

# Proposition AA



Colorado *Legislative Council Staff*  
**FISCAL IMPACT STATEMENT**

**Date:** September 24, 2013

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**TITLE: RETAIL MARIJUANA TAXES**

**Ballot Question:** Shall state taxes be increased by \$70,000,000 annually in the first full fiscal year and by such amounts as are raised annually thereafter by imposing an excise tax of 15% when unprocessed retail marijuana is first sold or transferred by a retail marijuana cultivation facility with the first \$40,000,000 of tax revenues being used for public school capital construction as required by the state constitution, and by imposing an additional sales tax of 10% on the sale of retail marijuana and retail marijuana products with the tax revenues being used to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters, with the rate of either or both taxes being allowed to be decreased or increased without further voter approval so long as the rate of either tax does not exceed 15%, and with the resulting tax revenue being allowed to be collected and spent notwithstanding any limitations provided by law?

<b>Fiscal Impact Summary</b>	<b>FY 2013-14*</b>	<b>FY 2014-15</b>
<b>State Revenue</b>	<b><u>\$33.5 million</u></b>	<b><u>\$67.0 million</u></b>
Excise Tax	13.8 million	27.5 million
Sales Tax	19.7 million	39.5 million
<b>State Spending</b>	\$4.2 million	\$1.3 million
<b>Local Government Revenue</b>	\$3.0 million	\$5.9 million

\*FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

## Summary of Measure

Proposition AA establishes an excise tax and special sales tax on retail marijuana beginning January 1, 2014. These taxes are not subject to the limitations on revenue, spending, or appropriations contained in Section 20 of Article X of the State Constitution (TABOR). The excise tax revenue is to be used for public school construction, while the special sales tax revenue is to increase funding for regulation of the retail marijuana industry. The Department of Revenue (DOR) has rulemaking authority over implementation of these taxes and is the primary agency responsible for regulating the retail marijuana industry.

**Background.** Amendment 64, passed by the voters in November 2012, allows for an adult 21 years or older to possess up to one ounce of marijuana and requires that a state regulatory structure be established. Beginning January 1, 2014, Amendment 64 also allows the cultivation, processing, and retail sale of marijuana in Colorado. These Amendment 64 provisions are in effect regardless of whether Proposition AA passes. The General Assembly passed four bills in the 2013 legislative session related to the implementation of Amendment 64. House Bill 13-1318 referred this measure to the ballot.

**Excise tax.** The measure creates a 15 percent excise tax to be applied to the average market rate of unprocessed retail marijuana on its first sale or transfer from a cultivation facility to a retail store, product manufacturing facility, or other cultivation facility. The DOR will develop a methodology for determining the average market rate for unprocessed marijuana and will set the rate twice a year. Retail marijuana businesses are required to keep detailed electronic records on all transactions involving retail marijuana. As specified by Amendment 64, the first \$40 million collected annually in excise tax goes to the Public School Capital Construction Assistance Fund. Any amount above \$40 million will be deposited into the Marijuana Cash Fund.

**Retail marijuana sales tax.** The measure authorizes a special sales tax on retail marijuana of 15 percent. The tax is initially set at 10 percent but can be adjusted later. The retail marijuana special sales tax is in addition to the current 2.9 percent state sales tax. Local jurisdictions will receive 15 percent of the proceeds of the retail marijuana special sales tax allocated according to the percentage of retail marijuana sales in their areas, distributed monthly. Local governments may also apply local sales taxes to retail marijuana. Retail marijuana businesses are prohibited from maintaining any portion of the retail marijuana special sales tax to cover the expenses of collecting and remitting the tax, unlike the "vendor fee" allowed for businesses collecting regular state sales taxes.

## **Fiscal Impact**

The measure will affect state revenue and spending as well as local government revenue, as described below. This revenue estimates are based on the assumptions shown in Table 1.

<b>Table 1. Assumptions for Revenue Projections*</b>		
	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Value of Wholesale Product (for excise tax)	\$91,767,000	\$183,534,000
Gross Retail Sales (for sales tax)	197,299,000	394,597,000

*\*Actual revenue will vary based on DOR's wholesale price, product mark up, and consumer demand.*

**State Revenue.** This measure is expected to increase state revenue from taxes by \$33.5 million in FY 2013-14 and \$67.0 million in FY 2014-15. Of this, \$13.8 million in FY 2013-14 and \$27.5 million in FY 2014-15 is from the excise tax and to be deposited into the Public School Capital Construction Assistance Fund. Revenue from the special sales tax on retail marijuana is projected to be \$19.7 million in FY 2013-14 and \$39.5 million in FY 2014-15 and deposited initially into the General Fund.

**State Spending.** The DOR is expected to have increased expenditures of \$4,258,166 in FY 2013-14 and \$1,280,050 in FY 2014-15 and thereafter. Because the taxes will go into effect January 1, 2014, costs for FY 2013-14 represent 6 months of expenditures for personal services, operating expenses, and capital outlay. These expenditures are shown in Table 2 and explained below.

<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$730,428	\$1,232,552
Full-Time Staff Positions	11.5	21.8
Operating Expenses and Capital Outlay	114,391	20,805
Travel	13,347	26,693
Contract Computer Programming	3,400,000	
<b>TOTAL</b>	<b>\$4,258,166</b>	<b>\$1,280,050</b>

**Information technology costs.** The DOR will have \$3,400,000 in costs in FY 2013-14 to make modifications to its tax collection system (GenTax). These costs are for 17,000 hours of programming at the contract rate of \$200 per hour. These programming changes will allow for the collection, monitoring, and reporting of both the excise tax and the retail marijuana special sales tax.

**Tax administration.** In order to assess and collect the new taxes, the DOR will require additional staff to determine the average market rate for unprocessed retail marijuana and to work with marijuana businesses to understand and comply with the new tax laws. Revenue agents, tax examiners, and criminal investigators will do onsite audits and investigations to ensure that the taxes paid match reports from the DOR inventory tracking system. Total staff positions are estimated at 11.5 in FY 2013-14 and 21.9 in FY 2014-15 and thereafter.

**Retail marijuana regulation.** The costs for regulating the retail marijuana market are not considered as part of this analysis because the market will exist regardless of whether Proposition AA passes. These costs are described in the final fiscal notes for HB 13-1317 and SB 13-283.

**Local Government Impact.** Local governments that allow retail marijuana stores to operate in their jurisdiction will receive an allocation of the retail marijuana special sales tax. The total amount allocated to local governments is estimated to be \$3.0 million in FY 2013-14 and \$5.9 million in FY 2014-15. The exact distributions among local governments will depend on the amount of sales in each jurisdiction.