



**Colorado
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Council
Staff**

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MEMORANDUM

November 17, 2017

TO: Interested Persons
FROM: Larson Silbaugh, Senior Economist, (303) 866-4720
SUBJECT: Marijuana Revenue in the State Budget

Summary

The memorandum describes how marijuana is taxed and how marijuana tax revenue is distributed. In FY 2016-17, state tax revenue from the marijuana industry totaled \$211.1 million. Marijuana tax revenue is deposited in several different accounts. The General Assembly appropriated \$100.5 million for FY 2017-18 from the Marijuana Tax Cash Fund to fund various programs related to the legalization of marijuana. Individual amounts are shown in Table 2. Local governments that authorize the sale of retail marijuana receive a share of the special sales tax revenue, which is summarized in Table 3. The special sales tax on marijuana was the twelfth largest tax source in FY 2016-17, while the excise tax on marijuana was the fourteenth largest tax source. Marijuana tax revenue collections exceeded excise tax revenue on tobacco and alcohol in FY 2016-17, which is summarized in Table 4.

Taxes on Marijuana

Three distinct taxes apply differently to medical and retail (adult-use recreational) marijuana. The state's 2.9 percent sales tax applies to medical marijuana. Sales tax revenue on medical marijuana is subject to the state's constitutional spending limit (TABOR).¹ Retail marijuana is subject to a voter-approved excise tax of 15 percent and a voter-approved special sales tax of 15 percent. Because they are voter approved, the marijuana excise tax and special sales tax are exempt from the state's constitutional spending limit. Figure 1 shows the tax that applies to each type of marijuana.

¹Colo. Const. art. X, § 20.

Figure 1
Colorado Marijuana Taxes
FY 2017-18

	Medical Marijuana	Retail Marijuana
State Sales Tax (2.9%)	✓	
Excise Tax (15.0%)		✓
Special Sales Tax (15.0%)		✓

Marijuana Tax Collections

Tax revenue from the marijuana industry totaled \$211.1 million in FY 2016-17. In FY 2017-18, total marijuana revenue is expected to increase 19.9 percent to \$253.2 million. The year-over-year change reflects policy changes included in Senate Bill 17-267, specifically the increase in the special sales tax rate from 10 percent to 15 percent and the exemption of retail marijuana from the 2.9 percent sales tax. Table 1 shows actual and expected revenue from each source.

Table 1
Tax Revenue from the Marijuana Industry
Dollars in Millions

	Preliminary FY 2016-17	Forecast FY 2017-18	Forecast FY 2018-19	Forecast FY 2019-20
Proposition AA Taxes				
Special Sales Tax	\$98.3	\$159.1	\$180.9	\$195.6
State Share of Sales Tax	83.6	143.2	162.8	176.1
Local Share of Sales Tax	14.8	15.9	18.1	19.6
15% Excise Tax	71.9	81.4	92.5	100.1
Total Proposition AA Taxes	170.3	240.5	273.4	295.7
2.9% Sales Tax (Subject to TABOR)				
2.9% Sales Tax on Medical Marijuana	12.4	11.8	11.1	10.5
2.9% Sales Tax from Retail Marijuana Stores	28.1	0.8	0.9	0.9
TABOR Interest	0.3	0.1	0.1	0.1
Total 2.9% Sales Tax	40.9	12.7	12.1	11.5
Total Taxes on Marijuana	\$211.1	\$253.2	\$285.5	\$307.2

Source: Colorado Legislative Council Staff, September 2017 Economic and Revenue Forecast.

*CAAGR: Compound average annual growth rate for FY 2016-17 to FY 2019-20.

Marijuana Tax Revenue Distributions

Marijuana tax revenue is distributed to four state cash funds, the General Fund, and local governments that allow the sale of retail marijuana. Marijuana tax revenue is distributed according to the following formulas:

Sales tax on medical marijuana – 2.9 percent. State sales tax revenue is deposited in the Marijuana Tax Cash Fund.² The revenue forecast in Table 1 includes 2.9 percent sales tax revenue collected on merchandise and non-marijuana products sold in retail marijuana stores.

