

Proposition EE: Taxes on Nicotine Products

1 **Proposition EE, if approved, would:**

- 2 • increase taxes on cigarettes and tobacco products;
- 3 • create a new tax on nicotine products, including vaping products; and
- 4 • distribute the new revenue to expanded preschool programs, as well as to
- 5 K-12 education, rural schools, affordable housing, eviction assistance,
- 6 tobacco education, and health care.

7 **What Your Vote Means**

YES

A “yes” vote increases taxes on cigarettes and other tobacco products, and creates a new tax on nicotine products, including vaping products. The new tax revenue will be spent on education, housing, tobacco prevention, health care, and preschool.

NO

A “no” vote means taxes on cigarettes and other tobacco products will stay the same, and there will be no new taxes on nicotine or vaping products.

Legislative Council Draft

1 Summary and Analysis for Proposition EE

2 Why is Proposition EE on the ballot?

3 Earlier this year, the state legislature passed a law to raise taxes on cigarettes and
4 tobacco products, create a state tax on nicotine products, and modify the regulation
5 of these products. The new law takes effect only if Proposition EE is approved by
6 voters, as all tax increases require voter approval under the Colorado Constitution.
7 This analysis discusses the changes that will occur if Proposition EE passes.

8 How are cigarettes, other tobacco products, and nicotine products currently 9 taxed?

10 Cigarettes are currently taxed at 4.2¢ per cigarette, which is 84¢ per pack of
11 20 cigarettes. Tobacco products include chewing tobacco, cigars, and snuff and are
12 currently taxed at 40 percent of the manufacturer's list price, which is the price at
13 which a manufacturer sells the product to a distributor. Nicotine products, which
14 include vaping products, are not currently subject to any existing cigarette or tobacco
15 tax. All three products are currently subject to the state sales tax.

16 Cigarette and tobacco taxes are required to be paid by the distributor that first
17 receives products in the state, which may include local manufacturers. The business
18 pays taxes to the state, but may keep a portion of the tax as compensation for work
19 associated with filing taxes.

20 **Current revenue distributions.** Current cigarette and tobacco tax revenue is
21 distributed to a variety of health care, tobacco education, and disease prevention
22 programs, as well as for general state programs and services.

23 How does Proposition EE change taxes on those products?

24 Proposition EE raises taxes on cigarettes and tobacco products, and establishes a
25 new tax on nicotine products. The new taxes increase incrementally until they are
26 fully phased in by 2027. Table 1 lists the current tax rates and the new rates under
27 the measure. The new revenue is exempt from constitutional spending limits.

28 **Table 1**
29 **Changes to Cigarette and Tobacco and Nicotine Products Taxes**

Product	Current Tax Rates	New Rates Under Proposition EE*							Tax Rate Increase 2021 to 2027
		2021	2022	2023	2024	2025	2026	2027	
Cigarettes <i>Tax per pack</i>	\$0.84	\$1.94	\$1.94	\$1.94	\$2.24	\$2.24	\$2.24	\$2.64	\$1.80
Tobacco Product <i>Percent of price**</i>	40%	50%	50%	50%	56%	56%	56%	62%	22%
Nicotine Products <i>Percent of price**</i>	None	30%	35%	50%	56%	56%	56%	62%	62%

30 * Rate increases begin January 1, except in 2024 and 2027, when rate increases begin July 1.

31 **Manufacturer's list price.

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1 If approved, the measure also:

- 2 • sets new tax rates for modified risk tobacco products, which are federally
3 designated as having lower health risks compared to existing commercial
4 products. Currently, there is only one type of tobacco product that has received
5 this designation for sale nationwide. This product would be taxed at 35 percent of
6 the manufacturer's list price, while a regular tobacco product would be taxed at
7 50 percent in 2021;

- 8 • establishes a minimum tax for moist snuff products at \$1.48 per 1.2 ounce
9 container, increasing to \$2.26 by 2027-28. Moist snuff is a type of cut,
10 smokeless tobacco that can be loose or pouched and is intended to be placed in
11 the mouth rather than sniffed;

- 12 • sets the minimum after-tax price of cigarettes for consumers at \$7.00 per pack
13 beginning in January 2021, and \$7.50 per pack beginning in July 2024;

- 14 • makes online sales from out of state retailers to Colorado consumers subject to
15 the new taxes; and

- 16 • reduces the portion of the taxes that distributors may keep as compensation for
17 the work associated with filing taxes from 4.0 percent to 0.4 percent for cigarette
18 distributors, from 3.33 percent to 1.6 percent for tobacco distributors, and sets
19 this rate at 1.1 percent for nicotine distributors.
20

21 **Are vaping products taxed under Proposition EE?**

22 Yes, vaping products that contain liquid nicotine are subject to the nicotine tax
23 established by Proposition EE. Vaping products and devices that do not contain
24 nicotine are not subject to the tax. Vaping products are not eligible for the lower tax
25 rates for modified risk tobacco products, even if they are approved for this
26 designation by the federal government.

