

# Getting a Revenue High

Best Practices, Lessons Learned in the Taxation of Legal Weed

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# Colorado's Experience

- ▶ Governor Established multiple working groups to study issues and make recommendations
  - ▶ The DoR accepted every speaking opportunity at community and industry groups
  - ▶ DoR researches the industry and promulgates regulations requiring certain internal controls
  - ▶ November 2013 citizens vote to allow public sales January 1, 2014
  - ▶ DoR in cooperation with our vendor created and implemented the Marijuana Tax system within the very limited amount of time available
  - ▶ January 1, 2014 Legal Sales of Recreational Marijuana begin
- 
- ❖ Best Practice: Err on the side of over-communication, involve stakeholders early and often, and approach issues with a problem solving bent

# My Experience

- ▶ Formerly Colorado's Senior Director of Taxation for over 30 years
- ▶ Served on the Governor's Working Group on legal and banking issues
- ▶ Chaired the regulation hearings for all marijuana tax issues
- ▶ Testified at numerous legislative hearings regarding marijuana taxation
- ▶ Appeared before press and industry groups

# A History of Regulation in Colorado

Colorado becomes one of the first states to outlaw use and possession of Marijuana as concern grows in western states because of marijuana's association with migrants.



1919

Congress passes "The Marihuana Tax Act" that criminalizes marijuana use, distribution or possession at the federal level.



1937

Marijuana advocates prepare a citizen initiative to legalize medical marijuana.



1997

Colorado Supreme Court rules S.o.S. Buckley erred in not certifying the results. Amendment 20 is subsequently voted upon and medical marijuana is legalized in Colorado.



2000

Colorado Department of Public Health and Environment (CDPHE) institutes a rule limiting caregivers to 5 patients maximum.



2004

Penalties increase after it is reported that a young girl is murdered by her marijuana smoking stepfather, who also happened to be Hispanic.



1929

Colorado becomes one of 10 states to decriminalize marijuana, based upon a 1972 federal commission report called the National Commission on Marijuana and Drug Abuse or the Shafer commission. This made possession of less than one ounce a petty offense with a \$100 fine.



1975

Coloradoans vote on Amendment 19 which should legalize Medical Marijuana, but Secretary of State Vicki Buckley refuses to certify the results saying the proponents had not collected the required number of petition signatures.



