

MARIJUANA TAX REVENUE ALLOCATION: IMPLICATIONS OF SENATE BILL 442

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INTRODUCTION

The topic of marijuana tax revenue has been in the news several times over the last couple months, as the fate of [Senate Bill 442](#) (SB 442) from the 2023 legislative session is still unresolved. SB 442, sponsored by Sen. Mike Lang, R-Malta, was passed by the Legislature and sent to the governor's desk on May 2, 2023, which happened to be the final day of session. The governor vetoed the bill, but did so shortly before the Senate adjourned and before the House did, which created confusion on whether or not the Legislature could override the veto.

Since Sine Die, the courts have been analyzing the situation, and in mid-January, a District Court judge issued an order in favor of the Legislature and directed the secretary of state to move forward with a poll to override the veto.

The state still has time to appeal the order, and even if the appeal is denied, the veto override may fail. However, if the veto override should prevail, SB 442 could go into effect, changing the distribution of marijuana tax revenue, starting with the 2024 fiscal year. What that actually means, though, deserves a little more explanation.

PRESENT LAW

Present law provides for the distribution of taxes and fees collected by the Department of Revenue (DOR) related to medical and recreational marijuana in [16-12-111](#), MCA. At the end of each fiscal year (June 30), the DOR transfers money collected in a specific order to designated accounts, after reserving 3 months of operating expenses. The first \$6 million goes to the Healing and Ending Addiction through Recovery and Treatment (HEART) fund, and the net balance is distributed to accounts specified for the following benefit:

- 20% for funding wildlife habitat
- 4% each for state parks, trails and recreational facilities, and nongame wildlife
- The lesser of 3% or \$200,000 for veterans and surviving spouses
- \$150,000 for the Board of Crime Control
- The remainder to the General Fund

In fiscal year 2023, the DOR collected \$56,440,000¹ in taxes and fees.

¹ As reported by the Legislative Fiscal Division

SENATE BILL 442

SB 442 revises the allocation of marijuana tax revenue to include distribution to the Department of Transportation to fund county road construction and maintenance. Additionally, the bill revised some of the allocation percentages to the existing funds in 16-12-111, MCA.

Present Law (MCA 16-12-111)		SB 442 Amendments		
Account	Allocation	Account	Allocation	Change?
DOR Operating Reserve	3 months	DOR Operating Reserve	3 months	No
HEART Fund	\$6 million	HEART Fund	11%	Yes
Wildlife Habitat	20%	Wildlife Habitat	20%	No
State Park Account	4%	State Park Account	4%	No
Trails & Recreation	4%	Trails & Recreation	4%	No
Nongame Wildlife	4%	Nongame Wildlife	4%	No
Veterans	> \$200k or 3%	Veterans	5%	Yes
Board of Crime	\$150k	Board of Crime	0.2%	Yes
General Fund	Remainder	General Fund	Remainder	Yes
		County Roads (NEW)	20%	Yes

Looking at the table above, the major changes to the revenue distribution are the new 20% distribution to the county roads special account and reduction to the general fund. Additionally, the HEART fund changed from a flat rate distribution to a percentage, which means the distribution would be in flux in any given fiscal year, depending on the collections. Notably, since present law requires the distribution for the veterans and surviving spouses account to receive the lesser of \$200,000 or 3%, a new distribution of 5% may result in a significant increase in distribution for that account if collections continue at current trends.

SB 442 is currently under litigation and therefore is not law. Were it to be enacted even now, the effective date on the bill is July 1, 2023, which is the beginning of fiscal year 2024, meaning any marijuana revenue distribution under SB 442 would only occur for marijuana tax and fee collections from July 1, 2023, forward.

