

Joint Budget Committee



Staff Figure Setting FY 2025-26

Tobacco Revenue

JBC Working Document - Subject to Change

Staff Recommendation Does Not Represent Committee Decision

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Colorado’s Tobacco Revenue Streams

Colorado receives annual TABOR-exempt tobacco revenue from three sources:

- 1 **Tobacco Master Settlement Agreement (MSA):** a 1998 legal settlement between tobacco manufacturers and states that sued manufacturers to recover Medicaid and other health-related costs incurred by treating smoking-related illnesses. Funds are allocated to various programs by a formula distribution.
- 2 **Amendment 35:** a 2004 constitutional amendment that imposes tobacco and cigarette taxes through Section 21 of Article X of the Colorado Constitution. Funds are allocated to various programs by a formula distribution.
- 3 **Proposition EE:** a tobacco, cigarette, and nicotine product tax referred by House Bill 20-1427 (Cigarette Tobacco and Nicotine Products Tax) and approved by voters in November 2020. The measure took effect January 1, 2021. Fund allocation is dictated by H.B. 20-1427.

The following sections detail the recommended FY 2025-26 Long Bill distribution for each revenue stream based on the most recent forecast provided by Legislative Council Staff (LCS).

Tobacco Master Settlement Agreement

The 1998 Tobacco Master Settlement Agreement (MSA) was the result of legal action to recover expenses that states incurred for the treatment of tobacco-related illnesses. Under the MSA, states and other governments consented to release participating manufacturers from health-related claims associated with tobacco products, and receive perpetual annual payments in return. MSA revenue is exempt from TABOR as a damage award.

Calculating Total MSA Payment

The size of the annual MSA payment is largely determined by (1) U.S. inflation rates, (2) nationwide cigarette consumption, and (3) cigarette manufacturers’ income.

An annual base payment of \$9.0 billion is annually adjusted by the above factors. Colorado receives 1.4 percent of the annual payment. Payments are received in April and are based on sales and adjustments from the prior year. Payment calculations remain open for four years and can be continually adjusted throughout that time.

Payments to Colorado have generally ranged from \$80.0 to \$93.0 million per year over the last ten years. The large payment in 2018 was a result of the Non-Participating Manufacturer Adjustment Settlement Agreement discussed in Appendix A.

Historic Tobacco MSA Payments to Colorado	
Year	Payment
2015	\$88,079,225
2016	\$92,200,153
2017	\$91,116,849
2018	\$177,342,325
2019	\$81,149,778
2020	\$82,359,389
2021	\$86,574,696
2022	\$88,844,796
2023	\$93,072,854
2024	\$82,965,119

Accelerated Payments

During the 2009 recession, the General Assembly created an “accelerated payment” by borrowing against the MSA payment to increase the available General Fund at the time. The accelerated payment funds MSA programs between the date when the prior year’s payment is exhausted and the date when the current year’s payment arrives.

The size of the accelerated payment is a concern if there is a possibility that the April payment will be significantly lower than the amount that was used to set the appropriation. This would result in a portion of General Fund that has been expended which cannot be paid back with MSA money. This was not an issue in FY 2024-25 because the remaining accelerated payment was estimated to be \$55.2 million compared to \$83.0 million received in April 2024.

The General Assembly took steps to reduce the size of this obligation prior to 2020. However, the General Assembly increased the accelerated payment as a budget-balancing measure during the pandemic-induced recession. Since then, the General Assembly has been slowly paying down the accelerated payment every year. Current annual payments are approximately 1.5 percent of the annual distribution, projected to be \$1.2 million in FY 2025-26. At the current rate, fully paying off the accelerated payment will take decades.

MSA Fund Distribution within Colorado

The recommended distribution for the FY 2025-26 MSA payment is based on the January 2025 LCS forecast of Tobacco MSA revenue.

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 the actual payment is known by mid-April, appropriations in the Long Bill are based on forecasted amounts.

The MSA itself does not have language that dictates how the payments to states may be used. States made these decisions through Consent Orders filed in individual state courts, and Colorado’s Consent Order stated that the use of funds would be directed by the State Legislature. As such, the MSA distribution formula is dictated by statute.