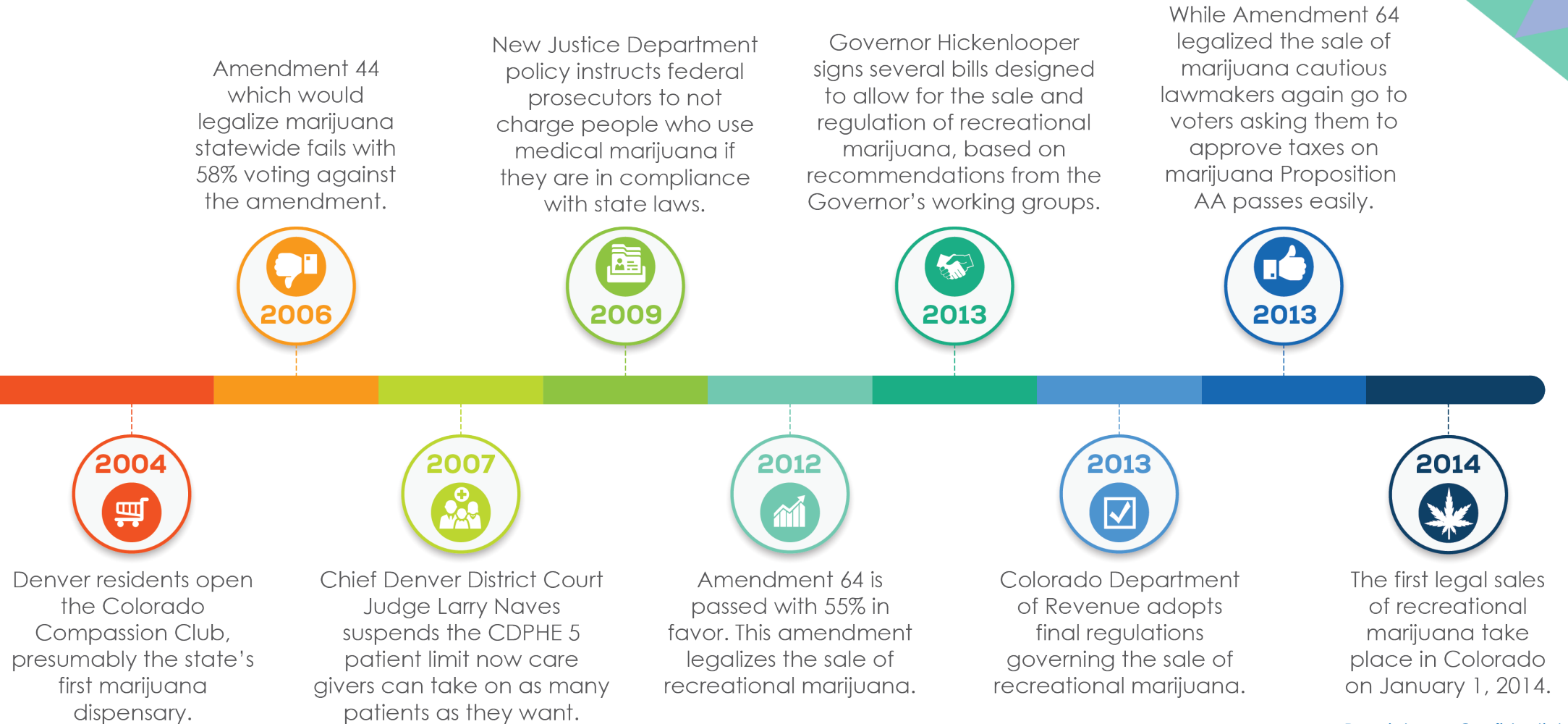
1998

Colorado creates a Medical Marijuana Patient Registry, only 500 people receive and register their medical certificates the first year.

