

3.2 – Sales Tax

The Task Force recommends that the General Assembly consider and introduce a statutory referendum consistent with TABOR, asking the voters to amend Title 39 of the Colorado Revised Statutes to provide for a new Article entitled “Marijuana Products Sales Tax.” The General Assembly should make use of expertise and research available at the Office of State Planning and Budgeting, the Colorado Department of Revenue, the Colorado Legislative Council, and possibly a private firm with specific expertise in economic and/or dynamic modeling, to develop a reasonable sales tax rate and a robust new sales tax structure for marijuana products, to submit to Colorado voters for their consideration in the November 2013 state-wide election and to be effective on January 1, 2014 if approved by the voters.

Guiding Principles:

- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme

Justification:

An excise tax and application fees are expressly indicated in Amendment 64, but both are significantly restricted. The excise tax is capped at 15%, and the first \$40 million in annual excise tax revenue is earmarked for public school capital construction, while it has been estimated that it will take several years of major growth in this new industry for excise tax revenues to reach this level. Application fees are capped at \$500 for holders of existing medical marijuana licenses, who in the vertically-integrated regulatory framework recommended by this Task Force (see Recommendation 1.1) will have the exclusive right to apply for the adult-use licenses in the first year. These limitations on potential revenue could leave the new Marijuana Enforcement Division under-funded to handle its formidable new responsibilities.

The excise tax provision of Amendment 64 does not bar other taxing approaches, such as a special sales tax on marijuana, nor other types of fees, such as licensing fees. A special tax on marijuana would be consistent with the treatment of other commodities and activities, such as alcohol, tobacco, fuel, and gaming, which are used not only to fund industry-wide regulation and enforcement but also to raise revenue for other related state programs and services. A special sales tax on marijuana would allow the state to properly fund the

regulation and enforcement of the marijuana industry as well as other necessary and critical services and programs for Colorado citizens, including some of the proposals of this Task Force, for example to study the effects of marijuana legalization on public health and safety (see Recommendation 10.5) and to develop educational materials on marijuana use (see Recommendations 10.3 and 10.4).

The Task Force discussed a number of proposals for possible tax rates and different options regarding the optimal point in the production cycle at which to levy a special sales tax. One suggestion was to set the sales tax, by way of a vote of the people as per TABOR requirements, at no more than 25%, at the point of sale of marijuana products and paraphernalia, and to review the tax rate biennially with the possibility of ratcheting it down, which would not require another TABOR vote. This option would place the tax burden directly on the marijuana consumer and eliminate the incentive in a vertically integrated regulatory system, as has been proposed by the Task Force in Recommendation 1.1, to understate the price of marijuana or its products at the cultivation or production facility in order to reduce the tax. It would be more straightforward to calculate than if the tax were levied at an earlier point in the production cycle.

Some members of the Task Force believed that a 25% sales tax would be too high, encouraging the survival of the illegal market and increasing the incidence of home cultivation among private citizens. As such, the Task Force refrained from recommending a specific level and mode of tax, inviting the Colorado General Assembly to seek the needed information from state agencies and possibly also a private entity with expertise in economic modeling.

Implementing Authorities:

Colorado General Assembly, Office of State Planning and Budgeting, Colorado Department of Revenue, Colorado Legislative Council, private consulting firm with expertise in economic and/or dynamic modeling

3.3 – Excise Tax and Escalator

The Task Force recommends that the General Assembly consider and introduce a statutory referendum consistent with Amendment 64 (5)(d) and TABOR that should be voted on during the November 2013 state-wide election and be effective on January 1, 2014 if passed. The referendum should give the voters the opportunity to approve a 15% excise tax, calculated at the transaction point that a marijuana cultivation facility transfers any product to a marijuana production facility or retail store. As per Amendment 64, the referendum should further direct the first \$40 million in revenue raised annually to the Building Excellent Schools Today (BEST) program for school capital construction. The excise tax should be measured by an average market rate to be determined by the Colorado Department of Revenue on a bi-annual basis.

The Task Force further recommends that any referendum considered and introduced by the General Assembly in 2013 for an excise tax on marijuana should include a reasonable escalation clause that would take effect after 2017.

Guiding Principles:

- b. Be responsive to consumer needs and issues
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme
- i. Take action that is faithful to the text of Amendment 64

Justification:

Amendment 64 directs the Colorado General Assembly to pass an excise tax, a critical source of revenue for the state, on marijuana at the point of transfer from a cultivation facility to a product manufacturer or retail store. However, the first \$40 million of that revenue annually was earmarked in the Amendment for public school capital construction.

The tax should be measured by an average market rate when the marijuana is transferred from a cultivation facility to a production or retail facility, rather than by the stated value of the transaction or a flat rate by weight or volume, as for alcohol, in order to accurately account for its value and automatically adjust for inflation. These transfers will most often

take place between different marijuana facilities owned by a single owner or business under a vertically integrated regulatory system, as has been proposed by this Task Force in Recommendation 1.1. If the excise tax were valued based on the stated value of the transaction, these vertically-integrated businesses would be tempted to understate the price of the marijuana transferred, which would in turn inhibit the effectiveness of the tax and the amount of revenue that could be collected by the state. If it were priced by weight or volume, the effective tax rate would decline over time, as has been the case for excise taxes on alcohol, as the price of marijuana increases with inflation.

Amendment 64 caps the excise tax on adult-use marijuana at 15% until 2017. Adding an escalation clause is meant to avoid declining effective excise tax rates for marijuana over time, as has been the case with alcohol, for which excise taxes have not been raised in decades, nor even adjusted for inflation, due at least in part to the TABOR requirement that all tax increases be subject to a vote. An escalation clause builds in a mechanism for the excise tax on marijuana to increase after 2017 without having to engage in a second TABOR vote at that time.

Implementing Authorities:

Colorado General Assembly