# Tax Revenues in the American States, The Tax Revolt, and Colorado's TABOR Amendment

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> A shouting mob of more than 1,000 anti-tax protesters stormed the Capitol Thursday, pounding on office doors and breaking windows, with one broken by a rock hurled into Gov. Don Sundquist's office. Chanting "no new tax!" the protestors banged on the locked doors of the Senate chamber where Tennessee lawmakers were debating the creation of a state income tax.
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> The people and the economy can only wax fat and prosperous when their government is starved and puny.
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> *~Murray N. Rothbard, 1992*

Almost a decade before the citizens of Tennessee were smashing windows at the statehouse in protest against the income tax, the citizens of Colorado, in a similarly anti-tax state of mind, were voting for a constitutional amendment that would significantly decrease the power of the state government (and local governments as well) to raise taxes, create new taxes, or even to collect additional tax revenue. And, as with the Tennessee voters of a decade later a great gulf was perceived between those who pay the taxes and those who spend them. The Colorado constitutional amendment was eventually successful, but only after a long and bitter campaign was launched against the change by virtually everyone well connected to state and local governments throughout the state.

Indeed, leading up to the 1992 fall election, the elected officials, lobbyists, pundits, government employees, and journalists of Colorado were in a frenzy over the proposed ballot initiative known as "Amendment 1," the ballot item that would require a vote of the general population of Colorado to approve any tax increases or increases in tax revenue beyond an established annual rate of growth. Both political parties and a cavalcade of interest groups, local governments, and state agencies closed ranks to oppose the bill. Primarily, the amendment was attacked as an assault on "the concept of representative government" (Longanecker p. 2) and dozens of policy briefs, newspaper columns, and pronouncements of doom blanketed the airwaves and newspapers across the state.

Most taxpayers and voters, however, appeared to pay little mind to the hand-wringing of lawmakers and administrators throughout the state. The electorate was, after all, experiencing a surge in anti-government and anti-incumbent sentiment, the same sentiments that would lead to a significant turnover in the U.S. Congress in 1994 and hopes of lower taxation, regulation, and government spending. While it is now clear that such efforts at the federal level have failed, efforts to control taxation at the state and local level have seen considerably more success.

In this paper, we will discuss the roots of the campaign to add the TABOR Amendment to the Colorado constitution, and how the amendment has been received in the state over the decade since its passage into law. We will then look at some possible reasons as to why the voters, contrary to the predictions of many observers, have not repented of their refusal to approve any additional tax increases, even after significant cuts in government subsidies for a wide variety of programs. Finally, we will examine how the lessons learned in the TABOR experience might be useful for debates over tax limitation measures in other states and why it is unlikely that such measures can be used successfully for those who promote tax and revenue limitation at the federal level in the United States.

## Taxation and Tax Revenue in the States

State and local governments have increased greatly in recent years. In fact, while employment by the federal level has increased by 20% over the past 30-40 years, the "number of state and local employees has approximately doubled," (Harrigan and Nice, 69). In fact, Richard Winters notes that state and local governments "now spend about $7,000 per person, an increase of almost 1,800% [since 1902]," (Winters, 305). While some of this disparity between federal and state employment levels can be attributed to a reliance on contractors at the federal level, the growth in state government over the last century is indisputable.

States have been much more experimental with taxation than has the federal government. Sales taxes, property taxes, income taxes, excise taxes, and other forms of revenue raising have been experimented with in the states over the past few years. But the increase in taxes has not been met with quiet approval of the voters, and the people have not always turned to the politicians for relief. In fact it is not as prevalent as one may think to turn "tax and spend" politicians out of office (Winters, 306). Instead, the people have more often than not used the direct democracy tool of initiative to implement tax limitations in order to ensure that the men and women they elect to public office will use the tax money already given to the state in a wiser manner. Tax revolts in the late 70s and early 80s with a smaller round in the 90s had various roots, but it is clear that the results have been, where instituted, a demand by the people for greater control on the purse strings of the states. It is important to understand methods of taxation before one moves on to see how tax limits in California and Missouri began the latest tax revolt in America and how it evolved into the Taxpayer's Bill of Rights [TABOR] amendment in Colorado in 1992, which can be seen as the most wide reaching tax limitation initiative in the country.

As stated earlier, the states have been quite resourceful in taxing strategies in an attempt to find the balance between levels of taxation and levels of services provided. This is in part due to the manner in which states battle each other in an attempt to draw businesses and residents into their economies. Competition thus requires the states to be innovative and diverse in their taxation strategies. Harrigan and Nice recognize four general sources of revenue for states and local governments, "taxes, intergovernmental aid, charges on services or enterprises they operate, and borrowing," they also go on to note that states "rely most heavily on aid from the federal government, income taxes, sales taxes, and insurance trust fund revenues," (Harrigan and Nice, 72). For self preservation in an economy that can take severe dives after experiencing soaring highs, states and localities have attempted to utilize a wide variety of taxes to insulate themselves from such major swings (Winters, 313).