MSA revenues are first placed in the Tobacco Litigation Settlement Fund and then distributed to programs by the Treasury using the formula outlined in Section 24-75-1104.5 (1.7), C.R.S. The statutory formula has been amended twice in the past ten years:

- 1 H.B. 16-1408 (Cash Fund Allocations For Health-Related Programs) removed a two-tier system for fund distribution, replaced MSA funding for multiple programs with the Marijuana Tax Cash Fund, and allocated additional funding for cancer research at the University of Colorado.
- 2 H.B. 24-1388 (Transfers to the Nurse Home Visitor Program Fund) increased the Nurse Home Visitor Program’s distribution from 26.7 percent to 28.7 percent. This was possible due to: (1) consolidation of a program that provided health services to children with autism into a different funding source, and (2) 2.0 percent of the distribution that was then unallocated from the Autism Treatment Fund in H.B. 24-1208 (Autism Treatment Fund).

Section 24-75-1103, C.R.S., outlines an overall state policy for the use of tobacco settlement funds. Among a number of other provisions, a majority of the funds received shall be “dedicated to improving the health of the citizens of Colorado, including tobacco use prevention, education, and cessation programs and related health programs”. The statute also lists activities for which a portion of settlement funds shall be used:

- statewide and local public health programs;
- addressing tobacco-related health problems;
- tobacco-related in-state research; and
- improving childhood literacy through reading programs implemented by public schools.

Staff is not recommending any changes to the distribution at this time, but will continue to evaluate program expenditures and may recommend adjustments in future years – particularly for programs that demonstrate consistent, unexplained underexpenditures. If the distribution were to be adjusted, the largest areas where tobacco funds could be used to offset General Fund include the Children’s Basic Health Plan Trust, Tony Grampsas Youth Services Program, and Department of Higher Education’s Fitzsimons Lease Purchase Payments.

→ Distribution of Tobacco MSA Revenue

The January 2025 LCS forecast for Tobacco MSA revenue projects a FY 2025-26 payment of \$78.6 million. This is less than the payment in FY 2024-25 (\$83.0 million) and FY 2023-24 (\$93.1 million).

Recommendation

Based on the January 2025 LCS forecast, staff recommends that the Committee approve the distribution of MSA revenue as shown in the table below.

Staff also requests permission to make all necessary adjustments to appropriations within affected departments to align with the approved distribution. If staff believes there is reason for the appropriation to deviate from the full distribution amount, staff will discuss the change during the respective department’s figure setting presentation.

Tobacco Master Settlement Agreement Revenue Distributions				
Department and Program	Percentage	FY 2023-24 Allocation	FY 2024-25 Allocation	FY 2025-26 Estimate
Early Childhood				
Nurse Home Visitor Program ¹	28.7%	\$24,850,452	\$23,810,989	\$22,556,960
Health Care Policy and Financing				
Children’s Basic Health Plan Trust	18.0%	16,753,114	14,933,721	14,147,222
Higher Education				
University of Colorado Health Sciences Center ²	17.5%	16,287,749	14,518,895	13,754,244
Human Services				
Tony Grampsas Youth Services Program	7.5%	6,980,464	6,222,384	5,894,676
Law				
Tobacco Litigation Settlement ³	2.5%	4,188,278	2,074,128	1,964,892
Military and Veterans Affairs				
State Veterans Trust Fund	1.0%	930,729	829,651	785,957

Tobacco Master Settlement Agreement Revenue Distributions				
Department and Program	Percentage	FY 2023-24 Allocation	FY 2024-25 Allocation	FY 2025-26 Estimate
Personnel				
Supplemental State Contribution	2.3%	2,140,676	1,908,198	1,807,701
Public Health and Environment				
State Drug Assistance Program (SDAP, Ryan White)	5.0%	4,653,643	4,148,256	3,929,784
AIDS and HIV Prevention (CHAPP)	3.5%	3,257,550	2,903,779	2,750,849
Immunizations	2.5%	2,326,821	2,074,128	1,964,892
Dental Loan Repayment Program (DLRP)	1.0%	930,729	829,651	785,957
CO Health Service Corps (CHSC)	1.0%	930,729	829,651	785,957
Capital Construction – Department of Higher Education – Fitzsimons Lease Purchase Payments				
Unallocated Amount	1.5%	1,396,093	1,244,478	1,178,935
Total	100.0%	\$93,072,854	\$82,965,119	\$78,595,680

¹ Beginning in FY 2024-25, the Nurse Home Visitor Program’s allocation increased from 26.7% to 28.7%.

