

**Proposition AA
Retail Marijuana Taxes**

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

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

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

- 10 ♦ direct 15 percent of the revenue collected from the 10 percent state
11 sales tax to cities and counties where retail marijuana sales occur; and

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

15 **Summary and Analysis**

16 ***Why is the measure on the ballot?*** Amendment 64, passed by the voters in
17 November 2012, allows for an adult 21 years of age or older to consume or possess
18 up to one ounce of marijuana and requires the state to establish a regulatory structure
19 for the retail marijuana industry. Amendment 64 also required the state legislature to
20 enact an excise tax on retail marijuana to fund public school construction; however,
21 the Colorado Constitution requires a statewide vote to approve new taxes. The state
22 legislature approved and the Governor signed into law a bill that proposes two new
23 state taxes: an excise tax to be applied to the average wholesale price of retail
24 marijuana when first sold or transferred by a retail marijuana cultivation facility; and a
25 sales tax on retail marijuana and retail marijuana products to fund the costs of
26 regulation. Therefore, the state legislature is submitting to the voters the question of
27 whether to approve additional taxes on retail marijuana. These taxes will not apply to
28 medical marijuana. Regardless of whether the measure passes, beginning on
29 January 1, 2014, existing medical marijuana stores will be eligible for a retail
30 marijuana license unless a city or county has imposed a ban. After October 1, 2014,
31 all applicants are eligible for licensure where no local ban is in place.

32 ***Excise taxes.*** An excise tax is a tax on the use or consumption of certain
33 products such as gasoline, alcohol, or cigarettes. The tax is generally collected at the
34 wholesale level and passed on to consumers in the retail price. Facilities that grow
35 retail marijuana will pay the 15 percent state excise tax when selling marijuana to

1 either retail marijuana product manufacturing facilities or to retail marijuana stores.
2 Every six months, the Colorado Department of Revenue will determine an average
3 wholesale price for unprocessed retail marijuana sold by retail marijuana cultivation
4 facilities, and all unprocessed retail marijuana will be taxed at this price. Medical
5 marijuana is not subject to the state excise tax created by the measure, or to any
6 existing state excise tax.

7 Under Amendment 64, the state excise tax is limited to 15 percent until
8 January 1, 2017, and the state legislature can seek voter approval through another
9 ballot measure to raise the excise tax rate above 15 percent to be effective on or after
10 January 1, 2017. Each year, the first \$40 million in revenue raised by the excise tax
11 will be credited to the Building Excellent Schools Today program for constructing
12 public schools. The excise tax revenue is estimated to be less than \$40 million
13 annually for at least the first two years. If the amount collected is greater than
14 \$40 million, the excess will be used for marijuana regulation.

15 ***School construction funding through the Building Excellent Schools Today***
16 ***program.*** In 2008, the state legislature enacted the Building Excellent Schools Today
17 program to address the limited capacity for many public schools to renew or replace
18 deteriorating facilities with local resources. The program prioritizes funding awards
19 based on issues such as asbestos removal, building code violations, overcrowding,
20 and poor indoor air quality. Program grants are available to public school districts,
21 charter schools, boards of cooperative services, institute charter schools, and the
22 Colorado School for the Deaf and the Blind. Under current law, funding is provided
23 from the State Land Trust, Colorado Lottery spillover funds, the applicants' matching
24 funds, and interest accrued within the fund itself. Between 2008 and 2012, the
25 program received \$2.15 billion in requests and awarded \$686 million for school
26 construction projects, with local governments allocating an additional \$293 million in
27 matching funds.

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

38 Amendment 64 permits cities and counties to ban retail marijuana cultivation,
39 processing, and sales. However, cities and counties where retail marijuana sales to
40 consumers are not banned will receive 15 percent of the revenue collected from the
41 10 percent state sales tax on retail marijuana. The proceeds will be divided according
42 to the percentage of retail marijuana sales within each jurisdiction. The measure is
43 silent on the use of this revenue by cities and counties. Beginning on or before

1 April 1, 2014, and annually through April 1, 2016, the state legislature is required to
2 determine if the revenue allocated to cities and counties is set at the appropriate level.

