

Proposition II: Retain Nicotine Tax Revenue in Excess of Blue Book Estimate

Placed on the ballot by the legislature • Passes with a majority vote

1 Proposition II, if approved, would:

- 2 • allow the state to keep and spend \$23.65 million in tax revenue that
3 has already been collected from the sale of cigarettes, tobacco
4 products, and nicotine products, including interest, rather than refund it
5 to wholesalers and distributors of these products; and
- 6 • allow the state to maintain the current tax rates that apply to cigarettes,
7 tobacco products, and nicotine products, rather than reduce the rates
8 in the future, and to keep and spend the revenue collected under these
9 rates on preschool programs.

10 What Your Vote Means

YES

11 A “yes” vote on
12 Proposition II allows
13 the state to keep and spend \$23.65 million
14 in tax revenue that has already been
15 collected from the sale of cigarettes,
16 tobacco products, and nicotine products,
17 including interest, and to maintain the
18 current tax rates on cigarettes, tobacco
19 products, and nicotine products. The future
20 tax revenue will be spent on preschool
21 programs.

NO

A “no” vote on Proposition II
means that \$23.65 million
will be refunded to wholesalers and
distributors of cigarettes, tobacco products,
and nicotine products, and tax rates on
cigarettes, tobacco products, and nicotine
products will be reduced.

Summary and Analysis of Proposition II

1 What does Proposition II do?

2 Proposition II allows the state to keep and spend \$23.65 million in tax revenue
 3 that has already been collected from the sale of cigarettes, tobacco products,
 4 and nicotine products, including interest, rather than refund it to wholesalers and
 5 distributors of these products. Money to pay for potential refunds was set aside
 6 from state funds to use for preschool programs (\$23.65 million). If Proposition II
 7 is approved, the money will be returned to the state in the same amount to use
 8 for preschool programs. Proposition II also allows the state to maintain the tax
 9 rates and tax rate increases on cigarettes, tobacco products, and nicotine
 10 products that voters approved in 2020 and to keep and spend future revenue
 11 collected under these tax rates.

**Figure 1
 Outcomes Under Proposition II**

If Proposition II Passes ("Yes" Vote)	If Proposition II Fails ("No" Vote)
<ul style="list-style-type: none"> • \$23.65 million will be spent on preschool programs. 	<ul style="list-style-type: none"> • \$23.65 million will be refunded to wholesalers and distributors of cigarettes, tobacco products, and nicotine products.
<ul style="list-style-type: none"> • Tax rates on cigarettes, tobacco products, and nicotine products will stay the same as the tax rates previously approved by voters. 	<ul style="list-style-type: none"> • Tax rates on cigarettes, tobacco products, and nicotine products will be reduced from the tax rates previously approved by voters.

14 What are the constitutional requirements for new taxes?

15 The Colorado Constitution requires the state to ask voters for permission to
 16 create a new tax or to increase a tax rate. The state must provide voters an
 17 estimate of revenue from the new or increased taxes in the ballot question and in
 18 the ballot information booklet (Blue Book) prior to voting.

19 If voters approve a new tax and the state collects more revenue from the tax in
 20 the first year than the state estimated in the Blue Book:

- 21 • the state is required to refund the revenue that was collected over the
 22 estimate and reduce the tax rate based on how much revenue was collected
 23 over the estimate; or
- 24 • voters may approve a ballot measure allowing the state to keep all the
 25 revenue that was collected from the new tax and not reduce the tax rate,
 26 which is what this measure proposes to do.

27 What events led to Proposition II being on the ballot?

28 In 2020, voters approved Proposition EE. That measure increased taxes on
 29 cigarettes and tobacco products, created a new tax on nicotine products, and
 30 created a minimum price for cigarettes. The Blue Book for Proposition EE
 31 estimated that the measure would increase tax revenue by \$186.5 million in the
 32 first year. Actual revenue collected from the new taxes in that year was

1 \$208.0 million, or \$21.5 million more than the estimate. The excess revenue was
 2 mostly due to tax revenue from nicotine products, such as e-cigarettes and
 3 vaping products. The Colorado Constitution requires that this amount, plus
 4 \$2.15 million in interest, be refunded and that the tax rates be reduced.

