

JOINT BUDGET COMMITTEE



STAFF FIGURE SETTING FY 2022-23

TOBACCO REVENUE

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STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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OVERVIEW

Colorado receives annual tobacco revenue from three sources:

- 1 The Tobacco Master Settlement Agreement (MSA), a 1998 legal settlement between tobacco manufacturers and the states who sued the tobacco manufacturers to recover Medicaid and other health-related costs incurred by the states as a result of treating smoking related illnesses.
- 2 Tobacco taxes imposed by Section 21 of Article X of the Colorado Constitution (often called Amendment 35).
- 3 An additional tax on tobacco and nicotine products created by H.B. 20-1427 (Proposition EE), which began January 1, 2021.

Both Amendment 35 and MSA dollars are distributed by formula, while proposition EE revenue distribution is largely specified in HB 20-1427. Long Bill appropriations are determined based on forecasted revenues provided by Legislative Council Staff (LCS). More details about distribution of tobacco revenue are included in the following sections.

TOBACCO MASTER SETTLEMENT AGREEMENT

The Tobacco Master Settlement Agreement (MSA) provides Colorado with an annual revenue stream distributed via a statutory formula to a variety of programs. Revenue from the MSA is the result of a 1998 legal settlement between tobacco manufacturers and the states who sued to recover Medicaid and other health-related costs incurred by the states as a result of treating smoking related illnesses.

Tobacco Master Settlement Agreement payments are driven by the number of units sold (units being individual cigarettes) and the inflation adjustment. Payments received in April are based on sales and adjustments from the prior year. For example, the payment received by Colorado in April 2021 was based on the number of units sold in 2020.

OVERVIEW OF CALCULATING MASTER SETTLEMENT AGREEMENT DISTRIBUTIONS

The Legislative Council January 2022 forecast of Tobacco Master Settlement Agreement revenue serves as the basis for the Long Bill appropriations of MSA revenues in FY 2022-23. The State receives the annual MSA payment in April, which is after the Long Bill is typically sent to the Governor. As a result, even though actual receipts are known by mid-April, appropriations in the Long Bill are based on the January Legislative Council Staff revenue forecast. The allocation percentages are determined by statute and are shown in Appendix A. Once approved by the Committee, JBC analysts use the FY 2022-23 allocations to set appropriations for Tobacco Master Settlement Agreement-supported programs in their respective departments.

TOBACCO MASTER SETTLEMENT AGREEMENT ALLOCATIONS AND APPROPRIATIONS

The following statutes and processes direct the allocation of Tobacco Master Settlement Agreement money.

- Section 24-75-1104.5 (1.3) (a), C.R.S., specifies that the total Tobacco Master Settlement Agreement funds allocated to programs will be based on the prior year's Tobacco Master Settlement Agreement receipts.
- The distribution across programs is governed by statute, with the key provisions contained in Sections 24-75-1104.5 (1.7), C.R.S. The Treasury uses the formula to allocate this money to programs.
- The General Assembly appropriates the allocated funds in the Long Bill, providing spending authority for programs receiving the allocations.

→ TOBACCO MASTER SETTLEMENT REVENUE ALLOCATIONS

Staff recommends that the Committee approve the allocation of settlement revenue as shown in the table below. The recommendation is based on a Legislative Council Staff projection of \$86,893,856 available for allocation in FY 2022-23.

