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Memorandum

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TO: Interested Persons

FROM: Elizabeth Ramey, Principal Economist, 303-866-3522

SUBJECT: Use of State Tobacco Revenue

Summary

In FY 2020-21, Colorado received \$314.5 million from tobacco-related sources. These include taxes on cigarettes, other tobacco products, and nicotine products and payments from tobacco manufacturers as part of the Tobacco Master Settlement Agreement. This memorandum describes the sources and uses of this revenue.

Cigarette, Tobacco, and Nicotine Product Taxes

Colorado assesses excise taxes on cigarettes and non-cigarette tobacco products. A flat tax is assessed on each individual cigarette, while a percentage tax is assessed on tobacco products according to the manufacturer's list price (MLP), which is the invoice price for which a manufacturer or supplier sells a tobacco or nicotine product to a distributor. A portion of these taxes is set in statute and credited to the state General Fund and local governments. The remaining revenue is allocated to programs identified in the Colorado Constitution under Amendment 35 and in statute under Proposition EE. Current tax rates are shown in Table 1.

Table 1
Cigarette, Tobacco, and Nicotine Product Taxes

	Statutory Tax	Amendment 35 Tax	Proposition EE Tax	Total
Cigarette Tax (per pack)	\$0.20 per pack	\$0.64 per pack	\$1.10	\$1.94
Tobacco Tax (% of MLP)	20% MLP	20% MLP	10% MLP	50% MLP
Nicotine Tax (% of MLP)	-	-	35% MLP	35% MLP

MLP = Manufacturer's list price.

Statutory excise taxes. The statutory portion of each tax is appropriated each year at the discretion of the General Assembly, except that 27 percent must be distributed to local jurisdictions where cigarettes and tobacco products are sold, based on their proportion of total sales.¹ In FY 2020-21, the state collected \$54.0 million in statutory cigarette and tobacco taxes.

¹ Section 39-22-623, C.R.S.

Amendment 35 programs. In 2004, voters adopted Amendment 35, which increased cigarette and tobacco taxes and specified uses for the additional revenue.² Under the amendment, this portion of tax revenue is allocated as follows:

- 46 percent to increase enrollment of children, pregnant women, and parents in the Children’s Basic Health Plan and Medicaid;
- 19 percent to fund comprehensive primary care through community health centers or providers serving uninsured and indigenous populations;
- 16 percent to fund school- and community-based tobacco education programs;
- 16 percent for the prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases; and
- 3 percent for health-related purposes funded from the General Fund, the Old Age Pension Fund, or local governments.

In FY 2020-21, the state collected \$124.8 million in Amendment 35 cigarette and tobacco taxes.

Proposition EE programs. In 2020, voters adopted Proposition EE, which increased cigarette and tobacco taxes, created a new tax on nicotine products such as e-cigarettes, and specified uses for the additional revenue.³ Proposition EE tax rates were instituted January 1, 2021, and will be fully phased in beginning in FY 2027-28.

Table 2
Proposition EE Tax Rates by Tax Year

Tax Year	2022	2023	2024	2025	2026	2027*
Cigarette Tax (per pack)	\$1.10	\$1.10	\$1.40	\$1.40	\$1.40	\$1.80
Tobacco Tax (% of MLP)	10%	10%	16%	16%	16%	22%
Nicotine Tax (% of MLP)	35%	50%	56%	56%	56%	62%

MLP = Manufacturer’s list price.

** Tax rates shown for 2027 will continue in subsequent years.*

Proposition EE tax revenue is allocated as shown in Table 3. Proposition EE also set a minimum price for cigarettes. Of the additional sales tax revenue resulting from the minimum price, 27 percent is deposited in the General Fund and 73 percent is deposited in the Preschool Programs Fund.

In FY 2020-21, the state collected \$49.0 million in Proposition EE taxes, and \$0.3 million in additional sales tax revenue from the minimum cigarette price.

² Colo. Const. art X, § 21

³ Part 1 of Article 28 of Title 39, C.R.S.; Section 24-22-118, C.R.S.

Table 3
Distribution of Proposition EE Cigarette, Tobacco, and Nicotine Product Tax Revenue
Millions of Dollars

Fiscal Year	Actual 2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28*
General Fund	\$2.0	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1
Tobacco Tax Cash Fund	\$5.5	\$11.0	\$11.0	\$11.0	\$11.0	\$11.0	\$11.0	\$11.0
Eviction Legal Defense Fund	\$0.5	\$0.5	\$0.5	-	-	-	-	-
Housing Development Grant Fund	\$11.2	\$11.2	\$11.2	-	-	-	-	-
Rural Schools Cash Fund	\$25.0	\$30.0	\$35.0	-	-	-	-	-
Tobacco Education Programs Fund	-	-	-	-	\$20.0	\$20.0	\$20.0	\$20.0
State Education Fund	\$4.9	Remainder	Remainder	-	-	-	-	-
Preschool Programs Cash Fund	\$0.2**	-	-	Remainder	Remainder	Remainder	Remainder	Remainder

* FY 2027-28 funding allocations will continue in future years.

** Allocation of additional sales tax revenue from the minimum cigarette price.

Tobacco Master Settlement Agreement

In 1998, Colorado and 45 other states signed the Tobacco Master Settlement Agreement (MSA) with manufacturers of tobacco products. In return for annual MSA payments, states consented to release participating manufacturers from liability for the health-related impacts of tobacco use, manufacture, and marketing.

Colorado receives a settlement payment in April of each year. The amount received in April dictates the amount allocated for expenditures on MSA-funded programs in the fiscal year beginning June 1. Shares to specific programs are allocated according to statute, as indicated in Table 3, which also depicts allocations of the April 2021 payment of \$86.6 million.⁴

Table 4
Tobacco MSA Programs and Allocations, FY 2021-22
Millions of Dollars

	Amount	Percentage Allocation
Revenue for Distribution	\$86.6	100.0%
Department of Law		
Tobacco Settlement Defense Account	\$2.2	2.5%
Department of Human Services		
Nurse Home Visitors	\$23.1	26.7%
Tony Grampsas Youth Services	\$6.5	7.5%
Department of Health Care Policy and Financing		
Children's Basic Health Plan Trust	\$15.6	18.0%
Autism Treatment Fund	\$1.7	2.0%
Department of Higher Education		
CU Health Sciences Center*	\$15.2	17.5%
Department of Public Health and Environment		
AIDS Drug Assistance	\$4.3	5.0%
HIV Prevention	\$3.0	3.5%
Immunizations	\$2.2	2.5%
Health Services Corps	\$0.9	1.0%
Dental Loan Repayment	\$0.9	1.0%
Capital Construction		
Fitzsimons Trust Fund	\$6.9	8.0%
Department of Personnel and Administration		
Supplement State Employee Insurance Plans	\$2.0	2.3%
Department of Military and Veterans Affairs		
Veterans Trust Fund	\$0.9	1.0%
Unallocated Portion**	\$1.3	1.5%

Source: Department of the Treasury and February 2022 Legislative Council Staff Forecast.

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

*** The unallocated amount remains in the Tobacco Litigation Settlement Cash Fund to reduce the "accelerated payment," the amount of the annual MSA payment that is allocated for programs during the fiscal year it is received.*

⁴ Section 24-75-1104.5, C.R.S.