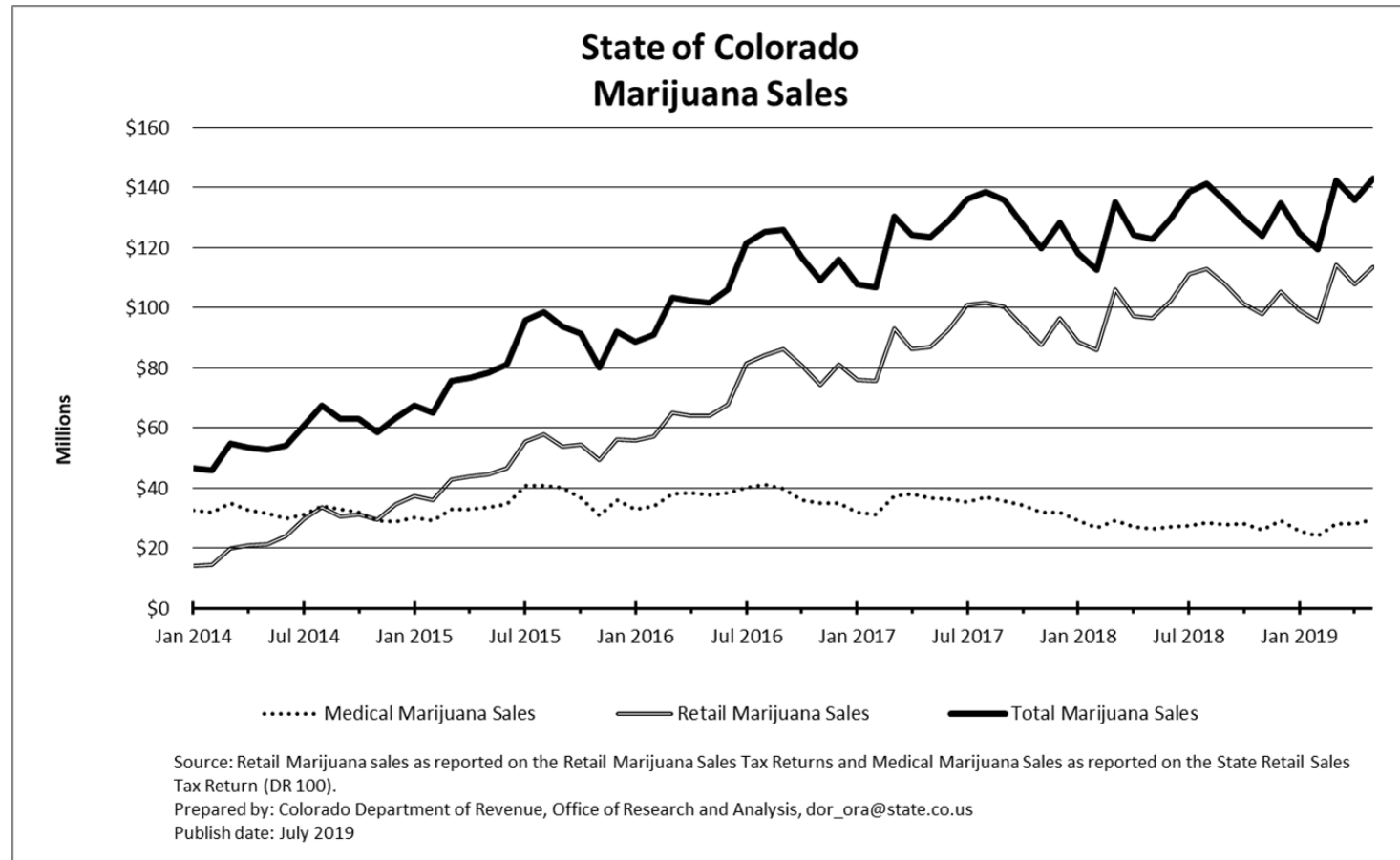


2001

# A History of Regulation in Colorado



# The Revenue High



# Marijuana Sales by Year and To Date

| Calendar Year  | Total Marijuana Sales | Total to Date   |
|----------------|-----------------------|-----------------|
| 2014           | 683,523,739           | \$683,523,739   |
| 2015           | \$995,591,255         | \$1,679,114,994 |
| 2016           | \$1,307,203,473       | \$2,986,318,467 |
| 2017           | \$1,507,702,219       | 4,494,020,686   |
| 2018           | \$1,545,691,080       | \$6,039,711,766 |
| 2019 (Jan-May) | \$665,687,186         | \$6,705,398,952 |