TOBACCO MASTER SETTLEMENT AGREEMENT REVENUE ALLOCATIONS			
	PERCENTAGE	FY 2021-22 ACTUAL DISTRIBUTION	FY 2022-23 RECOMMENDATION
Health Care Policy and Financing			
Children's Basic Health Plan Trust	18.0%	\$15,583,445	\$15,640,894
Autism Waiver	2.0%	1,731,494	1,737,877
Subtotal - Health Care Policy and Financing	20.0%	17,314,939	17,378,771
Higher Education			
University of Colorado Health Sciences Center ¹	17.5%	15,150,572	15,206,425
Human Services			
Nurse Home Visitor Program	26.7%	23,115,444	23,200,660
Tony Gramscas Youth Services Program	7.5%	6,493,102	6,517,039
Subtotal - Human Services	34.2%	29,608,546	29,717,699
Law			
Tobacco Settlement Defense Account	2.5%	2,164,367	2,172,346
Military and Veterans Affairs			
State Veterans Trust Fund	1.0%	865,747	868,939
Personnel			
Supplemental State Contribution Fund	2.3%	1,991,218	1,998,559
Public Health and Environment			
Drug Assistance Program (ADAP; Ryan White)	5.0%	4,328,735	4,344,693
AIDS and HIV Prevention Grants (CHAPP)	3.5%	3,030,114	3,041,285
Immunizations	2.5%	2,164,367	2,172,346
Health Services Corps Fund	1.0%	865,747	868,939
Dental Loan Repayment Program	1.0%	865,747	868,939
Subtotal - Public Health and Environment	13.0%	11,254,710	11,296,201
Capital Construction - Department of Higher Education - Fitzsimons			
Lease Purchase Payments	8.0%	6,925,976	6,951,508
Unallocated Amount	1.5%	1,298,620	1,303,408
TOTAL	100.0%	\$86,574,696	\$86,893,856

¹ 8.75 percent of this amount is required to be spent on cancer research.

Individual staff analysts will recommend FY 2022-23 appropriation amounts for programs in their budget areas that are supported by Tobacco Master Settlement Agreement funds. Staff recommendations will take into consideration this revenue forecast and the balance of tobacco moneys expected to be available in program cash funds.

NOTE FOR FY 2022-23

Colorado joined an additional MSA settlement in 2018. The settlement resolves the disputed payments in three ways: it releases disputed payments from 2004-2014, ends NPM adjustment withholding from future annual payments, and determines percentage splits/credits for those no-longer-withheld funds, with a portion that would have otherwise been withheld going to Colorado, and the rest being credited back to manufacturers. As a result, Colorado received a one-time payment of approximately \$113.3

million in 2018, which was credited to the General Fund. Additionally, Colorado's receipts will modestly increase in 2019, 2020, and 2023, and modestly decrease in 2021 and 2022. This moderate decrease for the 2022 payment is offset, in part, by the inflation adjustment. The inflation adjustment is equal to 3.0 percent or the Consumer Price Index (CPI) percentage change for the calendar year being used to determine the payment, whichever is greater. Therefore, if the CPI percentage is lower than 3.0 percent, the inflation adjustment for that year is 3.0 percent. There have only been four years since the inception of the Tobacco Master Settlement Agreement when CPI was greater than 3.0 percent: 2000 (3.4 percent), 2004 (3.3 percent), 2005 (3.4 percent), and 2007 (4.1 percent). For the 2022 payment the U.S. Bureau of Labor Statistics reported a 12 month CPI increase of 7.0 percent.

ACCELERATED PAYMENTS

Prior to FY 2007-08, expenditures for MSA-funded programs were paid exclusively from revenue received in April of the prior fiscal year. While appropriations continue to be based on revenue received in April of the prior fiscal year, the General Assembly changed statute in response to economic downturns so that expenditures are partially paid from revenue received in April of the current fiscal year. This change requires that MSA-funded programs operate for most of the fiscal year before the largest source of revenue to pay for the expenses is received in April. This change is referred to as accelerating the use of tobacco revenues, or accelerated payments. The initial change in SB 09-269 allowed for access to \$65.0 million in one-time funding without reducing support for MSA programs.

House Bill 12-1247 began to gradually reduce the use of such advances from the Treasury by reducing the use of current year revenue and increasing the use of prior year revenue. The bill required spending from current year revenue be reduced each year by any unallocated MSA funds (currently 1.5 percent) and other residual funds in the Tobacco Litigation Settlement Cash Fund. House Bill 20-1380 transferred an additional \$20 million from the state's 2020 MSA payment to the General Fund. To compensate, an additional \$20 million from the state's 2021 MSA payment was allocated to programs in FY 2020-21. The total receipt of MSA funds in April of 2021 was \$86.6 million. Of that amount \$26.6 million was made available for FY 2021-22 programs in July of 2021, while \$60.0 million was distributed immediately upon receipt of the April 2021 payment to "pay back" the General Fund for FY 2020-21 programs. This \$60.0 million is the accelerated payment amount. The accelerated payment amount will decrease from \$60,041,931 to \$58,738,523 in FY 2022-23.

