

Proposition II: Keep 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 has
3 already been collected from the sale of cigarettes, tobacco products, and
4 nicotine products, plus interest, rather than refund it to sellers of these
5 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 in the
8 future, and to keep and spend the revenue collected under these rates.

9 **What Your Vote Means**

YES

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

NO

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

Summary and Analysis for 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, plus interest, rather than refund it to taxpayers who sell
 5 these products. It also allows the state to maintain the current tax rates that
 6 apply to cigarettes, tobacco products, and nicotine products and to keep and
 7 spend future revenue collected under the current tax rates.

8 **Table 1**
 9 **Outcomes Under Proposition II**

If Proposition II Passes ("Yes" Vote)	If Proposition II Fails ("No" Vote)
1. \$23.65 million will be spent on preschool programs; 2. tax rates on cigarettes, tobacco products, and nicotine products will stay the same as the tax rates previously approved by voters.	1. \$23.65 million will be refunded to sellers of cigarettes, tobacco products, and nicotine products, and other taxpayers; 2. tax rates on cigarettes, tobacco products, and nicotine products will be reduced from the tax rates previously approved by voters.

10 **What are the constitutional requirements for new taxes?**

11 The Colorado Constitution requires voters to approve a new tax or tax rate
 12 increase and to receive an estimate of revenue from the new taxes in the ballot
 13 question and in the ballot information booklet (Blue Book) prior to voting.

14 If voters approve a new tax and the state collects more revenue from the tax in
 15 the first year than was estimated in the Blue Book, the state is required to

- 16 1. refund the revenue that was collected over the estimate; and
- 17 2. reduce the tax rate based on how much revenue was collected over the
- 18 estimate.

19 Alternatively, the voters may approve a ballot measure allowing the state to keep
 20 all the revenue that was collected from the new tax and not reduce the tax rate,
 21 which is what this measure proposes to do.

22 **What events led to Proposition II being on the ballot?**

23 In 2020, voters approved Proposition EE. That measure increased taxes on
 24 cigarettes and tobacco products, created a new tax on nicotine products, and
 25 created a minimum price for cigarettes. The Blue Book for Proposition EE
 26 estimated that the measure would increase tax revenue by \$186.5 million in the
 27 first year. Actual revenue collected from the new taxes in that year was
 28 \$208.0 million, or \$21.5 million more than the estimate. The excess revenue was
 29 mostly due to tax revenue from nicotine products such as e-cigarettes and vaping
 30 products. Unless Proposition II is approved, the Colorado Constitution requires
 31 that this amount be refunded to taxpayers and the tax rates be reduced. The
 32 refund amount includes \$2.15 million in interest, for a total of \$23.65 million.

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

2 If Proposition II passes, the tax rates on cigarettes, tobacco products, and
 3 nicotine products will stay the same as those that were approved under
 4 Proposition EE, and the state will keep and spend \$23.65 million along with
 5 future revenue collected by maintaining the tax rates. Table 2 shows the tax
 6 rates that will remain in place if Proposition II passes.

7 **Table 2**
 8 **Tax Rates if Proposition II Passes**

Product	January 2024 through June 2024	July 2024 through June 2027	July 2027 and Future Years
Cigarettes <i>Tax per pack</i>	\$1.10	\$1.40	\$1.80
Tobacco Product <i>Percent of price*</i>	10%	16%	22%
Nicotine Products <i>Percent of price*</i>	50%	56%	62%

9 * *Manufacturer's List Price*

10 If Proposition II passes, revenue kept and spent under the measure will be used
 11 to support the Colorado preschool program, which provides part-day preschool
 12 programming to all children in the year before kindergarten and all three- and
 13 four-year-old children with disabilities, with additional preschool programming for
 14 low-income families and at-risk children.

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

16 If Proposition II fails, the state will refund \$23.65 million to taxpayers, and the tax
 17 rates outlined in Proposition EE will be reduced by 11.53 percent. Table 3 shows
 18 the tax rates if Proposition II fails.

19 **Table 3**
 20 **Tax Rates if Proposition II Fails**

Product	January 2024 through June 2024	July 2024 through June 2027	July 2027 and Future Years
Cigarettes <i>Tax per pack</i>	\$0.97	\$1.24	\$1.59
Tobacco Product <i>Percent of price*</i>	8.8%	14.2%	19.5%
Nicotine Products <i>Percent of price*</i>	44.2%	49.5%	54.9%

21 * *Manufacturer's List Price*

22 The excess \$23.65 million will be refunded to the cigarette wholesalers, tobacco
 23 product distributors, nicotine retailers, and other taxpayers via direct refunds,
 24 temporary tax reductions, temporary credits, or some other method. The
 25 Department of Revenue will determine the method of the refund.

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:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.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 their intended
5 purpose—supporting preschool programs—rather than creating refunds for
6 sellers of cigarettes, tobacco products, and nicotine products.
- 7 2) The measure helps provide free preschool for Colorado families, particularly
8 those with high need, including low-income families and families with at-risk
9 children. Proposition II will allow approximately 5,100 more children access
10 to additional preschool programs per year. Providing access to free
11 preschool gives all children the same foundation before entering
12 kindergarten. High-quality preschool is shown to improve educational,
13 economic, and health outcomes throughout a child's life, including higher
14 wages, higher graduation rates, and fewer criminal convictions. Access to
15 preschool also supports working parents.

16 **Arguments Against Proposition II**

- 17 1) Proposition II expands the government unnecessarily. Taxpayers are being
18 asked to give up this refund and pay higher tax rates in the future in order to
19 pay for a program that is already fully funded to the level that voters approved
20 in Proposition EE. When the state collects more revenue than expected, it
21 should provide taxpayer refunds and lower tax rates, rather than expand
22 government programs.
- 23 2) Proposition II is effectively a tax increase. Taxes on cigarettes, tobacco
24 products, and nicotine products impose a financial burden on people suffering
25 from addiction, particularly low-income users. Not passing Proposition II will
26 reduce the high taxes on these products and provide tax relief to Coloradans.

27 **Fiscal Impact for Proposition II**

28 [The fiscal impact will be included in the second draft of this ballot analysis.]