With the passage of the 16th Amendment to the U.S. Constitution in 1913, the federal government was granted the authority to tax the income of its citizens. A few years after that, the nation was in a severe depression, and states, in search of ways to keep revenue flowing into their coffers, began to see the fiscal and political merits of utilizing a tax that was related directly to how much money a person made (324), and thus to personal income growth. The income tax is one of those taxes that is tied closely to the economy and more specifically to inflation and is therefore much more reactive to the fluctuations therein. Plus it is much more difficult to avoid than "sin" taxes or fees (NCSL, 11). Sales taxes, "sin" taxes, and fees—and even to some extent income taxes—are avoidable given the correct environment. A practice known as "tax migration" can lead people to avoid these taxes by buying goods in other states, over the internet, or via mail-order, working in one state while living in another, or just by not utilizing certain government programs that charge fees (Winters, 315). However these practices are not always practical; the hardship of avoiding the tax may be more laborious than simply paying it.

In the debate over how best to share the tax burden across the population, progressivity and regressivity of a tax must be taken into consideration. A progressive tax is a tax that either burdens all equally or takes some from those who are better off economically and gives to those who are not.  Income tax to a certain extent is considered a progressive tax—this is especially true of the graduated income tax in which the persons at the higher end of the pay scale pay a larger percentage than those at the lower end.  On the other side, broad sales taxes can be seen as regressive.  If necessities of life such as food or utilities are the major base for revenue raising, then people who earn less will pay a larger percentage in terms of their income and expenses than will those who make much more money but eat the same amount of food or use the same amount of energy or water (Harrigan and Nice, 72-79).

With all of the considerations of taxation, policy makers must decide the best path to take for their state in order to not only fully utilize the tax potential that exists but to try and balance that with a proper tax structure the voters of the state feel is fair and equitable.  It is in the nature of politicians to take the monies given to them and spend them in a manner that will benefit their own constituents in order to better secure re-election the next time his or her seat is up for grabs.  If the office holders do not deal with this well and do not react to the wants and needs of the electorate, the worst thing that could happen is not that they will be removed from office, but that the voters will fix the problem themselves.

## The Tax Revolt

Merely labeling what happened in the late 1970s and continuing on and off through the remainder of the century as the "tax revolt" would be to lessen the other tax revolts that have occurred in the United States.  The major difference between the earlier tax revolts and this one was that in the late 20$^{th}$ Century, more states had the initiative process, and more people were willing to use it to get a grip on government spending. James Jacobs, currently the chief economist for the Colorado Commission on Higher Education, suggested in a *Denver Post* editorial regarding that state's Taxpayer's Bill of Rights, "state voters latched onto a concept that would give them some control over government, at least at the state and local levels," (Jacobs, J1).

Mandy Rafool of the National Conference of State Legislatures conducted a study of the differing state tax and expenditure limits that have been put into place over the past thirty years.  Some of the more mild forms include checking the legislature through supermajority requirements for raising taxes or a mandatory vote by the people before such an increase can be made.  However, some states have a much more restrictive form of limitation, these include: revenue limits (restricting how much the government can take in and refunding any excess), expenditure limits (placing caps on spending increases from year to year), appropriation limitations (basing spending on projections without a concrete cap), or hybrids of any of these. Rafool goes on to note that state limits in and of themselves have not proven to be all that effective, but when they are combined with a local restriction as well, they tend to successfully limit the growth of government (Rafool, 1996)

Each of the forms of limitation again raises political questions. While many argue that these tax and expenditure limits (TELs) are a product of the limited government crowd traditionally found in more conservative circles, how these limits are implemented and their results produce even more debate regarding the fairness of them in practice. Harrigan and Nice claim that the tax revolution was a revolt of the "haves against the have-nots" in that limiting government was a limit on the social programs needed by those in lower income brackets while placing more money in the hands of the people in secure financial situations (Harrigan and Nice, 87). Of course, one could also frame the conflict as one of the "producers of tax revenue against the non-producers."

For the most part, however, the initiative-induced restrictions brought to many states have been decried (by those opposed to such clamping down on governmental spending) as a severe limitation on the power of representative government, taking the policy making decisions out of the hands of elected officials and placing it in the hands of the voters. The tax revolt by the people began with the clarion call of Proposition 13 in California and continued with limits such as the Hancock Amendment in Missouri, but quite possibly the TABOR Amendment in Colorado amounted to the apex of citizen induced tax reform.

