Financial Impact Estimating Conference

Use of Marijuana for Certain Medical Conditions
Serial Number 13-02

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Tab 10 (continued)

Analysis Data

Analysis Data

The following presents information on sales tax rates charged on medical marijuana.

Sales Tax Rates Charged on Medical Marijuana

State	Sales Tax Rate	Local Taxes	Other	Estimate of Taxes Generated
Arizona	6.6%			Unknown
California	7.5%	vary		up to $100 million
Colorado	2.9%	vary		state sales tax $5.4 million; local sales tax >$6.0 million
District of Columbia	6.0%			Unknown
Maine	5.0%		7.0% meals / rooms taxes for edibles	$265,655 in sales tax
New Jersey	7.0%			Unknown
New Mexico	gross receipts tax 5.125% to 8.8675% depending upon location			$650,402
Nevada	2.0% excise tax at wholesale and retail level			Unknown

Source: Marijuana Policy Project (MPP), *State Medical Marijuana Programs Financial Information* , last updated October 18, 2013

Medical Marijuana
Fee and Tax Report

February 3, 2012

Prepared by the Joint Fiscal Office

VT LEG 274974.1

Summary
The Joint Fiscal Office is required to report on the projected revenue from the new fees established last session for medical marijuana dispensaries and the feasibility of a sales tax on medical marijuana (see Appendix A). The Department of Public Safety (DPS) is also simultaneously required to report on the projected fee income and expenses for implementing the act (2011 Act No. 65) to establish medical marijuana dispensaries in Vermont.[1] Therefore, the first part of this report is a summary of the fee revenue and expenses from experience with the registry and projections for the newly enacted dispensary program, with much of this information obtained from the DPS report. The second part of the report contains information from other states with taxes applied to medical marijuana.

Medical Marijuana Fee Revenue and Expenses
There are two components of the fee revenue: the marijuana registry and the dispensary program. Since 2004, patients and caregivers have an annual $50 registration fee for the Vermont marijuana registry, which covers the costs of maintaining the registry at the DPS. The number of patients and caregivers has risen gradually, but with the implementation of the dispensary program, the numbers are expected to rise much more dramatically. The actual data to date suggest that the estimates provided last session were accurate (500 registered patients were projected, 411 have actually registered, and 70 registered caregivers were projected, and 68 have registered). The DPS expects the number of registered patients to reach the 1,000 maximum, which would almost double the revenue from these fees from approximately $22,750 in FY11 to $50,000.

Because the dispensary program has yet to be implemented, the estimates of the annual fee revenue from dispensary applications and licenses as well as the number of registered principals, board members, and employees are still projections and have not changed significantly. According to the DPS report, approximately $91,600 revenue is anticipated from these fees if the program is implemented in a timely manner. Together, the revenue from these two sources is anticipated to cover the costs of the program as outlined in the DPS report. DPS has delayed hiring the newly approved administrator positions in order to guarantee that the fee revenues will be sufficient to cover the program expenses. After actual data is available from the implementation of the dispensary program, DPS should be able to more accurately assess the ongoing fiscal balance within this program. These fees will become part of the annual fee bill in the protection to persons and property area of government, which is reviewed every three years, next in 2013.

Taxation of Medical Marijuana
There is not a consistent approach to the taxation of medical marijuana in states that have allowed its sale for regulated purposes. The decision to tax medical marijuana and the type of tax applied has been determined in an ad hoc manner. In a few states, the tax intent of medical marijuana has been incorporated into the original law regulating dispensaries, but in most states the determination of the tax treatment has lagged behind the other regulatory aspects of state law. The chart shows the tax treatment of medical marijuana in the nine states and District of Columbia which allow its sale through government-regulated dispensaries or similar establishments.