²Section 39-28.8-501 (1), C.R.S.

Special sales tax on retail marijuana – 15 percent. Revenue from the special sales tax is shared between the state and local governments. The state share of the special sales tax equals 90 percent of total collections and is deposited in the state General Fund. In FY 2017-18 only, the state share of the special sales tax has the following distribution:³

- 28.15 percent, minus \$30 million, is retained in the General Fund;
- \$30 million is deposited into the State Public School Fund; and
- 71.85 percent is deposited into the Marijuana Tax Cash Fund.

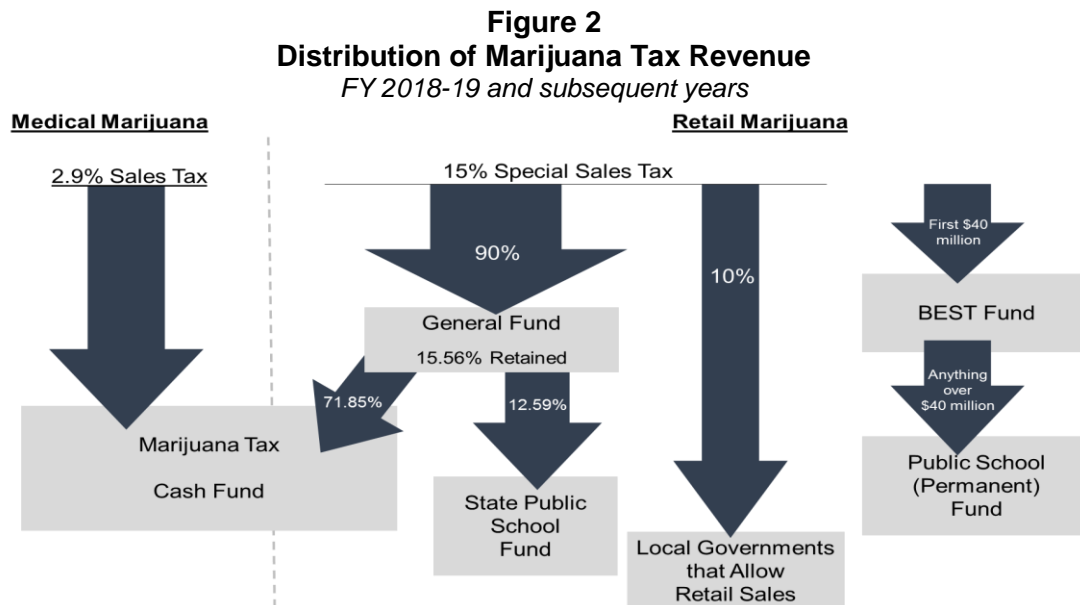
Starting in FY 2018-19, the state’s share, initially deposited in the state General Fund, has the following distribution:⁴

- 15.56 percent of the state share is retained in the General Fund;
- 12.59 percent of the state share is deposited into the State Public School Fund; and
- 71.85 percent of the state share is deposited into the Marijuana Tax Cash Fund.

Local governments that permit sales of retail marijuana receive 10 percent of special sales tax revenue. Revenue is distributed in proportion to the geographic location of retail marijuana sales.⁵

Excise tax on retail marijuana – 15 percent. The first \$40 million of excise tax revenue each year is constitutionally dedicated to school construction⁶ and deposited into the Building Excellent Schools Today (BEST) fund. Anything over \$40 million per year is deposited in the Public School Fund.⁷

The distribution of marijuana tax revenue in FY 2018-19 and future fiscal years is illustrated in Figure 2.



Source: Article 28.8 of Title 39, C.R.S.

³Section 39-28.8-203, 1(b)(1.3), C.R.S.

⁴Section 39-28.8-203, 1(b)(1.5), C.R.S.

⁵Section 39-28.8-203, 1(a)(1), C.R.S.

⁶Colo. Const. art. XVIII, §16 (5)(d) and Section 39-28.8-305 1(a), C.R.S.