² Of this share, 2.0% must be expended for tobacco-related in-state cancer research.

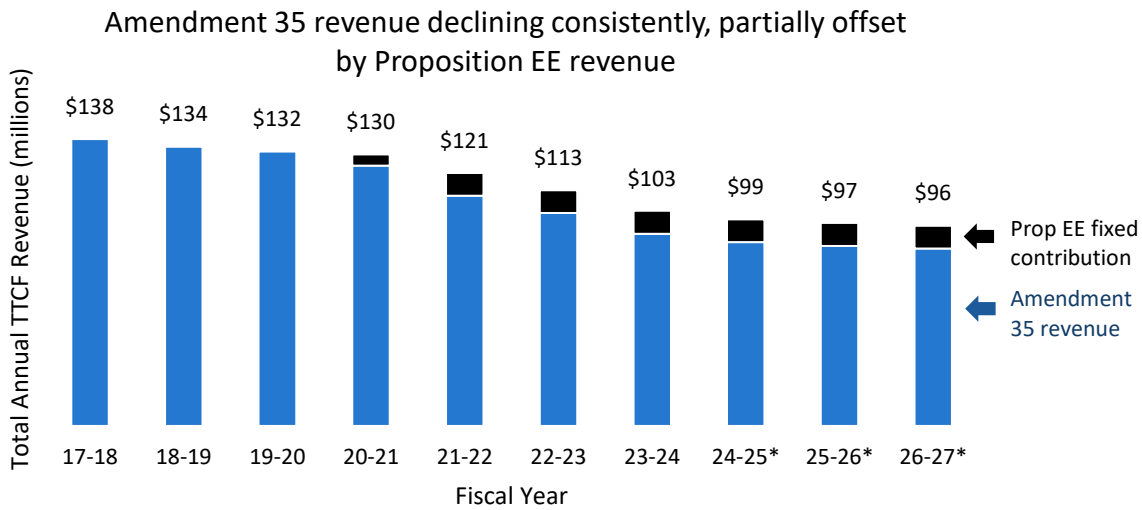
³ As a result of H.B. 24-1208, the FY 2023-24 transfer to the Autism Treatment Fund within the Department of Health Care Policy and Financing was retroactively discontinued and the remaining balance in the fund was transferred to the Tobacco Litigation Settlement Fund. This resulted in the fund’s higher than usual allocation in FY 2023-24.

Amendment 35

Amendment 35, approved by voters in 2004, added 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; 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.

Revenue from Amendment 35 is first deposited in the Tobacco Tax Cash Fund (TTCF) before being distributed to programs on a monthly basis. Amendment 35 revenues have been declining over time, as shown below, mainly due to decreasing consumption of cigarettes in Colorado. This revenue decline has been slightly offset in the short term by increased revenue from Proposition EE taxes, which transferred \$5.5 million into the TTCF in FY 2020-21 and \$11.0 million in FY 2021-22 and ongoing.



*FY24-25 through FY 26-27 based on December 2024 LCS forecasted revenue

Revenue distribution is dictated by very specific language in the constitutional amendment and is codified in Section 24-22-117, C.R.S. The revenue is distributed to various state agencies including the Departments of Health Care Policy and Financing, Public Health and Environment, and Human Services.

→ Distribution of Amendment 35 Revenue

The December 2024 LCS revenue forecast projects Amendment 35 revenue will be \$86.4 million in FY 2025-26, which is deposited into the Tobacco Tax Cash Fund. The TTCF also anticipates an additional \$11.0 million from Proposition EE in FY 2025-26.

Recommendation

Staff recommends that the Committee approve the distribution of Amendment 35 and Proposition EE revenue distributed to the Tobacco Tax Cash Fund as shown in the table below. This recommendation is based on the December 2024 forecast and does not amend the distribution formula.

Staff also requests:

- 1 Permission to adjust the distribution to align with the March 2025 LCS forecast, if the forecast is significantly different than the December 2024 forecast.
- 2 Permission to make all necessary adjustments to appropriations within affected departments to align with the approved distribution. If staff believes there is reason for the appropriation to deviate from the full distribution amount, staff will discuss the change during the respective department’s figure setting presentation.