However, using data from fiscal year 2023 for illustration purposes only, the table on the following page shows what the marijuana revenue distribution would look like under SB 442 compared to present law:

FY 2023 TAXES & FEES COLLECTED	\$56,440,00
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Distribution Scenarios based on FY 2023 Marijuana Tax/Fee Collections

Account	Present Law	SB 442 Amendments	Change (\$)	Change (%)
DOR Operating Reserve	\$4,140,000	\$4,140,000	\$0	0%
HEART Fund	\$6,000,000	\$5,753,000	\$(247,000)	-4%
<i>Net Balance</i>	\$46,300,000	\$52,300,000		
Wildlife Habitat	\$9,260,000	\$10,460,000	\$1,200,000	13%
State Park Account	\$1,852,000	\$2,092,000	\$240,000	13%
Trails & Recreation	\$1,852,000	\$2,092,000	\$240,000	13%
Nongame Wildlife	\$1,852,000	\$2,092,000	\$240,000	13%
Veterans	\$200,000	\$2,615,000	\$2,415,000	1208%
Board of Crime	\$150,000	\$104,600	\$(45,400)	-30%
General Fund	\$31,134,000	\$10,460,000	\$(20,674,000)	-66%
County Roads (NEW)	\$0	\$16,631,400	\$16,631,400	n/a

In this hypothetical distribution, since the remainder of the collections go to the general fund, the addition of the county roads special account and adjustments to other accounts result in the general fund distribution of roughly half of what it received under present law. The Board of Crime Control and HEART fund both decreased, however all the other accounts increased by at least 10%.

COUNTY ROADS DISTRIBUTION

The distribution of the County Roads fund is not as simple as dividing the revenue by the number of counties. The allocation of revenue for the new distribution to the County Roads fund is established in SB 442 and follows a calculation based on the road miles, state and federal land area, and block management acres in counties and consolidated city-counties. The amount of funds received is appropriated² to the Department of Transportation and must be divided among the various counties and consolidated city-counties as follows³:

- 50% in the ratio that the rural road mileage in each county or consolidated city-county, exclusive of the national highway system and primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;
- 25% in the ratio that the total number of acres of property enrolled in the block management program established in [87-1-265](#), MCA of each county or consolidated city-county bears to the total number of acres enrolled in the block management program established in [87-1-265](#), MCA in the state; and

² [HB 868 \(2023\)](#) provides coordination language that appropriates these funds.

³ SB 442: Section 3. 15-70-101(4)(a), 15-70-101(4)(b), and 15-70-101(4)(c)

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- 25% in the ratio that the total state and federal land area of each county or consolidated city-county bears to the total state and federal land area of the state.

Put in other terms, the revenue deposited into the County Roads fund first goes into three buckets: Rural Roads, Block Management Acres, and Federal and Trust Acres. Half of the revenue is deposited into the Rural Roads bucket, and 25% each into of the Block Management Acres and Federal and Trust Acres buckets.

The formula using the fiscal year 2023 marijuana tax allocation would be as follows⁴:

Marijuana Tax/Fee Distributions for County Roads

Total Allocation	Roads (50%)	BMA/WMA (25%)	Fed & Trust Lands (25%)
\$10,460,000	\$5,230,000	\$2,615,000	\$2,615,000

The statewide totals for each of the three "buckets" are as follows:

- Rural roads: 58,331 miles
- BMA/WMA: 6,821,494 acres
- Fed & Trust: 32,546,827 acres

Each county then receives a percentage of each of the buckets of revenue relative to the amount of either roads or acres that county possesses in the respective bucket. Below are some examples of distribution from counties (either large population counties or counties that would receive large allocations of revenue).

See appendix A for all counties.

