BUDGET & TAX

Protecting taxpayers with supermajority requirements

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MOUNTAIN STATES
POLICY CENTER

Protecting taxpayers with supermajority requirements

Introduction

If there's one thing Americans can still agree on it's that tax policy is one of the most consequential decisions our government makes that impacts our economy and family budgets. There is also general agreement that tax increases should be the last resort when budgeting and imposing them should not be taken lightly by policymakers.

One way to ensure this occurs is by adding requirements to a state's constitution that require a supermajority vote or voter approval to raise taxes. This type of taxpayer protection already exists in several states.

KEY INFORMATION COLUMN

Need for constitutional tax protections

Some may say that the current makeup of the legislatures in Idaho, Montana, and Wyoming is already sufficient to avoid tax increases. While that may be true today, it may not be tomorrow as experienced by taxpayers in Washington state.

Consider the fact that Washington voters have passed ballot measures requiring a supermajority vote to raise taxes not once, twice, or thrice, but six separate times.[1] Yet today this taxpayer protection does not exist in Washington because it was not added to the state constitution. As a result, Washington taxpayers now face tax increases on an annual basis without this protection.[2]

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Rather than leave certain taxpayer protections subject to changing political winds, lawmakers in Texas have acted in recent years instead to forward voters constitutional amendments on various tax restrictions. As noted by the Tax Policy Center:[3]

> "Texas Proposition 3 would amend the state's constitution to prohibit legislators from enacting a wealth tax. No one in Texas is proposing a wealth tax. But no one in Texas was proposing an income tax in 2019, and that didn't stop three-quarters of Texans from amending the constitution that year to keep the income tax permanently out of the Lone Star State."

Although wealth and income tax prohibitions are different policies than supermajority requirements, these efforts demonstrate Texas policymakers acting to provide voters the opportunity to make sure the tax climate in the state remains stable.

Examples from other states

There are currently 17 states with some form of supermajority or voter approval requirements for tax increases.

There are currently 17 states with some form of supermajority or voter approval requirements for tax increases.[4] Here are examples of the legislative vote thresholds required to raise taxes in those states:

- **3/5 vote**: Delaware, Kentucky, Mississippi, and Oregon

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[1] "New Poll: Lawmakers should act on supermajority for taxes amendment," Washington Policy Center, January 2015, available at https://www.washingtonpolicy.org/publications/detail/new-poll-lawmakers-should-act-on-supermajority-for-taxes-amendment

[2] "Washington Advisory Vote 37, Nonbinding Question on Capital Gains Tax to Fund Education and Child Care (2021)," Ballotpedia, accessed on October 23, 2023, available at https://ballotpedia.org/Washington_Advisory_Vote_37,_Nonbinding_Question_on_Capital_Gains_Tax_to_Fund_Education_and_Child_Care_(2021)

[3] "TaxVox: State and Local Issues," Tax Policy Center, October 2023, available at https://www.taxpolicycenter.org/taxvox/2023-state-elections-feature-key-tax-questions

[4] "Senate considers supermajority for taxes constitutional amendments," Washington Policy Center, February 2013, available at https://www.washingtonpolicy.org/publications/detail/senate-considers-supermajority-for-taxes-constitutional-amendments

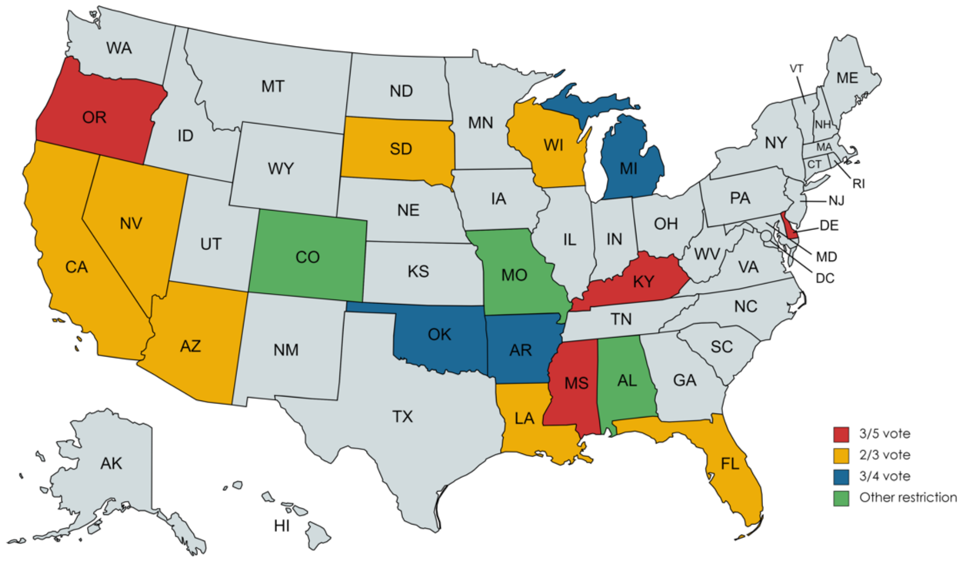
KEY INFORMATION COLUMN

Along with providing constitutional tax increase protections, several states like Oregon and Colorado also require automatic tax rebates when revenues grow above a certain level.