# Colorado's Marijuana Taxation Approach

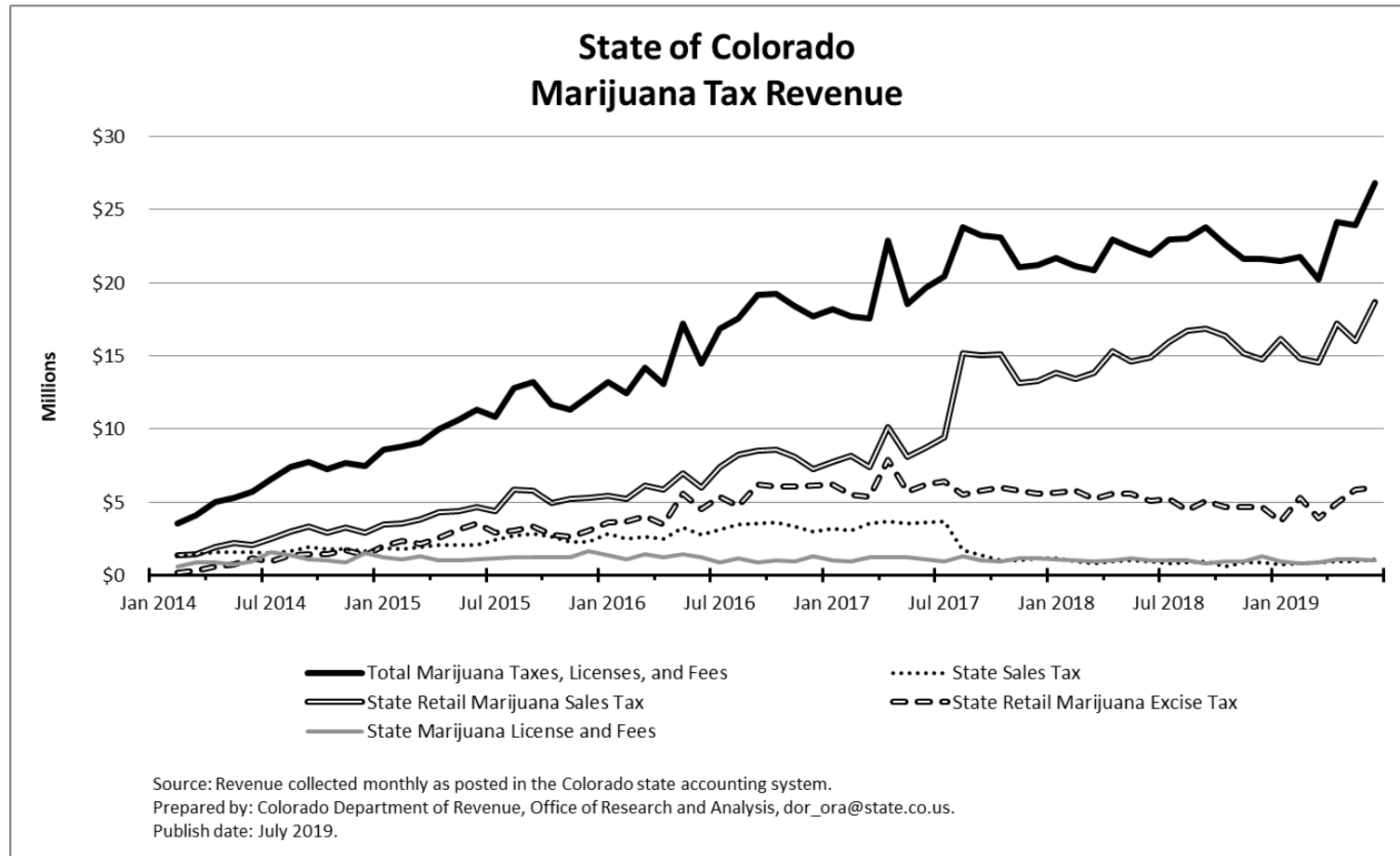
- ▶ 2.9% state sales tax on medical marijuana and retail marijuana
  - ▶ Retail marijuana is exempt from the state sales tax starting July 1, 2017
  - ▶ The first report reflecting this exemption is August 2017
- ▶ State retail marijuana sales tax
  - ▶ 10% rate from January 1, 2014 - June 30, 2017; 15% rate starting July 1, 2017
  - ▶ The first report reflecting the 15% rate is August 2017
- ▶ 15% state retail marijuana excise tax
- ▶ Marijuana application and license fees



