

OPINION

## YES: It's what voters wanted

By Ross Kaminsky  
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Proposition BB, the only statewide issue in Colorado's elections this November, asks voters to "allow the state to retain and spend \$66.1 million, which has already been collected, rather than refund it to taxpayers."

Supporters of limited and cost-effective government understand the importance of reminding politicians and bureaucrats whose money they're spending. Refunds of tax revenue are perhaps the single most-effective way of doing so. However, Proposition BB relates specifically to the refund of excise and sales taxes on marijuana, taxes approved by Colorado voters in 2013 through Proposition AA as required by the 2012 passage of Amendment 64, which legalized recreational marijuana in Colorado.

If BB were to fail, the functional impact would be for the state not to have collected any of the voter-approved 15 percent state excise tax or 10 percent state sales tax on retail (non-medical) marijuana sales.

Two key points, as explained by the Legislative Council staff:

- A \$153.6 million tax refund required by the Taxpayer's Bill of Rights (TABOR) based on state collections of sales, income, gasoline and other taxes — the first such refund for a decade due to Referendum C and the subsequent recession — will occur regardless of whether voters approve Proposition BB. (Retail marijuana taxes are excluded from TABOR limits because they were separately passed by taxpayers.)
- A possible refund of marijuana tax revenue has only become an issue because the state underestimated its non-marijuana tax collections in FY 2014-15. Colorado took in about \$270 million more in TABOR-limited taxes than predicted while taxes on retail (aka recreational) marijuana came in slightly below estimates. The underestimation of non-marijuana taxes has ironically triggered a possible refund of correctly estimated marijuana taxes.

If Proposition BB fails, \$49 million will be returned to taxpayers through a refund of \$25 million to Colorado income-tax payers and \$24 million to Colorado retail marijuana cultivators. For a family reporting a joint adjusted gross income of \$60,000, the tax

refund would be \$14.

To achieve the \$66.1 million total "refund," on Jan. 1, 2016, the retail marijuana sales-tax rate will be slashed from 10 percent to 0.1 percent until the state has forgone \$17.1 million in tax revenue. During that period, the share of retail marijuana sales-tax revenue that goes to local governments will be cut in half, from 15 percent to 7.5 percent, reducing local government tax revenue by \$6.3 million.

As always, those who want to keep tax money make a sympathetic claim: "While an average refund of \$8 per person is a relatively small amount, \$66.1 million will boost school construction and address the effect of marijuana legalization on communities and children."

As always, I find such "for the children" arguments condescending, even annoying.

However, the voters of Colorado explicitly legalized retail marijuana on the promise of tax revenue being directed to schools as well as to "funding for the regulation and enforcement of the retail marijuana industry and to fund related health, education, and public safety costs."

So as much as it pains me to support letting the state keep tax money that it might otherwise have to return, Proposition BB does nothing more than have state tax revenues be collected and spent as voters explicitly approved.

The potential of a refund of marijuana sales and excise taxes only exists because the government underestimated the state's receipts of non-marijuana-related taxes such as income taxes and ordinary sales taxes. For that to cause the state to effectively collecting nothing from marijuana sales — when the potential tax revenue was a clinching argument in allowing retail pot legalization to begin with — violates the spirit of the law and the intent of Colorado voters.

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