County	Rural Roads (miles)	Distribution Roads	BMA + WMA Acres	Distribution - BMA Acres	Fed & Trust Acres	Distribution - Fed/Trust Acres	Total Distribution
Beaverhead	1,630	\$146,104	144,628	\$55,443	2,385,723	\$191,682	\$393,229
Blaine	1,289	\$115,513	372,809	\$142,915	598,932	\$48,1212	\$306,550
Cascade	1,454	\$130,359	194,013	\$74,374	293,921	\$23,615	\$228,348
Flathead	2,674	\$239,675	120,867	\$46,334	2,575,637	\$206,942	\$492,950
Gallatin	1,602	\$143,620	11,752	\$4,505	482,654	\$62,883	\$211,008
L & C	1,373	\$123,074	206,890	\$79,311	1,208,330	\$97,084	\$299,469
Lincoln	2,345	\$210,286	33,834	\$12,970	1,813,007	\$145,667	\$368,924
Missoula	1,651	\$148,064	111,988	\$42,930	970,329	\$77,962	\$268,957
Phillips	1,495	\$134,079	681,134	\$146,107	1,567,590	\$125,949	\$406,135
Ravalli	1,803	\$161,647	18,550	\$7,111	1,149,831	\$92,384	\$261,142
Silver Bow	381	\$34,166	32,983	\$12,644	247,898	\$199,18	\$66,728

⁴ Provided by the Legislative Services Division

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Valley	2,043	\$183,209	256,054	\$98,157	1,340,285	\$107,686	\$389,053
Yellowstone	1,498	\$134,330	90,285	\$34,610	149,820	\$12,037	\$180,978

Each county receives a distribution of marijuana tax revenue from the County Roads fund, regardless of the sales status of the county, meaning a county that has prohibited recreational marijuana sales and therefore does not generate state marijuana excise tax would still receive a distribution under SB 442. Using the same counties as in the previous table, and using fiscal year 2023 sales data, the following is a breakdown of each county as a percentage of its contribution to state marijuana tax revenue in fiscal year 2023 and the percentage of County Road fund distribution it would receive under SB 442:

County	Adult Use Marijuana Sales	% State MJ Tax	% County Road Distribution
Beaverhead	Prohibited	0.05% (Medical)	3.8%
Blaine	Allowed	0.55%	2.9%
Cascade	Allowed	6.25%	2.2%
Flathead	Allowed	10.49%	4.7%
Gallatin	Allowed	16.03%	2.0%
L & C	Allowed	6.67%	2.9%
Lincoln	Allowed	1.40%	3.5%
Missoula	Allowed	13.03%	2.6%
Phillips	Prohibited	0.00%	3.9%
Ravalli	Allowed	2.76%	2.5%
Silver Bow	Allowed	4.55%	0.6%
Valley	Allowed	0.55%	3.7%
Yellowstone	Allowed	16.43%	1.7%

Of the "Red" counties – the counties in which recreational marijuana sales are prohibited and had 0% contribution of marijuana state tax revenue, the county roads revenue distribution ranged from 0.5% (Wibaux) to 3.9% (Phillips). The "Green" counties range in both contribution of tax revenue (0.13% in Deer Lodge – 16.43% in Yellowstone) to revenue distribution (0.6% in Silver Bow – 4.7% in Flathead).

Appendix B includes a table and map showing all counties with FY2023 marijuana tax revenue and county road distribution under SB442.

CONCLUSION

SB 442 may never come to fruition – the state may decide to move forward with its appeal and win, or if not, and the poll goes out, there may not be enough votes after all to override the veto. But, if the override does prevail, the marijuana tax revenue distribution will adjust for at least fiscal year 2024. When the next legislative session convenes in 2025, legislators again will have an opportunity to review statutes and craft policies, meaning the marijuana tax distribution may see additional adjustments in the near future.

