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MEMORANDUM

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TO: Use of Recreational Marijuana Sales Tax Revenues Interim Study Committee

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SUBJECT: Background on Marijuana Policy and Tax Revenue

Summary

This memorandum provides background information on marijuana policy and tax revenue in Colorado. It includes an overview of marijuana regulation, marijuana taxes, projected marijuana tax revenue, and the current allocation and uses of marijuana tax revenue.

Total marijuana tax revenue was \$25.3 million in FY 2013-14 and is projected to be \$47.9 million in FY 2014-15. Of the marijuana tax revenue collected in FY 2013-14, about \$18.9 million is available for discretionary spending by the state in FY 2014-15. Under current law, \$25.4 million in state spending and fund transfers in FY 2014-15 has been obligated from the prior year marijuana revenue, an over-appropriation of \$6.4 million.

Marijuana Policy in Colorado

In Colorado, marijuana may be legally sold in the medical marijuana and retail marijuana markets. The following sections provide a brief overview of state policy for these markets and a description of the regulation of marijuana in the state.

Medical marijuana. Medical marijuana was legalized by voters in 2000 and a formal regulatory structure for medical marijuana dispensaries was enacted by the General Assembly in 2010. To obtain medical marijuana, a patient must be a Colorado resident, have a qualifying medical condition such as severe pain, cancer, seizures, or glaucoma, be examined by a doctor, and register with the Department of Public Health and Environment (DPHE). Approved patients receive a medical marijuana registration card (commonly referred to as a red card). As of April 2014, more than 116,000 Colorado residents have valid medical marijuana registration cards. The number of patients on the medical marijuana registry has increased in recent years. In 2009, only about 5,000 patients were on the medical marijuana registry. Medical marijuana patients may grow their own marijuana, receive marijuana from a caregiver, or purchase it from a licensed dispensary. Unlike prescription drugs, medical marijuana is subject to state and local sales taxes.

Retail marijuana. In 2012, Amendment 64 legalized the growth, possession, and use of marijuana by persons age 21 and older in Colorado, and required that a regulated system for retail sales be created. Retail sales of marijuana began in January 2014. Initially, licenses for retail marijuana businesses were limited to owners of existing licensed medical marijuana dispensaries. As of July 2014, new business may seek a license and enter the market beginning on October 1, 2014. In addition to the state sales tax, retail marijuana is subject to an excise tax at the wholesale level and a special sales tax. These additional taxes on retail marijuana were approved by voters in 2013 with the passage of Proposition AA.

Marijuana regulation. The Marijuana Enforcement Division (MED) in the Department of Revenue (DOR) is responsible for regulating both medical and retail marijuana businesses in Colorado. The responsibilities of the MED include rulemaking, licensing and inspecting marijuana-related businesses, and taking enforcement actions when necessary. The MED has four offices locations around the state and is authorized to have up to 55 employees. The current annual budget for licensing and enforcement is about \$10.5 million. These costs are paid from fees on marijuana-related businesses, and with marijuana tax revenues, if fee revenue is not sufficient. Table 1 shows the number of licensed medical and retail marijuana facilities as of July 2014.

Table 1
Medical and Retail Marijuana Facilities
(as of July 2014)

Marijuana Type	Facility	Number
Medical	Medical marijuana centers / dispensaries	496
	Product manufacturers	152
	Cultivation centers	731
Retail	Retail marijuana stores	221
	Product manufacturers	66
	Cultivation centers	292
	Testing centers	13*

**As of July 2014, only 4 of the 13 retail marijuana testing centers have received approval from both the DOR and the DPHE to begin testing marijuana products.*

Marijuana Cash Funds

Two state cash funds receive marijuana revenue: the Marijuana Cash Fund (MCF) and the Marijuana Tax Cash Fund (MTCF). Created in 2010, the MCF was originally used for medical marijuana licensing revenue. Beginning on July 1, 2013, sales tax revenue on medical marijuana was also deposited into the MCF. The MTCF was created on July 1, 2014, to receive all tax revenue for both medical and retail marijuana, including sales tax, excise tax, and other revenue. After creation of the MTCF, the MCF only receives marijuana licensing-related revenue to operate the MED.

Marijuana Tax Revenue

The following taxes are levied on marijuana in Colorado:

- 15 percent excise tax on wholesale marijuana sales from retail marijuana cultivators;
- 10 percent special state sales tax on retail marijuana products;

- 2.9 percent state sales tax on retail marijuana products; and
- 2.9 percent state sales tax on medical marijuana products.

Actual and projected marijuana tax revenue. According to preliminary estimates by the Department of Revenue, marijuana tax revenue was **\$25.3 million in FY 2013-14**. Marijuana tax revenue is projected to be **\$47.9 million in FY 2014-15**, based on the June 2014 revenue forecast by Legislative Council Staff. Table 2 provides a summary of this revenue for each type of tax.

Table 2
Marijuana Tax Revenues
(Millions of Dollars)

Type of Tax	FY 2013-14 (Preliminary)	FY 2014-15 (Projected*)
2.9% Sales Tax on Medical Marijuana	\$10.6	\$11.3
2.9% Sales Tax on Retail Marijuana	2.7	6.0
15% Excise Tax	3.0	10.1
10% Special Sales Tax	9.0	20.5
TOTAL	\$25.3	\$47.9

* Projected revenue based on the June 2014 Economic Forecast by Legislative Council Staff.

