

CHAPTER 337

TAXATION

HOUSE BILL 23-1290

BY REPRESENTATIVE(S) McCluskie and Sirota, Amabile, Bacon, Bird, Boesenecker, Brown, deGruy Kennedy, Duran, Garcia, Hamrick, Jodeh, Kipp, Lieder, Lindsay, Lindstedt, McLachlan, Michaelson Jenet, Ricks, Sharbini, Snyder, Story, Titone, Weissman, Woodrow, Young;
also SENATOR(S) Moreno and Fields, Bridges, Coleman, Cutter, Exum, Hansen, Marchman, Priola, Fenberg.

AN ACT

CONCERNING THE REFERRAL OF A BALLOT ISSUE RELATED TO THE UNDERESTIMATION OF REVENUE FROM THE TAXES ON PRODUCTS THAT CONTAIN NICOTINE IN A REQUIRED NOTICE TO VOTERS, AND, IN CONNECTION THEREWITH, REFERRING A BALLOT ISSUE TO THE VOTERS TO ALLOW THE STATE TO RETAIN AND SPEND STATE REVENUES THAT WOULD OTHERWISE NEED TO BE REFUNDED FOR EXCEEDING THE ESTIMATE IN THE BALLOT INFORMATION BOOKLET ANALYSIS FOR PROPOSITION EE AND TO ALLOW THE STATE TO MAINTAIN THE TAX RATES ON CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS ESTABLISHED IN PROPOSITION EE THAT WOULD OTHERWISE NEED TO BE DECREASED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Universal access to high-quality preschools can transform the lives of children, families, and communities. The window from birth to age five is a critical moment in a child's development, with ninety percent of brain development occurring during this time.

(b) Research illustrates that children who attend high-quality preschools are, on average, eight months ahead in academic learning and about five months ahead in executive function skills, such as listening, planning, and self-control, compared to those who do not. Children who attend high-quality preschools are also more likely to graduate college and less likely to become a teenage parent or receive public assistance later in life.

(c) That is why in 2020, the general assembly enacted House Bill 20-1427, which created a new excise tax on nicotine products and increased excise taxes on

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

cigarettes and tobacco products to fund preschool programs, among other things, and subsequently referred proposition EE, which sought voter approval for these portions of House Bill 20-1427 to take effect;

(d) 66.7% of voters approved proposition EE, with 2,134,608 votes in favor of the measure and 1,025,182 votes against it;

(e) And yet, if in state fiscal year 2021-22, the actual revenue the state received exceeded the ballot information booklet estimate for either state fiscal year spending or state revenue from the new taxes in proposition EE, then the state may be required to refund revenues related to proposition EE and reduce the new and increased taxes in proposition EE;

(f) The potential refund is because section 20 (3)(c) of article X of the state constitution, commonly known as TABOR, requires the combined amount in excess of the blue book estimates to be refunded, unless there is later voter approval to retain these excess revenues;

(g) The potential reduction in the rates of the new and increased taxes in proposition EE is because paragraph (3)(c) of TABOR also requires a percentage reduction in the rate of newly created or increased taxes equal to the amount of revenue in excess of the blue book estimates as a percentage of the total state revenue from the new and increased taxes, unless there is later voter approval;

(h) On September 12, 2022, legislative council staff sent a memo to the executive committee of the legislative council and the prime sponsors of House Bill 20-1427 informing them that:

(I) The state controller had released its certification of revenues for state fiscal year 2021-22 certifying the state's total fiscal year spending without the new taxes in proposition EE; and

(II) The department of revenue and the department of treasury had released preliminary data for state fiscal year 2021-22 indicating the amount of state revenue from the new taxes in proposition EE;

(i) Although the state had less fiscal year spending without the tax increase than anticipated in the blue book estimate, the state received \$208 million in state revenue from the new taxes, or \$21.5 million more than the blue book estimate;

(j) Since the general assembly first became aware of state revenue from the new taxes exceeding the blue book estimates on September 12, 2022, the same day that the secretary of state certified the ballot order and content to the county clerks and recorders and after the blue book had been sent to the printer, as a practical matter, it was too late to refer a ballot issue for the general election on November 8, 2022;

(k) Consequently, this act refers a new ballot issue to the voters at the first possible election to seek the voter approval necessary to avoid a refund under TABOR and to avoid reducing the rates of the new and increased taxes;

(l) If the voters approve the new ballot issue, the refund and rate reductions will

be unnecessary and the money that would have otherwise been refunded will be retained and refunded to the preschool programs cash fund and the general fund and the rates of the new and increased taxes will remain as they were initially approved by the voters;

(m) Demand for the Colorado universal preschool program for all children in the year before kindergarten has already exceeded expectations ahead of its launch for the 2023-24 school year. More than 30,000 eligible families and over 1,800 providers have already signed up to participate in the program, with months remaining in the application window; and

(n) Additional resources would allow the state to extend preschool services and additional hours to more children, setting Colorado's children on a path to success in kindergarten and beyond.

