Lessons from Other States from Colorado & Washington

NCSL Executive Committee Task Force on State & Local Taxation
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TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

1. 
2. 
3. 
4. 
5. Corporate Tax Issues
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TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

1.

2.

3. State Tax Trends

4. Property Taxes

5. Corporate Tax Issues
1. Sales Taxes
2. State Tax Trends
3. Property Taxes
4. Corporate Tax Issues
TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

1. Marijuana Taxes
2. Sales Taxes
3. State Tax Trends
4. Property Taxes
5. Corporate Tax Issues
• Structuring marijuana taxes
• Tax projections and results in Colorado & Washington
• Lessons learned
  • Recreational vs. Medical
  • State vs. Local
  • Health
  • Zoning
  • Criminal Penalty
MARIJUANA LEGALIZATION & TAXES

TAX HISTORY

- **1906**: Federal labeling law
- **1907-14**: CA, ME, MA, NY pass laws restricting purchase of habit-forming drugs, some specifying cannabis
- **1914**: Harrison Narcotics Tax Act: modest tax but hefty penalties for providing drugs to addicts (marijuana not included)
- **1915-29**: WY, TX, IA, NV, OR, WA, AR, NE, LA, CO pass laws restricting legal marijuana purchases
- **1925**: International Opium Convention bans international trade in hashish and derived products
- **1925**: Uniform Law Commission develops Uniform State Narcotic Act; all states adopt in some form by mid-1930s
- **1930**: Federal Bureau of Narcotics set up; cannabis a priority
- **1937**: Marihuana Tax Act imposes punitive tax on cannabis
- **1969**: Marihuana Tax Act ruled unconstitutional in *Leary v. U.S.*
MARIJUANA LEGALIZATION & TAXES

TAX HISTORY

- **1970**: Congress passes Controlled Substances Act and sets up Drug Enforcement Agency (DEA)
- **1980s**: States pass drug stamp tax laws with real purpose to levy tax-related interest and penalties on those arrested. Most have been overturned unless there is a “firewall” between revenue and drug enforcement personnel
- **1994 & 2001**: DEA declines to reschedule cannabis from Sch. I
- **1996**: California legalizes medical marijuana in Proposition 215
- **1998-2012**: AK, OR, WA, ME, CO, HI, NV, MT, VT, RI, NM, MI, AZ, DC, NJ, DE, CT, MA legalize medical marijuana
- **2012**: Colorado voters pass Amendment 64 (55 to 45) and Washington passes Initiative 502 (56 to 44) to legalize marijuana
- **2016**: Five more states will vote on marijuana legalization ballot measures (Arizona, California, Maine, Massachusetts, Nevada)
MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES

GASOLINE PRICE INCLUDES

48.55¢ Per Gallon Tax
30.15¢ NC Tax*
18.4¢ Federal Tax

*State Tax Rates change semi-annually. Rate Based on Jan. 1, 2006 figures.
Brought to you by NC Petroleum Marketers Association Fueling North Carolina’s Future.

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<th>Tax &amp; Fees</th>
<th>Amount</th>
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<td><strong>Total Tax &amp; Fees</strong></td>
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MARIJUANA LEGALIZATION & TAXES
STRUCTURING MARIJUANA TAXES
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STRUCTURING MARIJUANA TAXES

• **Who Collects?** Grower vs. Processor vs. Retailer.

• **How Imposed?** Per Item vs. Per THC content vs. Percentage of Price

• **How High?** Raising Revenue vs. Discouraging Black Market
**Who Collects?** Grower vs. Processor vs. Retailer.

- Colorado taxes at retail sale (15% wholesale and 10% retail).
- Washington started bytaxing all three levels (25% at each level) but in 2015 changed to just tax at retail level. (Vertical integration of some sellers led to inequity.)
- Oregon will tax at retail sale, while Alaska is still figuring it out. All pending ballot measures are percentage of the price.
How Imposed? Per Item vs. Per THC content vs. Percentage of Price

All states have settled on percentage of the price. (Alaska still debating.) Oregon was going to tax per flower, per leaf, per plant but dropped that.

Per Item untenable due to variety of forms.

