

# K. MARIJUANA TAX REVENUE ALLOCATIONS

This appendix provides an overview of state taxes related to marijuana and the allocation of these tax revenues. This section also includes a summary of appropriations from the Marijuana Tax Cash Fund for FY 2016-17 and FY 2017-18.

## 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<sup>1</sup> 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<sup>2</sup> 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 Retail<sup>3</sup> 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*<sup>4</sup>. 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*<sup>5</sup>, and the remaining activities are supported by medical and retail marijuana sales tax revenues that are credited to the *Marijuana Tax Cash Fund*.

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<sup>1</sup> Amendment 20 was adopted with 915,943 (53.5 percent) voting for the measure.

<sup>2</sup> Amendment 64 was adopted with 1,383,140 (55.3 percent) voting for the measure.

<sup>3</sup> 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.

<sup>4</sup> Actual business fee and fine revenues collected and credited to the Marijuana Cash Fund, along with associated interest and other adjustments, totaled \$15,767,831 in FY 2015-16.

<sup>5</sup> Actual patient fee revenues collected and credited to the Medical Marijuana Program Cash Fund, along with associated interest and other adjustments, totaled \$1,644,578 in FY 2015-16.

## TAX REVENUE OVERVIEW

The State collects three types of taxes on marijuana products:

- First, the **regular state sales tax** (2.9 percent) is collected on consumer goods, including both medical and retail marijuana sales. These tax revenues are credited to the *Marijuana Tax Cash Fund* (MTCF) and are used to support a variety of state programs and services. The allocation of money in its fund is discussed in more detail below.
- Second, a **special sales tax** (10.0 percent<sup>6</sup>) is collected on retail (but not medical) marijuana sales. Of the total amount collected annually, 15.0 percent is allocated to local governments based on the percentage of such revenues collected within the boundaries for each local government. The remaining 85.0 percent of annual revenues are credited to the MTCF and are used to support a variety of state programs and services.
- 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 set every six months by the Department of Revenue's Marijuana Enforcement Division (MED).

As required by the State Constitution<sup>7</sup>, 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*. 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. Any excise tax revenues in excess of \$40.0 million are 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 2015-16, a total of \$69.4 million from marijuana excise tax revenues has been credited to these two funds, including \$67.0 million to the Public School Capital Construction Assistance Fund<sup>8</sup> and \$2.4 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 tax<sup>9</sup>. However, the regular state sales tax (2.9 percent) revenues collected for sales in medical marijuana centers and retail marijuana stores are 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 2015-16, the marijuana-related tax and fee revenue that is subject to TABOR totaled \$49.0 million, including \$31.6 million in sales tax revenues and \$17.4 million in fee revenue.

**Senate Bill 17-267** makes significant changes to the collection and allocation of state marijuana sales taxes starting in FY 2017-18. Specifically, beginning July 1, 2017, the act:

- exempts sales of retail marijuana from the regular (2.9 percent) state sales tax;
- increases the special sales tax rate from 10.0 to 15.0 percent; and
- adjusts the distribution of special sales tax revenues to local governments, decreasing the local share from 15.0 percent to 10.0 percent.

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<sup>6</sup> 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 beginning January 1, 2014. Prior to the passage of S.B. 17-267, this tax rate was scheduled to decrease to 8.0 percent on July 1, 2017.

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

<sup>8</sup> This amount excludes an additional \$40.0 million that was allocated to the Public School Capital Construction Assistance Fund from the Proposition AA Refund Account in FY 2015-16, pursuant to voter approval of Proposition BB.

<sup>9</sup> See Sections 39-28.8-204 and 39-28.8-307, C.R.S., respectively.

The act also modifies the allocation of special sales tax revenues as follows:

- for FY 2017-18 and all subsequent years, 71.85 percent of the State's share of retail marijuana special sales tax revenues is transferred to the MTCF;
- for FY 2017-18 only, \$30.0 million is transferred to the State Public School Fund (SPSF) and is statutorily appropriated to the Department of Education for disbursement to schools in rural and small rural school districts; and
- for FY 2018-19 and all subsequent years, 12.59 percent is transferred to the SPSF and is statutorily appropriated to the Department of Education for the State's share of total program funding for school districts and institute charter schools.

The amount remaining each fiscal year, after the transfers to the MTCF and the SPSF, is retained in the General Fund. For FY 2018-19 and all subsequent years, this allocation is equal to 15.56 percent of the State's share of retail marijuana special sales tax revenues. For a more complete description of S.B. 17-267, see the "Recent Legislation" section at the end of the Department of Health Care Policy and Financing.

## 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 MTCF<sup>10</sup>. 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 2016-17 may only be appropriated for FY 2017-18 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 6.5 percent General Fund reserve requirement<sup>11</sup>.

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 2017-18 were premised on the March 2017 revenue forecast prepared by Legislative Council Staff. A total of \$117.7 million is projected to be available for transfers and appropriations for FY 2017-18, and the General Assembly appropriated a total of \$117.6 million. The following table details appropriations from the MTCF for FY 2016-17 and FY 2017-18.

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<sup>10</sup> See Section 39-28.8-501 (2), C.R.S.