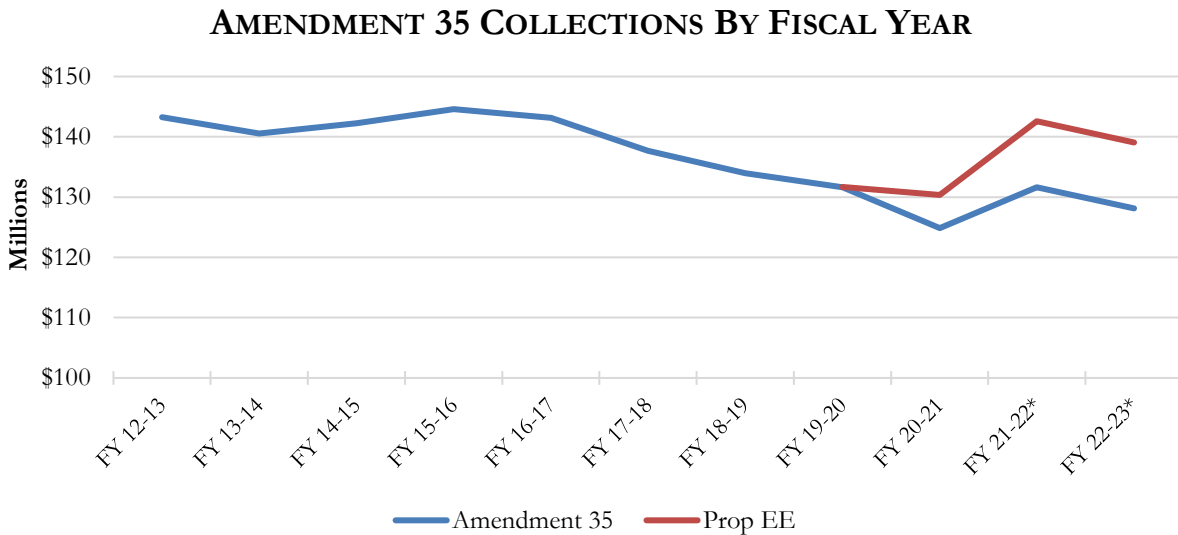
AMENDMENT 35 AND PROPOSITION EE TAX REVENUE

Amendment 35 was approved by the voters in 2004 and added the following two cigarette and tobacco taxes to Section 21 of Article X of the Colorado Constitution.

- An additional \$0.64 tax on each pack of cigarettes sold in Colorado (a pack equals twenty cigarettes); and
- A statewide tobacco products tax equal to 20.0 percent of the manufacturer's list price, on the sale, use, consumption, handling, or distribution of tobacco products by distributors.

Amendment 35 was codified in Section 24-22-117, C.R.S., which outlines how revenue from Amendment 35 is distributed to various state agencies including: the Departments of Health Care Policy and Financing, Public Health and Environment, and Human Services. Appendix B summarizes which departments and programs receive Amendment 35 tobacco tax revenue.

Amendment 35 revenues have been declining over time (as shown in the table below) due mainly to lower consumption of cigarettes. This revenue decline is offset in the short term by increased revenue from Proposition EE taxes, which transfers \$11.0 million in FY 2021-22 and beyond to the Tobacco Tax Cash Fund.



*Forecasted Revenue

Proposition EE was a ballot measure created by HB 20-1427 (Cigarette, Tobacco, and Nicotine Products Tax) and approved by voters during the November 2020 election. The measure raises taxes on cigarettes and other tobacco products (OTP) and creates a tax on nicotine products such as vaping devices. The measure creates a funding stream that is separate from Amendment 35 revenue and has transfer amounts that are largely defined Section 24-22-118 (2), C.R.S., rather than a distribution formula. The expected distribution amounts outlined in statute can be found in Appendix C of this document.