Distribution of TTCF Revenue					
Department	Fund and/or Major Program Activities	Percent	FY 25-26 A35 Distribution	FY 25-26 Prop EE Distribution	Total FY 25-26 Distribution
Health Care Policy and Financing	Health Care Expansion Fund – includes Medicaid expansion efforts	46.0%	\$39,749,678	\$5,037,000	\$44,786,678
	Primary Care Fund – reimbursing providers in underserved communities	19.0%	16,418,345	2,080,500	18,498,845
Public Health and Environment	Tobacco Education Programs Fund – supports the Tobacco Education, Prevention, and Cessation Grant Program	16.0%	13,825,975	1,752,000	15,577,975
	Prevention, Early Detection, and Treatment Fund – see details in following table below	16.0%	13,825,975	1,752,000	15,577,975
Health Care Policy and Financing	Old Age Pension Fund – medical care for those 60 years and older that qualify for the Old Age Pension	1.5%	1,296,185	164,250	1,460,435
Revenue	Local government compensation for lost revenue from tobacco taxes	0.9%	777,711	98,550	876,261
Public Health and Environment	Immunizations performed by small local public health agencies	0.3%	259,237	32,850	292,087
Health Care Policy and Financing	Children's Basic Health Plan	0.3%	259,237	32,850	292,087
Total		100.0%	\$86,412,344	\$10,950,000	\$97,362,344

Money that is credited to the Prevention, Early Detection, and Treatment (PEDT) Fund is further divided among three programs in CDPHE. Whatever remains in the fund is then allocated to the Cancer, Cardiovascular Disease, and Chronic Pulmonary Disease (CCPD) Program. The following table summarizes how funds credited to the PEDT Fund are allocated.

Breakdown of Money Credited to the Prevention, Early Detection, and Treatment Fund				
Program	Percent	FY 25-26 A35 Distribution	FY 25-26 Prop EE Distribution	Total FY 25-26 Distribution
Breast and Cervical Cancer Program	20.0%	\$2,765,195	\$350,400	\$3,115,595
Health Disparities Program Fund	15.0%	2,073,896	262,800	2,336,696
Center for Health and Environmental Data	Fixed Amount	116,942	0	116,942
<i>Remains in the Prevention, Early Detection, and Treatment Fund</i>		<i>8,869,942</i>	<i>1,138,800</i>	<i>10,008,742</i>
Total Amount Credited to the Prevention, Early Detection, and Treatment Fund		\$13,825,975	\$1,752,000	\$15,577,975

Proposition EE

Proposition EE was a ballot measure created by H.B. 20-1427 (Cigarette, Tobacco, and Nicotine Products Tax) and approved by voters during the November 2020 election. The measure raised taxes on cigarettes and other tobacco products, as indicated in the table below, and created a tax on nicotine products such as vaping devices.

Incremental Tobacco Tax Increases			
Category	Jan 2021 - Jun 2024	Jul 2024 - Jun 2027	Jul 2027 Onward
<i>Cigarettes</i>			
Before Jan 1, 2021	\$0.84	\$0.84	\$0.84
Prop EE Tax Increase ¹	\$1.10	\$1.40	\$1.80
Total	\$1.94	\$2.24	\$2.64

Incremental Tobacco Tax Increases			
Category	Jan 2021 - Jun 2024	Jul 2024 - Jun 2027	Jul 2027 Onward
Tobacco			
Before Jan 1, 2021	40%	40%	40%
Prop EE Tax Rate Increase ¹	10%	16%	22%
Total	50%	56%	62%
Nicotine			
Before Jan 1, 2021	0%	0%	0%
Prop EE Tax Rate Increase ¹	50%	56%	62%
Total	50%	56%	62%

¹Prop EE tax rates reflect passage of Proposition II in November 2023

Tax revenue from Proposition EE is deposited in the 2020 Tax Withholding Fund and distributed on an ongoing basis throughout the year. Currently, the distribution to the General Fund (\$4.1 million), Tobacco Education Programs Fund (\$20.0 million), and Tobacco Tax Cash Fund (\$11.0 million) remain the same every year. After these distributions are made, the remaining revenue is then deposited into the Preschool Programs Cash Fund. If revenue is insufficient to cover initial obligations, dollars are dispersed on a proportional basis.