[1] See Appendix A for the report requirements

STATE TAXATION OF MEDICAL MARIJUANA (sales through dispensaries)

State	Law and Year Passed	Dispensaries	Tax Applied	Revenue Actual/Estimate
Arizona	Arizona Medical Marijuana Act (2010) Proposition 203	Up to 124 dispensaries, openings delayed - none operational	6.6% Sales Tax; AZ Attorney General announced taxable	$40 million sales tax estimate
California	Compassionate Use Act of 1996 Proposition 215 - voter initiative	Dispensaries and growing collectives licensed through local city or county business ordinances (500 - 1,000)	5.0% State Sales Tax; local sales taxes also Board of Equalization Special Notice - June 2007	$21.4 million; 2007 state estimate $58 - $105 million 2012 estimate
Colorado	Colorado Medical Marijuana Act (2010) Original voter initiative in Nov 2000	667 dispensaries as of 12/1/11	5.0% State Sales Tax	$5 million calendar year collections
Delaware	Delaware Medical Marijuana Act (2011)	3 Compassionate Care Centers	No sales tax; gross receipts tax (first $1.2 million of gross receipts exempt from tax)	None
Maine	An Act to Amend the Medical Marijuana Act (2010)	8 dispensaries	5% Sales Tax and 7% Meals & Rooms Tax Sales Tax added 2010; Meals by Dept Ruling	$500,000 sales tax estimate
New Jersey	New Jersey Compassionate Use Medical Marijuana Act (2010)	6 Alternative Treatment Centers (ATCs) approved, but not yet open	7% Sales Tax - (not sure if sales tax will apply)	None
New Mexico	The Lynn and Erin Compassionate Use Act (2010)	11 nonprofit dispensaries	Gross Receipts Tax – proposals to tax not passed	N/A
Rhode Island	The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (2009)	3 compassionate care centers	Compassion Center Surcharge - 4% of net patient revenue, paid monthly (RIGL Chapter 44-67-12) 7% Sales Tax will also be applied	No taxes colleced yet. $700K NPR estimate
Vermont	An Act Relating to Registering Four Nonprofit Organizations to dispense Marijuana for Symptom Relief (2011)	4 dispensaries	Tax treatment not explicit under current law	N/A
Washington D.C.	Amendment Act B18-622 - Council approved April 2010	10 dispensaries, separate cultivation centers	6% Sales Tax; District of Columbia City Council included sales tax in budget - June 15, 2010	$400,000 sales tax estimate over 4 years

Data compiled by JFO from a variety of sources.

There are a number of states that have decriminalized medical marijuana and have possession limits but do not allow for its sale within the state – these are not included in the chart. In most states, if a tax is applied, it is the sales and use tax, but one has applied the meals tax to some marijuana-food products and one a provider tax-type model. A few states have legal opinions determining that medical marijuana is taxable but do not allow for its legal sale, such as Washington State. Therefore, there is little experience and even less actual data on the potential revenue from the taxation of medical marijuana.

California, Colorado, and Maine are the only states with some history of sales tax collection and medical marijuana. Below is a brief discussion of each:

California

California was the earliest state to allow medical marijuana dispensaries in 1996 after a voter initiative which did not consider the tax status of medical marijuana. Dispensaries and growing collectives are licensed through local governments. The state's tax department, the State Board of Equalization, did not issue seller's permits (authority to for venders to sell tangible personal property) until its policy changed in October 2005 and it began issuing the permits to businesses, even if the only property being sold was illegal. A Special Notice issued in June of 2007 notified sellers that medical marijuana is considered taxable and is not exempt as a prescribed medication. Non-prescription medications are taxable in California. The projected revenue in 2007 was $21.4 million at the 5% state sales tax rate. Newer estimates place the state revenue between $58.0 million and $105.0 million from sales tax on medical marijuana.

Colorado

Colorado authorized dispensaries, with minimal state oversight, in November of 2000. Nine years later, in November 2009, the state's attorney general issued an opinion finding medical marijuana to be subject to the sales tax. The state began more regulation and oversight of dispensaries in general in 2010 and subsequently began tracking sales tax collections. In the calendar year between November 2010 and October 2011 the state collected $5.1 million in sales tax revenue from dispensaries. This tax revenue is not limited to medical marijuana, but may also include other taxable tangible personal property sold by these businesses as well. There were 667 dispensaries licensed as of December 1, 2011 and approximately 80,500 patients are registered in Colorado.

Maine

Maine began applying the sales tax in 2010 when its law was amended to allow dispensaries. It is estimated that approximately $500,000 of sales tax revenue will be collected from the eight authorized dispensaries. Subsequent to the law passing, the Tax Department also ruled that certain marijuana food products would also be subject to the state meals and rooms tax. There is no estimate on the revenue from the meals tax.