3 **Regulatory activities funded by sales tax revenue.** The Marijuana
4 Enforcement Division (MED) in the Colorado Department of Revenue regulates the
5 cultivation, processing, and sale of both medical and retail marijuana. Medical
6 marijuana licensees are currently operating, but the licensing program for retail
7 marijuana establishments is still being developed. In cities and counties that currently
8 allow medical marijuana sales, licensed retail marijuana stores are authorized to sell
9 retail marijuana beginning on January 1, 2014, unless a local ban is imposed.
10 Revenue generated by the 2.9 percent state sales tax on both medical and retail
11 marijuana and marijuana products, plus revenue from application and licensing fees
12 paid by medical and retail marijuana establishments, will be used to fund the MED.
13 This revenue will fund the regulation of marijuana establishments, including
14 enforcement of the laws for the testing, tracking, and labeling of retail marijuana and
15 measures to prevent the diversion of retail marijuana to individuals under 21 years old.
16 The revenue from the proposed 10 percent state sales tax will also be used to fund
17 the regulatory structure, as well as related costs for health, education, and public
18 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>

19 **Arguments For**

20 1) A majority of Colorado voters approved Amendment 64 to allow the sale of
21 retail marijuana within a regulated and taxed market, and passage of this measure is
22 expected to generate the revenue necessary to support the robust regulation of this
23 market. In addition, an effective regulatory system may discourage federal
24 interference with the industry, as the sale of marijuana remains illegal under federal
25 law. Adoption of the additional 10 percent state sales tax is important because the
26 current funding structure for the regulatory system may not be adequate and may
27 require funds to be diverted from other state priorities such as education, public
28 safety, and health care. Without revenue from the 10 percent sales tax, studies that
29 address public safety concerns and educational efforts aimed at preventing the use of
30 marijuana by children may not be funded.

31 2) Colorado schools have a projected \$17.9 billion in school construction needs
32 through 2018, and the proposed state excise tax will make more funding available for
33 these needs, as intended by Amendment 64. This additional funding will help

1 modernize older schools, build new schools, and alleviate health and safety concerns.
2 Also, by increasing the number of projects funded, the school construction industry
3 may see an increase in jobs.

4 **Arguments Against**

5 1) The new state taxes created by the measure may be so high that they undercut
6 one of the intended purposes of Amendment 64, which is to encourage consumers to
7 purchase marijuana from licensed stores. When marijuana is purchased from
8 licensed stores, sales are taxed and limited to consumers 21 years of age or older. By
9 overtaxing a product that is readily available in the underground market, the measure
10 may limit sales from licensed stores and keep consumers in the underground market.

11 2) Amendment 64 requires the establishment of an excise tax, but does not
12 require the sales tax created by this measure. This second tax was not anticipated by
13 supporters of Amendment 64 and is an unfair tax burden on consumers of marijuana.
14 The state legislature's plan for implementing Amendment 64 includes measures that
15 exceed what is essential to regulate the industry. Revenue from application and
16 licensing fees, as well as the existing 2.9 percent state sales tax on marijuana, can
17 adequately satisfy the requirements of Amendment 64.

18 **Estimate of Fiscal Impact**

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

26 In FY 2011-12, Colorado's medical marijuana industry sold \$199.1 million worth of
27 product to 109,000 patients. Under Amendment 64, retail marijuana sales will be
28 made up of marijuana consumers who transition from the medical marijuana industry,
29 marijuana consumers who currently use unregulated marijuana, and visitors to the
30 state. The revenue estimates assume a wholesale price of \$93.75 per ounce for
31 unprocessed retail marijuana, a retail price of \$187.50 per ounce, and 2 million ounces
32 of marijuana 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 Building Excellent Schools Today Program	\$27.5	
Sales taxes to state government (85%)		\$33.5
Sales taxes to local governments (15%)		\$6.0

13 **State spending.** The Colorado Department of Revenue will develop a computer
 14 system and hire staff to collect, monitor, and enforce both the 15 percent excise tax
 15 and the 10 percent sales tax on retail marijuana. The computer system is estimated
 16 to cost \$4.2 million in the first year of implementation and \$1.3 million annually
 17 thereafter. The department is expected to add approximately 22 staff to implement
 18 the measure. The remaining funding will be used to fund the regulation of marijuana
 19 establishments, including enforcement of the laws for the testing, tracking, and
 20 labeling of retail marijuana measures to prevent the diversion of retail marijuana to
 21 individuals under 21 years old, and costs for health, education, and public safety.