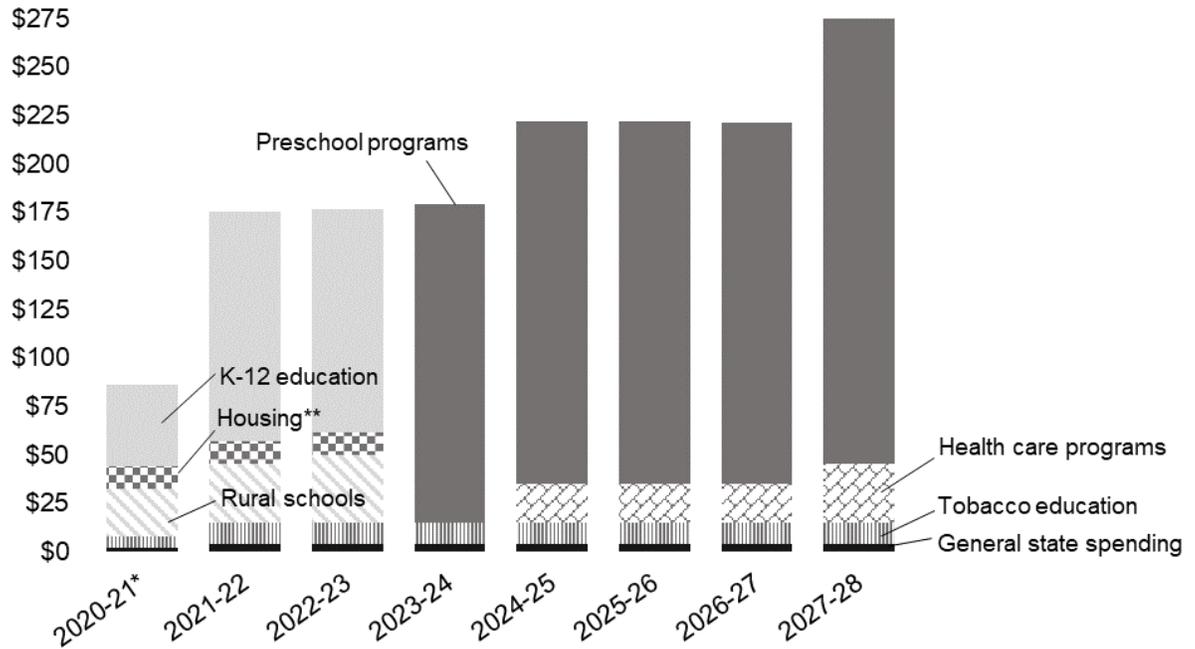
27 **How will the new tax revenue be spent?**

28 Proposition EE is expected to generate up to \$175.6 million in cigarette, tobacco,
29 and nicotine tax revenue in budget year 2021-2022, the first full year the measure
30 will be in effect, and up to \$275.9 million beginning in budget year 2027-28 when the
31 new tax rates are fully phased in. Figure 1 shows the programs that will receive
32 funding as the new tax rates are phased in through budget year 2027-28. Programs
33 funded in budget year 2027-28 will continue to receive funding in future years.

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Figure 1
Distributions of New Tax Revenue
Millions of dollars, by budget year



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* *Half-year impact.*
** *Includes housing development and eviction legal assistance.*

As shown in the above figure, the measure will provide funding for the following programs:

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- Preschool programs.** Proposition EE provides funding for expanded preschool, including at least ten hours per week of free preschool to every child in their final year before kindergarten. A portion of the additional sales tax revenue from the minimum cigarette price is also used for this purpose.
- Rural schools.** Of the money allocated for rural schools in the first three years, 55 percent goes to rural school districts with between 1,000 and 6,500 students, and 45 percent goes to rural school districts with fewer than 1,000 students. The funding is allocated on a per-student basis.
- K-12 education.** In addition to the funding for rural schools, any revenue not allocated to other programs will be available for K-12 education funding for the first three years. Specific uses may include school finance funding to school districts statewide, including charter schools, as well as other education programs.
- Housing development.** In the first three years, funding will be allocated as grants or loans to buy, renovate, and construct houses, or provide rental assistance, in an effort to increase the supply of affordable housing. Of the amount allocated for this purpose, \$5.0 million must be used in rural areas.

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- 1 • **Eviction legal assistance.** Funding for this purpose is allocated in the first
2 three years and will be awarded to organizations that provide legal assistance to
3 low-income clients at risk of eviction.
- 4 • **Health care programs.** Funding allocated for health care programs will be used
5 for Medicaid, primary care, tobacco use prevention, children’s health and a
6 variety of other health care programs that currently receive cigarette and tobacco
7 tax revenue.
- 8
- 9 • **General state spending.** Of the amount allocated for this purpose, 27 percent
10 must be distributed to local governments, and the remainder used for general
11 state spending, which may include education, transportation, and health care,
12 and will be determined by the state legislature. A portion of the additional sales
13 tax revenue from the minimum cigarette price is also used for general state
14 spending.
- 15 • **Tobacco education programs.** Money allocated for this purpose is used for
16 grants for community-based and statewide programs to reduce tobacco use by
17 youth, encourage cessation, and reduce exposure to secondhand smoke.

18 How would preschool availability and funding change?

19 Currently, the Colorado Preschool Program funds 29,360 half-day preschool slots for
20 three- and four-year old children who are from low-income families, in need of
21 language development, or who meet certain criteria indicating they may be in danger
22 of falling behind in school. About 9,000 low-income students also have access to
23 preschool through federal Head Start programs. The measure requires that the new
24 funding be used to offer at least 10 hours per week of free preschool to every child in
25 their final year before kindergarten. This is expected to begin in the 2023-24 school
26 year. Any remaining revenue must be used to expand preschool opportunities for
27 low-income families and children at risk of not being ready for kindergarten.

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, 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>

28 Arguments For Proposition EE

- 29 1) Colorado has one of the highest rates of youth vaping in the country, while also
30 having one of the lowest tax rates on cigarettes and tobacco products, and no tax
31 on vaping products. Cigarettes, tobacco, and nicotine products are addictive and
32 have negative health impacts, which can include cancer and heart and lung
33 disease. Tax increases usually result in higher prices, which deter smoking and
34 tobacco use, especially among youth and young adults. Higher taxes on
35 cigarettes, tobacco products, and vaping products could decrease consumption
36 while funding health care, and tobacco cessation, education, and prevention
37 programs.

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1 2) Proposition EE provides needed funding for education. The impacts of the
2 COVID-19 pandemic on the state budget have resulted in a 10 percent decrease
3 in the state share of public school funding for the 2020-21 school year. Additional
4 federal funding has helped lessen the impact of this state budget cut in 2020;
5 however, it is not likely to be available next year and further cuts are expected.
6 The measure provides vital funding for schools as the economy recovers, and
7 additional assistance for small rural districts that are disproportionately impacted
8 by state funding cuts.

9 3) Providing access to free preschool gives all children the same foundation before
10 entering kindergarten. Currently, half of Colorado three- and-four-year-olds do
11 not attend any type of preschool. High quality preschool is shown to improve
12 educational, economic, and health outcomes throughout a child's life, including
13 higher wages, higher graduation rates, and fewer criminal convictions. Access to
14 preschool also supports working parents by giving them the option to enroll their
15 children in up to ten hours per week at no cost.