In 1978 the people of California passed Proposition 13, also known as the Jarvis-Gann Amendment. This was a major event in that it was the passage of a constitutional amendment limiting how and to what extent property taxes throughout the state could be imposed and increased. With its passage, property taxes could only increase by two percent a year (unless inflation was less than that) regardless of increase in value, supermajorities were required in both chambers for tax increases, two-thirds of the voters had to approve any new tax, and other restrictions were placed on the state and local governments (Stocker, 3). While those in favor of limiting any sort of taxation against property felt they had gained a great victory over the expansive government, the truth was that Proposition 13 only struck the heart of the local governments including school districts. More often than not these local authorities are the largest beneficiaries of property taxes, not the higher levels of government. Dan Walters of the *Fresno Bee* noted that, "It led to a massive shift of financial and operational authority from locally elected government and school officials to Sacramento," (Walters, A19).

Just as the various governments of California were settling into the fact that Proposition 13 was now part of the state's fiscal landscape, one of the men responsible for the passage of the 1978 Amendment, John Gann, returned with his own version, Proposition 4, or the "Spirit of 13" Amendment. This was a spending limit on the state and calculated the limit utilizing increases in personal income rates or inflation (whichever was lower) with an added variable for population changes, (Rabushka, 144). This limit further restrained the state in how it could spend revenues once they were received. When the amendment passed, the means by which excesses could be dealt with also became a political issue, and it led to and continues to be a source of contention amongst policy makers in the Golden State. Ed Mendel of the San Diego Union-Tribune noted in the spring of 2000,

> [The legislature and governor] could spend more money in areas exempt from the limit . . .Or they could deadlock, failing to get the two-thirds vote in the Legislature required for a new spending plan, and the revenue over the Gann limit would be automatically rebated to the taxpayers (Mendel, A-3).

Even under these tight restraints, California's Constitution still allowed for the political powers to deal with the necessities of the state. However, with supermajority requirements, excess revenues can only be utilized to fund items with a consensus backing. A strict limit combined with the requirement of two-thirds majority for appropriations create an environment where unwisely or completely unused revenues are returned to the people.

In 1980, deep into the revolt, the voters of Missouri passed their own limitations on the budgetary process in that state. Missouri's Constitutionally imbedded limit, known as the Hancock Amendment, was a restriction on the amount of revenue the state could take in and was based on a percentage increase from the prior year's personal income numbers. They added to this in 1996 by requiring a vote of the electorate for any increase in taxes. (Rafool, 1996). Combined, these limits not only restrain the growth of government, at least in terms of how much money the government can retain from collected taxes, but also place control in the hands of the people to vote on any increases in taxes collected in the first place. Terry Ganey of the *St. Louis Post-Dispatch* noted that "The state tax and spending limitation known as the Hancock

Amendment has not eliminated or stopped the growth of Missouri's taxes," instead he goes on to say that the ultimate outcome of the revenue raising and spending process has fallen into the hands of special interests, "rather than giving elected officials authority to determine budget needs," (Ganey, 1B). Whether or not government growth has been slowed by such limitations is tough to gauge, but that is surely the goal of the men who have pushed these ballot initiatives. The Missouri government considered itself lucky after 1992, for that was when the state of Colorado passed what could be considered the most detailed, multi-pronged amendment aimed at restricting taxation and limiting the growth of government, the Taxpayer's Bill of Rights.

## TABOR

After its passage in 1992, the Taxpayers Bill of Rights (TABOR) became the broadest and strictest tax limitation measure in the entire United States. The *St. Louis Post-Dispatch* editorialized that Colorado's restrictions were "much more Draconian," than the Hancock Amendment that clamped down on Missouri ("Anti-Tax Madness", 2C). Indeed this measure, labeled as "Amendment 1" on the ballot totaled nearly 1,900 words and seemed to take the best (or worst) of every other limitation in the nation and tied them together into one behemoth that took the legislature by storm. However, it is not like the people of the state and their elected leaders could not see the limitation proposal coming from far away, for its primary proponent and designer, Douglas Bruce, a California transplant, had pushed similar measures in both the '88 and '90 elections before the passage of Amendment 1 in 1992. And with each ballot measure the margin of defeat became more and more narrow until the margin was not of defeat but of victory (Cronin, 97).

Within the lengthy amendment to the state constitution were limits on revenues, limits on appropriations (which was actually a limit that had already been written into statute and then set into the constitution with TABOR), a refund to the taxpayers for any excess revenues, and a requirement for a vote of the people for any new tax *or* tax increase. Furthermore, it should be noted that the restrictions on revenues included caps on cash fund revenues like fees for services, and even college tuition at state colleges, further restricting ways the state could make up for declining tax revenues in the future. In fact, TABOR was the first measure in any state that required a vote of the people for both the increase of an existing tax or the institution of any new tax (Rafool, 1996). Under the provisions of Amendment 1, growth in government was limited basically to the rate of inflation plus population growth, and each of the municipalities in the state are limited by local population growth, while inflation for all localities is set by a single rate of inflation —that of the Denver-Boulder area. The appropriations measure was limited by 6%, an already-existing statutory limit known as the Arvescough-Bird limit, enacted during the 1992 legislative session.