➔ DISTRIBUTION OF AMENDMENT 35 AND PROPOSITION EE REVENUE

The December 2021 Legislative Council Staff revenue forecast projects Amendment 35 revenues will equal **\$131,635,000** in FY 2022-23, with an additional **\$10,950,000** being made available to traditional Amendment 35 distribution programs through Proposition EE. Dollars from both of these revenue streams are held in the Tobacco Tax Cash Fund (TTTCF), and distributed from there via the formula outlined in the table below. The following table summarizes staff's recommendation of the allocation of TTTCF dollars for FY 2022-23. Staff recommends that the Committee approve these distribution amounts, which includes both Amendment 35 and Proposition EE revenue. **Staff also requests permission to adjust the allocations if the March 2022 Legislative Council Amendment 35 and Proposition EE forecasts are greater than the December 2021 forecast, or if the Committee elects to use the OSPB forecast to balance this year's budget.** The December 2021 OSPB forecast anticipates a very similar amount of revenue for Amendment 35 when compared to LCS, with an expected **\$131.9 million** to be distributed via statutory formula. Each JBC staff with TTTCF funded programs will provide additional information on the use of these dollars during their respective figure setting presentations.

DISTRIBUTION OF TTTCF DOLLARS					
DEPT.	PROGRAM AND/OR FUND	PERCENT	FY 2022-23 A35 DISTRIBUTION	FY 2022-23 PROP EE DISTRIBUTION	TOTAL FY 2022-23 DISTRIBUTION
HCPF	Health Care Expansion Fund	46.0%	\$58,933,820	\$5,037,000	\$63,970,820
HCPF	Primary Care Fund	19.0%	24,342,230	2,080,500	26,422,730
DPHE	Tobacco Education Programs Fund	16.0%	20,498,720	1,752,000	22,250,720
DPHE	Prevention, Early Detection and Treatment Fund	16.0%	20,498,720	1,752,000	22,250,720
HCPF	Old Age Pension Fund	1.5%	1,921,755	164,250	2,086,005
REV	Local governments to compensate for lost revenue from tobacco taxes	0.9%	1,153,053	98,550	1,251,603
DPHE	Immunizations performed by small local public health agencies.	0.3%	384,351	32,850	417,201
HCPF	Children's Basic Health Plan	0.3%	384,351	32,850	417,201
Total Distributions		100%	128,117,000	10,950,000	139,067,000

Money that is credited to the Prevention Early Detection and Treatment Fund is further divided among three programs: Breast and Cervical Cancer Program, Health Disparities Program Fund, and Center for Health and Environmental Information. The following table summarizes how the total funds credited to the Prevention, Early Detection and Treatment Fund is further allocated.

BREAKDOWN OF MONEY CREDITED TO THE PREVENTION, EARLY DETECTION AND TREATMENT FUND				
	PERCENT	FY 2022-23 A35 DISTRIBUTION	FY 2022-23 PROP EE DISTRIBUTION	TOTAL FY 2022-23 DISTRIBUTION
Total Amount Credited to the Prevention, Early Detection and Treatment Fund		\$20,498,720	\$1,752,000	\$22,250,720
Breast and Cervical Cancer Program	20.0%	4,099,744	350,400	4,450,144
Health Disparities Program Fund	15.0%	3,074,808	262,800	3,337,608
Center for Health and Environmental Information	Fixed \$	116,942	0	116,942
<i>Remains in the Prevention, Early Detection and Treatment Fund</i>		<i>13,207,226</i>	<i>1,138,800</i>	<i>14,346,026</i>

Legislative Council Staff’s December 2021 forecast projects that **\$204.4 million** in revenue from Proposition EE taxes will be collected and distributed to specific cash funds in FY 2021-22 along with **\$204.9 million** in FY 2022-23, as outlined in the table below.