Other States

For a number of states in the chart, the authorization of medical marijuana dispensaries is relatively new, and many, although authorized, have not yet become operational or taxable. Arizona, Delaware, New Jersey, Rhode Island, Vermont, and Washington, D.C.

are all in the process of authorizing dispensaries. In a few of these places, the tax question was determined by the lawmakers or others in advance, while in several the issue of taxation remains unsettled. For example, in Arizona, the attorney general has announced that medical marijuana will be subject to the 6.6% sales tax when the state's dispensaries become operational. Rhode Island has in statute a 4% compassion center surcharge that operates similarly to a provider tax and has determined that the sales tax will also apply. Washington, D.C. voted to approve a sales tax on medical marijuana soon after the legislation approving dispensaries passed their City Council. Delaware, which has a gross receipts tax, New Jersey, and Vermont did not directly address the issue of taxation.

Vermont Summary

In Vermont, four dispensaries have been authorized, and the Department of Public Safety is working to implement the new law. It is anticipated that these facilities may open by the end of the year.

Although Vermont statute does not directly address the tax treatment of medical marijuana and no technical bulletins have been issued with regard to this issue by the Department of Taxes, it seems that medical marijuana will not likely be taxable. Vermont currently exempts both prescription and non-prescription drugs from the sales tax, along with dietary supplements, and medical marijuana may qualify under one of these existing definitions. The decision whether or not to apply taxes on medical marijuana should be made explicit in statute to avoid some of the issues experienced in other states. With the small number of dispensaries and existing state oversight, it would not appear to be administratively difficult to apply the sales tax to medical marijuana, and in some cases dispensaries may be required to collect the sales and use tax on other tangible personal property for sale in these establishments.

Based on the experience in other states, the estimated sales tax revenue from medical marijuana could range from $80,000 to $250,000 depending on a number of factors including the number of registered patients, the average sales price, the amount consumed, and if all four dispensaries are authorized. The lower range of the estimate is more likely in earlier years until the number of patients reaches higher levels. The cap on the number of registered patients at 1,000 is likely to limit the revenue potential.

APPENDIX A

Act No. 65. An act relating to registering four nonprofit organizations to dispense marijuana for symptom relief.

Sec. 2a. REPORT FROM THE DEPARTMENT OF PUBLIC SAFETY

The department of public safety shall report to the general assembly no later than January 1, 2012 on the following:
(1) The actual and projected income and costs for administering this act.
(2) Recommendations for how dispensaries could deliver marijuana to registered patients and their caregivers in a safe manner. Delivery to patients and caregivers is expressly forbidden until the general assembly takes affirmative action to permit delivery.
(3) Whether prohibiting growing marijuana for symptom relief by patients and their caregivers if the patient designates a dispensary interferes with patient access to marijuana for symptom relief and, if so, recommendations for regulating the ability of a patient and a caregiver to grow marijuana at the same time the patient has designated a dispensary.

Sec. 2b. JOINT FISCAL OFFICE REPORT

No later than January 15, 2012, the joint fiscal office shall report to the house committee on ways and means and the senate committee on finance regarding the projected costs of administering this act, the projected fee revenue from this act, the feasibility of a sales tax on marijuana sold through registered dispensaries, and any other information that would assist the committees in adopting policies that will encourage the viability of the dispensaries while remaining, at a minimum, revenue neutral to the state.

Appendix B
Attachments

1. Arizona Attorney General Opinion RE: Transaction Privilege Tax Upon Medical Marijuana Sales, July 7, 2011

2. California State Board of Equalization Special Notice June 2007

3. Colorado Attorney General Opinion, November 16, 2009

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by THOMAS C. HORNE ATTORNEY GENERAL July 7, 2011	No. I11-004 (R11-001) Re: Transaction Privilege Tax Upon Medical Marijuana Sales

To: The Hon. Scott Bundgaard
Arizona State Senate

Questions Presented

You have asked for an opinion on the following questions:

1. Does current law require the State to impose a transaction privilege tax upon the sale of medical marijuana in Arizona?

2. Do medical marijuana dispensaries have a valid Fifth Amendment defense for the failure to file transaction privilege tax returns and pay the tax that is due?

Summary Answer

1. Under current law, the proceeds of medical marijuana sales are taxable under the retail classification of the transaction privilege tax.

2. Even though the distribution of marijuana is a federal crime, medical marijuana dispensaries do not have a valid Fifth Amendment defense to a generally applicable requirement to file transaction privilege tax returns and pay the tax that is due.