Revenue from the increased taxes on cigarettes, tobacco, and nicotine products in Proposition EE totaled \$208.0 million in FY 2021-22, exceeding the \$186.5 million estimate in the 2020 Blue Book. In order to retain the excess revenue, Proposition II was referred by the General Assembly and approved by voters in November 2023.

As a result of the tax increases implemented in July 2024 (see table above), projected revenue for Proposition EE increased by about 15.0 percent in FY 2024-25 and is anticipated to remain relatively steady.

Distribution of Proposition EE dollars					
Program/Fund	FY 22-23 Actual	FY 23-24 Actual	FY 24-25 Forecast	FY 25-26 Forecast	FY 26-27 Forecast
General Fund	\$4,050,000	\$4,050,000	\$4,050,000	\$4,050,000	\$4,050,000
Tobacco Education Programs Fund	-	-	20,000,000	20,000,000	20,000,000
Tobacco Tax Cash Fund	10,950,000	10,950,000	10,950,000	10,950,000	10,950,000
Preschool Programs Cash Fund ¹	-	186,612,817	198,586,687	208,614,189	207,037,695
Rural Schools Fund ²	35,000,000	-	-	-	-
Housing Development Grant Fund ²	11,167,000	-	-	-	-
Eviction Legal Defense Fund ²	500,000	-	-	-	-
State Education Fund ^{1,2}	139,337,065	-	-	-	-
Total	\$201,004,065	\$201,612,817	\$233,586,687	\$243,614,189	\$242,037,695

¹ These funds will receive revenue after the other fund obligations outlined in statute have been fulfilled.

² Allocations only exist from FY 20-21 through FY 22-23.

*Prop EE revenue is forecasted on an accrual basis, however, distributions are made on a cash basis which may lead to discrepancies between total revenue and total distributions. This table is based on the December 2024 LCS forecast.

→ Distribution of Proposition EE Revenue

The LCS December 2024 forecast projects that revenue from Proposition EE taxes will total \$243.6 million in FY 2025-26.

Recommendation

Staff recommends that the Committee approve the distribution of Proposition EE revenue as shown in the table below. This recommendation is based on the December 2024 forecast of Proposition EE revenue and does not amend the distribution formula.

Staff also requests:

- 1 Permission to adjust the distribution to align with the March 2025 LCS forecast, if the forecast is significantly different than the December 2024 forecast.
- 2 Permission to make all necessary adjustments to appropriations within affected departments to align with the approved distribution. If staff believes there is reason for the appropriation to deviate from the full distribution amount, staff will discuss the change during the respective department’s figure setting presentation.

Distribution of Proposition EE dollars		
Fund	Major Program Activities	FY 25-26 Estimated
General Fund	Various	\$4,050,000
Tobacco Education Programs Fund	Tobacco Education, Prevention, and Cessation Grant Program	20,000,000
Tobacco Tax Cash Fund	Same as Amendment 35 program activities – intended to supplement declining Amendment 35 revenue	10,950,000
Preschool Programs Cash Fund	Universal pre-K	208,614,189
Total		\$243,614,189

Requests for Information

Staff recommends **continuing** 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 Grampsas 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 of each year 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 State Board of Health. The request for information was added to improve program accountability and the responses are reviewed by JBC staff during the tobacco revenue briefing every fall.

Appendix A: MSA Payment Calculation Details

The size of the annual MSA payment is largely determined by (1) U.S. inflation rates, (2) nationwide cigarette consumption and manufacturer income, and (3) disputed payments.

Inflation Adjustment

The inflation adjustment is equal to either 3.0 percent or the U.S. Consumer Price Index (CPI-U) percentage change for the calendar year used to determine the payment, whichever is greater. The Independent Auditor for the MSA, Price Waterhouse Coopers, calculates the inflation adjustment using CPI-U across the nation. Of the 25 years since the inception of the MSA, there have been seven years when CPI was greater than 3.0 percent, including in 2021 (7.0 percent), 2022 (6.5 percent), and 2023 (3.4 percent).

U.S. Cigarette Consumption and Manufacturer Income (Volume and Profit Adjustments)

The volume adjustment is based on the aggregate number of cigarettes shipped in or to the U.S. by the MSA’s original participating manufacturers. The Legislative Council Staff forecast uses a proxy measure that has data available monthly – excise taxes collected on containers of roll-your-own tobacco and on packs of cigarettes bearing state excise tax stamps. With the exception of during the pandemic, in which demand temporarily increased, cigarette sales in the U.S. have declined for decades and are projected to continue declining.

