

# Colorado Recreational Marijuana Sales – What a Long Strange Trip it's Been...

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# Legalization History and Background

- 2737 B.C. - Chinese Emperor Shen Nung writes of the psychoactive effects of the plant
- 500 A.D. – First European reference to the plant
- 1545 A.D. – Spanish explorers bring marijuana to the Americas
- 1611 – Jamestown settlers grew hemp alongside corn and tobacco
- 1619 – King James I orders every Jamestown colonist to grow 100 plants specifically for export
- 1907 – California outlaws possession and use
- 1937 – Marijuana Stamp Act made possession or transfer illegal under federal law
- 1970s – Decriminalization occurs throughout country
- 2000 – Colorado voters approve medical marijuana
- 2012 – November 6, Colorado voters pass Amendment 64, legalizing the recreational use of cannabis

# Initial Entrants

- January 1, 2014 – First legal sales of recreational marijuana occur
  - Initially only companies with licensed medical marijuana operations can enter recreational market
- July 1, 2014 – Started accepting application from non-medical marijuana businesses to sell recreational marijuana
- October 1, 2014 – First recreational marijuana sales from non-medical growers to occur

# The “Highs...”

- DOR providing hands-on, proactive taxpayer service
- Electronic filing requirement creates opportunities for improved communications
- Collections substantial (depending on your version of projections)
- Very few nonfilers

## DOR hands-on, proactive taxpayer service (classes, etc.)

- Department invited industry reps to a filing demo
- Sent letters to all new licensees with filing instructions

# Electronic filing requirement creates opportunities for improved communication

- Marijuana taxpayers are required to create online accounts
- DOR can immediately communicate messages to taxpayers, whether mass messages or individual account issues

# Revenues:

- \$41 million in total MJ-related taxes and fees through July 2014 sales
- Approximately \$22 million attributable to retail operations
- Revenues have been slowly increasing
- Originally, state predicted \$67 million in tax collections during year 1
- That forecast was later increased to \$115 million
- However, current revenues are tracking to the original \$67 million forecast

## Noncompliance almost non-existent, especially when compared to other taxes

- In recent months, about 98%+ required returns have been filed
- DOR is requiring newly licensed businesses to file zero returns even prior to their opening

# "Dazed and Confused"

- Average market rate over- and under-taxes some MJ products
- Some confusion with multiple-step license approval requirements (local, county, state, etc.)
- Medical growers receiving waivers to the 5-patient cap rule, allowing them to run commercial-size operations without the accompanying oversight and tax liability
- Industry has limited access to bank accounts, creating challenges with payments, audits, etc.
- Confusion over the exact impact of recreational tax rates on price and effect on black market
- The tax-free "one-time-transfer" can allow businesses to manipulate their inventory to avoid excise tax

# Average market rate over- and under-taxes some MJ products

- Excise tax calculated on the average market rate of the type of product (bud, trim, or whole plant)
- Cultivators specializing in lesser-quality products understandably have issues with the system
- As the vertical integration requirements are eliminated, there is an opportunity to revisit this approach

## The tax-free "one-time-transfer" can allow businesses to manipulate their inventory to avoid excise tax

- In order to have sufficient retail inventory upon opening, stores were allowed to transfer existing medical MJ onto their retail shelves
- Each retail store was allowed a one-time transfer of product that would not be subject to the 15% excise tax (any subsequent transfers are forbidden)
- Some businesses were able to transfer large amounts of product for the recreational kickoff— as a result total excise tax collections were low in the first couple months of retail sales

## Some confusion with multiple-step license approval requirements (local, county, state, etc.)

- New retail businesses are often required to be approved by multiple jurisdictions before being able to open
- This can be challenging for both the business and the governmental agencies to track

**Medical growers receiving waivers to the 5-patient cap rule, allowing them to run commercial-size operations without the accompanying oversight and tax liability**

- Original inflated projections of retail tax collections were based on a predicted “migration” of users from medical to retail industry
- This migration hasn’t happened, generating suspicion that some medical operations have expanded beyond the spirit of the law in order to accommodate a larger clientele and contribute to a gray market

# Industry has limited access to bank accounts, creating challenges with payments, audits, etc.

- Colorado passed legislation (HB 14-1398) allowing pot businesses to petition the Federal Reserve to allow “co-ops” of MJ businesses pooling their money
- The US Treasury has provided guidance to banks to legally provide services to MJ businesses
- Despite these efforts, banks aren’t yet fully on board
- Some MJ businesses are finding ways to use accounts, credit cards, etc.

## Confusion over the exact impact of recreational tax rates on price and effect on black market

- Recreational prices began 2-3 times higher than medical for the same products
- Industry and public often blame the high price on “taxes,” even though the rates (15% excise and 10% special sales) don’t begin to explain the inflated retail prices
- Others complain the high tax rates ensure the continuance of black market MJ sales

# Summary

- Public perceptions changed dramatically and suddenly
- Effects have been manageable and to some degree predictable
- Legal sales have gone well, supply is finding an equilibrium with demand
- Some loose ends to tie up
  - Product safety testing
  - Dosage limits
  - Banking issues need resolution