Legal Marijuana Sales in Colorado

Tax, Regulatory & Policy Considerations

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June 23, 2017
Recent History of Marijuana in Colorado

2000
- Medical Marijuana
- Colorado voters approve “Amendment 20” 53.5% Yes
- Colorado Constitution Article XVIII, section 14

2009
- Court decisions and regulatory changes open door to retail dispensaries for medical marijuana patients
- Legislation to regulate them adopted in 2010

2012
- Adult Use (“Recreational”) Marijuana
- Colorado voters approve “Amendment 64” 55% Yes
- Colorado Constitution Article XVIII, section 16
Welcome to Colorful Colorado
Amendment 20  (2000)

- Authorizes medicinal use upon physician recommendation for certain debilitating conditions, including chronic pain
- Creates affirmative defense against prosecution for registered patients and their caregivers
- Confidential patient registry at state Health Dept
- State Board of Health can expand list of medical conditions for which medical marijuana is allowed
- Limits quantities possessed & number of plants grown
- Doctor recommendation can waive quantity limits
- Kids under 18 require second physician opinion concurring in the recommendation
- Authorizes “caregivers” to acquire or cultivate for patients
Amendment 64 (2012)

- Legalized adult use for people age 21 and over
- Allows private cultivation, possession, use
- Limits # of plants, quantities of 1 ounce or less
- Directs legislature to enact licensing scheme
- Authorizes excise tax not to exceed 15% with first $40 million annually to benefit school construction fund
- “...regulated in a manner similar to alcohol”
Taxation of Marijuana

November 2009 Colorado Attorney General opinion determines marijuana to be “tangible goods” subject to state sales tax (2.9%)

Amendment 64 directs General Assembly to propose excise tax on adult use marijuana not to exceed 15% with the first $40 million in annual proceeds directed to school construction fund
Taxation of Marijuana

General Assembly refers tax proposal to General Election ballot for voter approval:

– sets excise tax at maximum 15%
– imposes additional increment of 10% sales tax with authority to increase or decrease without further voter approval provided tax does not exceed 15%
– 15% Local Shareback of sales tax with cities, counties

Voters approve Proposition AA in November 2013 by margin of 65 to 35%
Marijuana Tax Policy

-General Assembly enacts fiscal policy for marijuana tax revenue in 2014 (SB 14-215)
-Policy of spending money one year in arrears to avoid uncertainty in revenue projections
-Prefers spending on grants, avoid building marijuana revenues into operating budgets
-Marijuana Tax Cash Fund established to receive revenues and provide transparency to voters and taxpayers
Marijuana Tax Policy

🌿 Conservative approach: federal enforcement could end sales for medical and/or adult use

🌿 Revenue from 2.9% state sales tax on all marijuana sales also re-directed to Marijuana Tax Cash Fund

🌿 Excise tax revenues in excess of annual cap on school construction funding ($40 million) are dedicated to Public School Fund

🌿 2013 legislation makes IRC § 280E non-allowable business deductions allowed for state income tax
2017 Tax Policy Updates

🌿 Special Sales Tax raised to maximum allowable 15% rate

🌿 Retail marijuana exempted from 2.9% state sales tax *(medical marijuana, which is exempt from the special marijuana taxes, remains subject to state sales tax)*

🌿 Increased revenue pledged to school funding

🌿 Allowable purposes for MTCF appropriations expanded to behavioral health, housing, etc.
Marijuana Sales in Colorado

Dispensaries serving medical patients opened in 2009; medical marijuana sales are subject to 2.9% state sales tax but not additional taxes imposed by passage of Proposition AA.

Amendment 64 took effect in 2013, but did not authorize adult use retail sales until January 1, 2014, by which time Proposition AA taxes had been approved by voters.
Marijuana Sales in Colorado

$116.5 million = estimated total sales tax revenue to MTCF in FY 2016-17; compare to $88.8 million in FY 2015-16

$40 million in excise tax credited to school construction fund in FY 2016-17 plus $17.8 million projected spillover to Public School Fund

$188 million in total tax revenue FY 2016-17 if you include local shareback of sales tax
Marijuana sales reached $1.3 billion in Colorado in 2016

DENVER — Marijuana is now a billion-dollar industry in Colorado.