⁷Section 39-28.8-305 1(b), C.R.S.

Use of Marijuana Tax Revenue

Marijuana tax revenue is deposited in five separate state funds and distributed to local governments that allow the sale of retail marijuana. Each of these funds has a specific purpose pursuant to how money from the fund can be spent.

Marijuana Tax Cash Fund. The General Assembly appropriates money from the Marijuana Tax Cash Fund (MTCF) annually. The appropriation of money from the MTCF is limited in statute. Most revenue from the Marijuana Tax Cash Fund is appropriated in the fiscal year after revenue is actually deposited in the fund.⁸ Appropriations from the fund are limited to specific uses determined by the General Assembly.⁹ MTCF appropriations were made to 15 agencies and totaled \$102.1 million for FY 2017-18. MTCF appropriations for FY 2016-17 and FY 2017-18 are shown in Table 2.

Table 2
Appropriations from the Marijuana Tax Cash Fund
FY 2016-17 and FY 2017-18

Department and Program	FY 2016-17 Appropriations	FY 2017-18 Appropriations
Agriculture:		
Pesticide control and regulation	\$1,499,726	\$1,909,783
Colorado State Fair Authority: FFA and 4-H programming	300,000	300,000
Hemp regulation and seed certification	364,273	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>105,241</u>	<u>0</u>
Subtotal: Agriculture	\$2,269,240	\$2,209,783
Education:		
School Health Professionals Grant Program	2,280,833	11,923,783
Early Literacy Competitive Grant Program	4,378,678	4,378,678
Appropriation to the School Bullying Prevention and Education Cash Fund	900,000	2,000,000
Office of Dropout Prevention and Student Reengagement	900,000	2,000,000
Centrally appropriated amounts not accounted for above ¹	<u>18,649</u>	<u>69,869</u>
Subtotal: Education	\$8,478,160	\$20,372,330
Governor:		
Office of Information Technology, Applications Administration	0	1,109,625
Evidence-based Policymaking Evaluation and Support	0	500,000
Governor's Office	0	117,199
Governor's Office of Marijuana Coordination	191,590	0
Centrally appropriated amounts not accounted for above ¹	<u>25,354</u>	<u>0</u>
Subtotal: Governor	\$216,944	\$1,726,824

⁸Section 39-28.8-501, (2)(a), C.R.S.

⁹Section 39-28.8-501, (2)(b)(IV), C.R.S.

Table 2 (Cont.)
Appropriations from the Marijuana Tax Cash Fund
FY 2016-17 and FY 2017-18

Department and Program	FY 2016-17 Appropriations	FY 2017-18 Appropriations
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>
Subtotal: Health Care Policy and Financing	\$750,000	\$750,000
Higher Education:		
Institute of Cannabis Research at CSU-Pueblo (SB 16-191)	<u>900,000</u>	<u>1,800,000</u>
Subtotal: Higher Education	\$900,000	\$1,800,000
Human Services:		
SB 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
Mental health services for juvenile and adult offenders (including related administration)	3,000,000	5,640,338
Implementation of substance use-related criminal justice diversion programs recommended by the Colorado Commission on Criminal and Juvenile Justice	0	2,557,942
SB 91-094 Programs that fund service alternatives to placing youth in a correctional facility	2,000,000	2,028,036
Circle Program for adults with co-occurring mental health and substance use disorders	1,852,824	1,993,511
Tony Grampsas Youth Services Program grants for the prevention of youth marijuana use	373,672	1,373,672
Behavioral health services for individuals in rural areas shown to have co-occurring mental health and substance use disorders	500,000	1,035,529
Youth Mentoring Services Cash Fund (Tony Grampsas Youth Services Program)	1,000,000	1,000,000
Community prevention and treatment for alcohol and drug abuse (including related administration)	823,218	823,218
Substance use disorder treatment at the mental health institutes	0	556,986
Mental health treatment services for youth (H.B. 99-1116)	300,000	304,205
Indirect cost assessments and centrally appropriated amounts not accounted for above ¹	<u>784,639</u>	<u>2,068,997</u>
Subtotal: Human Services	\$16,634,353	\$31,638,208
Judicial:		
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>
Subtotal: Judicial	\$1,550,000	\$1,571,728

