

J. MARIJUANA TAX REVENUE ALLOCATIONS

This appendix provides an overview of state taxes related to marijuana and the allocation of these tax revenues, and a summary of appropriations and transfers from the Marijuana Tax Cash Fund for FY 2017-18 and FY 2018-19.

LEGAL AND REGULATORY OVERVIEW

Marijuana has been legalized in Colorado through the passage of two citizen ballot initiatives that amended the State Constitution. In 2000, voters passed an initiative that added Section 14 to Article XVIII, authorizing the medical use of marijuana for persons suffering from debilitating medical conditions. In 2012, voters passed an initiative that added Section 16 to Article XVIII, authorizing personal use of marijuana.

The General Assembly has passed legislation to implement the constitutional provisions adopted by voters. The most significant statutory provisions concerning marijuana include:

- Colorado Medical Marijuana Code [Section 12-43.3-101 et. seq., C.R.S.]
- Colorado Retail¹ Marijuana Code [Section 12-43.4-101 et. seq., C.R.S.]
- Taxes on Marijuana and Marijuana Products [Section 39-28.8-101 et seq., C.R.S.]

Two state agencies are primarily responsible for implementing the above laws:

- The **Department of Revenue** regulates and controls the licensing of the cultivation, manufacture, distribution, and sale of medical and retail marijuana. These activities are supported by medical and retail marijuana business fees that are credited to the *Marijuana Cash Fund*². The Department also collects, administers, and enforces state taxes and fees related to marijuana and marijuana products. These activities are supported by medical and retail marijuana sales tax revenues that are credited to the *Marijuana Tax Cash Fund*.
- The **Department of Public Health and Environment** administers certain aspects of the medical marijuana program, including administering the medical marijuana registry and distributing medical marijuana cards, and coordinating inspection of retail marijuana lab testing facilities. This Department's regulatory activities are supported by fees paid by patients seeking medical marijuana cards that are credited to the *Medical Marijuana Program Cash Fund*³, and the remaining activities are supported by medical and retail marijuana sales tax revenues that are credited to the *Marijuana Tax Cash Fund*.

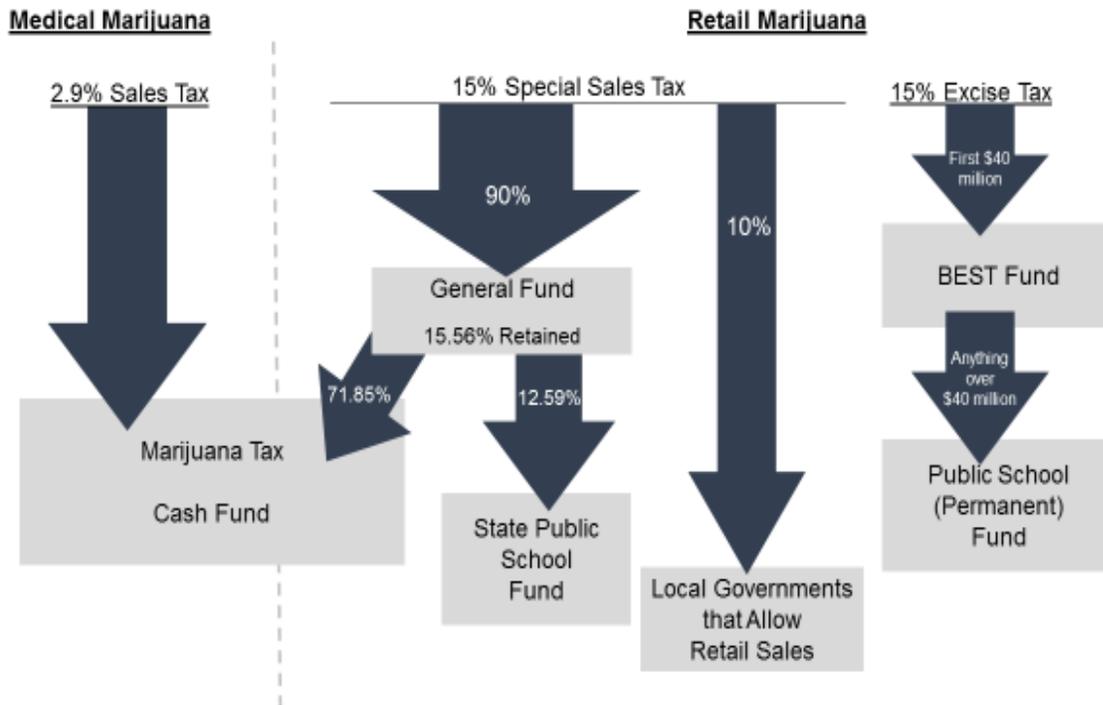
TAX REVENUE OVERVIEW

The State collects three types of taxes on marijuana products. The following graphic, which was prepared by Legislative Council Staff, illustrates the allocation of state tax revenue related to marijuana starting in FY 2018-19. A discussion of each type of tax and the allocation of the associated tax revenue follows.