MARIJUANA TAX REVENUE ALLOCATION: IMPLICATIONS OF SENATE BILL 442

Appendix A: SB442 Roads Calculation Worksheet (Prepared 1/18/24)

Data compiled by Toni Henneman, Legislative Services Division
 Calculations based on hypothetical annual distribution using FY23 revenue

COUNTY	Off-Sys Roads	\$Distribution - Roads	BMA + WMA Acres	\$Distribution - BMA Acres	Fed & Trust Acres	\$Distribution - Fed/Trust Acres	Total Distribution	
BEAVERHEAD	1629.52	\$146,103.60	144627.52	\$55,442.55	2,385,723.25	191,682.7832	\$393,228.93	BEAVERHEAD
BIG HORN	859.94	\$77,102.34	12501.25	\$4,792.32	101,849.31	8,183.1617	\$90,077.82	BIG HORN
BLAINE	1288.34	\$115,512.75	372809.21	\$142,915.34	598,930.91	48,121.5681	\$306,549.66	BLAINE
BROADWATER	709.87	\$63,646.92	72325.03	\$27,725.59	312,199.92	25,083.9445	\$116,456.46	BROADWATER
CARBON	868.22	\$77,845.00	23497.97	\$9,007.88	614,976.36	49,410.7522	\$136,263.63	CARBON
CARTER	608.82	\$54,586.57	270140.57	\$103,557.61	737,266.40	59,236.2402	\$217,380.42	CARTER
CASCADE	1453.92	\$130,358.62	194013.29	\$74,374.44	293,920.76	23,615.2912	\$228,348.35	CASCADE
CHOUTEAU	1924.67	\$172,566.23	80304.79	\$30,784.61	420,724.58	33,803.4424	\$237,154.28	CHOUTEAU
CUSTER	728.75	\$65,339.71	227368.28	\$87,160.98	488,651.21	39,261.0601	\$191,761.75	CUSTER
DANIELS	780.14	\$69,947.63	87317.24	\$33,472.81	213,629.96	17,164.2647	\$120,584.70	DANIELS
DAWSON	1002.84	\$89,914.54	154339.65	\$59,165.66	151,134.13	12,142.9888	\$161,223.19	DAWSON
DEER LODGE	354.83	\$31,813.82	95776.98	\$36,715.83	223,453.06	17,953.5093	\$86,483.16	DEER LODGE
FALLON	679.15	\$60,892.56	166757.71	\$63,926.09	186,328.63	14,970.7182	\$139,789.37	FALLON
FERGUS	1570.94	\$140,850.94	186917.34	\$71,654.23	644,628.76	51,793.1973	\$264,298.37	FERGUS
FLATHEAD	2673.14	\$239,674.67	120867.41	\$46,334.18	2,575,636.61	206,941.5193	\$492,950.37	FLATHEAD
GALLATIN	1601.82	\$143,619.83	11752.44	\$4,505.26	782,654.24	62,882.9614	\$211,008.06	GALLATIN
GARFIELD	946.75	\$84,885.76	277620.36	\$106,424.97	968,268.11	77,796.2516	\$269,106.98	GARFIELD
GLACIER	768.16	\$68,873.32	2638.79	\$1,011.57	410,186.51	32,956.7530	\$102,841.64	GLACIER
GOLDEN VALLEY	451.90	\$40,517.69	101130.90	\$38,768.24	79,667.65	6,400.9591	\$85,686.89	GOLDEN VALLEY
GRANITE	710.36	\$63,691.04	41839.92	\$16,039.21	721,730.77	57,988.0180	\$137,718.27	GRANITE
HILL	1650.86	\$148,016.69	42118.23	\$16,145.90	202,514.35	16,271.1724	\$180,433.76	HILL
JEFFERSON	835.42	\$74,903.87	89762.11	\$34,410.51	584,327.84	46,948.2731	\$156,262.19	JEFFERSON
JUDITH BASIN	850.08	\$76,218.11	82445.14	\$31,605.11	408,525.11	32,823.2665	\$140,646.49	JUDITH BASIN
LAKE	1157.58	\$103,788.85	8432.25	\$3,232.48	247,601.40	19,893.7264	\$126,915.06	LAKE
LEWIS AND CLARK	1372.67	\$123,074.16	206889.84	\$79,310.63	1,208,330.37	97,084.2399	\$299,469.03	LEWIS AND CLARK
LIBERTY	844.76	\$75,741.66	160823.45	\$61,651.21	119,220.71	9,578.8803	\$146,971.75	LIBERTY