According to Thomas Cronin, Colorado as a state has always seemed to have a frontier mentality, it is relatively distrustful of big government and believes strongly in individual rights, and that is manifested in anti-tax sentimentalities (Cronin, 19). With a population that is for the most part anti-tax and with no strong movement away from that at any given time, it should come as no surprise that Colorado is among the lowest in state taxation, and when combined with local taxes, the state falls into the middle of the pack when compared with other states (Lorch, 343). Since 1989, Colorado has dropped from being 28$^{th}$ among all states in total tax collections as a percentage of personal income to 43rd (Bell Report, 6). While TABOR's role in the decrease in the tax burden is not totally clear, it is evident that TABOR has not allowed tax revenues to keep up with personal income growth in the state. Thus, the private sector has consistently outpaced the government sector in growth, and by healthy margins.

While it is conventionally held that there is a belief among conservatives throughout the nation that government and therefore taxation should be greatly limited, the population in Colorado from both sides of the political fence seem to agree on the issue, and to whomever one spoke prior to TABOR, the sentiment was that the taxes levied, as moderate as they may have been, were more than the people were willing to put up with (Cronin, 116).

Its passage may simply have been a repudiation of the legislature and the manner in which it was managing the state coffers. As was stated before, the legislature had passed limitations on how much money could be spent on a yearly basis, and in 1992 that limit was lowered from a 7% increase per year down to 6%. However, the taxpayers did not really benefit from this, for even then, the state could take in as much as it wanted, the excess would simply end up in a reserve fund. Provisions in TABOR not only mandated the return of those funds, but also gave stricter limits on how much the state and localities could raise and spend in any given year (TABOR Legislative Handbook, 2-3). Under this new constitutional amendment, the taxpayers also felt like they had more control over how the government operated in the state. There seems to be a consensus that while the initiative was long, far-reaching, and excruciatingly strict, the one thing that most voters remember or cling to from the campaign to sell Amendment

1 in 1992 was the provision that the voters would decide when and how to raise taxes in the state. In fact the Colorado Municipal League stated that TABOR, "mounts a broadside against some of the most fundamental prerogatives of legislative bodies, in particular the power to raise and spend revenue," (CML, 93-94).

The conservative Independence Institute based in Golden, Colorado notes that in the each of the six years following the passage of TABOR, "the state ballot had either a tax increase or an attempt to circumvent TABOR," and all of them were defeated (TABOR Legislative Handbook, 2). However, the local governments (from cities to school districts) have seen things in a different light. Measures in those areas to "de-Bruce" (a colloquial term utilizing the name of the sponsor of the initiative and meaning to call a vote of the people to retain a surplus or levy a tax) have succeeded more than 400 times in the years since ("Love and TABOR's Cost", J4). Such numbers do not necessarily suggest *great* ease in raising taxes at the local level. According to a report for the Center for Colorado Policy Studies, "City officials reported in interviews that they are being more careful than in the past to propose only tax rate increases that are absolutely necessary and that are most likely to be supported by voters. (Brown, 2). "De-Brucing" does not always mean full tax raising abilities for municipalities. Sometimes, the term can be applied to very limited flexibility given to municipalities as when the city of Colorado Springs obtained a small sales tax increase and the city of Aurora was allowed a small tax increase only for police and jail funding. Such elections hardly signal a full withdrawal from the provisions of TABOR but only allow small revenue increases where the destination of the new tax revenues is usually stipulated ahead of time (Brown, 2).

It is difficult to divine the will of the people even in an election as small as city council, so a statewide ballot initiative is that much more troublesome. Perhaps the vast majority of these who voted to adopt TABOR did it simply on the belief that citizens should be able to vote for or against the taxes they pay, perhaps they wanted more than that. Whichever reason one may give, the fact of the matter is, they got more than that. As stated above, the 1992 addition to Article X of the Colorado Constitution added nearly 1,900 words and created a monster for the state to deal with. After its passage, the courts, the legislature, and many governmental officials had to figure out how the new amendment would be implemented in practice. Numerous court hearings and lengthy legislation attempted to decipher the language of the initiative in order to provide guidance to the various officials who had to live and work with the constraints. Definitions of enterprise, which government could be charged with intergovernmental aid, how refunds were to be returned to the people, and how a ballot issue for “de-Brucing” should be worded were all issues dealt with during this period. The fact that the new amendment was instituted through the initiative process made it doubly difficult. During the hearings, the court attempted not only to tackle the wording of the bill, but also the will of the voters who passed the measure (CML, 93-100). Even nine years after its passage, implementation and compliance with TABOR is a time consuming and confusing task.

