



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Memorandum

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**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 cigarettes<sup>1</sup> 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.

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<sup>1</sup> 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<br>Actual | 2025<br>Forecast | 2026<br>Forecast | 2027<br>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.<sup>2</sup> 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.

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<sup>2</sup> Section 24-75-1104.5 (1.7), C.R.S.



**Table 2**  
**Distribution of Tobacco MSA Payment**

| <b>Program</b>                                        | <b>Distribution</b> |
|-------------------------------------------------------|---------------------|
| <b>Department of Law</b>                              |                     |
| Tobacco Settlement Defense Account                    | 2.5%                |
| <b>Department of Human Services</b>                   |                     |
| Nurse Home Visitors                                   | 28.7%               |
| Tony Grampas Youth Services                           | 7.5%                |
| <b>Department of Health Care Policy and Financing</b> |                     |
| Children's Basic Health Plan Trust                    | 18.0%               |
| <b>Department of Higher Education</b>                 |                     |
| CU Health Sciences Center*                            | 17.5%               |
| <b>Department of Public Health and Environment</b>    |                     |
| 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%                |
| <b>Capital Construction</b>                           |                     |
| Fitzsimons Trust Fund                                 | 8.0%                |
| <b>Department of Personnel and Administration</b>     |                     |
| Supplement State Employee Insurance Plans             | 2.3%                |
| <b>Department of Military and Veterans Affairs</b>    |                     |
| Veterans Trust Fund                                   | 1.0%                |
| <b>Total Funds Distributed</b>                        | <b>98.5%</b>        |

\*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

| <b>Program</b>                                        | <b>FY 2024-25<br/>Actual</b> | <b>FY 2025-26<br/>Forecast</b> | <b>FY 2026-27<br/>Forecast</b> | <b>FY 2027-28<br/>Forecast</b> |
|-------------------------------------------------------|------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <b>Department of Law</b>                              |                              |                                |                                |                                |
| Tobacco Settlement Defense Account                    | \$2.1                        | \$2.0                          | \$1.9                          | \$1.9                          |
| <b>Department of Human Services</b>                   |                              |                                |                                |                                |
| Nurse Home Visitors                                   | \$23.8                       | \$22.6                         | \$22.1                         | \$21.7                         |
| Tony Grampas Youth Services                           | \$6.2                        | \$5.9                          | \$5.8                          | \$5.7                          |
| <b>Department of Health Care Policy and Financing</b> |                              |                                |                                |                                |
| Children's Basic Health Plan Trust                    | \$14.9                       | \$14.1                         | \$13.9                         | \$13.6                         |
| <b>Department of Higher Education</b>                 |                              |                                |                                |                                |
| CU Health Sciences Center <sup>1</sup>                | \$14.5                       | \$13.8                         | \$13.5                         | \$13.2                         |
| <b>Department of Public Health and Environment</b>    |                              |                                |                                |                                |
| 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                          |
| <b>Capital Construction</b>                           |                              |                                |                                |                                |
| Fitzsimons Trust Fund                                 | \$6.6                        | \$6.3                          | \$6.2                          | \$6.1                          |
| <b>Department of Personnel and Administration</b>     |                              |                                |                                |                                |
| Supplement State Employee Insurance Plans             | \$1.9                        | \$1.8                          | \$1.8                          | \$1.7                          |
| <b>Department of Military and Veterans Affairs</b>    |                              |                                |                                |                                |
| Veterans Trust Fund                                   | \$0.8                        | \$0.8                          | \$0.8                          | \$0.8                          |
| <b>Total Funds Distributed</b>                        | <b>\$81.7</b>                | <b>\$77.4</b>                  | <b>\$75.8</b>                  | <b>\$74.5</b>                  |
| <b>Unallocated Funds</b>                              | <b>\$1.2</b>                 | <b>\$1.2</b>                   | <b>\$1.2</b>                   | <b>\$1.1</b>                   |

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

<sup>1</sup> 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.