Table 2 (Cont.)
Appropriations from the Marijuana Tax Cash Fund
FY 2016-17 and FY 2017-18

Department and Program	FY 2016-17 Appropriations	FY 2017-18 Appropriations
Labor and Employment:		
Colorado Veterans' Service-to-Career Pilot Program (HB 16-1267)	<u>500,000</u>	<u>165,296</u>
Subtotal: Labor and Employment	\$500,000	\$165,296
Law:		
Local law enforcement training through the Peace Officers Standards and Training (POST) Board	750,000	750,000
Develop in-house legal expertise and training	<u>286,766</u>	<u>286,766</u>
Subtotal: Law	\$1,036,766	\$1,036,766
Local Affairs:		
Affordable housing construction grants and loans	0	15,300,000
Local Government Retail Marijuana Impact Grant Program	1,117,540	1,117,540
Centrally appropriated amounts not accounted for above ¹	<u>63,155</u>	<u>115,033</u>
Subtotal: Local Affairs	\$1,180,695	\$16,532,573
Public Health and Environment:		
Substance abuse prevention	7,127,612	9,408,800
Public awareness campaign	7,025,000	4,650,000
Distributions to local public health agencies (HB 16-1408)	1,767,584	1,792,362
Marijuana lab certification	294,141	1,295,543
Retail marijuana health research grants	343,622	866,122
Healthy Kids Colorado Survey	745,124	745,124
Marijuana Health Effects Monitoring	320,388	320,388
Health survey data collection	238,000	238,000
Data collection and analysis (SB 13-283)	89,550	90,939
Enhanced marijuana data collection through Rocky Mountain Poison and Drug Center	123,383	60,100
Indirect cost assessments and centrally appropriated amounts not accounted for above ¹	<u>24,058</u>	<u>1,263,368</u>
Subtotal: Public Health and Environment	\$18,098,462	\$20,730,746

Table 2 (Cont.)
Appropriations from the Marijuana Tax Cash Fund
FY 2016-17 and FY 2017-18

Department and Program	FY 2016-17 Appropriations	FY 2017-18 Appropriations
Public Safety:		
Juvenile diversion programs	400,000	400,000
Study of the impacts of the legalization of retail marijuana (SB 13-283/SB 16-191)	159,983	159,983
Collection of medical marijuana information by law enforcement agencies (SB 15-014)	61,940	61,940
Public safety intelligence support related to the illegal sale and diversion of marijuana	56,998	56,998
Centrally appropriated amounts not accounted for above ¹	<u>43,888</u>	<u>57,039</u>
Subtotal: Public Safety	\$722,809	\$735,960
Regulatory Agencies:		
Improve enforcement of medical marijuana grey market	<u>0</u>	<u>304,225</u>
Subtotal: Regulatory Agencies	\$0	\$304,225
Transportation:		
Marijuana impaired driving campaign	450,000	950,000
Impaired driving campaign	<u>500,000</u>	<u>0</u>
Subtotal: Transportation	\$950,000	\$950,000
Long Bill Appropriations from Revenues Collected in Previous Fiscal Year	\$53,287,429	\$100,524,439
Appropriation to the Department of Revenue Marijuana Enforcement Division from revenues collected in same fiscal year	<u>7,707,249</u>	<u>1,591,805</u>
Total	\$60,994,678	\$102,116,244

Source: Joint Budget Committee.

¹*Pursuant to a Joint Budget Committee policy, certain costs are addressed centrally at the department level rather than in specific line items. These costs include group health, life, and dental insurance, short-term disability, some employee pension contributions, and leased office space.*

General Fund. A portion of special sales tax revenue is retained in the state General Fund starting in FY 2017-18. The General Fund is used to fund most general government functions of the state. The largest sources of revenue into the General Fund are individual income taxes, sales and use taxes, and corporate income taxes.