¹ While marijuana that is sold for personal use as authorized by Amendment 64 is generally called "recreational" marijuana, the statutory provisions that implement Amendment 64 use the term "retail" marijuana. Staff has generally used the term "retail" for purposes of this document.

² Actual business fee and fine revenues collected and credited to the Marijuana Cash Fund, along with associated interest and other adjustments, totaled \$14,221,913 in FY 2016-17.

³ Actual patient fee revenues collected and credited to the Medical Marijuana Program Cash Fund, along with associated interest and other adjustments, totaled \$1,386,004 in FY 2016-17.



- First, the **regular state sales tax** (2.9 percent) is collected on consumer goods. While this tax was initially collected on both medical and retail marijuana sales, retail marijuana was exempted from this tax through S.B. 17-267. Since July 1, 2017, the general state sales tax has only applied to sales of medical marijuana and non-marijuana products (i.e., t-shirts and other novelty items). General sales tax revenue related to marijuana is credited to the *Marijuana Tax Cash Fund* (MTCF) and is used to support a variety of state programs and services. The allocation of money in this fund is discussed in more detail below.
- Second, a **special sales tax** (15.0 percent⁴) is collected on retail (but not medical) marijuana sales. Of the total amount collected annually, 10.0 percent is allocated to local governments based on the percentage of such revenues collected within the boundaries for each local government. The remaining 90.0 percent state share of special sales tax revenues is allocated among three funds:
 - 71.85 percent is transferred to the *MTCF* and annually appropriated for a variety of programs and services;
 - 12.59 percent⁵ is transferred to the *State Public School Fund* and may be appropriated to the Department of Education for the State's share of total program funding for school districts and institute charter schools⁶; and
 - 15.56 percent⁵ is retained in the *General Fund* and is thus available for appropriation in the fiscal year in which it is collected.

⁴ In 2013, voters approved Proposition AA, which authorized the State to levy up to a 15.0 percent excise tax and up to a 15.0 percent special retail sales tax on retail marijuana and marijuana products. The State initially chose to levy a 10.0 percent special sales tax (effective January 1, 2014). Pursuant to S.B. 17-267, the special sales tax rate increased to 15.0 percent (effective July 1, 2017).

⁵ For FY 2017-18 only, a flat amount of \$30,000,000 was transferred to the State Public School Fund, rather than transferring an amount equal to 12.59 percent of special sales tax revenues. Thus, for FY 2017-18, only \$10.3 million (7.20 percent of special sales tax revenues) is anticipated to be retained in the General Fund.

⁶ Senate Bill 17-267 statutorily appropriated the amount transferred to the State Public School Fund in FY 2017-18 to the Department of Education for disbursement to schools in rural school districts in FY 2017-18. Pursuant to H.B. 18-1101, starting in FY 2018-19, the amount annually transferred to the State Public School Fund is subject to appropriation by the General Assembly and any such appropriation must occur in a fiscal year following the fiscal year in which the transfer occurs.

- Third, a marijuana **excise tax** (15.0 percent) is applied to the average market wholesale price of the product being sold or otherwise transferred from a retail marijuana cultivation facility. The average market wholesale prices are periodically set by the Department of Revenue’s Marijuana Enforcement Division. As required by the State Constitution⁷, the first \$40.0 million of excise tax revenue raised annually from retail marijuana wholesale products is credited to the *Public School Capital Construction Assistance Fund (PSCCAF)*. Money in this fund helps pay for local K-12 school construction projects through the Building Excellent Schools Today (BEST) program, which is administered through the Colorado Department of Education. Pursuant to H.B. 18-1070, starting in FY 2018-19, the greater of \$40.0 million or 90.0 percent of excise tax revenue will be credited to the PSCCAF. Any excise tax revenue that exceeds the amount transferred to the PSCCAF is credited to the *Public School Fund*, which is a constitutionally created fund that generates income to support public K-12 schools. From FY 2013-14 through FY 2016-17, a total of \$141.0 million from marijuana excise tax revenues has been credited to these two funds, including \$107.0 million to the PSCCAF⁸ and \$34.0 million to the Public School Fund.