DISTRIBUTION OF PROPOSITION EE DOLLARS			
PROGRAM AND/OR FUND	FY 2021-22	FY 2022-23	FY 2023-24
General Fund	\$4,050,000	\$4,050,000	\$4,050,000
Tobacco Tax Cash Fund ¹	10,950,000	10,950,000	10,950,000
Rural Schools Fund	30,000,000	35,000,000	0
Housing Development Grant Fund ²	11,167,000	11,167,000	0
Eviction Legal Defense Fund	500,000	500,000	0
Preschool Programs Cash Fund	0	0	189,485,347
State Education Fund	147,768,663	143,271,888	0
Total	\$204,435,663	\$204,938,888	\$204,485,347

¹ Dollars distributed to the Tobacco Tax Cash Fund are accounted for in the considerations for Amendment 35 distributions.

² These funds are continuously appropriated.

In addition to the cash fund destinations outlined in the table above, Proposition EE is also expected to increase revenue from sales taxes. Increased sales tax revenue is allocated to the General Fund (27 percent) and the Preschool Programs Cash Fund (73 percent), created in Section 24-22-118 (3)(a), C.R.S. The December 2021 Legislative Council forecast estimates that **\$928,514** will be deposited into the Preschool Programs Cash Fund in FY 2021-22 and **\$545,247** in FY 2022-23. There will be a forecasted balance of **\$1,708,432** in the fund through the end of FY 2022-23, before the fund begins to receive Proposition EE distribution amounts directly, rather than exclusively through sales taxes.

LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

REQUEST FOR INFORMATION

Staff recommends **CONTINUING AND MODIFYING** the following request for information:

- 1 Department of Health Care Policy and Financing, Medical Services Premiums; Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs; Department of Higher Education, Colorado Commission on Higher Education, Special Purpose, University of Colorado, Lease Purchase of Academic Facilities at Fitzsimons; Governing Boards, Regents of the University of Colorado; Department of Human Services, Division of Child Welfare, Tony Grampas Youth Services Program; Office of Early Childhood, Division of Community and Family Support, Nurse Home Visitor Program; Department of Military and Veterans Affairs, Division of Veterans Affairs, Colorado State Veterans Trust Fund Expenditures; Department of Personnel, Division of Human Resources, Employee Benefits Services, H.B. 07-1335 Supplemental State Contribution Fund; Department of Public Health and Environment, Disease Control and Environmental Epidemiology Division, Administration, General Disease Control, and Surveillance, Immunization Operating Expenses; Special Purpose Disease Control Programs, Sexually Transmitted Infections, HIV and AIDS Operating Expenses, and Ryan White Act Operating Expenses; Prevention Services Division, Chronic Disease Prevention Programs, Oral Health Programs; Primary Care Office -- Each Department is requested to provide the following information to the Joint Budget Committee by ~~October 1, 2024~~ **October 1, 2022** for each program funded with Tobacco Master Settlement Agreement money: the name of the program; the amount of Tobacco Master Settlement Agreement money received and expended by the program for the preceding fiscal year; a description of the program including the actual number of persons served and the services provided through the program; information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals.

COMMENT: This request for information was added in FY 2015-16 and replaced a statutory report from the Department of Public Health and Environment and the State Board of Health. The request for information was added to improve the accountability of each program that receives Tobacco Master Settlement Agreement funding. The responses to the request for information are reviewed by the JBC staff analyst during the Tobacco Master Settlement Agreement briefing.

