Colorado Recreational Marijuana Sales – Year 1 Update

FTA Tobacco Tax Section Annual Meeting
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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

Collections high (depending on your version of projections)

- $35 million in total MJ-related taxes and fees through May 2014 sales
- Approximately half attributable to retail operations
- Revenues have been slowly increasing
- Originally, state predicted $184 million in tax collections during initial 18 months, then backed off to a more achievable $79 million number

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 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 industry removes integration requirements, there is an opportunity to revisit this approach

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

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

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 (<u>any</u> 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