When income collected by cigarette manufacturers in a given year exceeds an inflation-adjusted threshold, the profit adjustment is applied to the volume adjustment and MSA payments are increased. In recent years, the largest manufacturers that participate in the MSA have begun moving towards higher-priced premium products and non-cigarette tobacco products, and away from lower-cost products, resulting in higher incomes for tobacco manufacturers.

Disputed Payments, Arbitration, and Settlements

Participating manufacturers used to withhold portions of Colorado’s MSA payments based on a “non-participating manufacturer (NPM) adjustment” clause within the MSA. In 2018, the NPM Adjustment Settlement Agreement (NPMASA) changed this for the state by:

- releasing all disputed payments withheld from Colorado for 2004 through 2017;
- ending NPM adjustment withholding from future annual payments; and
- determining percentage splits/credits for the no-longer-withheld, but disputed NPM adjustment amounts.

The original clause intended to ensure that significant losses of market share do not occur for participating manufacturers as a result of the MSA. However, per the MSA, resolving NPM adjustment disputes requires states and participating manufacturers to enter into a lengthy arbitration process. For the 2003 NPM adjustment dispute – the process to define the multi-state arbitration began in 2006, actual arbitration began in 2010, and ended in 2013.

In order to avoid arbitration processes, many states and the participating manufacturers entered into the NPMASA. As a result, Colorado's payment received increased in 2018 to approximately \$113.3 million. This one-time revenue was credited to the General Fund per Section 24-75-1104.5 (5) C.R.S. The agreement is currently extended through 2024. Without another extension or agreement, 2025 is the next sales year for which an NPM adjustment arbitration could occur.



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Memorandum

January 27, 2025

TO: Interested Persons
FROM: Emily Dohrman, Senior Economist, 303-866-3687
SUBJECT: 2025 Tobacco MSA Forecast

Summary

Colorado receives annual payments from tobacco manufacturers as part of the Tobacco Master Settlement Agreement (MSA). The Tobacco MSA was reached in 1998 between certain tobacco manufacturers (known as "participating manufacturers") and the governments of 52 states and territories. Under the MSA, participating tobacco manufacturers were released from health-related claims associated with their products in exchange for making perpetual annual payments to states.

This document presents a forecast for annual receipts from the Tobacco MSA through 2027. In April 2024, the state received \$83.0 million, which determined distributions to MSA-funded programs for the current FY 2024-25. The state is expected to receive \$78.6 million in 2025, \$77.0 million in 2026, and \$75.6 million in 2027. Revenue from the Tobacco MSA is exempt from TABOR as a damage award.

Tobacco MSA Payments

Base Payment

Colorado's annual tobacco MSA payment is primarily determined by what is known as the base payment. The base payment is determined at the national level, and each state receives a fixed percentage, where Colorado receives 1.37 percent of the total national payment. The size of the annual MSA base payment is largely determined by U.S. inflation and the volume of U.S. cigarette sales from participating manufacturers.



Specifically, the total payment from all manufacturers is adjusted upwards from the prior year by the rate of inflation or 3.0 percent, whichever is greater. The payment is then adjusted based on the number of cigarettes¹ sold by original participating manufacturers in the U.S. in the prior year, which tends to decline over time. Other, smaller adjustments are made to the base payment as well, including an upward adjustment if manufacturers' income exceeds a certain threshold. In 2024, Colorado's base payment was **\$88.0 million**.

Non-Participating Manufacturer Adjustment

If participating manufacturers are found to have lost aggregate market share as a result of joining the MSA, then the Non-Participating Manufacturer Adjustment (NPM Adjustment) is calculated. A market share loss has been found in every year of the MSA's existence. However, the NPM Adjustment reduces the MSA payment only if the state is found, through arbitration, to have not diligently enforced its legal obligation under the MSA. Therefore, participating manufacturers must institute arbitration against the state for each year in which the NPM adjustment was calculated in order for their payments to be reduced.

Prior to 2018, participating manufacturers paid the amount of the NPM Adjustment into the disputed payment account, where the funds were held until the arbitration was resolved. These funds became known as disputed payments. Arbitration proceedings took many years to resolve, resulting in payments to states being severely delayed, sometimes by over a decade.