Allocation of marijuana revenue. Current law allocates marijuana taxes for several uses. The first \$40 million in excise tax revenue goes to the Building Excellent Schools Today (BEST) grant program. Any additional excise tax is deposited into the MTCF. The 2.9 percent state sales tax on medical and retail marijuana is also deposited into the MTCF. For the 10 percent state sales tax, 15 percent is transferred to local governments and the remainder is deposited into the MTCF. Local governments' share of the special sales tax is distributed on the basis of retail marijuana sales in each jurisdiction. In addition, under current law, \$2.0 million in medical marijuana sales tax was transferred to the General Fund in FY 2013-14 for the Circle and SBIRT programs.¹

Based on the information above, marijuana tax revenue from FY 2013-14 will be allocated as follows:

- \$3.0 million to the BEST grant program for school construction;
- \$1.4 million to local governments;
- \$2.0 million to the General Fund; and
- \$18.9 million to the MTCF.

Programs Funded by Marijuana Tax Revenues

For most programs, funds in the MTCF must be appropriated in the following fiscal year after the funds are received by the state, except that marijuana enforcement costs in the Department of Revenue may be paid with funds in the year they are received. Beginning in FY 2015-16, appropriations from the MTCF are limited to 93.5 percent of the funds available from the prior year.

¹The Circle Program in the Department of Human Services provides services to patients with co-occurring substance abuse and mental health disorders at the Colorado Mental Health Institute at Pueblo. SBIRT is the Screening, Brief Intervention, and Referral to Treatment Program in the Department of Health Care Policy and Financing, which allows physicians to be reimbursed under Medicaid for certain substance abuse services.

Current law appropriates marijuana tax revenue in the MTCF for a variety of programs and total spending in FY 2014-15 is approximately \$35.3 million. Of total spending in FY 2014-15, \$25.4 million is paid with funds in the MTCF received in FY 2013-14, \$7.6 million is paid with funds received in FY 2014-15, and \$2.4 million is paid with federal funds for certain programs in the Department of Health Care Policy and Financing. The majority of this spending was appropriated in Senate Bill 14-215, which created, expanded, and enhanced a number of programs funded with marijuana tax revenue via the MTCF. The bill also shifted funding of several existing programs from the MCF to the MTCF. Table 3 lists programs funded and transfers occurring from the MTCF in FY 2014-15.

**Table 3
Programs Funded by the MTCF in FY 2014-15**

Agency	Program	Total Funds
Department of Education	School Health Professional Grant Program to address behavioral health issues in public schools	\$2,500,000
Governor's Office	Office of Marijuana Coordination	190,097
Department of Health Care Policy and Financing	School-based prevention and intervention services	4,363,807*
	School-based early intervention and prevention substance abuse grant program	2,000,000*
	General Fund reserve requirement for school-based prevention and intervention programs	260,000*
	SBIRT Program	1,000,000**
Department of Human Services	Expansion of Tony Grampsas Youth Services program grants for prevention	2,000,000
	Substance use disorder treatment services for adolescents and pregnant women	1,500,000
	Expansion and enhancement of jail-based behavioral health services	2,000,000
	Enhancement of S.B. 91-094 programs to provide alternatives to incarceration at the local level	2,000,000
	Child welfare training	100,000
	Circle Program	1,000,000**
Department of Law	Development of in-house expertise on regulations	456,760
	Peace Officers Standards and Training Board expanded training activities	1,168,000
	Peace Officers Standards and Training Board support	76,000
Department of Public Health and Environment	Public awareness marijuana education campaign	5,683,608
	Healthy Kids Colorado survey	903,561
	Cannabis health environmental and epidemiological training, outreach and surveillance	320,388

**Table 3 (Cont.)
Programs Funded by the MTCF in FY 2014-15**

Agency	Program	Total Funds
Department of Public Safety	Administrative services in the Division of Criminal Justice	204,983
Department of Revenue	Marijuana Enforcement Division	7,600,000***
TOTAL		\$35,327,204
MTCF (FY 2013-14 revenue)		25,363,397
MTCF (FY 2014-15 revenue)		7,600,000
Federal Funds		2,363,807

* Direct spending on these programs is made using General Fund and federal funds. A transfer to the General Fund from the MTCF is made to cover the General Fund portion of the costs of the programs, as well as the General Fund reserve requirements for this spending.

** SB 14-215 transfers \$2.0 million to the General Fund to pay for the costs of these programs in the Department of Human Services and Department of Health Care Policy and Financing.

*** Costs in the Department of Revenue may be paid using funds received in the MTCF in the year it was received.

Other spending from the MTCF. House Bill 14-1398 allows for the creation and regulation of marijuana financial services cooperatives, or cannabis credit co-ops (CCCs). The bill enables licensed marijuana and hemp businesses to obtain comparable services to those provided by a bank or credit union. The bill includes an appropriation of \$50,000 to the Department of Regulatory Agencies from the MTCF in FY 2014-15, and, once fully implemented, is estimated to cost \$259,355 per year, paid from the MTCF. However, the creation of CCCs is conditional upon a number of factors, including the Federal Reserve System Board of Governors approving CCC access to the banking system and completion of a stakeholder and legal review process. As a result, the appropriations under HB14-1398 may not actually be used, and thus are not shown in Table 3.

Comparison of available funds in the MTCF and current appropriations. Currently, the MTCF is over-appropriated by about \$6.4 million for FY 2014-15 for programs funded using revenue received in FY 2013-14. The Department of Revenue reports that \$18.9 million in revenue from FY 2013-14 was transferred to the MCTF as of July 1, 2014. As shown in Table 3, \$25.4 million is appropriated from the MTCF for various programs for FY 2014-15, excluding funding for the MED in the Department of Revenue.