APPENDIX A: TOBACCO MASTER SETTLEMENT AGREEMENT ALLOCATION PERCENTAGES

TOBACCO MASTER SETTLEMENT AGREEMENT MONEY ALLOCATION PERCENTAGES		
DEPARTMENT	PROGRAM	PERCENTAGE
Human Services	Nurse Home Visitor	26.7%
Health Care Policy and Financing	Children's Basic Health Plan Trust	18.0%
Higher Ed	CU Health Sciences	15.5%
Capital Construction	Fitzsimons Trust Fund	8.0%
Human Services	Tony Gramscas Youth Services	7.5%
Public Health and Environment	Drug Assistance Program	5.0%
Public Health and Environment	AIDS & HIV Prevention Grants	3.5%
Public Health and Environment	CO Immunization Fund	2.5%
Law	Tobacco Litigation Settlement Cash Fund	2.5%
Personnel	Supplemental State Contribution	2.3%
Higher Ed	Cancer Program	2.0%
Health Care Policy and Financing	Autism Treatment	2.0%
Unallocated Amount - used to reduce size of the accelerated payment		1.5%
Military and Veterans Affairs	State Veterans	1.0%
Public Health and Environment	Dental Loan Repayment	1.0%
Public Health and Environment	Health Services Corps (Loan Repayment)	1.0%
Total Distributions		100.0%

APPENDIX B: ALLOCATION OF AMENDMENT 35 TOBACCO TAX REVENUE

ALLOCATION OF AMENDMENT 35 TOBACCO TAX REVENUE		
DEPT.	PROGRAM AND/OR FUND	PERCENT
HCPF	Health Care Expansion Fund, to provide funding to the Children's Basic Health Plan and Medicaid.	46.0%
HCPF	Primary Care Fund, to provide funding to clinics and hospitals that offer health care services to the uninsured or medically indigent.	19.0%
DPHE	Tobacco Education Programs Fund, to support grants for tobacco education, prevention and cessation.	16.0%
DPHE	Prevention, Early Detection and Treatment Fund (PEDT Fund)	16.0%
DHS	Old Age Pension Fund	1.5%
DOR	Local governments, to compensate for lost revenue from tobacco taxes	0.9%
DPHE	Immunizations performed by small local public health agencies.	0.3%
HCPF	Children's Basic Health Plan	0.3%
Total Distributions		100.0%

ALLOCATION OF MONEY CREDITED TO THE PREVENTION, EARLY DETECTION AND TREATMENT FUND	
	ALLOCATION
Prevention, Early Detection and Treatment Fund (PEDT Fund)	16% of Amendment 35 Money
Breast and Cervical Cancer Screening Program (up to \$5.0 million)	20% of 16.0% allocated to the PEDT Fund
Health Disparities Program Fund	15% of 16.0% allocated to the PEDT Fund
Center for Health and Environmental Information	<u>fixed dollar amount</u>
Remains in the PEDT Fund for cancer, cardiovascular and pulmonary disease prevention, detection and treatment grants.	16.0% less amounts credited to three above purposes.

APPENDIX C: ALLOCATION OF PROPOSITION EE REVENUE

PROPOSITION EE REVENUE DISBURSEMENT (BASED ON THE LCS DECEMBER 2021 FORECAST)								
DISTRIBUTIONS	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	FY 27-28
Tobacco Education Programs Fund	0	0	0	0	20,000,000	20,000,000	20,000,000	30,000,000
Tobacco Tax Cash Fund	5,475,000	10,950,000	10,950,000	10,950,000	10,950,000	10,950,000	10,950,000	10,950,000
General Fund	2,025,000	4,050,000	4,050,000	4,050,000	4,050,000	4,050,000	4,050,000	4,050,000
Rural Schools	25,000,000	30,000,000	35,000,000	0	0	0	0	0
Housing Development Grant Fund	11,166,000	11,166,000	11,166,000	0	0	0	0	0
Eviction Legal Defense Fund	500,000	500,000	500,000	0	0	0	0	0
State Education Fund ¹	4,857,478	147,768,663	143,271,888	0	0	0	0	0
Preschool Programs Cash Fund ¹	0	0	0	189,485,347	221,239,716	218,205,540	215,228,478	268,691,615
Preschool Programs Cash Fund (Sales Tax)	234,670	928,514	545,248	235,124	343,015	4,968	0	0
General Fund (Sales Tax)	86,053	343,423	201,667	86,964	126,869	1,838	0	0
Total	49,023,478	204,435,663	204,938,888	204,485,347	256,239,716	253,205,540	250,228,478	313,691,615

¹ These funds will begin seeing revenue after the other fund obligations outlined in the bill have been fulfilled.