

**Proposition AA
Retail Marijuana Taxes**

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

- 2 ♦ impose a 15 percent excise tax on the average wholesale price of retail
3 marijuana when the product is first sold or transferred by a retail
4 cultivation facility, with public school construction receiving the first
5 \$40 million of any annual tax revenues 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 the average wholesale price of retail marijuana
22 when first sold or transferred by a retail cultivation facility; and a sales tax on retail
23 marijuana and retail marijuana products to fund the costs of regulation. Therefore, the
24 state legislature is submitting to the voters the question of whether to create additional
25 taxes on retail marijuana. Regardless of whether the measure passes, retail
26 marijuana can be sold legally under state law by licensed retail marijuana businesses
27 as of January 1, 2014.

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

1 subject to the state excise tax created by the measure, or to any existing state excise
2 tax.

3 Under Amendment 64, the excise tax is limited to 15 percent until January 1, 2017,
4 and the state legislature can seek voter approval through another ballot measure to
5 raise the excise tax rate above 15 percent to be effective on or after January 1, 2017.
6 Each year, the first \$40 million in revenue raised by the excise tax will be credited to
7 the Building Excellent Schools Today (BEST) program for constructing public schools.
8 The excise tax revenue is estimated to be less than \$40 million annually for at least
9 the first two years. If the amount collected is greater than \$40 million, the excess will
10 be used for marijuana regulation.

11 **School construction funding through the BEST program.** In 2008, the state
12 legislature enacted the BEST program in order to address the limited capacity for
13 many public schools to renew or replace deteriorating facilities with local resources.
14 The program prioritizes funding awards based on issues such as asbestos removal,
15 building code violations, overcrowding, and poor indoor air quality. BEST grants are
16 available to public school districts, charter schools, boards of cooperative services,
17 institute charter schools, and the Colorado School for the Deaf and the Blind. Under
18 current law, funding is provided from the State Land Trust, Colorado Lottery spillover
19 funds, the applicants' matching funds, and interest accrued within the fund itself.
20 Through school year 2011-12, the program has received \$2.15 billion in requests and
21 awarded \$979 million for school construction projects. Of the \$979 million,
22 \$686 million is from state funds and \$293 million is from local matching funds.

23 **Sales tax.** The measure also adds a sales tax to be applied when a consumer
24 purchases retail marijuana or retail marijuana products at a licensed retail marijuana
25 store. The sales tax rate will initially be set at 10 percent. The state legislature can
26 raise or lower the tax rate at any time through legislation, but cannot increase it above
27 15 percent without further voter approval. The 10 percent retail marijuana sales tax is
28 in addition to current state and local sales taxes, which are applied to all retail
29 purchases. All sales taxes will be applied to the retail price paid by the consumer,
30 which includes the 15 percent excise tax created by the measure. Medical marijuana
31 is not subject to the additional sales tax created by the measure, but remains subject
32 to the existing 2.9 percent state sales tax.

33 Amendment 64 permits cities and counties to ban retail marijuana cultivation,
34 processing, and sales. Cities and counties where retail marijuana sales to consumers
35 are generated will receive 15 percent of the revenue collected from the 10 percent
36 retail marijuana sales tax. The proceeds will be divided according to the percentage
37 of retail marijuana sales within each jurisdiction. Beginning on or before April 1, 2014,
38 and annually through April 1, 2016, the state legislature is required to determine if the
39 percent of revenue allocated to cities and counties is set at the appropriate level.

40 **Regulatory activities funded by sales tax revenue.** The Marijuana
41 Enforcement Division (MED) in the Colorado Department of Revenue regulates the
42 cultivation, processing, and sale of both medical and retail marijuana. Medical

1 marijuana licensees are currently operating, but the licensing program for retail
2 marijuana businesses is still being developed. The first licensed retail marijuana
3 stores are authorized to open January 1, 2014. Revenue generated by the
4 2.9 percent state sales tax on both medical and retail marijuana and marijuana
5 products, plus revenue from application and licensing fees paid by medical and retail
6 marijuana businesses, will be used to fund the MED. This revenue will fund the
7 regulation of marijuana businesses, including enforcement of the laws for testing and
8 tracking marijuana. If the measure passes, the revenue from the proposed 10 percent
9 sales tax will also be used to fund the regulatory structure, as well as related costs for
10 health, education, 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 website hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

11 **Arguments For**

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

21 2) The BEST program projects that Colorado schools have \$17.9 billion in school
22 construction needs through 2018, and the proposed excise tax will make more funding
23 available for these needs, as intended by Amendment 64. This additional funding will
24 help modernize older schools, build new schools, and alleviate health and safety
25 concerns. Also, by increasing the number of projects funded, the school construction
26 industry may see an increase in jobs.

27 **Arguments Against**

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

1 the measure may limit sales from licensed businesses and drive consumers to the
2 underground market.

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

10 **Estimate of Fiscal Impact**

11 ***State and local revenue.*** As shown in Table 1 below, passage of Proposition AA
12 is estimated to increase excise tax revenue by \$27.5 million and state sales tax
13 revenue by \$39.5 million annually. The total taxable value of retail marijuana at the
14 wholesale level is estimated to be about \$183.5 million per year, with sales to
15 consumers of retail marijuana generating approximately \$394.6 million per year. Local
16 governments where retail marijuana stores are operating will receive a proportionate
17 share of \$6.0 million based on the percentage of sales in each jurisdiction.

18 In FY 2011-12, Colorado's medical marijuana industry sold \$199.1 million worth of
19 product to 109,000 patients. Under Amendment 64, retail marijuana sales will be
20 made up of marijuana consumers who transition from the medical marijuana industry,
21 marijuana smokers who currently use unregulated marijuana, and visitors to the state.
22 The revenue estimates assume a wholesale price of \$93.75 per ounce for retail
23 marijuana, a retail price of \$187.50 per ounce, and 2 million ounces of marijuana
24 being sold by retail marijuana stores.

Table 1. Estimated Annual State Revenue from Proposition AA (in millions)		
	Wholesale Sales Subject to Excise Tax	Retail Sales Subject to Sales Tax
Total sales	\$183.5	\$394.6
Tax rate	15%	10%
Total taxes	\$27.5	\$39.5
Excise taxes to BEST Program	\$27.5	
Sales taxes to state government (85%)		\$33.5
Sales taxes to local governments (15%)		\$6.0

12 **State spending.** The Department of Revenue will develop a computer system
 13 and hire staff to collect, monitor, and enforce both the excise tax and the 10 percent
 14 sales tax on retail marijuana. This is estimated to cost \$4.2 million in the first year of
 15 implementation and \$1.3 million annually thereafter. The department is expected to
 16 add approximately 22 staff to implement the measure. The remaining funding will be
 17 used to fund the regulation of marijuana businesses, including enforcement of the
 18 laws for testing and tracking marijuana.