



Fiscal Impact Statement

Date: August 18, 2023

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LCS TITLE: RETAIN NICOTINE TAX REVENUE IN EXCESS OF BLUE BOOK ESTIMATE

Fiscal Impact Summary		FY 2023-24	FY 2024-25
Revenue	General Fund	\$14.4 million	\$32.1 million
	Total	\$14.4 million	\$32.1 million
Transfers	General Fund	(\$8.8 million)	(\$32.1 million)
	Proposition EE Refund Cash Fund	(\$23.7 million)	-
	Preschool Programs Cash Fund	\$32.4 million	\$32.1 million
	Net Transfer	\$0	\$0
Expenditures	Preschool Programs Cash Fund	up to \$32.4 million	up to \$32.1 million
	Total	up to \$32.4 million	up to \$32.1 million

Summary of Measure

The measure allows the state to retain \$23.65 million in tax revenue that has been collected from Proposition EE taxes, including interest, rather than refund it to wholesalers and distributors of cigarettes, tobacco products, and nicotine products. House Bill 23-1290 transferred \$23.65 million to the Proposition EE Refund Cash Fund from the Preschool Programs Cash Fund and the General Fund. The measure allows the state to return the \$23.65 million to the Preschool Programs Cash Fund and the General Fund in the same proportion as the initial transfers into the Proposition EE Refund Cash Fund. If the measure fails, the \$23.65 million will be refunded to cigarette wholesalers, tobacco product distributors, nicotine products distributors, and other taxpayers.

The measure also allows the state to maintain the tax rates and tax rate increases on cigarettes, tobacco products, and nicotine products that were approved in Proposition EE. If the measure fails, the Proposition EE taxes must be reduced by 11.53 percent.

Background

Proposition EE taxes. Proposition EE increased cigarette and tobacco taxes, created a new tax on nicotine products, and created a minimum price for cigarette sales. Revenue from the new taxes is exempt from TABOR as a voter-approved revenue change. New tax rates from the measure were instituted on January 1, 2021, and are required to increase incrementally until FY 2027-28. The tax rates are shown in Table 2.

Proposition II

Table 2
Tax Rates if Proposition II Passes

Product	January 2024 through June 2024	July 2024 through June 2027	July 2027 and Future Years
<i>Cigarettes (tax per pack of 20)</i>			
Pre-Proposition EE Taxes	\$0.84	\$0.84	\$0.84
Proposition EE Tax	\$1.10	\$1.40	\$1.80
Total Cigarette Tax	\$1.94	\$2.24	\$2.54
<i>Tobacco Products (Percent of price*)</i>			
Pre-Proposition EE Taxes	40%	40%	40%
Proposition EE Tax	10%	16%	22%
Total Tobacco Tax	50%	56%	62%
<i>Nicotine Products (Percent of price*)</i>			
Pre-Proposition EE Taxes	-	-	-
Proposition EE Tax	50%	56%	62%
Total Nicotine Tax	50%	56%	62%

* *Manufacturer's list price*

Proposition EE excess revenue. The 2020 Blue Book estimated that Proposition EE would raise revenue by \$186.5 million in its first full fiscal year, FY 2021-22. Actual revenue collected from the new taxes in that year was \$208.0 million, or \$21.5 million more than the estimate. The excess revenue was mostly due to tax revenue from nicotine products, such as e-cigarettes and vaping products. Because actual revenue exceeded the amount estimated in the Blue Book, the state is constitutionally required to refund the excess and reduce the tax rates in proportion to the excess, or to ask voters for permission not to do so.

Proposition EE Refund Cash Fund. Proposition II was referred to the ballot by HB 23-1290. HB 23-1290 also created the Proposition EE Refund Cash Fund and transferred \$23.65 million into the fund on September 1, 2023. The transfer was directed to come from the Preschool Programs Cash Fund unless that fund did not have a sufficient balance to cover the full transfer, in which case the remaining amount was to be transferred from the General Fund. On September 1, the full balance of the Preschool Programs Cash Fund, \$18.05 million was transferred from the Preschool Programs Cash Fund to the Proposition EE Refund Cash Fund, and the remaining \$5.6 million was transferred from the General Fund.

State Revenue

The measure is expected to increase General Fund revenue by \$14.4 million in FY 2023-24 (half-year impact), \$32.1 million in FY 2024-25, and increasing amounts in future years as tax rates increase. These amounts reflect the impact of not reducing the Proposition EE taxes by 11.53 percent, which would otherwise be required under current law.

Proposition II

State Transfers

The measure will result in two main transfers of revenue if approved by voters – returning the money set aside in the Proposition EE Refund Cash Fund to the original funds, and increased transfers of Proposition EE tax revenue to the Preschool Programs Cash Fund from maintaining current tax rates.

Proposition EE Refund Cash Fund. First, if the measure is approved, the \$23.65 million set aside in the Proposition EE Refund Cash Fund will be transferred back to the original funds, with \$5.6 million transferred to the General Fund and \$18.05 million transferred to the Preschool Programs Cash Fund in FY 2023-24.

Preschool Programs Cash Fund. On an ongoing basis, additional Proposition EE revenue from higher tax rates will be collected in the General Fund and transferred to the Preschool Programs Cash Fund, with \$14.4 million transferred in FY 2023-24 and \$32.1 million transferred in FY 2024-25.

Proposition EE revenue is first deposited in the General Fund via the Old Age Pension Fund and then transferred into the 2020 Tax Holding Fund. In FY 2023-24, revenue is distributed from the 2020 Tax Holding Fund such that \$10.95 million is transferred to the Tobacco Tax Cash Fund, \$4.05 million is transferred back to the General Fund, and the remainder is distributed to the Preschool Programs Cash Fund. Because the General Fund and Tobacco Tax Cash Fund obligations will be fully funded regardless of whether Proposition II passes, the total amount of additional revenue collected if the measure is approved will be distributed to the Preschool Programs Cash Fund.

Taxpayer Impact

If Proposition II passes, the state will retain \$23.65 million that would otherwise be refunded to cigarette wholesalers, tobacco product distributors, nicotine products distributors, and other taxpayers. Additionally, taxes on cigarettes, tobacco products, and/or nicotine products will be higher than if Proposition II fails. If Proposition II fails, Proposition EE taxes will be reduced by 11.53 percent. The tax rates imposed by Proposition EE are shown above in the Background section.

State Expenditures

The measure will increase state spending on preschools by the amount that would otherwise be refunded in FY 2023-24 but is instead returned to the Preschool Programs Cash Fund, plus the ongoing increase in state revenue brought in from higher tax rates.

In FY 2023-24, the measure increases expenditures on preschool programs by up to \$32.4 million, including the \$18.05 million that would otherwise be refunded and \$14.4 million in additional tax revenue. State spending on preschool will increase by up to \$32.1 million in FY 2025-26 from higher tax rates, and by increasing amounts in future years.

Proposition II

Lastly, as described in the State Transfers section above, the measure also increases the amount of General Fund available to spend or save by \$5.6 million in FY 2023-24. Decisions on spending this money will be made by the General Assembly and have not been estimated here.

Effective Date

If approved by voters at the 2023 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Legislative Council Staff Economics Section
Personnel

Early Childhood
Revenue