



# Taxes on Nicotine Products

*Placed on the ballot by the legislature • Passes with a majority vote*

## Proposition EE, if approved, would:

- increase taxes on cigarettes and tobacco products;
- create a new tax on nicotine products, including vaping products; and
- distribute the new revenue to expanded preschool programs, as well as to K-12 education, rural schools, affordable housing, eviction assistance, tobacco education, and health care.

## What Your Vote Means

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**YES** A “yes” vote on Proposition EE increases taxes on cigarettes and other tobacco products, and creates a new tax on nicotine products, including vaping products. The new tax revenue will be spent on education, housing, tobacco prevention, health care, and preschool.

**NO** A “no” vote on Proposition EE means taxes on cigarettes and other tobacco products will stay the same, and there will be no new taxes on nicotine or vaping products.

## Summary and Analysis for Proposition EE

### Why is Proposition EE on the ballot?

Earlier this year, the state legislature passed a law to raise taxes on cigarettes and tobacco products, create a state tax on nicotine products, and modify the regulation of these products. The new law takes effect only if Proposition EE is approved by voters, as all tax increases require voter approval under the Colorado Constitution. This analysis discusses the changes that will occur if Proposition EE passes.

### How are cigarettes, other tobacco products, and nicotine products currently taxed?

Cigarettes are currently taxed at 4.2¢ per cigarette, which is 84¢ per pack of 20 cigarettes. Tobacco products include chewing tobacco, cigars, and snuff and are currently taxed at 40 percent of the manufacturer's list price, which is the price at which a manufacturer sells the product to a distributor. Nicotine products, which include vaping products, are not currently subject to any existing state cigarette or tobacco tax. All three products are currently subject to the state sales tax.

Cigarette and tobacco taxes are required to be paid by the distributor that first receives products in the state, which may include local manufacturers. The business pays taxes to the state, but may keep a portion of the tax as compensation for work associated with filing taxes.

**Current revenue distributions.** Current cigarette and tobacco tax revenue is distributed to a variety of health care, tobacco education, and disease prevention programs, as well as for general state programs and services.

### How does Proposition EE change taxes on those products?

Proposition EE raises taxes on cigarettes and tobacco products, and establishes a new tax on nicotine products. The new taxes increase incrementally until they are fully phased in by 2027. Table 1 lists the current tax rates and the new rates under the measure. The new revenue is exempt from constitutional spending limits.

**Table 1**  
**Changes to Cigarette, Tobacco, and Nicotine Products Taxes**

Product	Current Tax Rates	New Rates Under Proposition EE*							Tax Rate Increase 2021-2027
		2021	2022	2023	2024	2025	2026	2027	
Cigarettes <i>Tax per pack</i>	\$0.84	\$1.94	\$1.94	\$1.94	\$2.24	\$2.24	\$2.24	\$2.64	\$1.80
Tobacco Product <i>Percent of price**</i>	40%	50%	50%	50%	56%	56%	56%	62%	22%
Nicotine Products <i>Percent of price**</i>	None	30%	35%	50%	56%	56%	56%	62%	62%

\* Rate increases begin January 1, except in 2024 and 2027, when rate increases begin July 1.

\*\* Manufacturer's list price.



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If approved, the measure also:

- sets new tax rates for modified risk tobacco products, which are federally designated as having lower health risks compared to existing commercial products. Currently, there is only one type of tobacco product that has received this designation for sale nationwide. This product would be taxed at 35 percent of the manufacturer's list price, while a regular tobacco product would be taxed at 50 percent in 2021;
- establishes a minimum tax for moist snuff products at \$1.48 per 1.2 ounce container, increasing to \$2.26 by 2027-28. Moist snuff is a type of cut, smokeless tobacco that can be loose or pouched and is intended to be placed in the mouth rather than sniffed;
- sets the minimum after-tax price of cigarettes for consumers at \$7.00 per pack beginning in January 2021, and \$7.50 per pack beginning in July 2024;
- makes online sales from out of state retailers to Colorado consumers subject to the new taxes; and
- reduces the portion of the taxes that distributors may keep as compensation for the work associated with filing taxes from 4.0 percent to 0.4 percent for cigarette distributors, from 3.33 percent to 1.6 percent for tobacco distributors, and sets this rate at 1.1 percent for nicotine distributors.