State Public School Fund. State money used to finance the School Finance Act is deposited in the State Public School Fund. The \$30 million in marijuana revenue deposited in the fund in FY 2017-18 must be distributed to rural school districts. Marijuana tax revenue deposited in the fund in future years will either increase the revenue distributed to school districts and charter schools, or reduce the revenue needed from the General Fund to pay for K-12 education.

Local governments. Local governments that have authorized the sale of retail marijuana receive 10 percent of marijuana special sales tax revenue. The revenue is distributed proportionally to where the sales occur. In FY 2016-17, local governments that allow sales of retail marijuana received \$14.8 million in special sales tax revenue. Local governments are not limited in how they use their share of special sales tax revenue. Table 3 shows the ten largest recipients of local government special sales tax distributions.

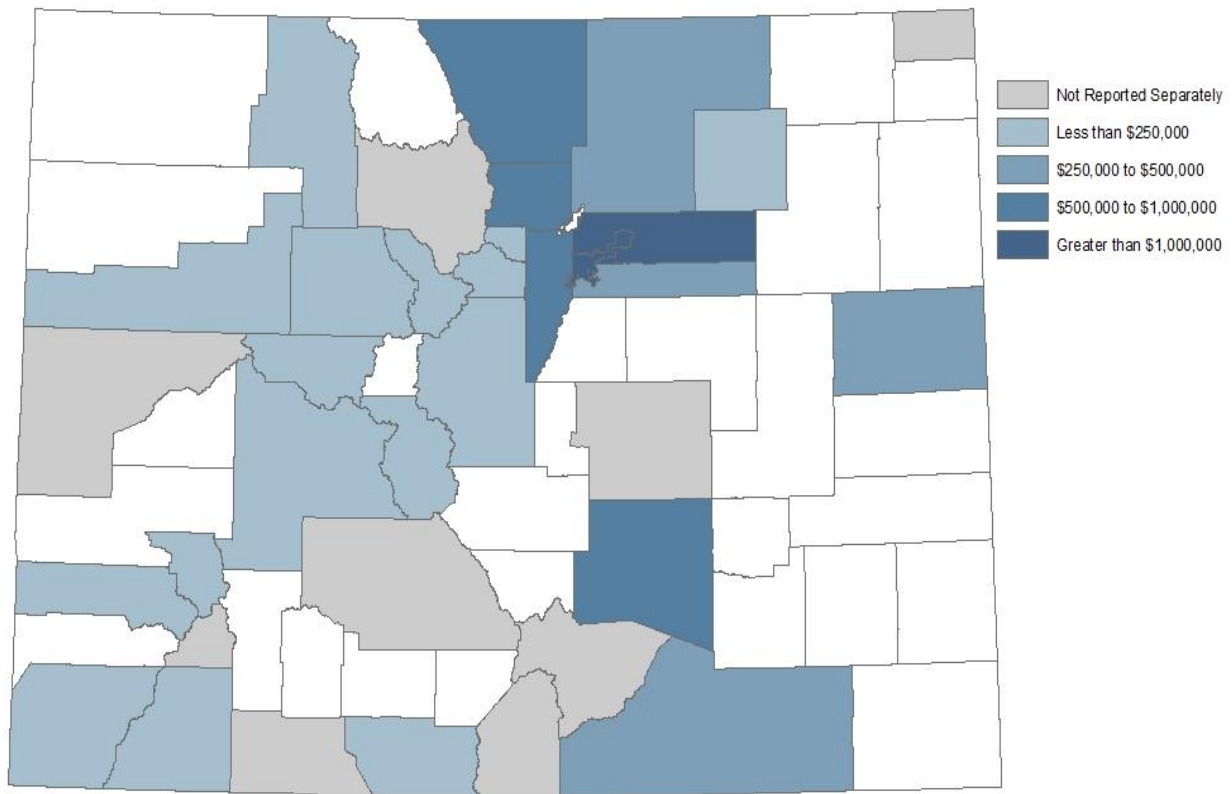
Table 3
Ten Largest Local Government Distributions
of Retail Marijuana Special Sales Tax Revenue
FY 2016-17