# Colorado Marijuana Revenue July 2019

|             |   | June 2019<br>Remitted | Fiscal<br>Year-to-Date<br>FY2018-19 <sup>2</sup> | Calendar<br>Year-to-Date<br>CY2019 <sup>3</sup> |
|-------------|---|-----------------------|--|---|
| <b>Line</b> | <b>TAXES</b>  |                       |  |   |
| 1           | State Sales Tax Transfer to Marijuana Tax Cash Fund (2.9% rate) (2+3)                 | \$1,121,264           | \$10,420,002                                     | \$5,466,512                                     |
| 2           | Medical Marijuana   | \$931,414             | \$9,379,282                                      | \$4,707,840                                     |
| 3           | Retail Marijuana <sup>4</sup>   | \$189,850             | \$1,040,721                                      | \$758,672                                       |
| 4           | State Retail Marijuana Sales Tax (15% rate) (5+6+10)                                  | \$18,698,640          | \$193,309,398                                    | \$97,430,886                                    |
| 5           | Local Government Distribution (10% of Total)  | \$1,863,668           | \$19,324,469                                     | \$9,738,915                                     |
| 6           | Total Retained by the State (90% of Total) (7+8+9)                                    | \$16,767,827          | \$173,909,856                                    | \$87,644,754                                    |
| 7           | Marijuana Tax Cash Fund Transfer <sup>5</sup>   | \$12,047,684          | \$124,954,232                                    | \$62,972,756                                    |
| 8           | Public School Fund <sup>5</sup>   | \$2,111,069           | \$20,088,462                                     | \$11,034,474                                    |
| 9           | General Fund <sup>5</sup>   | \$2,609,074           | \$28,867,163                                     | \$13,637,524                                    |
| 10          | Collections Not Yet Allocated <sup>6</sup>  | \$67,145              | \$75,073   | \$47,218  |
| 11          | State Retail Marijuana Excise Tax (15% rate) (12+13+14)                               | \$6,004,970           | \$58,447,349                                     | \$29,680,786                                    |
| 12          | Public School Capital Construction Assistance Fund Transfer <sup>7</sup>              | \$5,360,466           | \$52,648,440                                     | \$24,614,992                                    |
| 13          | Public School Fund <sup>7</sup>   | \$595,607             | \$5,849,826                                      | \$5,849,826                                     |
| 14          | Collections Not Yet Allocated <sup>6</sup>  | \$48,897              | (\$50,917)                                       | (\$784,032)                                     |
| 15          | Total Marijuana Tax Transfers and Distributions <sup>8</sup> (1+4+11)                 | \$25,824,874          | \$262,176,749                                    | \$132,578,185                                   |
|             | <b>LICENSES AND FEES</b>  |                       |  |   |
| 16          | License and Application Fees Transfer to Marijuana License Cash Fund (17+18+19+20+21) | \$1,016,198           | \$11,874,019                                     | \$5,874,608                                     |
| 17          | Medical Marijuana   | \$389,589             | \$3,678,153                                      | \$1,877,968                                     |
| 18          | Retail Marijuana  | \$317,770             | \$4,467,535                                      | \$2,160,326                                     |
| 19          | Individual  | \$316,391             | \$3,719,617                                      | \$1,915,791                                     |
| 20          | Others  | \$0                   | \$7,800  | \$1,550   |
| 21          | Collections Not Yet Allocated <sup>6</sup>  | (\$7,552)             | \$914  | (\$81,027)                                      |
|             | <b>TAXES, LICENSES, AND FEES TOTALS</b>   |                       |  |   |
| 22          | Total Marijuana Tax and License Cash Fund Transfers <sup>8</sup> (1+7+16)             | \$14,185,146          | \$147,248,253                                    | \$74,313,876                                    |
| 23          | Total All Marijuana Taxes, Licenses, and Fees <sup>8</sup> (15+16)                    | \$26,841,073          | \$274,050,768                                    | \$138,452,793                                   |

# Colorado Marijuana Tax Revenues



## Marijuana Tax, License and Fee Revenue by calendar year

| Calendar Year    | Revenue By Calendar Year | Total Revenue Since Feb 2014 |
|------------------|--------------------------|------------------------------|
| 2014 (Feb - Dec) | 7,594,323                | \$67,597,323                 |
| 2015             | \$130,411,173            | \$198,005,496                |
| 2016             | \$193,604,810            | \$391,610,306                |
| 2017             | \$247,368,473            | \$638,978,779                |
| 2018             | \$266,529,637            | 905,508,416                  |
| 2019 (Jan - Jun) | \$138,452,793            | \$1,043,961,209              |

# License Types for Medical and Recreational Marijuana

- ▶ Cultivations
- ▶ Infused Product Manufacturers
- ▶ Testing Facilities
- ▶ Transporters
- ▶ Operators
- ▶ Centers/Stores

# Medical Marijuana Business License Numbers as of August 1, 2019

- ▶ 454 Centers
- ▶ 501 Cultivations
- ▶ 224 Infused Product Manufacturers
- ▶ 11 Testing Facilities
- ▶ 6 Operators
- ▶ 9 Transporters
- ▶ 1 Research and Development Cultivation