5 **What will happen if Proposition II passes?**

6 If Proposition II passes, the tax rates on cigarettes, tobacco products, and
 7 nicotine products will stay the same as those that were approved under
 8 Proposition EE, and the state will keep and spend \$23.65 million along with
 9 future revenue collected by maintaining the tax rates and tax rate increases
 10 approved by voters. Figure 2 shows the tax rates if Proposition II passes.

11 **Figure 2**
 12 **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%

13 * *Manufacturer's List Price*

14 Revenue kept and spent under the measure will be used to support the Colorado
 15 preschool program, which provides part-day preschool programming to all
 16 children in the year before kindergarten and all three- and four-year-old children
 17 with disabilities. Additional preschool programming is also available under the
 18 program for low-income families and at-risk children.

19 **What will happen if Proposition II fails?**

20 If Proposition II fails, the state will refund \$23.65 million to wholesalers and
 21 distributors of cigarettes, tobacco products, and nicotine products, and the taxes
 22 created by Proposition EE will be reduced by 11.53 percent. The excess
 23 \$23.65 million will be refunded via direct refunds, temporary tax reductions,
 24 temporary credits, or some other method. The Department of Revenue will
 25 determine the refund method, as well as how the taxes will be reduced. Taxes on
 26 these products that existed before Proposition EE was passed will not be
 27 affected.

For information on those issue committees that support or oppose the measures on the ballot at the November 7, 2023 election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/ballot/contacts/2023.html>

1 **Arguments For Proposition II**

- 2 1) Proposition II maintains tax rates that voters already approved in
3 Proposition EE by a two-thirds majority. The measure ensures that money
4 collected from these voter-approved taxes can be used for its intended
5 purpose—supporting preschool programs—rather than creating refunds for
6 distributors of cigarettes, tobacco products, and nicotine products. Higher tax
7 rates also deter smoking, tobacco, and nicotine use, which may reduce
8 negative health impacts.
- 9 2) The measure helps provide free preschool for Colorado families, particularly
10 those with high need, including low-income families and families with at-risk
11 children. Proposition II will allow thousands more children access to
12 additional preschool programs each year. Providing access to free preschool
13 gives all children the same foundation before entering kindergarten.
14 High-quality preschool is shown to improve educational, economic, and
15 health outcomes throughout a child's life, including higher wages, higher
16 graduation rates, and fewer criminal convictions. Access to preschool also
17 supports working parents.

18 **Arguments Against Proposition II**

- 19 1) Proposition II expands the government unnecessarily. Taxpayers are being
20 asked to give up this refund and pay higher tax rates in the future in order to
21 pay for a program that is already fully funded to the level that voters approved
22 in Proposition EE. When the state collects more revenue than voters
23 approved, it should provide taxpayer refunds and lower tax rates, rather than
24 expand government programs.
- 25 2) Proposition II is a tax increase. Taxes on cigarettes, tobacco products, and
26 nicotine products impose a financial burden on people suffering from
27 addiction, particularly for people with lower incomes. Rejecting Proposition II
28 will reduce the high taxes on these products and provide tax relief to
29 Coloradans.

1 **Fiscal Impact of Proposition II**

2 **Taxpayer impacts.** If Proposition II passes, the state will retain rather than
3 refund \$23.65 million to wholesalers and distributors of cigarettes, tobacco
4 products, and nicotine products. Tax rates on cigarettes, tobacco products, and
5 nicotine products will be higher than if Proposition II fails.

6 **State revenue and transfers.** Proposition II will increase state revenue by
7 maintaining the current law tax rates and tax rate increases. Proposition II will
8 increase state revenue by an estimated \$14.5 million in state budget year
9 2023-24 and \$32.1 million in state budget year 2024-25. The estimate for budget
10 year 2023-24 represents a half-year impact. In addition, the \$23.65 million set
11 aside for potential refunds of excess Proposition EE revenue will be transferred
12 to its original sources, including \$18 million to the preschool program fund and
13 \$5.6 million to the state’s general-purpose fund, or General Fund.

14 **State spending.** Proposition II will increase state spending by the amount of the
15 refund plus the increase in state revenue in state budget year 2023-24, which
16 total \$38.1 million, of which \$32.5 million will be spent on preschool programs
17 and \$5.6 million will be available for spending from the state General Fund. State
18 spending on preschool programs will increase by \$32.1 million in state budget
19 year 2024-25.