Its level of constraint and extensive reach have also had a great effect on the how the political machine in the state of Colorado operates. At the Capitol, lawmakers are now more constrained in what they can and cannot do. John Straayer notes that with the new limits, legislators have to somehow finagle whatever bill they want to pass without a “fiscal note” (a requested tax-fund appropriation) attached to it. While they may have a good idea for a government program, even a program that could be cash funded, it can end up dying in appropriations because the revenue limits of TABOR include the cash fund along with the General Fund dollars. He also notes that those who sit on the Finance or especially the Joint Budget Committee are given even greater power when the budget is so restrained (Straayer, 239). For this reason, TABOR is decried much as the Hancock Amendment in Missouri for being a tool of special interests that can launch well funded, strategic campaigns to better ensure their chance of gaining a slice of the very limited pie. Even the pro-TABOR forces at the Independence Institute noticed that when the state’s revenue surpasses the limits set by the amendment the refunding and budgetary jockeying that follows is “less efficient and less equitable than those [decisions] that would have been made in the absence of the surplus revenue,” (TABOR Legislative Handbook, 8).

Because of the pressures by groups who saw not only the inequity of the surplus returns but the seemingly inefficient manner in which the government was spending time to take in money only to return it to the taxpayers, the legislature with the backing of Governor Bill Owens instituted tax reductions to ensure that the state did not get the revenue in the first place. However, given the restrictions on the government to raise taxes only through a vote of the people and inability to raise revenue at a certain level the year following, new base tax levels were established with no way to make up for lost money even in boom times (Rafool, 1996). All of the dynamics that rely on one year serving as the basis for taxing and spending in the next year results in state and local governments being unable to plan for the future while taking the present year into account (Straayer, 331). Peggy Lamm of the Big Horn Institute, a Denver based policy analysis firm noted, TABOR is like a boa constrictor, “when you exhale, it squishes down with you and then you don’t get to go back up big again, you just keep going down and down and down.” And at the same time, the requirement of surplus returns does not allow for the state to take in revenue in the good times as reserve for when the bad times hit. As *The Denver Post* quipped, “As every farmer knows, when the harvest is bountiful, that’s the time to repair the tractor,” (“Love and TABOR’s Cost,” J4). But with such constraints on the budget, in flush times TABOR only allows for the taxpayers to get paid.

Considering the consequences of the recent tax cuts and the downturn in the economy, the provision of TABOR that concerns TABOR opponents the most is the “ratchet-down” effect. This provision ensures that even in boom years, government spending will be limited, and will even be adjusted down in years of declining revenues. The reasoning goes as follows. If the Bird-Arvescough limit (constitutionalized under TABOR) allows for a spending increase 6% over and above the previous year’s (Y1) base, and the following year’s (Y2) base is established by the new base of the current year (Y1+6%), then any spending less than that maximum increase is lost forever. Thus in a year when there is a need for only a 5% increase and the legislature sets it as that, then the next year the need is for 7%, they are still limited to the 6% increase. Therefore, while in the first year the budget is 105% of the previous year (not 106%), then in the next year the increase is 6% over 105% (not 6% over the possible 106% or even 7% over the 105%). That lost money can never be made up and the budget is forever “ratcheted down.” Such an effect precipitates the boa constrictor comments like Lamm’s above since it has been observed that TABOR tax refund provisions coupled with the ratchet-down effect virtually ensure that government growth will never be able to grow at the same rate as the private sector over time, making government participation in the economy less and less every year. Nevertheless, this ratchet-down effect should not be interpreted as something that will eventually de-fund the government. The language used in the debate about tax funds “being lost forever” really refers to revenue *increases* “being lost forever.” The government budget continues to grow every year, yet the fact that in some years it may not be able to keep up with inflationary increases, or increases in school enrollments or case loads, has led some to conclude that the government is withering away to nothing. This is not the case.

Since 1992 the state of Colorado and the country as a whole have witnessed major swings in the economy from an unprecedented boom to a sagging recession, and during this time TABOR has been stretched and pulled to see where room can be made. However, while the loopholes are few if any, the snares are many. In addition to the complaints with the law already mentioned, Paul M. Grattet, city manager for Greeley, Colorado, noted that the amendment caused the "Erosion of home rule powers," did not provide adequately for an "emergency reserve," and greatly limited "multi-year financial obligations," all of which are basis for sound financial planning and government structure in the state (Grattet, J2).

Much of this could probably be circumvented by going to the people for a reworking of the Taxpayer's Bill of Rights through the same initiative process that put the state in the fiscal bind it is currently in. However, the voters changed the constitution again in 1994 by passing a measure that limited ballot items to a single subject, this put the initiative process on the same footing as legislators whose bill titles and subject matter are tightly restrained at the Capitol (Straayer, 270). This was in response to the lengthy labyrinth-like bills such as TABOR that, according to some, caused more confusion than produced benefits. While there have been court hearings and bills drafted in response to the enactment of TABOR, no one has claimed to know how many provisions it contains—some say as few as 13, while others claim as many as 20. All that is certain is that the court did rule that an effort to amend or abolish TABOR in one fell swoop would run afoul of the single subject rule (CML, 6). Mark Cavenaugh, also of the Big Horn Center likened it to being in a room with Frankenstein's monster and, "now, oh, lovely we've even slammed the door." Even when the legislature itself has tried to reform TABOR, consensus has been elusive, Senator Tilman Bishop attempted to send a referendum to the voters to exclude cash funds from TABOR limitations so that the state could fund some of its own programs through fees and the like. The bill never even made it out of the Capitol and onto the ballot (Straayer, 237).