Local Government	Distribution
Denver	\$4,828,899
Aurora	\$1,377,902
City of Boulder	\$780,678
Pueblo County	\$492,935
Garden City	\$439,887
Trinidad	\$436,488
Edgewater	\$423,223
Northglenn	\$417,720
Fort Collins	\$389,983
Durango	\$366,047

Source: Colorado Department of Revenue,
<https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

Figure 3 shows the local government distributions in FY 2016-17 for local governments across the state. The data has been summarized by combining the distributions for counties and municipalities that receive a share of the marijuana special sales tax. The Department of Revenue maintains taxpayer confidentiality by not reporting local government distributions in counties and local governments where there are only a few retail marijuana outlets. When distributions are not reported separately, the counties are shaded gray. Areas that do not allow retail marijuana sales are not shaded.

Figure 3
Local Share of Retail Marijuana Special Sales Tax
FY 2016-17



Source: Colorado Department of Revenue.

BEST fund. In 2008, the legislature adopted the Building Excellent Schools Today (BEST) Act.¹⁰ The Colorado Department of Education Division of Public School Construction Assistance administers BEST. The BEST program provides public schools with capital money for construction projects with priority given to health and safety concerns, including new roofs and boilers, major renovations, and the construction of new schools. It is a competitive grant program available to all public school districts, charter schools, institute charter schools, boards of cooperative educational services, and the Colorado School for the Deaf and Blind. Grant applications are reviewed on a yearly cycle and recommended for funding by the Capital Construction Assistance Board. The board consists of nine appointed members who, in conjunction with division staff, review all grant applications for the current fiscal year.

¹⁰Section 22-43.7-101, *et seq.*, C.R.S.

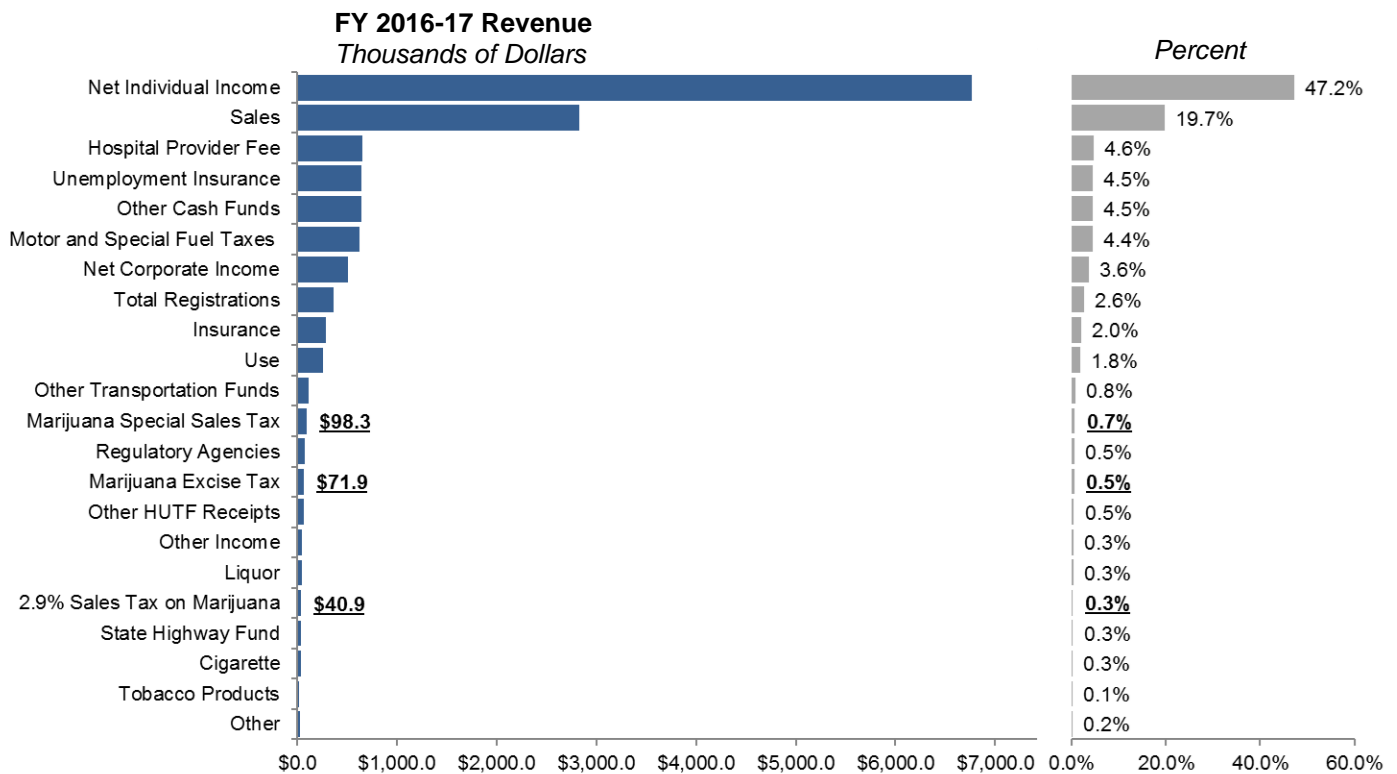
Public School (Permanent) Fund. The Public School Fund, also known as the Permanent Fund or the Permanent School Fund, was created when Colorado became a state. The balance of the fund cannot be spent; however, the fund generates interest and other income which must be spent on schools in the state.¹¹ The largest source of revenue into the Permanent School Fund is from state public school land. This includes income from sales, rental and lease payments, and royalties from mineral extraction and the sale of timber. The Permanent School Fund received its first distribution of marijuana excise tax revenue in FY 2015-16, when excise tax revenue on retail marijuana exceeded \$40.0 million for the first time.

