

April 18, 2023

The Honorable Daniel Werfel  
Commissioner Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Commissioner Werfel:

I write about the Internal Revenue Service's (IRS) future tax treatment of Colorado's Taxpayer Bill of Rights (TABOR) refunds. On February 3, 2023, the IRS announced that it may treat TABOR as federal taxable income, throwing the recent tax season for Colorado filers into chaos.<sup>1</sup> Although the IRS later decided against taxing Colorado's 2022 state tax refunds, the risk remains that it may do so in the future. Over the past 30 years, the IRS has never taxed TABOR refunds, and I urge it to continue this long-standing precedent. I also request a meeting with you to discuss the matter.

The IRS issued final guidance on February 10, 2023, confirming that it would not tax Colorado and other states' 2022 tax payments. The guidance placed those payments into two categories: "refund of state taxes paid" and "general welfare and disaster relief payments."<sup>2</sup> The IRS noted that the first category of payments is generally not taxable. Even though Colorado's TABOR refunds are, by definition, state tax refunds, the IRS inexplicably designated them as general welfare and disaster relief payments and opened the door to taxing these refunds in the future.

The IRS's misclassification is deeply concerning and demonstrates a poor understanding of how Colorado's TABOR system works. In 1992, Colorado voters passed TABOR, a law establishing a strict formula to limit state revenue based on population growth and inflation. Under TABOR, the state withholds statutory income, property, gas, and sales taxes, as well as fees that Coloradans pay during the year. If the state collects revenue in excess of what the formula allows, it refunds the balance to Coloradans – first as property tax exemptions for seniors, then as income tax rate reductions and rebates.

Between 2016 and 2019, the state did not collect excess revenue and therefore did not provide TABOR rebates to taxpayers. Like other states' tax refunds, TABOR rebates are not a means to enhance incomes, but rather to correct Coloradans' tax liability when they overpay during the year.

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<sup>1</sup> IRS, "IRS Statement — Taxability of State Payments," February 3, 2023, <https://www.irs.gov/newsroom/irs-statement-taxability-of-state-payments>

<sup>2</sup> IRS, "IRS issues guidance on state tax payments to help taxpayers," February 10, 2023, <https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments-to-help-taxpayers>

Colorado deliberately provides TABOR rebates as a lump sum given the impracticality of asking Coloradans to collect, total, and calculate thousands of receipts throughout the year to determine whether they exceed a legal threshold. The rebate mechanism simplifies Colorado's tax administration. The IRS has adopted a similar approach, for example, by allowing businesses to write off gas and vehicle wear and tear expenses using a standard mileage formula.<sup>3</sup> There is no other realistic way for Colorado to refund this excess revenue.

TABOR payments are tax refunds and the IRS should continue to treat them that way. Last year, to help Coloradans cope with rising costs, Colorado accelerated the TABOR refund through the Colorado Cash Back initiative. While Colorado changed the timing of the TABOR payment, it still remained a refund and should not be taxed.

I strongly urge the IRS to continue its 30-year precedent of not treating Colorado's TABOR rebates as taxable income, and I look forward to discussing the matter with you.

Sincerely,



Michael F. Bennet  
United States Senator

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<sup>3</sup> IRS, "2023 Standard Mileage Rates, March 2023, <https://www.irs.gov/pub/irs-drop/n-23-03.pdf>