## Public Reaction

In their study of taxation in the 1990s, the National Conference of State Legislatures noted that states have not adequately updated the manner in which they lay and collect taxes. Much of the tax structures in place were enacted in 1930s when the country was in a depression and with an economy that was based in heavy industry (NCSL, 5). They go on to say that although voters may be willing to forego certain services in the name of saving a few tax dollars, "reductions in spending cannot address the deterioration of state tax bases and state systems' inequities and inefficiencies," (7). If governments hope to avoid more and greater revolts from the taxpayers who fund the programs provided by them, they need to ensure that the taxes in place are adequate but equitable and flexible for the times. Proposition 13 was born at a time when property values were exceeding the owners' growth in income, and the state of California was slow to react to that dynamic.

It would be a mistake to disregard general distaste for taxes among voters, though. While there are certainly equity problems built into every tax, in Colorado, at least, voters have shown little enthusiasm for any kind of new tax at all. No tax increase since TABOR's approval has ever been approved by a majority in the voting booth, and according to a 2003 poll taken after significant cuts in state services, 60% of Coloradans polled still supported the TABOR Amendment (52% of the voters approved it in 1992). In fact, while 8% of those polled wanted to revoke TABOR, 12% claimed to want to make TABOR *more* restrictive (Ciruli Associates 2003, 1). Indeed, there is nothing on the horizon that would have us believe that there will be a significant demand from voters for major changes in the Taxpayer's Bill of Rights any time soon.

It has long been gospel among pundits and lawmakers that Americans want all the amenities government distributes to citizens, but that the citizens don't want to pay for them. The Colorado experience however, would seem to illustrate that while the voters don't want to pay for government amenities, they don't much care about receiving them either. Part of this can be explained by methods long used by government to collect taxes in the first place. In basic interest group theory, of course, it has long been known that government spending on various interest groups has long been due to asymmetries between those being taxed and those receiving the tax revenues. For example, in a state or nation where taxes can always be increased with mere changes in statute and more tax revenues can be collected every time the taxpayers see an increase in income (assuming an income tax), interest groups are always looking for ways to ensure their revenues from the government coffers. An interest group called, say, the "Corporation for a Better America" (CBA), then deploys lobbyists and political operatives to ensure that the CBA receives a goodly amount of tax dollars. Most Americans don't know or care about the CBA, but since it would require a significant investment in time, energy, and even money to discover what the CBA and hundreds of other organizations like it are doing, the voters simply elect to do nothing. The same could be said about taxes in general, since it is difficult for the average voter to discern where the money is going, what the growth in government really is, and where cuts should be made. This is why the economist Murray Rothbard has noted that since at least some voters can be counted upon to be quite happy with the tax rate they pay, taxes end up extracting funds from at least three unwilling groups: "the poor, the uninterested, and the hostile, i.e., those who for one reason or another would not have voluntarily paid these equal sums to the government" (Rothbard 1993, 802). The "uninterested" and the "hostile" are likely to be the group most key in providing the tax revenue that the Corporation for a Better America benefits the most from, since these are the people who have money, and therefore pay taxes, but are yet unwilling to put forth the effort necessary to combat the full-time lobbying and PR efforts being launched by groups like the CBA.

In a thought experiment suggested by Rothbard in later writings, he mused that one way of testing the thesis as to whether or not voters are truly experiencing cognitive dissonance on whether or not to fund government programs, would be to allow the voters the chance of affirmatively checking off taxes which they would like to pay:

> It will then be fascinating to see how much the American public is truly willing to pay, how much it thinks the federal government is really worth, how much it is really convinced by all the slick cons: by the spectre of roads falling apart, cancer cures aborted, by invocations of the "common good," the "public interest," the "national security," to say nothing of the favorite economists' ploys of "public goods" and "externalities." It would be even more instructive to allow the various anonymous contributors to check off what specific services or agencies they wish to earmark for expenditure of their funds. It would be still more fund to see vicious and truthful competitive advertising between bureaus: "No, no don't contribute to those lazy louts in the Department of Transportation (or whatever), give it to us." (Rothbard 1995, 1)

Unbeknownst to Rothbard at the time he was writing this, Colorado was headed down a path that would bring the voters of Colorado a considerable amount of the control over taxes as fancifully imagined above. Since without the approval of 50%+1 of the voters in Colorado no tax increase and no new tax can take effect, voters are saved the trouble of tracking the votes of legislators and playing the game of researching which candidates are pro or anti-tax. As long as a majority simply refuse to approve new taxes, the candidates take on a secondary function of merely distributing an amount of money that is regulated not by the legislature, but by the constitution. In essence, the asymmetry problem between taxpayers and tax receivers has been made considerably less significant. With an inability to raise new revenue beyond the strict limits, legislators and state agencies find themselves in the unenviable position outlined above where agencies find themselves reduced to competing with other agencies for a larger piece of a largely fixed amount of revenue. One need look no further than the competition between k-12 education and higher education for funding in Colorado to note the kind of internal competition that such a state of affairs creates.