Local government tax revenue. In addition to the local share of the state’s special sales tax, local governments collect their own tax revenue on the sale of marijuana. County and municipal sales taxes apply to retail and medical marijuana unless the local government specifically exempts them. Local governments may also levy a special sales tax or an excise tax on retail marijuana with voter approval.

Marijuana Taxes in the State Budget

Marijuana tax revenues equaled \$211.1 million in FY 2016-17, the eleventh largest source of state revenues from taxes and fees. General Fund revenue totaled \$10.3 billion and TABOR revenue totaled \$12.9 billion. Figure 4 shows the amount of revenue from different taxes and fees.

Figure 4
Marijuana Tax Revenue Compared with TABOR Revenue Sources



Source: Colorado Department of Personnel and Administration, Office of the State Controller

¹¹Colo. Const. art. IX, § 3.

Marijuana, Tobacco, and Alcohol Taxes

The tax treatment of marijuana is often compared with the tax treatment of tobacco and alcohol. In addition to the 2.9 percent state sales tax, excise taxes are levied on cigarettes, tobacco, and alcohol. Total taxes on marijuana totaled \$211.1 million in FY 2016-17, while excise taxes on tobacco and alcohol totaled \$202.7 million and \$45.2 million, respectively. Tax revenue from marijuana, tobacco, and alcohol in FY 2016-17 are shown in Table 4. The figures in Table 4 for tobacco and alcohol do not include the state's 2.9 percent sales tax, which is deposited in the General Fund.

Table 4
Tax Revenue from Marijuana, Tobacco, and Alcohol
FY 2016-17, Millions of Dollars

Category	Revenue
Marijuana	
Special Sales Tax	\$98.3
2.9% Sales Tax	40.9
Excise Tax	71.9
Total Marijuana Taxes	\$211.1
Tobacco	
Cigarettes	36.6
Other Tobacco Products	21.2
Amendment 35 Cigarettes	112.2
Amendment 35 Other Tobacco Products	20.9
Total Tobacco Excise Taxes	\$202.7
Alcohol Excise Taxes	
Liquor Excise Taxes	45.0
Total Alcohol	\$45.0
Total	\$459.0

Source: Colorado Department of Personnel and Administration, Office of the State Controller.