LINCOLN	2345.36	\$210,286.07	33833.59	\$12,970.01	1,813,007.26	145,667.4732	\$368,923.55	LINCOLN
MADISON	1322.84	\$118,606.12	116242.63	\$44,561.28	1,188,989.37	95,530.2723	\$258,697.67	MADISON
MCCONE	836.86	\$75,032.98	201069.84	\$77,079.55	368,607.18	29,616.0295	\$181,728.56	MCCONE
MEAGHER	507.62	\$45,513.75	112732.76	\$43,215.78	575,697.99	46,254.9011	\$134,984.43	MEAGHER
MINERAL	780.66	\$69,994.43	47374.24	\$18,160.78	669,042.22	53,754.7156	\$141,909.92	MINERAL
MISSOULA	1651.39	\$148,064.30	111988.31	\$42,930.40	970,329.14	77,961.8467	\$268,956.54	MISSOULA
MUSSELSHELL	636.47	\$57,065.77	173675.83	\$66,578.13	163,800.65	13,160.6902	\$136,804.59	MUSSELSHELL
PARK	945.07	\$84,735.04	27406.10	\$10,506.05	989,253.12	79,482.3085	\$174,723.40	PARK
PETROLEUM	468.49	\$42,004.80	240235.39	\$92,093.55	398,510.29	32,018.6181	\$166,116.97	PETROLEUM
PHILLIPS	1495.41	\$134,078.99	381133.84	\$146,106.57	1,567,589.89	125,949.2245	\$406,134.78	PHILLIPS
PONDERA	870.36	\$78,036.51	44760.91	\$17,158.97	168,098.88	13,506.0348	\$108,701.52	PONDERA
POWDER RIVER	696.66	\$62,462.96	102140.63	\$39,155.32	736,533.77	59,177.3765	\$160,795.65	POWDER RIVER
POWELL	640.24	\$57,404.23	215310.10	\$82,538.51	815,809.45	65,546.8424	\$205,489.58	POWELL
PRAIRIE	580.66	\$52,062.00	336158.49	\$128,865.39	508,788.44	40,879.0015	\$221,806.40	PRAIRIE
RAVALLI	1802.88	\$161,647.03	18549.82	\$7,111.02	1,149,830.99	92,384.0619	\$261,142.12	RAVALLI
RICHLAND	1147.17	\$102,855.84	149681.42	\$57,379.94	137,210.92	11,024.3177	\$171,260.10	RICHLAND
ROOSEVELT	1112.58	\$99,754.22	76871.21	\$29,468.36	24,187.77	1,943.3851	\$131,165.97	ROOSEVELT
ROSEBUD	1057.22	\$94,790.36	122157.19	\$46,828.61	498,723.31	40,070.3108	\$181,689.28	ROSEBUD
SANDERS	1087.82	\$97,534.05	11375.06	\$4,360.60	980,790.07	78,802.3382	\$180,696.99	SANDERS
SHERIDAN	1197.52	\$107,369.71	77294.29	\$29,630.54	46,927.80	3,770.4505	\$140,770.70	SHERIDAN
SILVER BOW	381.06	\$34,166.33	32982.96	\$12,643.92	247,898.07	19,917.5625	\$66,727.82	SILVER BOW
STILLWATER	938.09	\$84,109.21	66467.67	\$25,480.19	243,165.97	19,537.3583	\$129,126.76	STILLWATER
SWEET GRASS	500.26	\$44,853.85	6197.27	\$2,375.71	341,660.26	27,450.9583	\$74,680.51	SWEET GRASS
TETON	1367.52	\$122,612.68	93706.05	\$35,921.95	392,120.43	31,505.2198	\$190,039.85	TETON
TOOLE	1023.84	\$91,797.85	126192.54	\$48,375.55	143,087.70	11,496.4921	\$151,669.90	TOOLE
TREASURE	227.66	\$20,412.43	200050.45	\$76,688.77	36,957.82	2,969.4047	\$100,070.60	TREASURE
VALLEY	2043.37	\$183,209.36	256053.57	\$98,157.40	1,340,284.95	107,686.2329	\$389,053.00	VALLEY
WHEATLAND	403.85	\$36,209.33	86077.54	\$32,997.58	137,225.86	11,025.5181	\$80,232.43	WHEATLAND
WIBAUX	440.70	\$39,512.87	28471.39	\$10,914.43	60,796.43	4,884.7363	\$55,312.03	WIBAUX
YELLOWSTONE	1498.21	\$134,330.03	90284.78	\$34,610.41	149,819.64	12,037.3751	\$180,977.82	YELLOWSTONE
TOTALS	58331.25	\$5,230,000.00	6821493.53	2,615,000.00	32,546,826.55	\$2,615,000.00	\$10,460,000.00	