16 Arguments Against Proposition EE

17 1) Increasing taxes on cigarette, tobacco, and nicotine products imposes a financial
18 burden on people who choose to consume them, particularly low-income users.
19 Because these products are addictive, users may continue to purchase them
20 even after a tax increase. In addition, vaping products are used by many as a
21 way to quit using traditional cigarettes. Youth vaping should be addressed
22 through enforcement of existing age restrictions and additional education and
23 prevention, not through raising taxes on a product that some use as a cessation
24 device.

25 2) Raising taxes and establishing a minimum purchase price hurts business
26 owners. This is particularly true for businesses that sell low-cost products, or that
27 are in areas of the state where local governments have already imposed
28 cigarette, tobacco, and nicotine taxes. Businesses selling these products may
29 see a decline in sales, which can be particularly harmful for small, local
30 businesses at a time when many are already struggling. Private businesses and
31 market competition are best suited to determine the prices at which products are
32 bought and sold.

33 3) The state should not be dependent on tax revenue from a specific, addictive
34 product to fund schools, preschool, and other state services. Once Proposition
35 EE is fully phased in, revenue from this tax is likely to decline over time as the
36 increased price results in fewer products being purchased. At the same time,
37 preschool funding needs are likely to grow. A tax intended to decrease
38 consumption is not a funding source on which the state should rely.

39 Estimate of Fiscal Impact for Proposition EE

40 **State revenue.** Proposition EE will increase state revenue from cigarette, tobacco
41 product, and nicotine product taxes by \$87 million in state budget year 2020-21 and
42 \$176 million in state budget year 2021-22, the first full year under the measure. The
43 amount of new revenue will increase as the measure is phased in, with \$276 million
44 expected to be generated in state budget year 2027-28.

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1 In addition, the measure will also increase state revenue from sales taxes by
2 \$0.8 million in state budget year 2020-21 and by \$1.5 million in state budget year
3 2021-22, the first full year under the measure. The amount of additional sales tax
4 revenue will decline as the measure is phased in, with no new sales tax revenue
5 expected in state budget year 2027-28.

6 **State spending.** Proposition EE will increase state spending by \$87 million in state
7 budget year 2020-21 and by \$177 million in state budget year 2021-22. As the
8 measure is phased in, state spending will increase, with \$276 million expected to be
9 spent in state budget year 2027-28. Spending includes the amounts identified in
10 Figure 1 for education, housing, preschool, tobacco and nicotine education and
11 cessation programs and other programs, as well as costs for administrative and
12 auditing purposes.

13 **Taxpayer impacts.** Proposition EE is expected to increase taxes paid by an
14 average of \$38 per Colorado adult in state budget year 2021-22, and \$53 per
15 Colorado adult in budget year 2027-28; however, the direct tax impact applies only to
16 people who consume cigarette, tobacco products, and/or nicotine products. If the
17 percentage of adult smokers remains constant at 14.5 percent, the measure is
18 expected to increase the taxes paid by cigarette smokers by an average of \$222 in
19 state budget year 2021-22 and by \$291 in state budget year 2027-28.

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- 6 tobacco education, and health care.

7 **What Your Vote Means**

YES

A “yes” vote increases taxes on cigarettes and other tobacco products, and creates a new tax on nicotine products, including vaping products. The new tax revenue will be spent on education, housing, tobacco prevention, health care, and preschool.

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Last Draft as Mailed to Interested Parties

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2 Why is Proposition EE on the ballot?

3 Earlier this year, the state legislature passed a law to raise taxes on cigarettes and
 4 tobacco products, create a state tax on nicotine products, and modify the regulation of
 5 these products. The new law takes effect only if Proposition EE is approved by voters,
 6 as all tax increases require voter approval under the Colorado Constitution. This
 7 analysis discusses the changes that will occur if Proposition EE passes.

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 13 which a manufacturer sells the product to a distributor. Nicotine products, which
 14 include vaping products, are not currently subject to a cigarette or tobacco tax. All
 15 three products are currently subject to the state sales tax.

16 Cigarette and tobacco taxes are required to be paid by the distributor that first
 17 receives products in the state, which may include local manufacturers or out-of-state
 18 retailers that sell to Colorado consumers online. The business pays taxes to the
 19 state, but may keep a portion of the tax as compensation for work associated with
 20 filing taxes.

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 22 distributed to a variety of health care, tobacco education, and disease prevention
 23 programs, as well as for general state programs and services.

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 26 new tax on nicotine products. The new taxes increase incrementally until they are
 27 fully phased in during 2027. Table 1 lists the current tax rates and the new rates
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Nicotine Products <i>Percent of price**</i>	None	30%	35%	50%	56%	56%	56%	62%	62%

31 *Rate increases begin January 1, except in 2024 and 2027, when rate increases begin July 1.

32 **Manufacturer’s list price.

Last Draft as Mailed to Interested Parties

1 If approved, the measure also:

- 2 • sets tax rates for modified risk tobacco products at half the new tax rate for
3 regular products. A modified risk tobacco product is a federal designation for a
4 tobacco product that poses lower health risks when compared to existing
5 commercial products such as cigarettes. Currently, there is only one type of
6 product that has received this designation for sale nationwide.

- 7 • establishes a minimum tax for moist snuff products at \$1.48 per 1.2 ounce
8 container, increasing to \$2.26 by 2027-28. Moist snuff is a type of cut,
9 smokeless tobacco that can be loose or pouched and is intended to be placed in
10 the mouth rather than sniffed;

- 11 • sets a minimum after-tax price of cigarettes for consumers at \$7.00 per pack
12 beginning in January 2021, and \$7.50 per pack beginning in July 2024; and

- 13 • reduces the portion of the taxes that distributors may keep as compensation for
14 the work associated with filing taxes from 4.0 percent to 0.4 percent for cigarette
15 distributors, from 3.33 percent to 1.6 percent for tobacco distributors, and sets
16 this rate at 1.1 percent for nicotine distributors.

17 **Are vaping products taxed under Proposition EE?**

18 Yes, vaping products that contain liquid nicotine are subject to the nicotine tax
19 established by Proposition EE. Vaping products and devices that do not contain
20 nicotine are not subject to the tax. Vaping products are not eligible for the lower tax
21 rates for modified risk tobacco products, even if they are approved for this
22 designation by the federal government.

