

Proposition AA
Retail Marijuana Taxes

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

- 2 ♦ impose a 15 percent excise tax on retail marijuana when the product is
3 first sold or transferred by a retail cultivation facility, with public school
4 construction receiving the first \$40 million of any annual tax revenues
5 collected;

- 6 ♦ impose a 10 percent sales tax on retail marijuana and retail marijuana
7 products, in addition to the existing 2.9 percent state sales tax, to fund
8 the regulation and enforcement of the retail marijuana industry and
9 related health, education, and public safety costs; and

- 10 ♦ allow the state legislature to increase or decrease the excise and sales
11 taxes on retail marijuana so long as the rate of either tax does not
12 exceed 15 percent.

13 **Summary and Analysis**

14 ***Why is the measure on the ballot?*** Amendment 64, passed by the voters in
15 November 2012, allows for an adult 21 years of age or older to consume or possess
16 up to one ounce of marijuana and requires the state to establish a regulatory structure
17 for the retail marijuana industry. Amendment 64 also required the state legislature to
18 enact an excise tax on retail marijuana to fund public school construction; however,
19 the Colorado Constitution requires a statewide vote to approve new taxes. The state
20 legislature approved and the Governor signed into law a bill that creates two new
21 taxes: an excise tax to be applied to retail marijuana when first sold or transferred by a
22 retail cultivation facility; and a sales tax on retail marijuana and retail marijuana
23 products to fund the costs of regulation. Therefore, the state legislature is submitting
24 to the voters the question of whether to create additional taxes on retail marijuana.
25 Regardless of whether the measure passes, retail marijuana can be sold legally under
26 state law as of January 1, 2014.

27 ***Excise taxes.*** An excise tax is a tax on the use or consumption of certain
28 products such as gasoline, alcohol, or cigarettes. The tax is generally collected at the
29 wholesale level and passed on to consumers in the retail price. Facilities that grow
30 retail marijuana will pay the 15 percent excise tax when selling marijuana to either
31 retail marijuana product manufacturing facilities or to retail marijuana stores. Every
32 six months, the Department of Revenue will determine an average wholesale price for
33 unprocessed retail marijuana, and all unprocessed retail marijuana will be taxed at this
34 price. Medical marijuana is not subject to the state excise tax created by the measure,
35 or to any existing state excise tax.

1 Under Amendment 64, the excise tax is limited to 15 percent until January 1, 2017,
2 when the state legislature may raise it above 15 percent with voter approval. Each
3 year, the first \$40 million in revenue raised by the excise tax will be credited to the
4 Building Excellent Schools Today (BEST) program for constructing public schools.
5 The excise tax revenue is estimated to be less than \$40 million annually for at least
6 the first two years.

7 **School construction funding through the BEST program.** In 2008, the state
8 legislature enacted the BEST program in order to address the limited capacity for
9 many public schools to renew or replace deteriorating facilities with their local
10 resources. The program prioritizes funding awards based on issues such as asbestos
11 removal, building code violations, overcrowding, and poor indoor air quality. BEST
12 grants are available to public school districts, charter schools, boards of cooperative
13 services, institute charter schools, and the Colorado School for the Deaf and the Blind.
14 Under current law, funding is provided from the State Land Trust, Colorado Lottery
15 spillover funds, the applicants' matching funds, and interest accrued within the fund
16 itself. Through school year 2011-12, the program has received \$2.15 billion in
17 requests and awarded \$979 million for school construction projects. Of the
18 \$979 million, \$686 million is from state funds and \$293 million is from local matching
19 funds.

20 **Sales tax.** The measure also adds a sales tax to be applied when a consumer
21 purchases retail marijuana or retail marijuana products at a licensed retail marijuana
22 store. The sales tax rate will initially be set at 10 percent. The state legislature can
23 raise or lower the tax rate at any time through legislation, but cannot increase it above
24 15 percent without voter approval. The 10 percent retail marijuana sales tax is in
25 addition to current state and local sales taxes, which are applied to all retail
26 purchases.

27 Amendment 64 permits cities and counties to ban retail marijuana cultivation,
28 processing, and sales. State law limits, for one year, the licensing of retail marijuana
29 businesses to only those jurisdictions that currently allow medical marijuana sales.
30 Cities and counties that allow retail marijuana stores will receive 15 percent of the
31 revenue collected from the marijuana retail sales tax. The proceeds will be divided
32 accorded to the percentage of retail marijuana sales within each jurisdiction.
33 Beginning on or before April 1, 2014, and annually through April 1, 2016, the state
34 legislature is required to determine if the percent of revenue allocated to cities and
35 counties is set at the appropriate level.

36 **Regulatory activities funded by sales tax revenue.** The Marijuana
37 Enforcement Division (MED) in the Colorado Department of Revenue regulates the
38 cultivation, processing, and sale of both medical and retail marijuana. Medical
39 marijuana licensees are currently operating, but the licensing program for retail
40 marijuana businesses is still being developed. The first licensed retail marijuana
41 stores are authorized to open January 1, 2014. Revenue generated by the
42 2.9 percent state sales tax on both medical and retail marijuana and marijuana
43 products, plus revenue from application and licensing fees paid by medical and retail

1 marijuana businesses, will be used to fund the MED. This revenue will fund the
2 regulation, enforcement, tracking, testing, and certification of marijuana. If the
3 measure passes, the revenue from the proposed 10 percent sales tax will also be
4 used to fund the regulatory structure, as well as related costs for health, education,
5 and public safety, which are not currently funded.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2013, 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>

6 **Arguments For**

7 1) A majority of Coloradans voted in favor of Amendment 64 to create a regulated
8 and taxed retail marijuana market, and passage of this measure is expected to
9 generate the revenue necessary to support a robust regulatory system. In addition, an
10 effective regulatory system may discourage federal interference with the industry.
11 Adoption of the additional 10 percent sales tax is important because the current
12 funding structure for the regulatory system may require funds to be diverted from
13 other state priorities. Without revenue from the 10 percent sales tax, studies that
14 address public safety concerns and educational efforts aimed at preventing the use of
15 marijuana by children may not be funded.

16 2) The BEST program projects that Colorado schools have \$17.9 billion in school
17 construction needs through 2018, and the proposed excise tax will make more funding
18 available for these needs. This additional funding will help modernize older schools,
19 build new schools, and alleviate health and safety concerns. Also, by increasing the
20 number of projects funded, the school construction industry may see an increase in
21 jobs.

22 **Arguments Against**

23 1) The new taxes created by the measure may be so high that they undercut the
24 intended purpose of Amendment 64, which is to encourage consumers to purchase
25 marijuana from licensed businesses. When marijuana is purchased from licensed
26 businesses, sales are taxed and can be limited to consumers 21 years of age or older.
27 By overtaxing a product that is readily available on the underground market, the
28 measure may limit sales from licensed businesses and drive consumers to the
29 underground market.

1 2) Amendment 64 requires the establishment of an excise tax, but does not
2 require the sales tax created by the measure. This second tax was not anticipated by
3 those who supported Amendment 64, and is not needed for the regulation of a retail
4 marijuana market. The state legislature's plan for implementing Amendment 64
5 includes measures that exceed what is essential to regulate the industry. Revenue
6 from application and licensing fees, as well as the existing 2.9 percent state sales
7 taxes on marijuana, can satisfy the requirements of Amendment 64.