



# TaxNewsFlash

## United States

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### **KPMG report: Election 2018—voters to decide key state tax matters**

Election Day 2018 is November 6 and much of the country's attention will likely be focused on congressional races. However, voters in a number of states will also be asked to make decisions on a variety of key state policy issues, including taxes.

The following discussion provides a summary of some of the ballot initiatives that, if approved by the voters and enacted, would affect state business taxpayers.

#### **Ballot initiatives to limit tax increases**

**Arizona Proposition 126: Prohibit new or increased taxes on services initiative:** [Proposition 126](#) [PDF 8 KB] if approved, would amend the Arizona Constitution to prevent the state as well as any local government from increasing the rate of tax currently applied to service transactions, or levying new transaction-based taxes on services not subject to tax as of December 31, 2017.

The taxes covered by the proposition include any “sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from a service performed in this state.”

The likely genesis of the proposition is legislation considered, but not passed in 2018 ([House Bill 2145](#) [PDF 79 KB]) that would have imposed transaction privilege tax on many personal services as well as real estate, business management, healthcare, accounting, legal, and financial services.

**Florida Amendment 5: Two-thirds vote of legislature to increase taxes and fees amendment:** [Amendment 5](#) [PDF 550 KB] if approved, would amend Florida's Constitution to require a two-thirds vote of each house of the legislature to enact any new tax or fee or raise existing taxes and fees. Moreover, any measure containing a

new or increased tax or fee would have to be presented in a separate bill containing no other subject matter. This proposal would not apply to taxes and fees imposed by a county, municipality, school board, or special district. The amendment defines raising an existing tax to mean either increasing the rate of tax or “decreas[ing] or eliminate[ing]” an “exemption or credit.”

Since 1971, Florida has required a three-fifths vote of each house of the legislature to increase the corporate income tax rate above 5%, which it last did in 1984.

Florida does not have an individual income tax, so this measure, if approved, would appear to largely apply to sales and use taxes and other transaction taxes.

**North Carolina income tax cap amendment:** If approved, this [ballot measure](#) [PDF 115 KB] would amend the North Carolina Constitution to decrease the maximum allowable state income tax rate from 10% to 7%. This amendment would not affect current rates—the individual (personal) income tax rate in North Carolina is 5.499% and the corporate income tax rate is 3.0% which drops to 2.5% beginning January 1, 2019. North Carolina has the lowest corporate income tax rate in any state that imposes the tax.

**Oregon Measure 104: Definition of raising revenue for three-fifths vote requirement initiative:** [Measure 104](#) [PDF 549 KB], if approved, would require a three-fifths vote on any measure that raises revenue. Raising revenue would be defined as any “modification, elimination, or change in eligibility for any exemptions, credits, deduction or lower rate of taxation.”

Currently, the Oregon Constitution requires a three-fifths vote of each state legislative chamber to pass bills raising revenue. Voters approved this requirement in 1996. However, in 2015, the Oregon Supreme Court held that a bill “raising revenue” must bring money into the treasury and possess the essential features of a bill levying a tax. In the court’s view, this definition excluded bills increasing fees or charges for a specific public benefit or service and bills reducing tax preferences, such as exemptions or credits.

## Ballot initiatives to increase taxes

**California Initiative 17-0055: The California Schools and Local Communities Funding Act of 2018.** Unless withdrawn by its proponents, this [measure](#) [PDF 417 KB] would be on the November 2020 ballot and, if approved by voters, would significantly revise property taxation of commercial and industrial property in California. Initiative 17-0055 would require that commercial and industrial real property be based on the fair market value of the property, beginning with the 2020 lien date.

Currently, under Proposition 13, residential, commercial, and industrial real properties are valued based on the purchase price plus inflation increases that are limited to 2%

per year. The legislature would be required to enact a plan to phase-in the new tax base over two or more years.

The Legislative Analyst's office estimates that the change would increase taxes by \$6.5 billion to \$10.5 billion annually. Exemptions would apply for: (1) real property used for commercial agricultural purposes; and (2) all property owned by a business in California if the market value of the property was less than \$2 million. The initiative would provide some personal property tax relief.

Notably, for businesses with 50 or more employees, an exemption would be allowed for up to \$500,000 of tangible personal property (copy machines, computers, desks, etc.). For business with fewer than 50 employees, all personal property would be exempt.