New numbers from the Department of Revenue show recreational and medical marijuana sales reached $1.3 billion in 2016.

Monthly sales went over $100 million in eight of the 12 months last year.
Marijuana Businesses in Colorado

As of June 30, 2016:

• 102 local jurisdictions license some type of marijuana business; 219 others do not
• 2,767 business licenses issued
• 56% medical; 44% are adult use businesses
• Over 30,000 people hold occupational licenses for employment in marijuana businesses
Marijuana Businesses in CO

- Licensed business types include cultivation, retail stores, infused product manufacturers, labs and transporters
- An industry-funded economic impact study released in October 2016 found $2.4 billion in economic impact and over 18,000 full-time direct and ancillary jobs in 2015
- Today: 650,000 plants are harvested and 750,000 units of marijuana-infused edibles sold each month
Allocation of Marijuana Sales Tax

4 Main Categories of MTCF Appropriations:

• Law Enforcement & Regulatory Oversight
  – Peace officer training, DUID enforcement, MED

• Substance Use Disorder Services
  – Jail-based programs, intensive/residential, CIRCLE

• Youth Programs
  – Grants to schools, district attorneys, non-profits

• Prevention, Public Education & Public Health
  – Impaired driving awareness, youth prevention, survey
Federal Policy


- Policy guidance to US Attorneys in states authorizing medicinal use of marijuana
- Avoid prosecution of persons found to be in “clear and unambiguous compliance with applicable state law.”
- Federal prosecution may be warranted in cases with firearms or violence, involving minors, money laundering and organized crime
Federal Policy

**Cole Memo**, US Dept of Justice, Aug. 29, 2013

- Updates federal policy guidance in light of state ballot initiatives legalizing adult use
- Establishes federal enforcement priorities:
  - Protect minors
  - Prevent organized crime, gangs and cartels
  - Prevent trafficking across state lines
  - Prevent impaired driving & health consequences
  - Prevent firearms and violence
  - Prevent cultivation and use on federal property
Spending Considerations

🌟 Responsive to public concerns:
  youth access, juvenile delinquency, public consumption & intoxication, impaired driving & traffic safety, consumer safety, business impacts

🌟 Responsive to federal policy concerns in Ogden & Cole Memos:
  tightly regulated, prevent organized crime, prevent trafficking across state lines, restrict youth access, promote highway safety
The Future of Federal Policy?
Risks to the Forecast

- Federal Policy Changes or Enforcement Actions
- Competition from new states joining the legal market; less tourism and in-migration
- Rapid expansion of capacity and infrastructure, increased efficiency all contribute to surplus production and inventory; prices continue to fall
- Current industry growth rate and increase in resulting tax revenues likely unsustainable
Policy Considerations

• Data Collection and Analysis
• Distinguish Medical vs. Recreational Use?
• Business Models and Regulatory Oversight
• Tax Policy and Allocation of Tax Revenue
• Local Government Role in Licensing, Zoning
• Impaired Driving Standards and Enforcement
• Banking Issues
Policy Considerations

• Grow Regulations, Pesticides and Lab Testing
• Edibles, Concentrates and Potency
• Health Consequences and Medical Research
• Housing Issues, Condominiums, Landlords
• Smoking Bans and Public Consumption
• Probationers and Parolees
• Juvenile Justice
• Child Endangerment, Parental Fitness
References

Senate Bill 14-215, Concerning the disposition of moneys collected by the state in connection with the legal marijuana industry


Colorado General Assembly, Joint Budget Committee, MTCF Allocation Briefing, Nov. 15, 2016

Colorado Dept of Revenue, Marijuana Enforcement Division Annual Report, Sept. 26, 2016
https://www.colorado.gov/pacific/sites/default/files/2015%20Annual%20Update%20FINAL%2009262016_1.pdf
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