(2) Now, therefore, it is the general assembly's intent to refer a ballot issue to seek the later voter approval permitted by TABOR to avoid a refund and tax rate reduction and to conditionally require the refund, plus interest, and tax rate reduction, if the voters reject the ballot issue.

SECTION 2. In Colorado Revised Statutes, 26.5-4-209, **add** (6) as follows:

26.5-4-209. Preschool programs cash fund - created - use - repeal.

(6) (a) (I) ON SEPTEMBER 1, 2023, THE STATE TREASURER SHALL TRANSFER TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS FROM THE UNEXPENDED AND UNENCUMBERED MONEY IN THE PRESCHOOL PROGRAMS CASH FUND TO THE PROPOSITION EE REFUND CASH FUND CREATED IN SECTION 39-28-503.

(II) NOTWITHSTANDING SUBSECTION (6)(a)(I) OF THIS SECTION, IF THERE IS LESS THAN TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS OF UNEXPENDED AND UNENCUMBERED MONEY IN THE PRESCHOOL PROGRAMS CASH FUND AS OF SEPTEMBER 1, 2023, THE STATE TREASURER SHALL TRANSFER TO THE PROPOSITION EE REFUND CASH FUND CREATED IN SECTION 39-28-503:

(A) FROM THE PRESCHOOL PROGRAMS CASH FUND, THE BALANCE OF THE UNEXPENDED AND UNENCUMBERED MONEY IN THE PRESCHOOL PROGRAMS CASH FUND; AND

(B) FROM THE GENERAL FUND, AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS AND THE AMOUNT THE STATE TREASURER TRANSFERS PURSUANT TO SUBSECTION (6)(a)(II)(A) OF THIS SECTION.

(b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2024.

SECTION 3. In Colorado Revised Statutes, 39-28-103, **add** (2) as follows:

39-28-103. Tax levied. (2) (a) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION THAT ARE ATTRIBUTABLE TO THE VOTERS' APPROVAL OF

THE TAX INCREASE AT THE NOVEMBER 2020 STATEWIDE ELECTION ARE REDUCED AS SPECIFIED IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JANUARY 1, 2024.

SECTION 4. In Colorado Revised Statutes, 39-28.5-102, **add** (5) as follows:

39-28.5-102. Tax levied. (5) (a) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION THAT ARE ATTRIBUTABLE TO THE VOTERS' APPROVAL OF THE TAX INCREASE AT THE NOVEMBER 2020 STATEWIDE ELECTION ARE REDUCED AS SPECIFIED IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JANUARY 1, 2024.

SECTION 5. In Colorado Revised Statutes, 39-28.6-103, **add** (4) as follows:

39-28.6-103. Tax levied. (4) (a) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION ARE REDUCED AS SPECIFIED IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JANUARY 1, 2024.

SECTION 6. In Colorado Revised Statutes, **add** part 5 to article 28 of title 39 as follows:

PART 5
BALLOT ISSUE RELATED TO PROPOSITION EE
REFUNDS - RATE REDUCTIONS - PERMITTED USES

39-28-501. Definitions. AS USED IN THIS PART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BALLOT ISSUE" MEANS THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1).

(2) "PROPOSITION EE REFUND CASH FUND" OR "FUND" MEANS THE CASH FUND CREATED IN SECTION 39-28-503.

(3) "PROPOSITION EE TAX REVENUE" MEANS THE ACTUAL REVENUE FROM PROPOSITION EE TAXES RECEIVED BY THE DEPARTMENT.

(4) "PROPOSITION EE TAXES" MEANS THE TAX IMPOSED BY SECTION 39-28.6-103 AND THE TAX INCREASES IMPOSED BY SECTIONS 39-28-103 AND 39-28.5-102 THAT WERE APPROVED BY VOTERS AT THE NOVEMBER 2020 STATEWIDE ELECTION.

39-28-502. Ballot issue - proposition EE - later voter approval. (1) AT THE ELECTION HELD ON NOVEMBER 7, 2023, THE SECRETARY OF STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF THE STATE FOR THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT ISSUE: "WITHOUT RAISING TAXES, MAY THE STATE RETAIN AND SPEND REVENUES FROM TAXES ON CIGARETTES, TOBACCO, AND OTHER NICOTINE PRODUCTS AND MAINTAIN TAX RATES ON CIGARETTES, TOBACCO, AND OTHER NICOTINE PRODUCTS AND USE THESE REVENUES TO INVEST TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS TO ENHANCE THE VOLUNTARY COLORADO PRESCHOOL PROGRAM AND MAKE IT WIDELY AVAILABLE FOR FREE INSTEAD OF REDUCING THESE TAX RATES AND REFUNDING REVENUES TO CIGARETTE WHOLESALERS, TOBACCO PRODUCT DISTRIBUTORS, NICOTINE PRODUCTS DISTRIBUTORS, AND OTHER TAXPAYERS, FOR EXCEEDING AN ESTIMATE INCLUDED IN THE BALLOT INFORMATION BOOKLET FOR PROPOSITION EE?"

