

Proposition II

**Retain Nicotine Tax Revenue in Excess
of Blue Book Estimate**

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, including interest, rather than refund it to wholesalers and
5 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 in the
8 future, and to keep and spend the revenue collected under these rates on
9 preschool programs.

10 What Your Vote Means

YES

11 A “yes” vote on
12 Proposition II allows the
13 state to keep and spend \$23.65 million in
14 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 a state fund used for preschool programs (\$18 million) and the state's
7 general-purpose fund, or General Fund (\$5.6 million). If Proposition II is
8 approved, the money will be returned in the same amounts to these funds.
9 Proposition II also allows the state to maintain the tax rates and tax rate
10 increases on cigarettes, tobacco products, and nicotine products that voters
11 approved in 2020 and to keep and spend future revenue collected under these
12 tax rates.

13 **Figure 1**
14 **Outcomes Under Proposition II**

If Proposition II Passes ("Yes" Vote)	If Proposition II Fails ("No" Vote)
1. \$18 million will be spent on preschool programs and \$5.6 million will be available for spending in the state General Fund. 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 wholesalers and distributors of cigarettes, tobacco products, and nicotine products. 2. Tax rates on cigarettes, tobacco products, and nicotine products will be reduced from the tax rates previously approved by voters.

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

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

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

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

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

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

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1 first year. Actual revenue collected from the new taxes in that year was
2 \$208.0 million, or \$21.5 million more than the estimate. The excess revenue was
3 mostly due to tax revenue from nicotine products, such as e-cigarettes and
4 vaping products. The Colorado Constitution requires that this amount, plus
5 \$2.15 million in interest, be refunded and that the tax rates be reduced.

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

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

12 **Figure 2**
13 **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%

14 * *Manufacturer's List Price*

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

21 In 2023 only, the state will keep \$23.65 million that has already been collected
22 and would otherwise be refunded. Of this amount, \$18 million will be spent on
23 Colorado preschool programs, and \$5.6 million will be repaid to the state's
24 General Fund and be available for spending.

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

26 If Proposition II fails, the state will refund \$23.65 million to wholesalers and
27 distributors of cigarettes, tobacco products, and nicotine products, and the taxes
28 created by Proposition EE will be reduced by 11.53 percent. The excess
29 \$23.65 million will be refunded via direct refunds, temporary tax reductions,
30 temporary credits, or some other method. The Department of Revenue will

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1 determine the refund method, as well as how the taxes will be reduced. Taxes on
2 these products that existed before Proposition EE was passed will not be
3 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://www.sos.state.co.us/pubs/elections/Initiatives/ballot/contacts/2023.html>

4 **Arguments For Proposition II**

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

21 **Arguments Against Proposition II**

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

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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 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 will be spent on preschool programs and
17 \$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.

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18 current tax rates on cigarettes, tobacco
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 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. It also allows the state to maintain the tax rates
 6 and tax rate increases on cigarettes, tobacco products, and nicotine products
 7 that voters approved in 2020 and to keep and spend future revenue collected
 8 under these tax rates.

9 **Figure 1**
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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 wholesalers and distributors of cigarettes, tobacco products, and nicotine products. 2. Tax rates on cigarettes, tobacco products, and nicotine products will be reduced from the tax rates previously approved by voters.

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 29 first year. Actual revenue collected from the new taxes in that year was
 30 \$208.0 million, or \$21.5 million more than the estimate. The excess revenue was
 31 mostly due to tax revenue from nicotine products, such as e-cigarettes and

1 vaping products. The Colorado Constitution requires that this amount, plus
 2 \$2.15 million in interest, be refunded and that the tax rates be reduced.

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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 **Figure 2**
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 13 to support the Colorado preschool program, which provides part-day preschool
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 15 four-year-old children with disabilities, with additional preschool programming for
 16 low-income families and at-risk children.

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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 approximately 5,100 more children access to
12 additional preschool programs per year. Providing access to free preschool
13 gives all children the same foundation before entering kindergarten. High-
14 quality preschool is shown to improve educational, economic, and health
15 outcomes throughout a child’s life, including higher wages, higher graduation
16 rates, and fewer criminal convictions. Access to preschool also supports
17 working parents.

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3 revenue by an estimated \$14.4 million in state budget year 2023-24 and
4 \$32.1 million in state budget year 2024-25. The estimate for budget year 2023-24
5 represents a half-year impact.

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7 refund plus the increase in state revenue in state budget year 2023-24, which
8 total \$38.0 million. State spending will increase by \$32.1 million in state budget
9 year 2024-25. This spending will be used for preschool programs.

Last Draft Comments from Interested Parties

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

Doug Bruce, representing himself:

You are STILL rigging your "analysis" to favor your employer spending the revenue you collected from your prior false estimates.

"RETAIN REVENUE" is your bold print imperative directive to voters at the start.