- **2/3 vote**: Arizona, California (includes fee increases), Florida, Louisiana, Nevada (includes fee increases), South Dakota, and Wisconsin

- **3/4 vote**: Arkansas, Michigan (property taxes only), and Oklahoma

- **Other**: Alabama (state income and property taxes cannot be increased without a constitutional amendment), Colorado (voter approval is required for all tax increases), and Missouri (voter approval is required to raise taxes above a set revenue cap)



Here are examples of how these tax restrictions are worded in state constitutions:

> **California Constitution Article 13a, Section 3**: "Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed." [5]

> **South Dakota Constitution Article 11, Section 14**: "Vote required to impose or increase taxes. The rate of taxation imposed by the State of

[5] "California Constitution Article XIII A - Tax Limitation Section 3," Justia Law, accessed on October 23, 2023, available at https://law.justia.com/constitution/california/article-xiii-a/section-3/

KEY INFORMATION COLUMN

Colorado is set to pay out more than $3.5 billion in TABOR refunds next spring — one of the largest paybacks that the state has ever had to return to taxpayers.

> South Dakota in regard to any tax may not be increased and no new tax may be imposed by the State of South Dakota unless by consent of the people by exercise of their right of initiative or by two-thirds vote of all the members elect of each branch of the Legislature."[6]

Authorizing automatic tax rebates

Along with providing constitutional tax increase protections, several states like Oregon and Colorado also require automatic tax rebates when revenues grow above a certain level. Here are details on how that automatic refund process works in those states.

The Oregon Department of Revenue explains:[7]

> "The Oregon surplus credit, known as the 'kicker,' is a way for state government to return some of your taxes to you when revenues are more than predicted. Every two years, the Oregon Department of Administrative Services (DAS) Office of Economic Analysis (OEA) determines whether there is a surplus and the amount to be returned to taxpayers as a kicker. If there's a surplus, the kicker may be claimed on the return as a refundable tax credit or donated to the State School Fund . . . The 1979 Oregon Legislature passed the 'Two percent kicker' law, which requires the state to refund excess revenue to taxpayers when actual General Fund revenues exceed the forecast amount by more than two percent."

This has resulted in billions of dollars of tax refunds for Oregonians:[8]

> "Oregon taxpayers are set to receive their biggest kicker tax rebate on record when they file their taxes next spring — a $5.6 billion refund, according to near-final forecasts issued Wednesday. That works out to $980 for the median taxpayer."

According to the Colorado Department of Revenue:[9]

> "The Taxpayer's Bill of Rights (TABOR) Amendment was approved by voters in 1992. This amendment to the Constitution of the State of Colorado generally limits the amount of revenue governments in the

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[6] "Constitution," South Dakota Legislature, accessed on October 23, 2023, available at https://sdlegislature.gov/Constitution/11-14
[7] "Oregon surplus 'Kicker' credit," Oregon Department of Revenue, accessed on October 23, 2023, available at https://www.oregon.gov/dor/programs/individuals/pages/kicker.aspx

[8] "Oregon taxpayers set to receive record $5.6 billion kicker; here's what you can expect,' The Oregonian, August 2023, available at https://www.oregonlive.com/business/2023/08/oregon-taxpayers-set-to-receive-record-56-billion-kicker-heres-what-you-can-expect.html
[9] "Taxpayer's Bill of Rights (TABOR) Information," Colorado Department of Revenue, accessed on October 23, 2023, available at https://tax.colorado.gov/TABOR

KEY INFORMATION COLUMN

Proactively acting to protect taxpayers by sending voters a supermajority for tax increases constitutional amendment is a prudent thing for policymakers to do.

Nothing in this publication shall be construed as an attempt to aid or hinder the passage of any legislation.

> state can retain and spend. Absent voter approval, it requires excess revenue to be refunded to taxpayers. TABOR also requires voter approval for certain tax increases. The state TABOR revenue limit is generally equal to the prior fiscal year's limit plus the rate of inflation and population growth in Colorado, subject to a voter-approved floor."

Here is an example of what the Colorado tax refund looked like this year:[10]

> "Colorado is set to pay out more than $3.5 billion in TABOR refunds next spring — one of the largest paybacks that the state has ever had to return to taxpayers. In fact, the state is in the middle of what could be a record-busting string of revenue years. For the first time ever, the state government could be forced to pay refunds for six straight years, stretching from 2022 through 2027 or longer. Those refunds are expected to average more than $2 billion per year — a level never before seen in Colorado, even accounting for inflation."

Conclusion

Proactively acting to protect taxpayers by sending voters a supermajority for tax increases constitutional amendment is a prudent thing for policymakers to do. As occurs in Oregon and Colorado, this type of policy could also be coupled with automatic tax rebate triggers based on revenue growth to help avoid the temptation of overheating a state budget and increasing the pressure for tax increases.

Whether requiring voter approval for all tax increases like in Colorado or needing a 2/3 legislative threshold as occurs in Florida, increasing the tax burden imposed on families and businesses should first secure a broad consensus and always be the last resort when budgeting.

[10] "Why are TABOR refunds so huge lately? And will they stay that way?," CPR News, September 2023, available at https://www.cpr.org/2023/09/21/colorado-why-are-tabor-refunds-so-huge-lately/

ABOUT THE AUTHOR

Jason Mercier has more than 20 years experience working with public officials, media, and citizen stakeholders across the nation to improve the fiscal, governance and transparency policies of local and state governments. He spent the last 16 years as the Director of the Center for Government Reform at Washington Policy Center.

Jason has been appointed by lawmakers and governors to various tax, budget and transparency reform committees. He is a Fellow with the national Better Cities Project and is also a member of the State Tax Advisory Board for the Tax Foundation. Jason has testified numerous times before legislative committees across the country on government reform issues, and his op-eds have been published in numerous newspapers across the region.

When he's not geeking out on studies and audits, Jason's life revolves around his wife and two daughters and the 49ers' schedule.

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