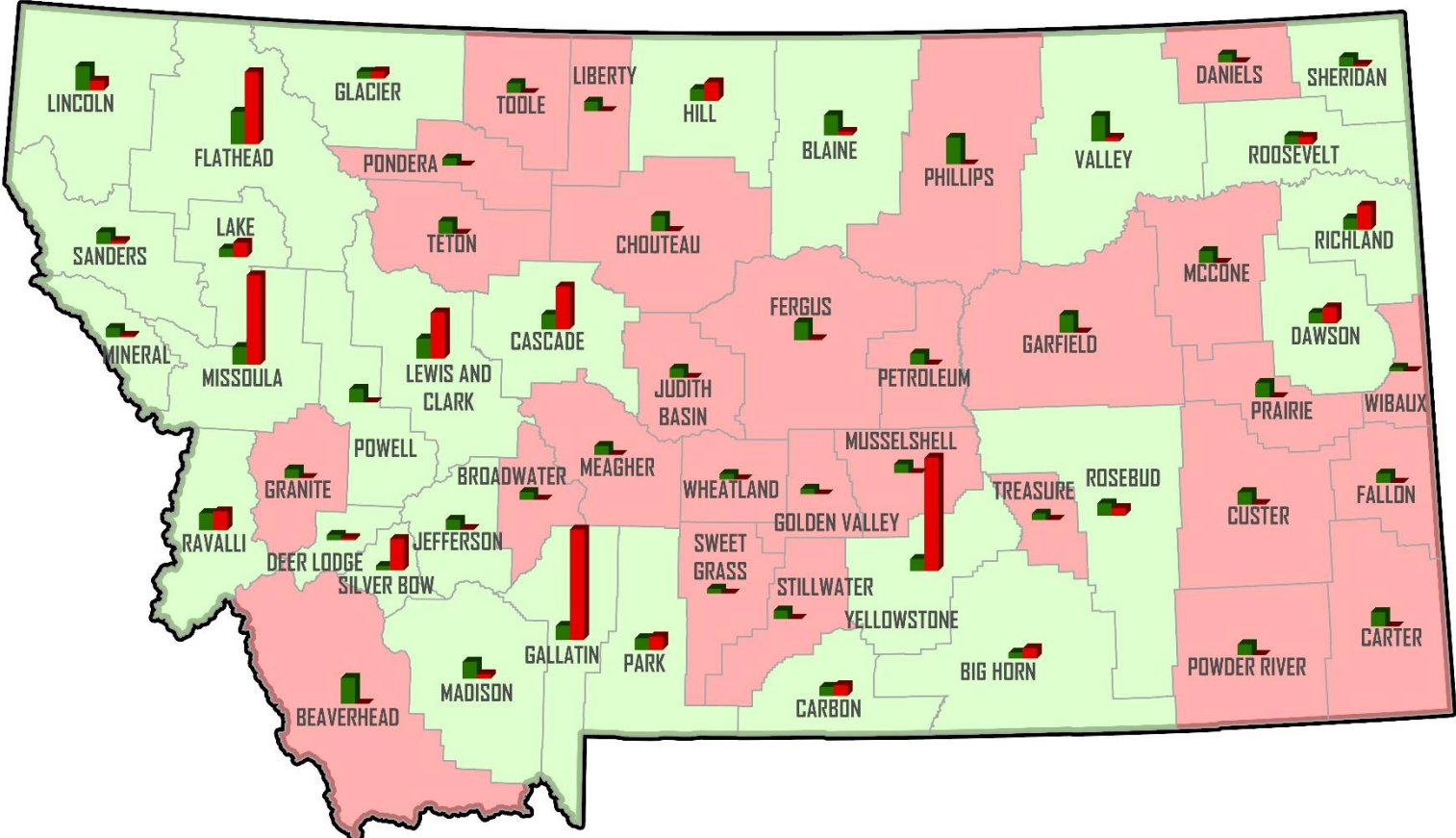
Appendix B: All counties marijuana state excise tax revenue contribution & county roads distribution