## Individual Licenses as of August 1, 2019

- ▶ 1,681 Associated Key (Owners)
- ▶ 13,584 Key Occupational
- ▶ 25,612 Support Occupational

## Retail/Recreational Marijuana Business License Numbers as of August 1, 2019

- ▶ 571 Centers
- ▶ 698 Cultivations
- ▶ 287 Product Manufacturers
- ▶ 13 Testing Facilities
- ▶ 8 Operators
- ▶ 13 Transporters

# Sales Tax

- ▶ Medical Marijuana is subject to the 2.9% standard state sales tax and any local jurisdiction sales tax, and in some instances, special district sales taxes as well
- ▶ Recreational Marijuana was subject to the 2.9% standard states sales tax but in July 2017 the legislature exempted it from the standard state sales tax and instead subjected it to the special 15% Marijuana sales tax. In addition, it is subject to local and in some instances special district sales taxes.
- ▶ All non-marijuana based products, lighters, ashtrays, and T-shirts, etc. are subject to the standard state and local sales taxes.
- ❖ What went well? The involvement of industry representatives in the process of user testing the new system and in visiting the CoDoR in person to file their first few returns so we could walk them through the process.



# Excise Tax

- ▶ Based upon an Average Market Rate when vertically integrated or Actual Cost on Arm's Length Transactions.
- ▶ Rate is 15%
- ▶ Tax is imposed when transferred from a cultivation to a retail store or when transferred to a Product Manufacturer, not when immature plants are transferred from one cultivation to another because the plant is not yet harvestable thus it is not yet at full value.
- ❖ Lesson Learned: Use AMR only when absolutely necessary and only for as short of a timeframe as is possible.

## Average Market Rate by Excise Tax Category July 1 to September 30, 2019

| Type                               | Cost            |
|------------------------------------|-----------------|
| Retail Bud Rate                    | \$850 per pound |
| Retail Trim Rate                   | \$325 per pound |
| Retail Immature Plant Rate         | \$8 per plant   |
| Wet Whole Plant Rate               | \$152 per pound |
| Seed Rate                          | \$4 per seed    |
| Trim Allocated for Extraction Rate | \$177 per pound |
| Bud Allocated for Extraction Rate  | \$227 per pound |

## Uses of Revenue from Marijuana Taxation

- ▶ For Fiscal Year (FY) 2015-16, the first \$40M of the Retail Marijuana Excise Tax revenue was distributed to the Public School Capital Construction Assistance Fund administered by the Colorado Department of Education's Building Excellent Schools Today (BEST) program. Excise tax collections in excess of \$40M, \$2.5M for FY 2015-16, were transferred to the Public School Fund.
- ▶ For FY 2016-17, the first \$40M of the Retail Marijuana Excise Tax revenue was distributed to the Public School Capital Construction Assistance Fund administered by the Colorado Department of Education's Building Excellent Schools Today (BEST) program. Excise tax collections in excess of \$40M, \$31.6M for FY 2016-17, were transferred to the Public School Fund.
- ▶ In addition the revenue generated from marijuana sales is used to fund regulation and oversight of the industry.

# Conclusion

- ▶ In closing, let me say that there is much more data that needs to be gathered and analyzed before we can determine the full effects of legalization. However, it should be noted that there has been a thriving underground market in marijuana for decades. It is simply too early to conclude from a sociological perspective the effects of legalization.
- ▶ I realize that I am not an objective observer; however, I believe that Colorado's implementation of Legal recreational marijuana sales was as seamless and transparent as possible and that we faithfully discharged our duty to the people of the state
- ▶ Some may argue the ethics or morality of legalization, that is not my purpose or intent. Rather I am here to tell you that we did one heck of a good job with very limited lead time and with the eyes of the entire world upon us.
- ❖ Lesson Learned: Be willing to accept new information from multiple valid sources and look for ways to solve problems in a mutually satisfactory fashion. Operate in good faith and in a transparent way.