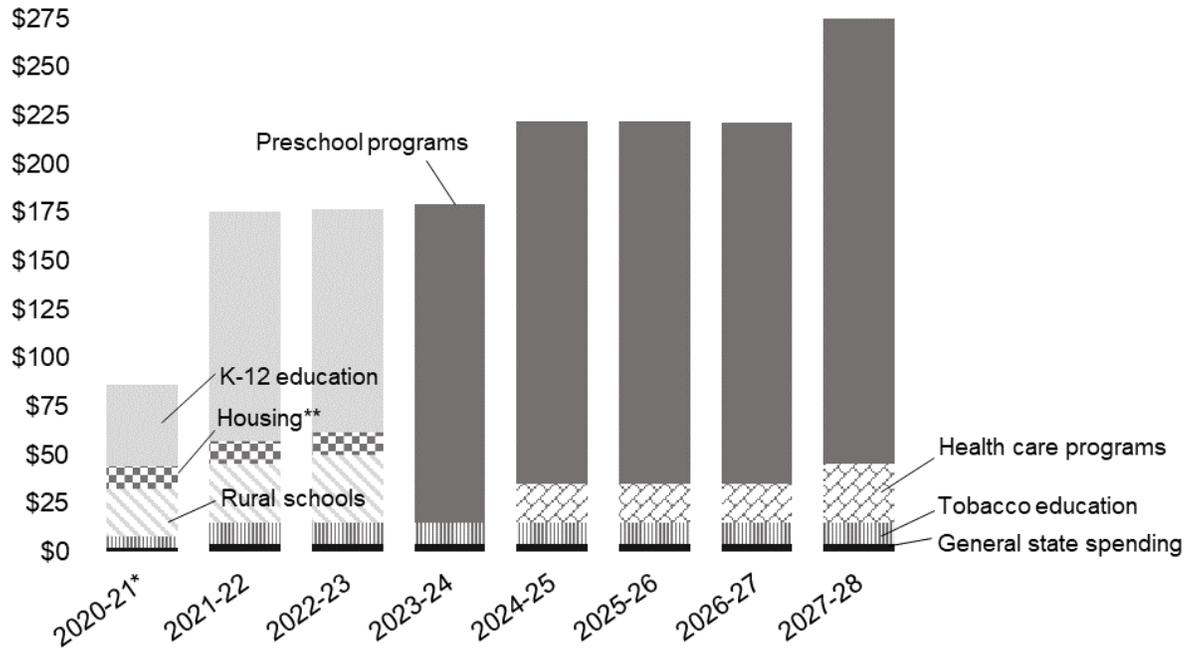
23 **How will the new tax revenue be spent?**

24 Proposition EE is expected to generate up to \$176.6 million in cigarette, tobacco,
25 and nicotine tax revenue in budget year 2021-2022, the first full year the measure
26 will be in effect, and up to \$274.9 million beginning in budget year 2027-28 when the
27 new tax rates are fully phased in. Figure 1 shows the programs that will receive
28 funding as the new tax rates are phased in through budget year 2027-28. Programs
29 funded in budget year 2027-28 will continue to receive funding in future years.

Last Draft as Mailed to Interested Parties

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Figure 1
Distributions of New Tax Revenue
Millions of dollars, by budget year



4 * Half-year impact.
5 ** Includes housing development and eviction legal assistance.

6 As shown in the above figure, the measure will provide funding for the following
7 programs:

- 8 • **K-12 education.** In the first three years, any revenue not allocated to other
9 programs will be available for K-12 education funding, which may include school
10 finance funding to school districts, including charter schools, as well as other
11 education programs.
- 12 • **Rural schools.** Of the money allocated for rural schools in the first three years,
13 55 percent goes to rural school districts with between 1,000 and 6,500 students,
14 and 45 percent goes to rural school districts with fewer than 1,000 students. The
15 funding is allocated on a per-student basis.
- 16 • **Housing development.** In the first three years, funding will be allocated as
17 grants or loans to buy, renovate, and construct houses, or provide rental
18 assistance, in an effort to increase the supply of affordable housing. Of the
19 amount allocated for this purpose, \$5.0 million must be used in rural areas.
- 20 • **Eviction legal assistance.** Funding for this purpose is allocated in the first
21 three years and will be awarded to organizations that provide legal assistance to
22 low-income clients at risk of eviction.
- 23 • **Health care programs.** Funding allocated for health care programs will be used
24 for Medicaid, primary care, tobacco use prevention, children's health and a
25 variety of other health care programs that currently receive cigarette and tobacco
26 tax revenue.

Last Draft as Mailed to Interested Parties

1 • **General state spending.** Of the amount allocated for this purpose, 27 percent
2 must be distributed to local governments, and the remainder used for general
3 state spending, which may include education, transportation, and health care,
4 and will be determined by the state legislature. A portion of the additional sales
5 tax revenue from the minimum cigarette price is also used for general state
6 spending.

7 • **Tobacco education programs.** Money allocated for this purpose is used for
8 grants for community-based and statewide programs to reduce tobacco use by
9 youth, encourage cessation, and reduce exposure to secondhand smoke.

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• **Preschool programs.** Proposition EE provides funding for expanded preschool,
including at least ten hours per week of free preschool to every child in their final
year before kindergarten. A portion of the additional sales tax revenue from the
minimum cigarette price is also used for this purpose.

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How would preschool availability and funding change?

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Currently, the Colorado Preschool Program funds 29,360 half-day preschool slots for
three- and four-year old children who are from low-income families, in need of
language development, or who meet certain criteria indicating they may be in danger
of falling behind in school. About 9,000 low-income students also have access to
preschool through federal Head Start programs. The measure requires that the new
funding be used to offer at least 10 hours per week of free preschool to every child in
their final year before kindergarten. This is expected to begin in the 2023-24 school
year. Any remaining revenue must be used to expand preschool opportunities for
low-income families and children at risk of not being ready for kindergarten.

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Arguments For Proposition EE

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1) Cigarettes, tobacco, and nicotine products are addictive and have negative
health impacts, which can include cancer and heart and lung disease. Tax
increases usually result in higher prices, which deter smoking and tobacco use,
especially among youth and young adults. Colorado has one of the lowest tax
rates on cigarettes and tobacco products, and no tax on vaping products, while
also having one of the highest rates of youth vaping in the country. A tax on
vaping products could decrease consumption while funding health care and
tobacco education and prevention programs.