Cigarettes. The cigarette tax is levied on the sale of cigarettes by wholesalers and is assessed at a fixed amount on each single cigarette sold. The cigarette tax has two components. The first, enacted in 1964, is a tax of 1¢ per cigarette.¹² In 2004, voters approved an additional 3.2¢ tax per cigarette with the passage of Amendment 35.¹³ The Department of Revenue is responsible for administering both taxes, which are collected in practice as a single tax of 84¢ per pack of 20 cigarettes. Wholesalers are responsible for collection of the tax and must submit monthly payments to the Department of Revenue on or before the tenth day of the month following collections.

Other tobacco products. The state excise tax on tobacco products was enacted in 1986 and expanded in 2004. The tax applies to all tobacco products other than cigarettes, including cigars, pipe tobacco, chewing tobacco, and snuff, at the time when they are manufactured, brought into the state, or shipped to retailers. The tax is based on the invoice price of tobacco

¹² Section 39-28-103, C.R.S.

¹³ Colo. Const. art. X, § 21, and Section 39-28-103.5, C.R.S.

products sold from a manufacturer or supplier to a distributor, prior to discounts or other price reductions.

The tax on tobacco products consists of two components. The first is a 20 percent statutory tax enacted in 1986,¹⁴ revenue from which is subject to the limitations of the TABOR Amendment. Voters approved an additional 20 percent tax with the passage of Amendment 35 in 2004,¹⁵ the revenue from which is exempt from the TABOR limitations on state revenue and spending.

Alcohol. Colorado’s liquor tax was enacted in 1935, when the state first permitted the production and sale of alcoholic beverages following Prohibition.¹⁶ The liquor tax is an excise tax levied on the sale of beer, wine, or spirits according to the quantity sold. The tax is collected only once within the state. Liability for payment of the tax is assigned to the beverage manufacturer or the licensee that first receives alcoholic beverages when they arrive in the state. Revenue from the liquor tax is subject to the TABOR Amendment’s limitations on revenue and spending. Excise tax rates on each type of alcohol are shown in Table 5.

Table 5
Excise Tax Rates on Alcoholic Beverages

Beverage	Description	Tax Rate
Fermented malt beverages	Any beverage obtained by the fermentation of barley, malt, hops, or similar product containing not more than 3.2 percent alcohol by weight or between 0.5 percent and 4.0 percent alcohol by volume.	8¢ per gallon
Hard cider	Any beverage containing between 0.5 percent and 7.0 percent alcohol by volume that is made by the fermentation of natural juice from apples or pears.	8¢ per gallon
Malt liquors	Beer and any beverage obtained by the fermentation of barley, malt, hops, or similar product containing more than 3.2 percent of alcohol by weight or 4.0 percent alcohol by volume.	8¢ per gallon
Colorado vinous liquors and other vinous liquors	Wine and fortified wines containing between 0.5 percent and 21.0 percent alcohol by volume.	13.33¢ per liter ^{a,b} (includes 5¢ and 1¢ surcharges) 8.33¢ per liter ^b (includes 1¢ surcharge)
Spirituous liquors	Any alcoholic beverage obtained by distillation and mixed with water and other substances in solution, including brandy, rum, whiskey, gin, and every liquid or solid containing at least 0.5 percent alcohol by volume that is fit for use for beverage purposes.	60.26¢ per liter

Source: Article 47 of Title 12, C.R.S.

^a For vinous liquor produced by Colorado wineries, an additional surcharge of 5¢ per liter applies to the first 9,000 liters produced, 3¢ per liter for the next 36,000 liters, and 1¢ per liter for all additional amounts. The surcharge amounts are to be transferred from the General Fund to the Colorado Wine Industry Development Fund.

^b Surcharges added 1¢ to all vinous liquors taxes effective July 1, 1990 through June 30, 2000. Effective July 1, 2000, a 1¢ per liter wine development fee is imposed.

¹⁴ Section 39-28.5-102, C.R.S.

¹⁵ Colo. Const. art. X, §21, and Section 39-28.5-102.5, C.R.S.

¹⁶ Section 12-47-503, C.R.S.