**San Francisco Proposition C: Additional tax on gross receipts tax of businesses to fund homeless services.** [Proposition C](#) [PDF 217 KB] if approved, would increase the city's gross receipts tax on persons, entities, or combined groups engaged in business in the city that have over \$50 million of gross annual San Francisco sourced receipts. The additional rate of tax, dubbed the "Homelessness Gross Receipts Tax," would be imposed on receipts over \$50 million at various rates from 0.175% to 0.69%, depending on the business activities in which the taxpayer is involved.

Taxpayers that currently pay tax in San Francisco based on payroll, rather than gross receipts, would be subject to an additional tax of 1.5% of total payroll expense under the measure.

The additional tax would generally not apply to businesses currently exempt from the city tax, and would also not apply to any business engaged in commercial leasing that was subject to a gross receipts tax increase approved by voters in June 2018.

As the name of the measure suggests, revenues from the tax increase would be used to help fund programs to alleviate the city's homeless problem, including the provision of housing and mental health services.

**Colorado Proposition 110: Authorize sales tax and bonds for transportation projects:** [Proposition 110](#) [PDF 927 KB] if approved, would increase the state sales and use tax rate from 2.9% to 3.52% for 20 years starting on January 1, 2019. Revenue generated from the tax increase would be dedicated to fund transportation expenditures in Colorado, including repayment of additional transportation bonds that are also authorized by the proposition.

**Colorado Amendment 73: Establish income tax brackets and raise taxes for education initiative:** [Amendment 73](#) [PDF 388 KB] if approved, would increase the Colorado corporation income tax from its current level of 4.63% to 6.0%, effective for tax years beginning on or after January 1, 2019. The measure would also authorize

and adopt a graduated personal income tax rate for those with income in excess of \$150,000, with the new rates ranging from 5% to 8.25% for incomes in excess of \$500,000, also effective for tax year 2019. If passed, revenues raised from these tax increases would be placed in a newly created Quality Public Education Fund for purposes of supporting expenditures for public school programs, resources, and opportunities.

**City of Portland Measure 26-201: Clean energy community benefits initiative:** [Measure 26-201](#) if approved, would amend Portland's Business License Tax Code to require certain "large retailers" to pay a 1% surcharge on gross revenue from retail sales within the City of Portland. Proceeds from the levy would be used to support a variety of clean energy initiatives.

The measure would define a large retailer as a business that (1) is subject to the Portland Business License Tax, (2) had total annual revenue over \$1 billion in the prior tax year, and (3) had Portland annual revenue over \$500,000 dollars in the prior tax year. Certain large retailers would not be subject to the surcharge, including manufacturers or businesses not engaged in retail sales, entities operating utilities, any cooperative recognized under law, or a federal or state credit union.

In calculating gross revenue subject to the surcharge, a deduction would be allowed for the Portland Business License Tax paid, and certain defined sales of groceries, medicines, and healthcare services. Revenue raised through the surcharge would be deposited into the Portland Clean Energy Community Benefits Fund to fund clean energy projects and job training related to clean energy. If approved and enacted, the surcharge would take effect for tax years beginning on or after January 1, 2019.

**Washington Initiative Measure 1631: Carbon emissions fee measure:** [Initiative Measure 1631](#) [PDF 76 KB] if approved, would impose a "pollution fee" on "large emitters," (unless exempted) based on the carbon content of fossil fuels sold or used within Washington State, and electricity generated within or imported for consumption into the state.

Beginning January 1, 2020, the measure would require affected businesses to pay a fee of \$15 per metric ton of carbon content.

Beginning January 1, 2021, the pollution fee would increase by \$2 per ton each year; the fee would also be adjusted annually for inflation.

When the state's 2035 greenhouse gas reduction goals are met, and it appears the state will be compliant with 2050 goals, the pollution fee would become fixed, except for annual adjustments for inflation. The measure requires that the fee is levied only once on a particular unit of fossil fuel or electricity. There are various exemptions from the fee, including among others, fossil fuels exported or sold for export from Washington; fossil fuels supplied to a light and power business for the purpose of generating electricity; fuels used solely for agricultural purposes; and fossil fuels and electricity to certain facilities designated by the U.S. Department of Commerce as

within energy intensive and trade-exposed industries. The state's Department of Ecology would be required to adopt rules for determining the carbon content of various fossil fuels and sources of electricity.

If passed, Washington would be the first U.S. state to impose a carbon emissions fee on businesses.

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