 percent excise tax on marijuana, met these requirements when it was approved by voters in 2013. This *issue brief* provides background information on one of the consequences of actual collections differing from what was provided to voters.

Two Types of TABOR Refunds

Refunds are required in two sections of TABOR: the section on spending limits[1] and the section on election provisions.[2] These are distinct refund requirements.

The section on spending limits requires a refund when state revenue growth is faster than inflation and population growth. This type of refund has been issued before, and there are statutory mechanisms for how that money is to be refunded. Refunds are issued the fiscal year following the fiscal year when surplus revenue is collected.

The election provision refund is based on a provision in TABOR regarding elections and voter approval of new taxes. Refunds are issued only for the fiscal year in which state spending or new tax revenue exceeded the estimate provided at the election. The TABOR refund from Proposition AA is this second type of refund, and it is the first time the state has owed a refund because of this provision.

Estimates in the Proposition AA Blue Book

Because Proposition AA included a tax increase, TABOR requires the statewide ballot information booklet ("Blue Book") to contain certain fiscal information. Specifically, it requires an estimate of state spending without the new taxes and the revenue from the new taxes. The following two estimates were provided to voters:

a) State spending without new taxes: $12.08 billion; and
b) State revenue from the new taxes: $67 million

These estimates were produced in the summer of 2013 for FY 2014-15, the first full year that the new marijuana taxes would be collected.

Based on the March 2015 Legislative Council Staff revenue forecast, state spending without the Proposition AA taxes will be $12.35 billion, $270 million more than what was published in the Blue Book. This increase in revenue is mainly attributable to increased sales and income tax revenue. These taxes reflect broad economic conditions, such as those measured by retail sales, income, and employment. The economy

[1]Colo. Const. art. X, § 20 (7)

[2]Colo. Const. art. X, § 20 (3)

is stronger in FY 2014-15 than was expected in the summer of 2013 when the Blue Book was prepared.

The 10 percent sales tax and the15 percent excise tax on marijuana are expected to generate $58.0 million in FY 2014-15, $9.0 million less than what was published in the Blue Book. Actual collections for FY 2014-15 will not be known until September 2015 after the fiscal year is complete.

Consequences from Different Blue Book Estimates

Based on a legal opinion issued by the Office of Legislative Legal Services, exceeding the Blue Book estimate for state spending without new taxes, creates a TABOR election refund liability for the state, which is capped at the amount of the revenue generated from the new taxes. The state can retain this revenue with voter approval.

If the General Assembly follows this legal opinion, the state will be required to either refund an estimated $58.0 million to taxpayers or obtain voter approval to keep it. The estimated refund amount is based on the March 2015 Legislative Council Staff revenue and economic forecast.

Proposition AA Refund Mechanism

There is currently no mechanism in statute prescribing how the Proposition AA money is to be refunded. Consequently, legislators must determine a mechanism to refund $58.0 million. The General Assembly could also ask voters to allow the state to keep the revenue.

The revenue from the Proposition AA taxes determines the refund amount, but the General Assembly may choose the revenue source from which to pay the refund. Previous TABOR refunds have been paid out of the General Fund and administered through the individual income tax.

Dedicated Marijuana Revenues

Most of the money generated from the marijuana taxes is appropriated by the General Assembly each year, but there are two cases where the revenue does not go through the normal budget process.

Based on the constitutional amendment that legalized marijuana, the first $40 million in marijuana excise tax revenue is dedicated to school construction. In FY 2014-15, this is expected to be $19.7 million.

A portion of the 10 percent sales tax is returned to cities and counties that allow marijuana sales. Based on the March 2015 forecast, this is expected to be $5.7 million in FY 2014-15. The local share of the sales tax is distributed to local governments on a monthly basis.

These two dedicated uses of revenue account for $25.4 million of the $58.0 million that is to be refunded to taxpayers. If the General Assembly chooses to use money dedicated to school construction or to cities and counties to pay for the refund, a policy change would be required.