Data compiled by Dan Kayser, Legislative Services Division

County	% State MJ Tax	% County Road Distribution
BEAVERHEAD	0.05%	3.80%
BIG HORN	1.52%	0.90%
BLAINE	0.55%	2.90%
BROADWATER	0.02%	1.10%
CARBON	1.54%	1.30%
CARTER	0.00%	2.10%
CASCADE	6.25%	2.20%
CHOTEAU	0.02%	2.30%
CUSTER	0.12%	1.80%
DANIELS	0.00%	1.20%
DAWSON	2.33%	1.50%
DEER LODGE	0.35%	0.80%
FALLON	0.00%	1.30%
FERGUS	0.12%	2.50%
FLATHEAD	10.49%	4.70%
GALLATIN	16.03%	2.00%
GARFIELD	0.00%	2.60%
GLACIER	1.01%	1.00%
GOLDEN VALLEY	0.00%	0.80%
GRANITE	0.03%	1.30%
HILL	2.67%	1.70%
JEFFERSON	0.13%	1.50%
JUDITH BASIN	0.00%	1.30%
LAKE	2.13%	1.20%
LEWIS AND CLARK	6.67%	2.90%
LIBERTY	0.00%	1.40%
LINCOLN	1.40%	3.50%

County	% State MJ Tax	% County Road Distribution
MADISON	0.66%	2.50%
MCCONE	0.00%	1.70%
MEAGHER	0.00%	1.30%
MINERAL	0.25%	1.40%
MISSOULA	13.03%	2.60%
MUSSELSHELL	0.00%	1.30%
PARK	1.92%	1.70%
PETROLEUM	0.00%	1.60%
PHILLIPS	0.00%	3.90%
PONDERA	0.00%	1.00%
POWDER RIVER	0.00%	1.50%
POWELL	0.00%	2.10%
PRAIRIE	0.00%	2.10%
RAVALLI	2.76%	2.50%
RICHLAND	3.54%	1.60%
ROOSEVELT	1.08%	1.30%
ROSEBUD	1.05%	1.70%
SANDERS	0.46%	1.70%
SHERIDAN	0.27%	1.30%
SILVER BOW	4.55%	0.60%
STILLWATER	0.02%	1.20%
SWEET GRASS	0.00%	0.70%
TETON	0.00%	1.80%
TOOLE	0.00%	1.40%
TREASURE	0.00%	1.00%
VALLEY	0.55%	3.70%
WHEATLAND	0.00%	0.80%
WIBAUX	0.00%	0.50%
YELLOWSTONE	16.43%	1.70%

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Adult Marijuana Sales

- Allowed (28)
- Prohibited (28)

Marijuana Tax Revenues Generation & SB442 Distribution (FY 2023)

- % of Total Distribution_FY2023
- % of Total State MJ Tax_FY 2023

Map created by Dan Kayser, Data Analyst, Legislative Services Division