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2) Proposition EE provides needed funding for education. The impacts of the
COVID-19 pandemic on the state budget have resulted in a 10 percent decrease
in the state share of public school funding for the 2020-21 school year. Additional
federal funding has helped lessen the impact of this state budget cut in 2020;
however, it is not likely going to be available next year and further cuts are
expected. The measure provides vital funding for schools as the economy

Last Draft as Mailed to Interested Parties

1 recovers, and additional assistance for small rural districts that are
2 disproportionately impacted by state funding cuts.

3 3) Providing access to free preschool gives all children the same foundation before
4 entering kindergarten. Currently, half of Colorado three- and four-year-olds do
5 not attend any type of preschool. High quality preschool is shown to improve
6 educational, economic, and health outcomes throughout a child's life, including
7 higher wages, higher graduation rates, and fewer criminal convictions. Access to
8 preschool also supports working parents by giving them the option to enroll their
9 children in up to ten hours per week at no cost.

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12 burden on people who choose to consume them, particularly low-income users.
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14 even after a tax increase. In addition, vaping products are used by many as a
15 way to quit using traditional cigarettes. Youth vaping should be addressed
16 through enforcement of existing age restrictions and additional education and
17 prevention, not through raising taxes on a product that some use as a cessation
18 device.

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20 owners. This is particularly true in areas of the state where local governments
21 have already imposed cigarette, tobacco, and nicotine taxes. Businesses selling
22 these products may see a decline in sales, which can be particularly harmful for
23 small, local businesses at a time when many are already struggling. Private
24 businesses and market competition are best suited to determine the prices at
25 which products are bought and sold.

26 3) The state should not be dependent on tax revenue from a specific, addictive
27 product to fund schools, preschool, and other state services. Once Proposition
28 EE is fully phased in, revenue from this tax is likely to decline over time as the
29 increased price results in fewer products being purchased. At the same time,
30 preschool funding needs are likely to grow. A tax intended to decrease
31 consumption is not a funding source on which the state should rely.

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33 **State revenue.** Proposition EE will increase state revenue from cigarette, tobacco
34 product, and nicotine product taxes by \$87 million in state budget year 2020-21 and
35 \$176 million in state budget year 2021-22, the first full year under the measure. The
36 amount of new revenue will increase as the measure is phased in, with \$276 million
37 expected to be generated in state budget year 2027-28.

38 In addition, the measure will also increase state revenue from sales taxes by
39 \$0.8 million in state budget year 2020-21 and by \$1.5 million in state budget year
40 2021-22, the first full year under the measure. The amount of additional sales tax
41 revenue will decline as the measure is phased in, with no new sales tax revenue
42 expected in state budget year 2027-28.

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2 budget year 2020-21 and by \$177 million in state budget year 2021-22. As the
3 measure is phased in, state spending will increase, with \$276 million expected to be
4 spent in state budget year 2027-28. Spending includes the amounts identified in
5 Figure 1 for education, housing, preschool, tobacco and nicotine education and
6 cessation programs and other programs, as well as costs for administrative and
7 auditing purposes.

8 **Taxpayer impacts.** Proposition EE is expected to increase taxes paid by an
9 average of \$38 per Colorado adult in state budget year 2021-22, and \$53 per
10 Colorado adult in budget year 2027-28; however, the direct tax impact applies only to
11 people who consume cigarette, tobacco products, and/or nicotine products. If the
12 percentage of adult smokers remains constant at 14.6 percent, the measure is
13 expected to increase the taxes paid by cigarette smokers by an average of \$221 in
14 state budget year 2021-22 and by \$289 in state budget year 2027-28.

Last Draft Comments from Interested Parties

Proposition EE Taxes on Nicotine Products

Leila Al-Hamoodah, Office of State Planning and Budgeting:

Hello,

I have the following questions and comments about this draft analysis.

- Where are the revenue estimates provided coming from? They don't match the fiscal note for HB 20-1427 currently published. Further, there are some minor discrepancies in the revenue reported between pages 1, 6, and 7.
- On page 2, it indicates the tax rate on modified tobacco products is half the new tax rate for regular products. However, as I understand it the modified tobacco product tax rate is half the statutory tax, plus the constitutional tax, so not half of the total tax. Because the "new tax rate" included on page 1 includes both the constitutional and statutory tax, I think the language on page 2 implies the tax on these modified products is half the tax listed in the table on page 1. Further, this note doesn't mention that modified nicotine products will also be taxed at half the statutory tax.
- On page 4, I recommend the description of rural school funding be clearly described as a set-aside or supplement in funding for rural schools. As written currently, it isn't distinguished clearly from the K-12 education funding in the bullet above, and so it reads as though the rural schools funding is the only funding going to rural schools, rather than a separate amount on top of general school financing.
- On page 5, the analysis indicates 27% of General Funds will be distributed to local governments. I couldn't find a reference to this in the bill, so I'm curious where this comes from.
- On page 5, the preschool description notes that at least 10 hours of universal preschool will be funded, but it doesn't note that additional hours will be provided to low-income students, if funds are available. I think that's an important clarification.
- On page 7, the taxpayer impact estimate is based on an estimate that 15% of adults are smokers. However, the analysis also notes that the instance of teen vaping in Colorado is one of the highest rates in the country. If we used the rate of teen vaping and assume those teens become adult tobacco/nicotine users, would that more accurately represent the growth in nicotine use?

Thanks.

Leila Al-Hamoodah

Budget & Policy Analyst

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Last Draft Comments from Interested Parties

Mark Grueskin, representing proponents of Proposition EE:

Mr. Grueskin's comments are included as Attachment A.

BLUE BOOK LANGUAGE -- DRAFT 2

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PAGE 1

Proposition EE: Taxes on Nicotine Products

1 Proposition EE, if approved, would:

2 increase taxes on cigarettes and tobacco products;

3 create a new tax on nicotine and vaping products, and

4 distribute the new revenue to expanded preschool programs, as well as to

5 K-12 education, rural schools, housing, eviction assistance,

6 tobacco education, and health care.

Commented [MG1]: As this is the first time in the narrative that “nicotine products” is used, voters would only understand what that phrase means if it includes a reference to “vaping.” The meaning of “nicotine product” is not explained until the reader gets to p.3, l. 17W-22. With just a brief two-word insert, this phrase will provide clarity for voters who are not yet familiar with the provisions proposed by EE.