In a tax system that employs TABOR-type limitations then, the voters that are "hostile" or "uninterested" are given an easy way to avoid having to pay more taxes without launching any kind of political campaign or lobbying effort. They simply need to vote "no" and hope that a majority of the voters feel the same way about taxes, and in the decade since TABOR's passage, this has not been a problem.

So how do most Coloradans feel about paying taxes? Polling data indicates that while Coloradans are not hard core libertarians who oppose all taxation, 2/3 of them believe that tax money is wasted and that people are overtaxed (Ciruli 2001, 1). Nevertheless, most citizens in Colorado are willing to accept *some* taxation, but most express a preference for state taxes over federal taxes in addition to their liking for TABOR. Consequently, TABOR has found a receptive audience in Colorado. Yet, opposition continues among those who claim that the taxpayers do not fully understand the ramifications of all the provisions contained in TABOR (Bell Report, 59). It has become clear that TABOR does not allow government growth to keep up with private sector growth in the economy. In other words, a generation down the line, while government budgets will continue to grow, the government sector will be a much smaller percentage of what it is now in relation to the private sector. This is being held up as a grave threat to the government's ability to provide essential services. What services the voters have deemed essential, though, remains to be seen.

Because of the public's apparent lack of concern for declining government revenues, many elected officials have signaled a new unwillingness to call for tax increases or for significant changes in TABOR (Bell Report, 56). During the last two legislative sessions (2003 and 2004), at least 25 resolutions have been introduced for passage as referenda to state ballot, and all of them have failed. Numerous changes have been suggested that would still allow the voters control over any new tax increases, but would allow more flexibility in making sure that growth in the government sector keeps better pace with growth in the private sector. With the failure of all referenda in the legislature, it appears that the task of putting any such amendments on the ballot will have to fall to private groups wishing to engage in the initiative process, a costly endeavor, and given the polling data, an endeavor hardly guaranteed success. It appears unlikely that those “hostile” and “uninterested” voters will be terribly interested in the details of TABOR and tax revenue.

But, the proponents of tax revenue have not lost hope. Success, however, has been elusive, and as John Straayer notes, any success in repealing these tax restrictions “would take courage and leadership, but thus far these have been in short supply,” (Straayer, 331). Of course, as far as the voters were concerned, that may have been the problem in the first place.

However, some note that perhaps the voters acted hastily and without all of the facts. One of the fundamental questions in a representative democracy is, “how much power should the government have to make the decisions that need to be met, and how much should the people have?” *The St. Louis Post-Dispatch* commented, “Prohibiting government from even asking the tax question is a punitive act, substituting voter resentment for good sense,” (Anti-Tax Madness, 2C). Perhaps the voters do not have the expertise and the time it takes to understand the complicated questions that surround revenue raising in government situations. Cronin and Loevy have suggested that while so much time is spent teaching math and history and good government in the classrooms, perhaps students would benefit greatly from instruction on revenue raising and appropriations in government, “more about local mill levies, excise taxes, fishing license fees,” and other taxes (Cronin and Loevy, 301).

One conclusion we can draw is that in a government without TABOR restrictions, voter ignorance is the bread and butter of the interest group system, maintaining that asymmetry of interest between those who pay the taxes, and those who receive the funds. In a system that *has* TABOR restrictions, though, the need for voter approval of increased taxes or revenue has allowed the voters to veto new taxes with minimal investment of resources, and if the TABOR experience has taught us anything, it is that if it is not made clear to the taxpayers how their money is spent, why it must be spent, and how equitable the tax structure is, the politicians and citizens should be prepared for little cooperation from the taxpaying public.

## Implications of TABOR

When thinking about the Taxpayers' Bill of Rights, it is important to keep in mind that the people of Colorado are not necessarily heading toward some kind of free-market, tax-free land of small government. Colorado is after all, not a sovereign nation, but part of a larger political entity with its own abilities to tax the citizens of Colorado. Federal taxes may still be freely imposed on the citizens of Colorado, and so far, federal mandatory spending in Colorado on programs such as Medicaid has not been affected. Budget cuts resulting from TABOR have been taken out of state programs like higher education, law enforcement, and other programs not protected by federal court decisions and Congressional mandates.