Try "GIVING UP TAX REFUND OF MONEY THE STATE OVER COLLECTED."

line 2 delete "that has already been collected...plus interest" which implies this vote is a waste of time

line 7-8 End in "future." Delete the repetitive emotional appeal "for the children"

Staff condones/conceals the false estimates in later years without a tax refund waiver vote on them. You quietly ignore those coming illegal tax increases because the original ballot title for EE suppressed the second and third tax rate increases (in violation of TABOR ballot title rules).

line 12 "keep and spend" is contradictory; the state can't do both; choose "spend"

line 14 "OVERcollected:

line 18-19 Saying "for the children" is a nauseating emotional appeal.
page 2

line 2 choose "spend" only

line 3 delete "that has already been" and insert "OVER" before "collected."

line 5 delete "to cigarette...retailers..." You want an unsympathetic class of taxpayers.

lines 7-8 KEEP this accurate statement of refunds.

line 9 insert "EXCESS" before "tax rates"

line 10 after "2020" insert "based on falsely low state estimates"

TABLE 1

1. delete "on preschool programs" and insert "by the state."
2. after "voters" add "based on falsely low state predictions"

line 20 change "was" to "the state"

line 21 insert "state" before "estimate"

Last Draft Comments from Interested Parties

Doug Bruce, representing himself (cont.):

line 23 ditto

page 3

Table 2 a smoking gun of illegal ballot title for Prop. EE's second and third phased in tax increases. This ballot issue cannot correct illegal future tax increases not disclosed in EE. This ballot issue is NOT "maintaining... tax rates approved by voters." It is RAISING TAXES." Staff should not engage in that massive added theft.

lines 12-16 delete as irrelevant and biased manipulation

TABLE 3

DELETE. Staff illegally raises taxes in 2024 and 2027 based on II, even if II loses. That reward for false estimate and wrong tax year in EE is crazy! What banana republic law school did you attend?

page 4

line 3-17 Delete ALL after "EE." Deception in EE does not justify Prop. II, even if by a large margin.

Delete "by a two-thirds majority." Hiding behind school children does not justify approving state LIES. False claim that refunds must go to vendors and "drug dealers" does not justify MORE LIES. It also contradicts staff statement (page 2,

line 8) that DOR will provide method of refunds.

ARGUMENTS AGAINST

Add that voters have already approved the tax increase that the state requested. This ballot issue is a bad precedent of getting "a foot in the door" and then asking for more in a second ballot question. The tax rate should be reduced to provide the amount the state originally said it wanted to collect, but not a reward for staff's erroneous estimate.

line 29 "Defeat of Prop. II will result in the state still getting its requested tax increase, but taxpayers will still also get their TABOR refund."

page 5 DELETE lines 6 and 7. GIVE IT A REST! Your bias is showing.

Last Draft Comments from Interested Parties

Zach Martinez, representing Gary Advocacy LLC:

Dear Colorado Office of Legislative Council,

I submit this comment on Draft 3 of the Proposition ii Blue Book on behalf of Gary Advocacy LLC. We make the following suggestion in the interest of factual accuracy and the usage of language that would best be understood by a layperson:

- Page 2 line 25, after “EE” insert “by a two-thirds majority”. This section of the blue book is designed to give voters an understanding of how Proposition ii got on the ballot. This unprecedented show of support should be made clear to voters as a relevant fact for why Proposition ii is now before voters.
- Page 4 line 17, create a third “argument for” stating the following:

These funds are necessary to fulfill the needs of Colorado families. In the first year of Colorado’s universal preschool program, over 36,000 families signed up for services.¹ This is a 30% increase of over Colorado’s peak preschool enrollment.² These additional funds are necessary to ensure that children from lower income families and children with other qualifying factors receive the additional hours of preschool programming they deserve.

We appreciate the opportunity to submit these comments, and would be happy to provide additional information upon request.

1 See [Chalkbeat Colorado](#), August 2, 2023 (quoting Conor Cahill, a Spokesperson for Governor Polis).

2 See Colorado Department of Education, [2022 Legislative Report](#) (peak enrollment was in 2019 prior to the COVID-19 pandemic).

Proposition II
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Contact List

Interested Party	Organization Name	Email Address
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Gary Marner	Home Owner	garymarner@gmail.com
Zach Martinez	Gary Advocacy	zmartinez@garycommunity.org
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Kim Monson	Self	kmonsoninco@outlook.com

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Interested Party	Organization Name	Email Address
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Hunter Nelson	Colorado Children's Campaign	hunter@coloradokids.org
Samantha Nuechterlein	The Capstone Group	samantha@capstonegroupllc.com
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Amy Pitlik	Mendez Barkis	amy@mendezbarkis.com
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Shannon Wilson	Early Childhood Leadership Commission	shannonm.wilson@state.co.us
Curtis Woitte	Denver art museum	cwoitte@denverartmuseum.org
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Catherine Perrone	League of Women Voters	lwvcovote411@gmail.com
Penn Pfiffner	TABOR Foundation	constecon@hotmail.com
Gini Pingenot		gpingenot@ccionline.org
Edward Ramey	Tierney Lawrence Stiles LLC	eramey@TLS.legal
Sheila Reiner	CCTPTA	sheila.reiner@mesacounty.us
Brian Rossbert	Housing Colorado	brian@housingcolorado.org

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Laura Schroetlin	Phillips County	laura.schroetlin@phillipscounty.co
Amelia Schubert-Zhang		aschubertzhang@gmail.com
Skyler Schuck	GovOffice - OSPB	skyler.schuck@state.co.us
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Robert Sheesley	Colorado Municipal League	rsheesley@cml.org
Emily Sirota		emily.sirota.house@coleg.gov
Briaa Smith	DOR	bretana1226@gmail.com
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Proposition II
Retain Nicotine Tax Revenue in Excess of Blue Book Estimate

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Ballot Question: Without raising taxes, may the state retain and spend revenues from taxes on cigarettes, tobacco, and other nicotine products and maintain tax rates on cigarettes, tobacco, and other nicotine products and use these revenues to invest twenty-three million six hundred fifty thousand dollars to enhance the voluntary Colorado preschool program and make it widely available for free instead of reducing these tax rates and refunding revenues to cigarette wholesalers, tobacco product distributors, nicotine products distributors, and other taxpayers, for exceeding an estimate included in the ballot information booklet for Proposition EE?