To expedite resolution of payment disputes, participating manufacturers and some states negotiated the **Non-Participating Manufacturer Adjustment Settlement Agreement** (NPMASA), a supplementary legal agreement within the MSA framework. Under the NPMASA, participating states and manufacturers agreed to settle pending disputes rather than wait for lengthy arbitration proceedings. As a result, participating states received between 54 and 75 percent of payments that had been disputed between 2004 and 2017.

Colorado signed the NPMASA in March 2018. Colorado received an additional \$113 million in 2018 due to the NPMASA, representing 100 percent of disputed payments from 2004 to 2017. However, the state was only authorized to retain a portion of this lump sum payment, and gradually returned a portion of this payment back to manufacturers in the following years, in the form of a subtraction from the state's annual payments.

¹ The volume adjustment also takes into account roll-your-own tobacco sales such that 0.0325 pounds of roll-your-own tobacco equates to one cigarette. This form of tobacco makes up a very small portion of the total.



Colorado has settled disputes through 2024, such that 75 percent of the NPM Adjustment is retained by the states and 25 percent is credited back to the manufacturers. In 2024, Colorado’s base payment was reduced by **\$5.0 million**, representing 25 percent of the NPM Adjustment. Had Colorado not joined the NPMASA, the state would not have received any portion of the NPM Adjustment until after arbitration was resolved.

Revenue Forecast

Table 1 presents the actual Tobacco MSA payment received in 2024 and the forecast for 2025 through 2027. Payments are received in April each year.

Table 1
Tobacco MSA Payment Forecast
Dollars in Millions

Payment	2024 Actual	2025 Forecast	2026 Forecast	2027 Forecast
Annual MSA Payment	\$83.0	\$78.6	\$77.0	\$75.6

Source: Department of Law, Department of the Treasury, and Legislative Council Staff Forecast.

Recent Payments and Expectations

The 2024 payment totaled \$83.0 million, a decline of nearly 11 percent from the 2023 payment of \$93.1 million. The base payment fell in 2024 due to a steep decline, over 10 percent, in the volume of cigarettes sold by original participating manufacturers in 2023. Additionally, the base payment was reduced by \$5.0 million in 2024 due to the NPM Adjustment, which is a larger reduction than in 2023.

Payments are expected to continue to fall through the forecast period as inflation moderates and cigarette sales continue to decline. Based on federal tax data, national cigarette consumption is estimated to have declined at similar rates in 2023 and 2024. Cigarette sales by original participating manufacturers are expected to decline throughout the forecast period, by 10.0 percent in 2024 (affecting the 2025 payment), 6.5 percent in 2025 (affecting the 2026 payment), and 6.0 percent in 2026 (affecting the 2027 payment). Sales have fallen more quickly since the Covid-19 pandemic, by 7 percent in 2021, 12 percent in 2022, and 11 percent in 2023, a trend that is expected to moderate in the coming years. Inflation is expected to be below 3 percent through the forecast period beginning in 2024, which means that the inflation adjustment will increase by 3 percent per year beginning with the 2025 payment.



Risks to the forecast

To the extent that U.S. cigarette sales from participating manufacturers are higher or lower than forecast, Colorado's base payment will be impacted accordingly. The inflation adjustment increases by a minimum of 3 percent each year, so payments will not be impacted if inflation is lower than expected, but could increase by more if inflation exceeds 3 percent. Payments will also be impacted by the amount that manufacturers choose to withhold as part of a disputed payment.

Additionally, the Tobacco MSA remains an area of ongoing legal uncertainty. Any changes to the legal landscape resulting from government or manufacturer legal strategy, arbitration proceedings, or court orders will have an effect on the amounts received. Receipts will also fall if participating manufacturers cease operations, file bankruptcy, or otherwise fail to pay what is due each year.

Distribution of MSA Payments

Distribution of Funds

Total allocations to MSA-funded programs each year correspond to the MSA payment that was received in April of the preceding fiscal year. The formula directs the distribution of 98.5 percent of the annual MSA payment, as shown in Table 2.² The unallocated portion is reserved each year to reduce the amount of the annual accelerated payment, as described below. Beginning in FY 2024-25, the 2.0 percent that was previously allocated to the Autism Treatment Fund is added to the Nurse Home Visitor program distribution, per House Bill 24-1388.