(2) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THIS CONSTITUTES LATER VOTER APPROVAL TO AVOID THE POTENTIAL REFUND AND RATE REDUCTION REQUIRED BY SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(3) FOR PURPOSES OF SECTION 1-5-407 (5)(b), THE BALLOT ISSUE IS A PROPOSITION. SECTION 1-40-106 (3)(d) DOES NOT APPLY TO THE BALLOT ISSUE.

39-28-503. Proposition EE refund cash fund. THE PROPOSITION EE REFUND CASH FUND IS HEREBY CREATED IN THE STATE TREASURY. IN ACCORDANCE WITH SECTION 26.5-4-209 (6), THE FUND CONSISTS OF TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS TRANSFERRED FROM THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 26.5-4-209 AND, IF APPLICABLE, THE GENERAL FUND. THE MONEY IN THE FUND IS RESTRICTED FROM USE UNTIL JANUARY 1, 2024, AND IS NOT INCLUDED IN THE YEAR-END BALANCE REQUIRED BY SECTION 24-75-201.1 (1)(d)(XXIII).

39-28-504. Approval of ballot issue - rejection of ballot issue - refunds. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IF A MAJORITY OF THE VOTERS VOTING ON THE BALLOT ISSUE VOTE "NO/AGAINST", THE STATE WILL BE REQUIRED BY SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION TO MAKE REFUNDS; AND

(b) THE AMOUNT OF THE REFUND WOULD BE TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS, WHICH IS THE AMOUNT BY WHICH THE PROPOSITION EE TAX REVENUE IN STATE FISCAL YEAR 2021-22 EXCEEDED THE

BALLOT INFORMATION BOOKLET ESTIMATE OF REVENUE FROM THE PROPOSITION EE TAX INCREASE FOR THAT SAME FISCAL YEAR PLUS INTEREST.

(2) THE DEPARTMENT SHALL DETERMINE A REASONABLE METHOD TO DISTRIBUTE THE REVENUE IN THE PROPOSITION EE REFUND CASH FUND CREATED IN SECTION 39-28-503 IN ACCORDANCE WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION. THIS METHOD MUST INCLUDE THE DISTRIBUTION OF MONEY FROM THE PROPOSITION EE REFUND CASH FUND TO TAXPAYERS WHO PAID THE PROPOSITION EE TAXES.

(3) (a) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "NO/AGAINST", THEN ON OR BEFORE JUNE 30, 2024, THE STATE TREASURER SHALL REFUND THE MONEY IN THE PROPOSITION EE REFUND CASH FUND IN THE MANNER DETERMINED BY THE DEPARTMENT PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(b) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THEN, AS SOON AS POSSIBLE THEREAFTER, THE STATE TREASURER SHALL TRANSFER THE BALANCE IN THE PROPOSITION EE REFUND CASH FUND TO THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 26.5-4-209 AND THE GENERAL FUND, IN THE SAME PROPORTION AS THE STATE TREASURER TRANSFERRED MONEY FROM THE PRESCHOOL PROGRAMS CASH FUND AND THE GENERAL FUND TO THE PROPOSITION EE REFUND CASH FUND.

39-28-505. Rejection of ballot issue - rate reduction. (1) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "NO/AGAINST", THEN THE PROPOSITION EE TAXES SHALL BE REDUCED IN A MANNER DETERMINED BY THE DEPARTMENT SO THAT THE PROPOSITION EE TAXES ARE REDUCED BY ELEVEN AND FIFTY-THREE ONE-HUNDREDTHS PERCENT. THIS PERCENTAGE IS EQUAL TO THE AMOUNT BY WHICH PROPOSITION EE TAX REVENUE EXCEEDED ONE HUNDRED EIGHTY-SIX MILLION FIVE HUNDRED THOUSAND DOLLARS, WITH THE EXCESS AMOUNT DIVIDED BY ONE HUNDRED EIGHTY-SIX MILLION FIVE HUNDRED THOUSAND DOLLARS.

(2) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THEN THE PROPOSITION EE TAXES SHALL REMAIN AT THE SAME RATES AS ESTABLISHED BY PROPOSITION EE.

39-28-506. Repeal of part. IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THEN THIS PART 5 IS REPEALED, EFFECTIVE JULY 1, 2024.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 2, 2023