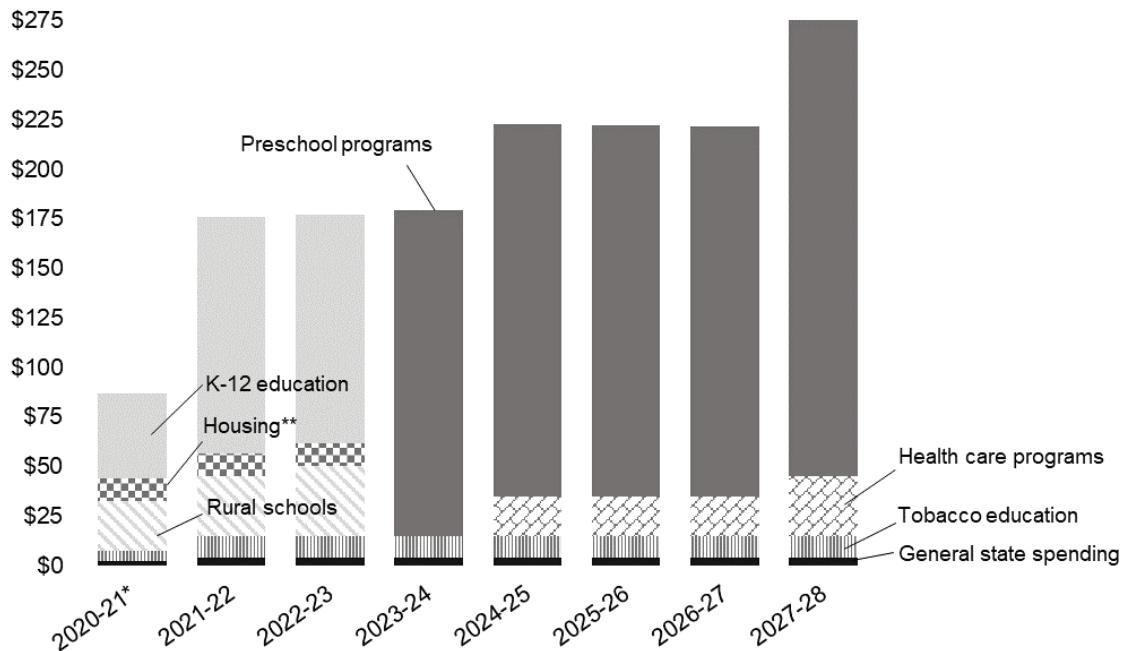
### **Are vaping products taxed under Proposition EE?**

Yes, vaping products that contain liquid nicotine are subject to the nicotine tax established by Proposition EE. Vaping products and devices that do not contain nicotine are not subject to the tax. Vaping products are not eligible for the lower tax rates for modified risk tobacco products, even if they are approved for this designation by the federal government.

### **How will the new tax revenue be spent?**

Proposition EE is expected to generate up to \$175.6 million in cigarette, tobacco, and nicotine tax revenue in budget year 2021-22, the first full year the measure will be in effect, and up to \$275.9 million beginning in budget year 2027-28 when the new tax rates are fully phased in. Figure 1 shows the programs that will receive funding as the new tax rates are phased in through budget year 2027-28. Programs funded in budget year 2027-28 will continue to receive funding in future years.

**Figure 1**  
**Distributions of New Tax Revenue**  
*Millions of dollars, by budget year*



\* Half-year impact.

\*\* Includes housing development and eviction legal assistance.

As shown in the above figure, the measure will provide funding for the following programs:

- **Preschool programs.** Proposition EE provides funding for expanded preschool, including at least ten hours per week of free preschool for every child in their final year before kindergarten. A portion of the additional sales tax revenue from the minimum cigarette price is also used for this purpose.
- **Rural schools.** Of the money allocated for rural schools in the first three years, 55 percent goes to rural school districts with between 1,000 and 6,500 students, and 45 percent goes to rural school districts with fewer than 1,000 students. The funding is allocated on a per-student basis.
- **K-12 education.** In addition to the funding for rural schools, any revenue not allocated to other programs will be available for K-12 education funding for the first three years. Specific uses may include school finance funding to school districts statewide, including charter schools, as well as other education programs.
- **Housing development.** In the first three years, funding will be allocated as grants or loans to buy, renovate, and construct houses, or provide rental assistance, in an effort to increase the supply of affordable housing. Of the amount allocated for this purpose, \$5.0 million must be used in rural areas.
- **Eviction legal assistance.** Funding for this purpose is allocated in the first three years and will be awarded to organizations that provide legal assistance to low-income clients at risk of eviction.



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- **Health care programs.** Funding allocated for health care programs will be used for Medicaid, primary care, tobacco use prevention, children’s health and a variety of other health care programs that currently receive cigarette and tobacco tax revenue.
- **General state spending.** Of the amount allocated for this purpose, 27 percent must be distributed to local governments, and the remainder used for general state spending, which may include education, transportation, and health care, and will be determined by the state legislature. A portion of the additional sales tax revenue from the minimum cigarette price is also used for general state spending.
- **Tobacco education programs.** Money allocated for this purpose is used for grants for community-based and statewide programs to reduce tobacco use by youth, encourage cessation, and reduce exposure to secondhand smoke.

### How would preschool availability and funding change?

Currently, the Colorado Preschool Program funds 29,360 half-day preschool slots for three- and four-year-old children who are from low-income families, in need of language development, or who meet certain criteria indicating they may be in danger of falling behind in school. About 9,000 low-income students also have access to preschool through federal Head Start programs. The measure requires that the new funding be used to offer at least 10 hours per week of free preschool to every child in their final year before kindergarten. This is expected to begin in the 2023-24 school year. Any remaining revenue must be used to expand preschool opportunities for low-income families and children at risk of not being ready for kindergarten.