Per THC content untenable because it would require frequent testing, and results can vary somewhat.
MARIJUANA LEGALIZATION & TAXES
STRUCTURING MARIJUANA TAXES

• **How High?** Raising Revenue vs. Discouraging Black Market

  - Colorado had ~29% plus sales tax (15% wholesale + 10% retail). 10% tax drops to 8% in July 2017
    - Denver also imposes local 3.5% excise tax
    - Compares to 31% on cigarettes and 8% on beer

  - Washington had ~37% (25% at all three levels). Replaced with flat 37% retail tax in July 2015.
    - Compares to 104% on cigarettes and 11% on beer

  - Oregon currently 25% but dropping to 17%.

  - Ballot initiatives this year all under 15%.
Excise Taxes on Recreational Marijuana

Note: *Effective tax rate for the 10% retail tax and 15% wholesale tax. Retail tax drops to 8% in mid-2017.
**Alaska’s ballot initiative imposes a $50 per ounce of flower or bud, and $15 per ounce. However, officials are considering replacing that tax with a percentage retail tax.
Colorado initiative supporters projected $70m per year; first $40m dedicated to school construction. Sales began January 1, 2014.

- 2014: $56m tax on sales of $304m
- 2015: $113m tax on sales of $568m
- 2016: ~$160m tax on sales of ~$880m
- Some TABOR implementation headaches
- July 2017: Tax reduction after July 2014 state study of effects on gray and black market (Demand of 130 metric tons vs. legal supply of 77 tons.) Visitors are 44% of market.
MARIJUANA LEGALIZATION & TAXES

Colorado Retail Marijuana Tax Revenue by Month

Source: Colorado Department of Revenue.
Washington initiative supporters said as much as $1.9 billion, with 40% going to state general fund and 60% for substance abuse prevention, research, education, and health care. 30% of revenue after first $25 million goes to local governments.

Slow start due to license approach (334 initially).
MARIJUANA LEGALIZATION & TAXES
TAX PROJECTIONS & RESULTS

- **Washington** sales began July 8, 2014.
  - FY 2016: $62m in excise taxes, $10m in sales taxes, $1.3m in business taxes, $3.6m in local sales taxes, all on $157m in sales
  - FY 2017: ~$270m in excise tax revenue
- “Seed to sale” inventory tracking & standards
- Challenge bringing unregulated medical into system
- Easing state zoning restrictions
- Tribal compact
Oregon sales began October 1, 2015.

Recreational sales to begin later this year, but existing medical marijuana facilities now able to sell to all adults, in hopes of stamping out black market. 25% tax

17% tax to take effect with Oregon Liquor Control Commission sets up regulatory regime this year.

Dispensaries keep 2% of collections for compensation

First estimates are ~$60m/year

DC cannot collect tax due to federal law. Was thinking 15%.

Alaska set as $50 per ounce at cultivation level. Considering a retail tax instead, perhaps 25%. Sales begin late 2016.
• Tax revenue estimates for each state based on extrapolated results from Colorado & Washington
• Nationwide between $5.3b to $8.8b
• Federal law remains restraint, with Section 280E, federal prosecution, and banking restrictions
MARIJUANA LEGALIZATION & TAXES

TAX PROJECTIONS & RESULTS

• All states mentioned have achieved legalization through ballot measures. Proponents are targeted that method.
  • Colorado and Washington legislators and officials had hands tied by ballot initiative and would have preferred legislative route.
• Vermont debated legislation this year but did not pass it.
• Five more ballot initiatives this November. Polling has proponents ahead in all but AZ (no poll yet).
  • Arizona (no proposition number yet) – 15% tax
  • California Proposition 64 – 15% tax
  • Maine Question 1 – 10% tax
  • Massachusetts Question 4 – 3.75% tax
  • Nevada Question 2 – 15% tax
MARIJUANA LEGALIZATION & TAXES
LESSONS FOR OTHER STATES

• Tax rate should not be so high as to prevent elimination of the black market.
• Taxes on final retail sales have proven the most workable form of taxation.
• Be conscious of the medical marijuana market.
• Be cautious with revenue estimates.
• Resolve health, agricultural, zoning, local enforcement, and criminal penalty issues.
Excise Taxes on Recreational Marijuana

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