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

SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2016-17 AND FY 2017-18

DEPARTMENT AND PROGRAM	FY 2016-17 APPROPRIATIONS	FY 2017-18 APPROPRIATIONS	ANNUAL CHANGE
<b>Agriculture:</b>			
Pesticide control and regulation	\$1,499,726	\$1,909,783	\$410,057
Colorado State Fair Authority: FFA and 4-H programming	300,000	300,000	0
Hemp regulatory and seed certification	364,273	0	(364,273)
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>105,241</u>	<u>0</u>	<u>(105,241)</u>
<b>Subtotal: Agriculture</b>	<b>2,269,240</b>	<b>2,209,783</b>	<b>(59,457)</b>
<b>Education:</b>			
School Health Professionals Grant Program	2,280,833	11,923,783	9,642,950
Early Literacy Competitive Grant Program	4,378,678	4,378,678	0
Appropriation to the School Bullying Prevention and Education Cash Fund	900,000	2,000,000	1,100,000
Office of Dropout Prevention and Student Reengagement	900,000	2,000,000	1,100,000
Centrally appropriated amounts not accounted for above	<u>18,649</u>	<u>69,869</u>	<u>51,220</u>
<b>Subtotal: Education</b>	<b>8,478,160</b>	<b>20,372,330</b>	<b>11,894,170</b>
<b>Governor:</b>			
Office of Information Technology, Applications Administration	0	1,109,625	1,109,625
Evidence-based Policymaking Evaluation and Support	0	500,000	500,000
Governor's Office	0	117,199	117,199
Governor's Office of Marijuana Coordination	191,590	0	(191,590)
Centrally appropriated amounts not accounted for above	<u>25,354</u>	<u>0</u>	<u>(25,354)</u>
<b>Subtotal: Governor</b>	<b>216,944</b>	<b>1,726,824</b>	<b>1,509,880</b>
<b>Health Care Policy and Financing:</b>			
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>
<b>Subtotal: Health Care Policy and Financing</b>	<b>750,000</b>	<b>750,000</b>	<b>0</b>
<b>Higher Education:</b>			
Institute of Cannabis Research at CSU-Pueblo (S.B. 16-191)	<u>900,000</u>	<u>1,800,000</u>	<u>900,000</u>
<b>Subtotal: Higher Education</b>	<b>900,000</b>	<b>1,800,000</b>	<b>900,000</b>
<b>Human Services:</b>			
S.B. 16-202: Access to effective substance use disorder services (including related administration and an evaluation of intensive residential treatment)	6,000,000	12,255,774	6,255,774
Mental Health Services for Juvenile and Adult Offenders (including related administration)	3,000,000	5,640,338	2,640,338
Implementation of substance use-related criminal justice diversion programs recommended by the Colorado Commission on Criminal and Juvenile Justice	0	2,557,942	2,557,942
S.B. 91-094 Programs that fund service alternatives to placing youth in a correctional facility	2,000,000	2,028,036	28,036
Circle Program for adults with co-occurring mental health and substance use disorders	1,852,824	1,993,511	140,687
Tony Gramscas Youth Services Program grants for the prevention of youth marijuana use	373,672	1,373,672	1,000,000

SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2016-17 AND FY 2017-18

DEPARTMENT AND PROGRAM	FY 2016-17 APPROPRIATIONS	FY 2017-18 APPROPRIATIONS	ANNUAL CHANGE
Behavioral health services for individuals in rural areas show have co-occurring mental health and substance use disorders	500,000	1,035,529	535,529
Appropriation to the Youth Mentoring Services Cash Fund (Tony Grampsas Youth Services Program)	1,000,000	1,000,000	0
Community prevention and treatment for alcohol and drug abuse (including related administration)	823,218	823,218	0
Substance use disorder treatment at the mental health institutes	0	556,986	556,986
Mental Health Treatment Services for Youth (H.B. 99-1116)	300,000	304,205	4,205
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>784,639</u>	<u>2,068,997</u>	<u>1,284,358</u>
<b>Subtotal: Human Services</b>	<b>16,634,353</b>	<b>31,638,208</b>	<b>15,003,855</b>
<b>Judicial:</b>			
Appropriation to the Correctional Treatment Cash Fund for jail-based behavioral health services (administered through the Department of Human Services)	<u>1,550,000</u>	<u>1,571,728</u>	<u>21,728</u>
<b>Subtotal: Judicial</b>	<b>1,550,000</b>	<b>1,571,728</b>	<b>21,728</b>
<b>Labor and Employment:</b>			
Colorado Veterans' Service-to-career Pilot Program (H.B. 16-1267)	<u>500,000</u>	<u>165,296</u>	<u>(334,704)</u>
<b>Subtotal: Labor and Employment</b>	<b>500,000</b>	<b>165,296</b>	<b>(334,704)</b>
<b>Law:</b>			
Local law enforcement training through the Peace Officers Standards and Training (POST) Board	750,000	750,000	0
Develop in-house legal expertise and training	<u>286,766</u>	<u>286,766</u>	<u>0</u>
<b>Subtotal: Law</b>	<b>1,036,766</b>	<b>1,036,766</b>	<b>0</b>
<b>Local Affairs:</b>			
Affordable Housing Construction Grants and Loans	0	15,300,000	15,300,000
Local Government Retail Marijuana Impact Grant Program	1,117,540	1,117,540	0
Centrally appropriated amounts not accounted for above	<u>63,155</u>	<u>115,033</u>	<u>51,878</u>
<b>Subtotal: Local Affairs</b>	<b>1,180,695</b>	<b>16,532,573</b>	<b>15,351,878</b>
<b>Public Health and Environment:</b>			
Substance abuse prevention	7,127,612	9,408,800	2,281,188
Public awareness campaign	7,025,000	4,650,000	(2,375,000)
Distributions to Local Public Health Agencies (H.B. 16-1408)	1,767,584	1,792,362	24,778
Marijuana lab certification	294,141	1,295,543	1,001,402
Retail marijuana health research grants	343,622	866,122	522,500
Healthy Kids Colorado Survey	745,124	745,124	0
Marijuana Health Effects Monitoring	320,388	320,388	0
Health survey data collection	238,000	238,000	0
Data collection and analysis (S.B. 13-283)	89,550	90,939	1,389
Enhanced marijuana data collection through Rocky Mountain Poison and Drug	123,383	60,100	(63,283)
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>24,058</u>	<u>1,263,368</u>	<u>1,239,310</u>

SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2016-17 AND FY 2017-18

DEPARTMENT AND PROGRAM	FY 2016-17 APPROPRIATIONS	FY 2017-18 APPROPRIATIONS	ANNUAL CHANGE
<b>Subtotal: Public Health and Environment</b>	<b>18,098,462</b>	<b>20,730,746</b>	<b>2,632,284</b>
<b>Public Safety:</b>			
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	159,983	0
Collection of medical marijuana information by law enforcement agencies (S.B. 15-014)	61,940	61,940	0
Public Safety Intelligence Support Related to the Illegal Sale and Diversion of Marijuana	56,998	56,998	0
Centrally appropriated amounts not accounted for above	<u>43,888</u>	<u>57,039</u>	<u>13,151</u>
<b>Subtotal: Public Safety</b>	<b>722,809</b>	<b>735,960</b>	<b>13,151</b>
<b>Regulatory Agencies:</b>			
Improve enforcement of medical marijuana grey market	<u>0</u>	<u>304,225</u>	<u>304,225</u>
<b>Subtotal: Regulatory Agencies</b>	<b>0</b>	<b>304,225</b>	<b>304,225</b>
<b>Transportation:</b>			
Marijuana impaired driving campaign	450,000	950,000	500,000
Impaired driving campaign	<u>500,000</u>	<u>0</u>	<u>(500,000)</u>
<b>Subtotal: Transportation</b>	<b>950,000</b>	<b>950,000</b>	<b>0</b>
<b>Subtotal Long Bill Appropriations from Revenues Collected in Previous Fiscal Year</b>	<b>\$53,287,429</b>	<b>\$100,524,439</b>	<b>\$47,237,010</b>
Appropriation to the Department of Revenue from revenues collected in same fiscal year	<u>7,707,249</u>	<u>1,591,805</u>	<u>(6,115,444)</u>
<b>Total FY 2016-17 Appropriations and Total FY 2017-18 Long Bill Appropriations</b>	<b>\$60,994,678</b>	<b>\$102,116,244</b>	<b>\$41,121,566</b>
<b>FY 2017-18 Appropriations Included in Other 2017 Legislation [Bill: Topic (Administering Department)]:</b>			
S.B. 17-012: Competency Restoration Services and Education (Human Services)		\$18,000	\$18,000
S.B. 17-025: Marijuana Education Materials Resource Bank (Education)		47,000	47,000
S.B. 17-074: Medication-assisted Treatment Pilot Program (Higher Education)		500,000	500,000
S.B. 17-096: Reserve Peace Officer Academy Grant Program (Public Safety)		814,834	814,834
S.B. 17-193: Center for Research Into Substance Use Disorder Prevention, Treatment, and Recovery Support Strategies (Higher Education)		1,000,000	1,000,000
S.B. 17-207: Strengthen Behavioral Health Crisis Response System (Human Services)		7,086,280	7,086,280
H.B. 17-1221: Gray and Black Market Marijuana Enforcement Efforts (Local Affairs)		5,945,392	5,945,392
H.B. 17-1351: Study Inpatient Substance Use Disorder Treatment (Health Care Policy and Financing)		<u>37,500</u>	<u>37,500</u>
<b>Total Appropriations in Other 2017 Legislation</b>		<b>\$15,449,006</b>	<b>15,449,006</b>
Transfer to General Fund for repayment related to the Proposition AA Refund Account created in H.B. 15-1367 (H.B. 16-1418)	\$26,277,661	\$0	(\$26,277,661)
Appropriations remaining available for capital construction	<u>844,858</u>	<u>0</u>	<u>(844,858)</u>
<b>Total Appropriations and Transfers from Marijuana Tax Cash Fund</b>	<b>\$88,117,197</b>	<b>\$117,565,250</b>	<b>\$29,448,053</b>