The effect of TABOR has been to increase the role of the federal government and local governments in the lives of Colorado citizens. With a dearth of funding at the state level, municipalities have taken to looking for funds elsewhere, especially in Washington, DC. While this is nothing novel for most local governments, many counties and municipal governments in Colorado have been increasing the funds devoted to federal level lobbying efforts in response to cuts in funding for local projects at both state and federal levels (Watzman, 1). If the state government becomes less and less likely to be a source of funds for local government projects, it is not difficult to see municipalities more interested in developing relationships with Washington than with Denver. This may or may not be a good thing depending on one's perspective. What we do know, however, is that TABOR has been very effective at substantially limiting state government revenues, and has slowed tax collection at the local level as well. The federal government continues to stand outside of these restriction, and it remains to be seen how measures like TABOR will affect relations between state and local government and Washington over the long run.

In spite of all the dissatisfaction expressed by lawmakers and pundits with the tax limitation effects of TABOR, and perhaps because of the satisfaction expressed by most voters with TABOR, other states around the country have begun to look at pursuing similar tax limitation measures. Oregon, Minnesota, and Wisconsin are all debating resolutions for consideration in their legislatures. The most heated debate has been in Wisconsin where the resolution has the most realistic chance of passing in the near future . When it comes to constitutional amendments, though, passage through a legislature is hardly proof of success (Andersen ,1). In Wisconsin at least, amendments must be adopted by "two successive legislatures" and then pass a vote of the citizens before it will become law. If Colorado's TABOR is any indicator, the initiative process remains the best bet for getting changes as sweeping as TABOR on the ballot, although no other state has yet adopted such stringent tax control measures.

While other states may be contemplating something like TABOR, proponents of tax limitation measures should not get their hopes up about anything similar being produced at the federal level anytime soon. In a recent editorial for the American Conservative Union, Brian Riedl and Alison Fraser discussed the need for Congress to "cap federal spending" (Riedl and Fraser, 1). The authors do not suggest an effective means for actually accomplishing this. If the solution is to merely change statute, we can be immediately sure that the cap will simply be increased every few years. In states where tax limitation measures have been little more than supermajority votes for new taxes, we find supermajorities voting for new taxes. If there is going to be any true limits on the spending done by legislatures, the limitations must come from somewhere other than the legislature. As there is no initiative process at the federal level, such changes would need to be made on a state by state basis, and would likely require much more money for such an effort in states that boast populations much larger than Colorado's. We will have to witness more than just a handful of states looking to implement strict tax limitation measures before there is any danger of such rules being applied to Congress.

TABOR supporters would also have to overcome the "national defense" argument that has long been justification for increased federal spending and for avoiding constitutional controls like a balanced budget amendment. It could be that measures like TABOR could build on themselves and promote more resistance to taxation and spending in the long run. The Colorado experience has shown that most voters do not have a problem with declining government services as long as they are not experiencing tax increases. Budget cuts also cut into government entities' abilities to advertise and drum up public support for their services, while also cutting down on their abilities to enforce regulations and fully fund agencies. It really does appear that TABOR has made state government less relevant to the lives of Coloradans. Whether or not this state of affairs will continue over time remains to be seen. The access to federal funds that still pour into the state has tempered any public reaction to the cuts, and the state has not reached a point of attempting to cut programs mandated by federal law. If the state government declares that it is unable to pay for federal mandates, it is unclear what the public and legal responses might be.

For now, the voting and polling data is clear about what Coloradans think about the Taxpayers' Bill of Rights. Most like it, some would like to see some small changes, and some would like to see it strengthened. The economic disaster predicted by its opponents a decade ago has yet to materialize.

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**Appendix: Text of TABOR Amendment**

**Note: <u>Bold underlined text indicates text added since the original TABOR was enacted.</u>**

**Article X, 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. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions.

Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

**(2) Term definitions.** Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

**(3) Election provisions.**

(a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) **<u>At least 30 days</u>** before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. **<u>The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs.</u>** Titles shall have this order of preference: **"NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."** Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by **<u>45</u>** days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. **The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.**

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall begin, **"SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?"**

**(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.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

**(5) Emergency reserves.** To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

**(6) Emergency taxes.** This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.

**(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.

(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. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

**(8) Revenue limits.** (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. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. 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.

**(9) State mandates.** Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Enacted by the People November 3, 1992 -- Section 1 of article V of this constitution provides that initiated measures shall take effect upon the Governor's proclamation. Subsection (1) of this section provides that this section shall take effect December 31, 1992, or as stated. (See subsection (4).) The Governor's proclamation was signed January 14, 1993. (For the text of this initiated measure, see L. 93. p. 2165.); section 20 (3)(b)(v) amended November 8, 1994 -- Effective upon proclamation of the Governor, January 19, 1995. (See L. 94, p. 2851.); the introductory portion to section 20 (3)(b) and (3)(b)(v) amended November 5, 1996 -- Effective upon proclamation of the Governor, December 26, 1996. (For the text of the amendment and the votes cast thereon, see Laws 1995, p. 1425, and Laws 1997, p. 2393.)