7 What Your Vote Means

A “yes” vote increases taxes on cigarettes and other tobacco products, and creates a new tax on nicotine products, including vaping products. The new tax revenue will be spent on education, housing, tobacco prevention, health care, and preschool.

A “no” vote means taxes on cigarettes and other tobacco products will stay the same, and there will be no new taxes on nicotine or vaping products. No new sources of revenue will be generated for education, housing, tobacco prevention, health care, or preschool.

Commented [MG2]: Provides symmetrical reference to “Yes” statement above.

PAGE 2

1 Summary and Analysis for Proposition EE

2 **Why is Proposition EE on the ballot?**

3 Earlier this year, the state legislature passed a law with bipartisan support to raise taxes on cigarettes and

4 tobacco products, create a state tax on nicotine and vaping products, and modify the regulation of

5 these products. The new law takes effect only if Proposition EE is approved by voters,

6 as all tax increases require voter approval under the Colorado Constitution. This

7 analysis discusses the changes that will occur if Proposition EE passes.

Commented [MG3]: Helps provide context about this referred measure.

Commented [MG4]: Provides clarity and consistency

8 **How are cigarettes, other tobacco products, and nicotine and vaping products currently**

9 **taxed?**

Commented [MG5]: Provides clarity and consistency

10 Cigarettes are currently taxed at 4.2¢ per cigarette, which is 84¢ per pack of

11 20 cigarettes. Tobacco products include chewing tobacco, cigars, and snuff and are

12 currently taxed at 40 percent of the manufacturer’s list price, which is the price at

13 which a manufacturer sells the product to a distributor. Nicotine products, which

14 include vaping products, are not currently subject to any existing cigarette or tobacco tax. All

15 three products are currently subject to the state sales tax.

Commented [MG6]: Provides additional clarity

Deleted: a

16 Cigarette and tobacco taxes are required to be paid by the distributor that first

17 receives products in the state, which may include local manufacturers or out-of-state

18 retailers that sell to Colorado consumers online. The business pays taxes to the

19 state, but may keep a portion of the tax as compensation for work associated with

20 filing taxes.

21 **Current revenue distributions.** Current cigarette and tobacco tax revenue is
 22 distributed to a variety of health care, tobacco education, and disease prevention
 23 programs, as well as for general state programs and services.

24 **How does Proposition EE change taxes on those products?**

25 Proposition EE raises taxes on cigarettes and tobacco products, and establishes a
 26 new tax on nicotine **and vaping products, which are not subject to existing cigarette or tobacco taxes.** The
 27 new taxes increase incrementally until they are
 28 fully phased in during 2027. Table 1 lists the current tax rates and the new rates
 under the measure. The new revenue is exempt from constitutional spending limits.

Commented [MG7]: Provides clarity and consistency
Commented [MG8]: Provides added clarity

Table 1
Changes to Cigarette and Tobacco and Nicotine Products Taxes

Product	Current Tax Rates	New Rates Under Proposition EE*							Tax Rate Increase 2021 to 2027
		2021	2022	2023	2024	2025	2026	2027	
Cigarettes <i>Tax per pack</i>	\$0.84	\$1.94	\$1.94	\$1.94	\$2.24	\$2.24	\$2.24	\$2.64	\$1.80
Tobacco Product <i>Percent of price**</i>	40%	50%	50%	50%	56%	56%	56%	62%	22%
Nicotine Products <i>Percent of price**</i>	None	30%	35%	50%	56%	56%	56%	62%	62%

*Rate increases begin January 1, except in 2024 and 2027, when rate increases begin July 1.

**Manufacturer's list price.

PAGE 3

1 If approved, the measure also:

2 —sets tax rates for modified risk tobacco products at half the new tax rate for
 3 regular products. A modified risk tobacco product is a federal designation for a
 4 tobacco product that poses lower health risks when compared to existing
 5 commercial products such as cigarettes. Currently, there is only one type of
 6 product that has received this designation for sale nationwide.

7 —establishes a minimum tax for moist snuff products at \$1.48 per 1.2 ounce
 8 container, increasing to \$2.26 by 2027-28. Moist snuff is a type of cut,
 9 smokeless tobacco that can be loose or pouched and is intended to be placed in
 10 the mouth rather than sniffed;

11 —sets a minimum after-tax price of cigarettes for consumers at \$7.00 per pack
 12 beginning in January 2021, and \$7.50 per pack beginning in July 2024; and

13 — reduces the portion of the taxes that distributors may keep as compensation for
 14 the work associated with filing taxes from 4.0 percent to 0.4 percent for cigarette
 15 distributors, from 3.33 percent to 1.6 percent for tobacco distributors, and sets
 16 this rate at 1.1 percent for nicotine distributors.

17 Are vaping products taxed under Proposition EE?

18 Yes, vaping products that contain liquid nicotine are subject to the nicotine tax
 19 established by Proposition EE. Vaping products and devices that do not contain
 20 nicotine are not subject to the tax. Vaping products are not eligible for the lower tax
 21 rates for modified risk tobacco products, even if they are approved for this
 22 designation by the federal government.

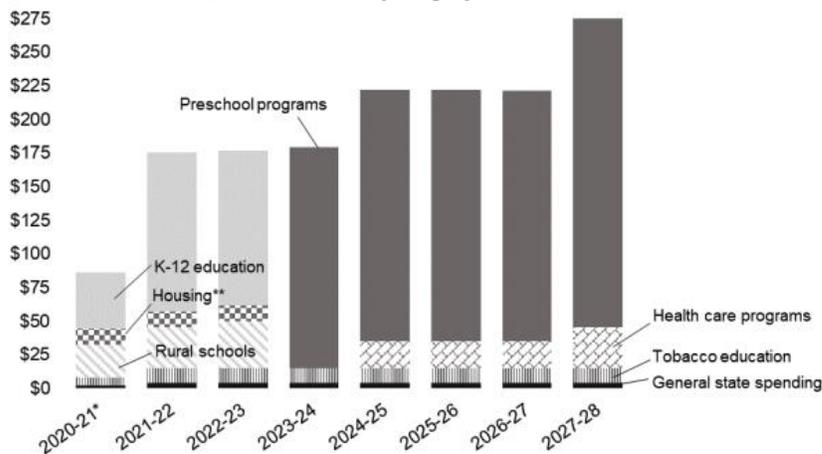
23 How will the new tax revenue be spent?

