

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

## 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 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, plus interest, rather than refund it to taxpayers. The  
 5 excess \$23.65 million will be refunded to cigarette wholesalers, tobacco product  
 6 distributors, nicotine retailers, and other taxpayers via direct refunds, temporary  
 7 tax reductions, temporary credits, or some other method. The Department of  
 8 Revenue will determine the method of the refund

9 It also allows the state to maintain the tax rates and tax rate increases on  
 10 cigarettes, tobacco products, and nicotine products that voters approved in 2020  
 11 and to keep and spend future revenue collected under these tax rates.

**Table 1  
 Outcomes Under Proposition II**

<b>If Proposition II Passes ("Yes" Vote)</b>	<b>If Proposition II Fails ("No" Vote)</b>
1. \$23.65 million will be spent on preschool programs.	1. \$23.65 million will be refunded to taxpayers.
2. Tax rates on cigarettes, tobacco products, and nicotine products will stay the same as the tax rates previously approved by voters.	2. 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 was estimated in the Blue Book:

- 21 1. 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 2. 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  
 33 \$208.0 million, or \$21.5 million more than the estimate. The excess revenue was  
 34 mostly due to tax revenue from nicotine products such as e-cigarettes and vaping  
 35 products. Unless Proposition II is approved, the Colorado Constitution requires

1 that this amount be refunded to taxpayers and the tax rates be reduced. The  
 2 refund amount includes \$2.15 million in interest, for a total of \$23.65 million.

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

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

9 **Table 2**  
 10 **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%

11 \* *Manufacturer's List Price*

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

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

18 If Proposition II fails, the state will refund \$23.65 million to taxpayers, and the tax  
 19 rates outlined in Proposition EE will be reduced by 11.53 percent. The excess  
 20 \$23.65 million will be refunded to taxpayers who paid the original Proposition EE  
 21 taxes. Table 3 shows the tax rates if Proposition II fails.

22 **Table 3**  
 23 **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%

24 \* *Manufacturer's List Price*

*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://www.sos.state.co.us/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 sellers 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 approximately 5,100 more children access  
12 to additional preschool programs per year. Providing access to free  
13 preschool gives all children the same foundation before entering  
14 kindergarten. High-quality preschool is shown to improve educational,  
15 economic, and health outcomes throughout a child's life, including higher  
16 wages, higher graduation rates, and fewer criminal convictions. Access to  
17 preschool also 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 expected, it  
23 should provide taxpayer refunds and lower tax rates, rather than expand  
24 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.

## 30 Fiscal Impact of Proposition II

31 **Taxpayer impacts.** If Proposition II passes, the state will retain rather than  
32 refund \$23.65 million to taxpayers. Tax rates on cigarettes, tobacco  
33 products, and nicotine products will be higher than if Proposition II fails.

34 **State revenue.** Proposition II will increase state revenue by maintaining the  
35 current law tax rates and tax rate increases. Proposition II will increase state  
36 revenue by an estimated \$14.4 million in state budget year 2023-24 and

1 \$32.1 million in state budget year 2024-25. The estimate for budget year  
2 2023-24 represents a half-year impact.

3 **State spending.** Proposition II will increase state spending by the amount of  
4 the refund plus the increase in state revenue in state budget year 2024-25,  
5 which total \$38.0 million. State spending will increase by \$32.1 million in  
6 state budget year 2025-26. This spending will be used for preschool  
7 programs.