² Section 24-75-1104.5 (1.7), C.R.S.



Table 2
Distribution of Tobacco MSA Payment

Program	Distribution
Department of Law	
Tobacco Settlement Defense Account	2.5%
Department of Human Services	
Nurse Home Visitors	28.7%
Tony Gramscas Youth Services	7.5%
Department of Health Care Policy and Financing	
Children's Basic Health Plan Trust	18.0%
Department of Higher Education	
CU Health Sciences Center*	17.5%
Department of Public Health and Environment	
State Drug Assistance Program	5.0%
AIDS and HIV Prevention	3.5%
Immunizations	2.5%
Health Services Corps	1.0%
Dental Loan Repayment	1.0%
Capital Construction	
Fitzsimons Trust Fund	8.0%
Department of Personnel and Administration	
Supplement State Employee Insurance Plans	2.3%
Department of Military and Veterans Affairs	
Veterans Trust Fund	1.0%
Total Funds Distributed	98.5%

*2.0 percent must be expended for tobacco-related in-state cancer research.

Table 3 shows the amount that each MSA-funded program is projected to receive through FY 2027-28 under the forecast presented in Table 1. The unallocated amount is shown at the bottom of the table.



Table 3
Tobacco MSA Distribution Forecast
 Dollars in Millions

Program	FY 2024-25 Actual	FY 2025-26 Forecast	FY 2026-27 Forecast	FY 2027-28 Forecast
Department of Law				
Tobacco Settlement Defense Account	\$2.1	\$2.0	\$1.9	\$1.9
Department of Human Services				
Nurse Home Visitors	\$23.8	\$22.6	\$22.1	\$21.7
Tony Gramscas Youth Services	\$6.2	\$5.9	\$5.8	\$5.7
Department of Health Care Policy and Financing				
Children's Basic Health Plan Trust	\$14.9	\$14.1	\$13.9	\$13.6
Department of Higher Education				
CU Health Sciences Center ¹	\$14.5	\$13.8	\$13.5	\$13.2
Department of Public Health and Environment				
State Drug Assistance Programs	\$4.1	\$3.9	\$3.8	\$3.8
AIDS and HIV Prevention	\$2.9	\$2.8	\$2.7	\$2.6
Immunizations	\$2.1	\$2.0	\$1.9	\$1.9
Health Services Corps	\$0.8	\$0.8	\$0.8	\$0.8
Dental Loan Repayment	\$0.8	\$0.8	\$0.8	\$0.8
Capital Construction				
Fitzsimons Trust Fund	\$6.6	\$6.3	\$6.2	\$6.1
Department of Personnel and Administration				
Supplement State Employee Insurance Plans	\$1.9	\$1.8	\$1.8	\$1.7
Department of Military and Veterans Affairs				
Veterans Trust Fund	\$0.8	\$0.8	\$0.8	\$0.8
Total Funds Distributed	\$81.7	\$77.4	\$75.8	\$74.5
Unallocated Funds	\$1.2	\$1.2	\$1.2	\$1.1

Source: Department of the Treasury and Legislative Council Staff Forecast.

¹ A portion of this amount is required to be spent for tobacco-related in-state cancer research.

Accelerated Payments

The size of the annual payment received each year determines the amount that will be distributed to programs in the following year. However, each payment funds programs in both the fiscal year in which it is received and the following fiscal year, due to a budget balancing measure in Senate Bill 09-269. This creates an annual General Fund obligation for a bridge loan, or an “accelerated payment,” made to fund MSA programs between when the prior fiscal year’s payment is exhausted and when the current fiscal year’s payment arrives in April.



The General Assembly further increased the accelerated payment in House Bill 20-1380, which transferred \$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, thereby increasing the accelerated payment by \$20 million.

To decrease the amount advanced annually from the General Fund, any unallocated amount remaining in the Tobacco Litigation Settlement Cash Fund after programs are funded is retained in the fund and used to reduce the following year's accelerated payment. This amount is currently 1.5 percent of the annual payment received. For programs funded in FY 2024-25, \$27.8 million was paid from the state's April 2024 payment, and the remaining \$55.2 million is expected to be paid from the April 2025 payment.