24 Proposition EE is expected to generate up to \$176.6 million in cigarette, tobacco,
 25 and nicotine tax revenue in budget year 2021-2022, the first full year the measure
 26 will be in effect, and up to \$274.9 million beginning in budget year 2027-28 when the
 27 new tax rates are fully phased in. Figure 1 shows the programs that will receive
 28 funding as the new tax rates are phased in through budget year 2027-28. Programs
 29 funded in budget year 2027-28 will continue to receive funding in future years.

PAGE 4

1
 2
 3

Figure 1
Distributions of New Tax Revenue
Millions of dollars, by budget year



4 * Half-year impact.
 5 ** Includes housing development and eviction legal assistance.

6 As shown in the above figure, the measure will provide funding for the following
 7 programs:

- 7.1. Preschool programs. Proposition EE provides funding for expanded preschool,
- 7.2. including at least ten hours per week of free preschool to every child in their final
- 7.3.13 year before kindergarten. A portion of the additional sales tax revenue from the
- 7.4.14 minimum cigarette price is also used for this purpose.

8 —K-12 education. In the first three years, any revenue not allocated to other
 9 programs will be available for K-12 education funding, which may include school
 10 finance funding to school districts, including charter schools, as well as other
 11 education programs.

12 — Rural schools. Of the money allocated for rural schools in the first three years,
 13 55 percent goes to rural school districts with between 1,000 and 6,500 students,

Moved (insertion) [1]

Deleted: 12

Commented [MG9]: Given that the preschool funding is the longest tenured programmatic funding in the measure and will be the greatest dedication of tax dollars flowing from these tax changes, it makes sense to list this one first at this point in the analysis.

14 and 45 percent goes to rural school districts with fewer than 1,000 students. The
15 funding is allocated on a per-student basis.

16 —Housing development. In the first three years, funding will be allocated as
17 grants or loans to buy, renovate, and construct houses, or provide rental
18 assistance, in an effort to increase the supply of affordable housing. Of the
19 amount allocated for this purpose, \$5.0 million must be used in rural areas.

20 —Eviction legal assistance. Funding for this purpose is allocated in the first
21 three years and will be awarded to organizations that provide legal assistance to
22 low-income clients at risk of eviction.

23 —Health care programs. Funding allocated for health care programs will be used
24 for Medicaid, primary care, tobacco use prevention, children's health and a
25 variety of other health care programs that currently receive cigarette and tobacco
26 tax revenue.

(LIST CONTINUED ON PAGE 6)

PAGE 5

1 —~~Constitutionally required~~ state spending. Of the amount allocated for this purpose ~~under existing~~
2 ~~provisions of the state constitution~~, 27 percent
3 must be distributed to local governments. ~~As consumption of cigarettes and tobacco products declines due~~
4 ~~to the price increase associated with Proposition EE, revenue from the existing tobacco tax (which funds public health~~
5 ~~programs) will also decline. Some of the new revenue from this measure will be used for those public health~~
6 ~~programs, including tobacco education and cessation programs, to maintain their current level of funding.~~6

7
10

11

15 **How would preschool availability and funding change?**
16 Currently, the Colorado Preschool Program funds 29,360 half-day preschool slots for
17 three- and four-year old children who are from low-income families, in need of
18 language development, or who meet certain criteria indicating they may be in danger
19 of falling behind in school. About 9,000 low-income students also have access to
20 preschool through federal Head Start programs. ~~Proposition EE~~ requires that the new
21 funding be used to offer at least 10 hours per week of free preschool to every child in
22 their final year before kindergarten. This is expected to begin in the 2023-24 school
23 year. Any remaining revenue must be used to expand preschool opportunities for
24 low-income families and children at risk of not being ready for kindergarten.

For information on those issue committees that support or oppose the measures on the ballot at the November 3,
2020, 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>

25 **Arguments For Proposition EE**

Deleted: General

Commented [MG10]: Provides clarity that these funds are allocated according to existing constitutional formulas rather than created solely as a function of this measure.

Commented [MG11]: More accurate way of describing how EE preserves funding for Amendment 35 programs

Deleted: , and the remainder used for general ¶
3 state spending, which may include education,
4 transportation, and health care, ¶
5 . and will be determined by the state legislature. A
6 portion of the additional sales ¶
7 tax revenue from the minimum cigarette price is
8 also used for general state ¶

Deleted: spending.

Deleted: —Tobacco education programs. Money
allocated for this purpose is used for ¶
8 . grants for community-based and statewide
9 programs to reduce tobacco use by ¶
10 youth, encourage cessation, and reduce exposure
11 to secondhand smoke.

Commented [MG12]: Not necessary given revised
language above

Moved up [1]: —Preschool programs. Proposition EE
provides funding for expanded preschool, ¶
12 . including at least ten hours per week of free
13 preschool to every child in their final ¶
14 year before kindergarten. A portion of the
15 additional sales tax revenue from the ¶
16 minimum cigarette price is also used for this
17 purpose.

Commented [MG13]: Specific rather than the general
adds to voter understanding of this section.

Deleted: The measure

26 1) Colorado has one of the lowest tax rates on cigarettes and tobacco products, and no tax on vaping
27 products, while also having one of the highest rates of youth vaping in the country. Cigarettes, tobacco, and nicotine
28 products are addictive and have negative
29 health impacts, which can include cancer and heart and lung disease. Tax
30 increases usually result in higher prices, which deter smoking and tobacco use,
31 especially among youth and young adults. A tax on
32 vaping products and increased taxes on cigarettes and tobacco products could decrease consumption while
33 funding health care and
34 tobacco cessation, education and prevention programs.

34 2) Proposition EE provides needed funding for education. The impacts of the
35 COVID-19 pandemic on the state budget have resulted in a 10 percent decrease
36 in the state share of public school funding for the 2020-21 school year. Additional
37 federal funding has helped lessen the impact of this state budget cut in 2020;
38 however, it is not likely going to be available next year and further cuts are
39 expected. The measure provides vital funding for schools as the economy
PAGE 6

1 recovers, and additional assistance for small rural districts that are
2 disproportionately impacted by state funding cuts.