Two of the three sources of state marijuana-related tax revenues are not subject to the limitation on state fiscal year spending imposed by Article X, Section 20, of the State Constitution (the Taxpayer’s Bill of Rights or TABOR): the special sales tax and the excise tax⁹. However, the regular state sales tax (2.9 percent) revenue collected by medical marijuana centers and retail marijuana stores is subject to TABOR. In addition, the fees and fines paid by retail and medical marijuana businesses and the fees paid by medical marijuana patients are subject to TABOR. For FY 2016-17, the marijuana-related tax and fee revenue that is subject to TABOR totaled \$56.6 million (including \$41.0 million in sales tax revenues and \$15.6 million in fee revenue).

MARIJUANA TAX CASH FUND OVERVIEW

The statutory provision that establishes the Marijuana Tax Cash Fund (MTCF) limits the timing, amount, and allowable uses of the MTCF¹⁰. With respect to **timing**, this provision states that the General Assembly may appropriate money in the MTCF to the Department of Revenue for the fiscal year in which the money was received by the State for the costs associated with implementing the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and provisions concerning taxes on marijuana and marijuana products. However, any other appropriations from the MTCF are limited to the fiscal year following the fiscal year in which the money was received (e.g., revenues collected in FY 2017-18 may only be appropriated for FY 2018-19 or subsequent fiscal years).

With respect to the **amount** appropriated from the MTCF, this statutory provision limits annual appropriations from the MTCF to 93.5 percent of the “amount of moneys in the fund available for appropriation.” This provision thus establishes an annual MTCF reserve that is similar to the statutory General Fund reserve requirement that was in place when the Fund was created¹¹.

Finally, the General Assembly has specified the **allowable purposes** for which the General Assembly may appropriate money in the MTCF. These purposes are listed in Section 39-28.8-501 (2)(b)(IV), C.R.S., and are periodically amended through legislation.

The General Assembly makes annual appropriations from the MTCF based on the most recent revenue projections available from either Legislative Council staff or Department of Revenue staff. Appropriations for FY 2018-19 were premised on the March 2018 revenue forecast prepared by Legislative Council staff. A total of \$133.8 million is

⁷ See Article XVIII, Section 16 (5)(d), of the State Constitution.

⁸ This amount excludes an additional \$40.0 million that was transferred to the PSCCAF from the Proposition AA Refund Account in FY 2015-16, pursuant to voter approval of Proposition BB. The source of this funding was sales tax revenues, rather than excise tax revenues.

⁹ See Sections 39-28.8-204 and 39-28.8-307, C.R.S., respectively.

¹⁰ See Section 39-28.8-501 (2), C.R.S.

¹¹ See Section 24-75-201.1 (1)(d)(XIV), C.R.S.

projected to be available for transfers and appropriations for FY 2018-19, and the General Assembly appropriated or transferred a total of \$132.4 million. The following table details appropriations and transfers from the MTCF for FY 2017-18 and FY 2018-19.

SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2017-18 AND FY 2018-19			
	FY 2017-18 APPROPRIATIONS	FY 2018-19 APPROPRIATIONS	ANNUAL CHANGE
BREAKDOWN OF APPROPRIATIONS BY DEPARTMENT AND PROGRAM			
Agriculture:			
Pesticide control and regulation	\$1,494,393	\$1,099,327	(\$395,066)
Hemp regulatory and seed certification	415,390	428,150	12,760
Colorado State Fair Authority: FFA and 4-H programming	<u>300,000</u>	<u>300,000</u>	<u>0</u>
Subtotal: Agriculture	2,209,783	1,827,477	(382,306)
Education:			
School Health Professionals Grant Program	11,970,783	11,930,434	(40,349)
Early Literacy Competitive Grant Program	4,378,678	4,378,678	0
Office of Dropout Prevention and Student Reengagement	2,000,000	2,000,419	419
Appropriation to the School Bullying Prevention and Education Cash Fund	2,000,000	2,000,000	0
Centrally appropriated amounts not accounted for above	<u>69,869</u>	<u>89,296</u>	<u>19,427</u>
Subtotal: Education	20,419,330	20,398,827	(20,503)
Governor:			
Office of Information Technology, Applications Administration	1,109,625	638,750	(470,875)
Evidence-based policymaking evaluation and support	500,000	435,675	(64,325)
Governor's Office	<u>117,199</u>	<u>131,054</u>	<u>13,855</u>
Subtotal: Governor	1,726,824	1,205,479	(521,345)
Health Care Policy and Financing:			
Training for health professionals to provide Screening, Brief Intervention, and Referral for Treatment (SBIRT) services for Medicaid clients at risk for substance abuse	<u>750,000</u>	<u>750,000</u>	<u>0</u>
Subtotal: Health Care Policy and Financing	750,000	750,000	0
Higher Education:			
Institute of Cannabis Research at CSU-Pueblo (S.B. 16-191)	1,800,000	1,800,000	0
Medication-assisted Treatment Pilot Program (S.B. 17-074)	500,000	500,000	0
Center for Research Into Substance Use Disorder Prevention, Treatment, and Recovery Support Strategies (S.B. 17-193)	<u>1,000,000</u>	<u>0</u>	<u>(1,000,000)</u>
Subtotal: Higher Education	3,300,000	2,300,000	(1,000,000)
Human Services:			
Increasing access to effective substance use disorder services, including evaluation of intensive residential treatment (S.B. 16-202)	12,189,109	15,284,950	3,095,841
Mental health services for juvenile and adult offenders	5,519,298	5,574,491	55,193
Criminal justice diversion programs (Law Enforcement Assisted Diversion or "LEAD" pilot programs and S.B. 17-207)	5,517,942	5,561,828	43,886
Enhance behavioral health crisis response system (S.B. 17-207)	4,070,318	4,344,438	274,120
Programs that fund service alternatives to placing youth in a correctional facility (S.B. 91-094)	2,028,036	2,048,317	20,281
Circle Program for adults with co-occurring mental health and substance use disorders	830,629	1,993,511	1,162,882
Tony Gramscas Youth Services Program grants for the prevention of youth marijuana use	1,373,672	1,373,672	0
Behavioral health services for individuals in rural areas show have co-occurring mental health and substance use disorders	1,035,529	1,045,884	10,355
Appropriation to the Youth Mentoring Services Cash Fund (Tony Gramscas Youth Services Program)	1,000,000	1,000,000	0
Community prevention and treatment for alcohol and drug abuse	756,298	763,861	7,563
Medication consistency and health information exchange (S.B. 17-019)	0	491,700	491,700
Expansion of evidence based Incredible Years program	0	481,236	481,236
Office of Behavioral Health administrative expenses	310,587	475,329	164,742

SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2017-18 AND FY 2018-19

	FY 2017-18 APPROPRIATIONS	FY 2018-19 APPROPRIATIONS	ANNUAL CHANGE
Substance use disorder treatment at the mental health institutes	556,986	468,031	(88,955)
Mental Health Treatment Services for Youth (H.B. 99-1116)	304,205	407,247	103,042
Competency restoration services and education (S.B. 17-012)	18,000	0	(18,000)
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>2,046,134</u>	<u>2,049,021</u>	<u>2,887</u>
Subtotal: Human Services	37,556,743	43,363,516	5,806,773
Judicial:			
Appropriation to the Correctional Treatment Cash Fund for jail-based behavioral health services (administered through the Department of Human Services)	<u>1,571,728</u>	<u>1,587,445</u>	<u>15,717</u>
Subtotal: Judicial	1,571,728	1,587,445	15,717
Labor and Employment:			
Colorado Veterans' Service-to-career Pilot Program (H.B. 16-1267)	<u>165,296</u>	<u>0</u>	<u>(165,296)</u>
Subtotal: Labor and Employment	165,296	0	(165,296)
Law:			
Local law enforcement training through the Peace Officers Standards and Training (POST) Board	750,000	1,036,766	286,766
Develop in-house legal expertise and training	<u>286,766</u>	<u>0</u>	<u>(286,766)</u>
Subtotal: Law	1,036,766	1,036,766	0
Local Affairs:			
Affordable Housing Construction Grants and Loans	15,300,000	15,300,000	0
Gray and Black Market Marijuana Enforcement Efforts (H.B. 17-1221)	5,919,036	5,940,151	21,115
Local Government Retail Marijuana Impact Grant Program	1,117,540	0	(1,117,540)
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>141,389</u>	<u>395,247</u>	<u>253,858</u>
Subtotal: Local Affairs	22,477,965	21,635,398	(842,567)
Public Health and Environment:			
Substance abuse prevention	9,408,800	9,420,800	12,000
Public awareness campaign	4,650,000	4,650,000	0
Medical marijuana research grants	0	3,000,000	3,000,000
Distributions to Local Public Health Agencies	1,792,362	1,810,286	17,924
Retail marijuana health research grants	866,122	867,167	1,045
Healthy Kids Colorado Survey	745,124	748,314	3,190
Marijuana lab certification	1,295,543	698,656	(596,887)
Marijuana Health Effects Monitoring	320,388	330,729	10,341
Health survey data collection	238,000	238,000	0
Data collection and analysis (S.B. 13-283)	90,939	90,939	0
Enhanced marijuana data collection through Rocky Mountain Poison and Drug	60,100	60,100	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>1,263,368</u>	<u>2,407,606</u>	<u>1,144,238</u>
Subtotal: Public Health and Environment	20,730,746	24,322,597	3,591,851
Public Safety:			
Black market marijuana interdiction	0	1,093,470	1,093,470
Juvenile diversion programs	400,000	400,000	0
Study of the impacts of the legalization of retail marijuana (S.B. 13-283/S.B. 16-191)	159,983	162,174	2,191
Public Safety Intelligence Support Related to the Illegal Sale and Diversion of Marijuana	56,998	75,774	18,776
Collection of medical marijuana information by law enforcement agencies (S.B. 15-014)	61,940	61,940	0
Reserve Peace Officer Academy Grant Program (S.B. 17-096)	814,834	16,183	(798,651)
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>57,039</u>	<u>89,477</u>	<u>32,438</u>
Subtotal: Public Safety	1,550,794	1,899,018	348,224

SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2017-18 AND FY 2018-19			
	FY 2017-18 APPROPRIATIONS	FY 2018-19 APPROPRIATIONS	ANNUAL CHANGE
Regulatory Agencies:			
Improve enforcement of medical marijuana gray market	<u>304,225</u>	<u>0</u>	<u>(304,225)</u>
Subtotal: Regulatory Agencies	304,225	0	(304,225)
Transportation:			
Marijuana impaired driving campaign	<u>950,000</u>	<u>950,000</u>	<u>0</u>
Subtotal: Transportation	950,000	950,000	0
Subtotal: Appropriations from Revenues Collected in Previous Fiscal Year	\$114,750,200	\$121,276,523	\$6,526,323
Appropriation to the Department of Revenue from revenues collected in same fiscal year pursuant to Section 39-28.8-501 (2)(a)(I), C.R.S.	<u>1,591,805</u>	<u>1,532,087</u>	<u>(59,718)</u>
TOTAL FY 2017-18 APPROPRIATIONS AND			
TOTAL FY 2018-19 LONG BILL APPROPRIATIONS	\$116,342,005	\$122,808,610	\$6,466,605
OTHER APPROPRIATIONS AND TRANSFERS			
FY 2018-19 Appropriations and Transfers Included in Other 2018 Legislation [Bill: Topic (Affected Departments)]:			
S.B. 18-024: Expand access to behavioral health care providers (Public Health and Environment)	\$0	\$2,500,000	\$2,500,000
H.B. 18-1003: Opioid misuse prevention (Health Care Policy and Financing, Higher Education, and Public Health and Environment)	0	2,450,000	2,450,000
H.B. 18-1020: Civil forfeiture reforms (Public Safety)	0	1,487,821	1,487,821
H.B. 18-1343: Veterans' Service-to-Career Program (Labor and Employment)	0	1,000,000	1,000,000
H.B. 18-1393: Effective implementation of READ Act (Education)	0	1,000,000	1,000,000
H.B. 18-1434: Safe2Tell Program New Duties and Annual Report (Law)	<u>0</u>	<u>164,920</u>	<u>164,920</u>
TOTAL APPROPRIATIONS IN OTHER 2017 LEGISLATION	\$0	\$8,602,741	\$8,602,741
Statutory Transfers:			
Transfer to a cash fund for H.B. 18-1323 (Pay for Success Contracts)	\$0	\$989,470	\$989,470
Transfer to General Fund for H.B. 17-1351 (HCPF study of inpatient substance use disorder treatment)	<u>37,500</u>	<u>0</u>	<u>(37,500)</u>
TOTAL STATUTORY TRANSFERS	\$37,500	\$989,470	\$951,970
TOTAL APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND	\$116,379,505	\$132,400,821	\$16,021,316