3 3) Providing access to free preschool gives all children the same foundation before
4 entering kindergarten. Currently, half of Colorado three- and-four-year-olds do
5 not attend any type of preschool. High quality preschool is shown to improve
6 educational, economic, and health outcomes throughout a child's life, including
7 higher wages, higher graduation rates, and fewer criminal convictions. Access to
8 preschool also supports working parents by giving them the option to enroll their
9 children in up to ten hours per week at no cost.

10 Arguments Against Proposition EE

11 1) Increasing taxes on cigarette, tobacco, and nicotine products imposes a financial
12 burden on people who choose to consume them, particularly low-income users.
13 Because these products are addictive, users may continue to purchase them
14 even after a tax increase. In addition, vaping products are used by many as a
15 way to quit using traditional cigarettes. Youth vaping should be addressed
16 through enforcement of existing age restrictions and additional education and
17 prevention, not through raising taxes on a product that some use as a cessation
18 device.

19 2) Raising taxes and establishing a minimum purchase price hurts business
20 owners. This is particularly true in areas of the state where local governments
21 have already imposed cigarette, tobacco, and nicotine taxes. Businesses selling
22 these products may see a decline in sales, which can be particularly harmful for
23 small, local businesses at a time when many are already struggling. Private
24 businesses and market competition are best suited to determine the prices at
25 which products are bought and sold.

26 3) The state should not be dependent on tax revenue from a specific, addictive
27 product to fund schools, preschool, and other state services. Once Proposition
28 EE is fully phased in, revenue from this tax is likely to decline over time as the
29 increased price results in fewer products being purchased. At the same time,
30 preschool funding needs are likely to grow. A tax intended to decrease
31 consumption is not a funding source on which the state should rely.

32 Estimate of Fiscal Impact for Proposition EE

33 State revenue. Proposition EE will increase state revenue from cigarette, tobacco
34 product, and nicotine product taxes by \$87 million in state budget year 2020-21 and

Moved (insertion) [2]

Commented [MG14]: Reordering this argument without changing any of its wording will provide clarity on the tax issue which, after all, is how it is perceived as a TABOR question.

Moved up [2]: Colorado has one of the lowest tax ¶
30 rates on cigarettes and tobacco products, and no
tax on vaping products, while ¶
31 also having one of the highest rates of youth
vaping in the country

Commented [MG15]: Provides needed perspective as to complete listing of tax changes

Commented [MG16]: Provides helpful perspective on affected programs

35 \$176 million in state budget year 2021-22, the first full year under the measure. The
36 amount of new revenue will increase as the measure is phased in, with \$276 million
37 expected to be generated in state budget year 2027-28.

38 In addition, the measure will also increase state revenue from sales taxes by
39 \$0.8 million in state budget year 2020-21 and by \$1.5 million in state budget year
40 2021-22, the first full year under the measure. The amount of additional sales tax
41 revenue will decline as the measure is phased in, with no new sales tax revenue
42 expected in state budget year 2027-28.

PAGE 7

1 State spending. Proposition EE will increase state spending by \$87 million in state
2 budget year 2020-21 and by \$177 million in state budget year 2021-22. As the
3 measure is phased in, state spending will increase, with \$276 million expected to be
4 spent in state budget year 2027-28. Spending includes the amounts identified in
5 Figure 1 for education, housing, preschool, tobacco and nicotine education and
6 cessation programs and other programs, as well as costs for administrative and
7 auditing purposes.

8 Taxpayer impacts. Proposition EE is expected to increase taxes paid by an
9 average of \$38 per Colorado adult in state budget year 2021-22, and \$53 per
10 Colorado adult in budget year 2027-28; however, the direct tax impact applies only to
11 people who consume cigarette, tobacco products, and/or nicotine products. If the
12 percentage of adult smokers remains constant at 14.6 percent, the measure is
13 expected to increase the taxes paid by cigarette smokers by an average of \$221 in
14 state budget year 2021-22 and by \$289 in state budget year 2027-28.

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Taxes on Nicotine Products
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Proposition EE
Taxes on Nicotine Products

1 **Question:**

2 SHALL STATE TAXES BE INCREASED BY \$294,000,000 ANNUALLY BY IMPOSING A TAX
3 ON NICOTINE LIQUIDS USED IN E-CIGARETTES AND OTHER VAPING PRODUCTS THAT
4 IS EQUAL TO THE TOTAL STATE TAX ON TOBACCO PRODUCTS WHEN FULLY PHASED
5 IN, INCREMENTALLY INCREASING THE TOBACCO PRODUCTS TAX BY UP TO 22% OF THE
6 MANUFACTURER'S LIST PRICE, INCREMENTALLY INCREASING THE CIGARETTE TAX BY
7 UP TO 9 CENTS PER CIGARETTE, EXPANDING THE EXISTING CIGARETTE AND TOBACCO
8 TAXES TO APPLY TO SALES TO CONSUMERS FROM OUTSIDE OF THE STATE,
9 ESTABLISHING A MINIMUM TAX FOR MOIST SNUFF TOBACCO PRODUCTS, CREATING
10 AN INVENTORY TAX THAT APPLIES FOR FUTURE CIGARETTE TAX INCREASES, AND
11 INITIALLY USING THE TAX REVENUE PRIMARILY FOR PUBLIC SCHOOL FUNDING TO
12 HELP OFFSET REVENUE THAT HAS BEEN LOST AS A RESULT OF THE ECONOMIC
13 IMPACTS RELATED TO COVID-19 AND THEN FOR PROGRAMS THAT REDUCE THE USE
14 OF TOBACCO AND NICOTINE PRODUCTS, ENHANCE THE VOLUNTARY COLORADO
15 PRESCHOOL PROGRAM AND MAKE IT WIDELY AVAILABLE FOR FREE, AND MAINTAIN
16 THE FUNDING FOR PROGRAMS THAT CURRENTLY RECEIVE REVENUE FROM TOBACCO
17 TAXES, WITH THE STATE KEEPING AND SPENDING ALL OF THE NEW TAX REVENUE AS
18 A VOTER-APPROVED REVENUE CHANGE?