Background

In the November 2010 general election, Arizona voters approved Proposition 203, the Arizona Medical Marijuana Act (the "Act"), which legalized the sale of marijuana for use by individuals with "chronic or debilitating diseases" under specified circumstances. While both the distribution and possession of marijuana remain criminal offenses under the Controlled Substances Act (21 U.S.C. §§ 801 through 971), marijuana sales that comply with the requirements established under the Act are permitted under Arizona law.

Analysis

I. Medical Marijuana Sales Proceeds Are Taxable Under the Retail Classification of the Transaction Privilege Tax.

The State of Arizona imposes a 6.6% transaction privilege tax on persons or entities engaged in taxable business classifications. Arizona Revised Statutes ("A.R.S.") § 42-5010; Ariz. Const. art. IX, § 12.1. The retail classification of the transaction privilege tax, more commonly known as the "sales tax," is established under A.R.S. § 42-5061, which in relevant part provides as follows:

> The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business.

The term "tangible personal property" is defined in A.R.S. § 42-5001(16) as "personal property which may be weighed, measured, felt or touched or is in any other manner perceptible to the senses." There can be no doubt that marijuana, which can be weighed, measured, felt,

touched, seen, tasted and smelled, falls within the scope of this definition. Moreover, "selling at retail" means "a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property." A.R.S. § 42-5061(V)(3). Therefore, medical marijuana dispensaries will be engaged in "the business of selling tangible personal property at retail," and unless an exemption applies, the proceeds of medical marijuana sales are taxable under the retail classification.[1]

While section 4 of the Act amended A.R.S. § 43-1201 to exempt medical marijuana dispensaries from income tax, there is no analogous provision in the Act exempting the proceeds of medical marijuana sales from the transaction privilege tax. Therefore, the Act itself does not shield these proceeds from sales tax.

Nor are these transactions exempt from sales tax under more generally applicable rules. In particular, medical marijuana sales proceeds do not constitute tax-exempt proceeds of income derived from the sale of prescription drugs under A.R.S. § 42-5061(8), because the Act does not contemplate prescriptions for medical marijuana. Instead, an individual applying for a registry identification card from the Arizona Department of Health Services must submit "written certification" from a physician specifying the patient's debilitating medical condition and stating that in the physician's professional opinion, the patient is likely to benefit from the medical use of marijuana. A.R.S. § 36-2801(18). Medical marijuana is not "prescribed" by a physician under these circumstances because the physician is not directing the patient to use marijuana. Moreover, in contrast to the fact pattern under which a physician writes a prescription that is

[1] Nothing in A.R.S. § 42-5061 limits the retail classification to business activities that are lawful, and, as a general proposition, an unlawful activity may be subject to tax. *Marchetti v. United States*, 390 U.S. 39, 44 (1968) (noting that the unlawfulness of an activity does not prevent its taxation). Therefore, even illegal sales of marijuana are currently subject to transaction privilege tax under the retail classification. For obvious reasons, however, criminal enterprises do not voluntarily disclose their sales revenues or otherwise comply with tax obligations.

delivered to a pharmacy, medical marijuana certification is submitted to the Arizona Department of Health Services, rather than to an organization that dispenses medical marijuana.

The fact that licensed physicians are prohibited under federal law from prescribing "Schedule I" controlled substances (as defined in § 812 of the Controlled Substances Act), including marijuana, further supports the conclusion that medical marijuana certification submitted to the Arizona Department of Health Services does not amount to a "prescription" for purposes of the prescription drug exemption established under A.R.S. § 42-5061(8).[2] And, it is well-settled law that tax exemptions are narrowly construed; therefore, it is unlikely that a court would broaden the scope of the prescription drug exemption to include medical marijuana certification. *Ariz. Dep't of Revenue v. Blue Line Distrib.*, 202 Ariz. 266, 266-67, ¶4, 43 P.3d 214, 214-15 (App. 2002) ("Tax exemption statutes are strictly construed against exemption.").

The only other retail transaction privilege tax exemption that could potentially apply to medical marijuana sales is the exemption set forth under A.R.S. § 42-5061(4) for sales of tangible personal property made by a federally recognized § 501(c)(3) charitable organization. While section 3 of the Act provides that medical marijuana can be lawfully dispensed only by nonprofit entities, it states that "[a] registered nonprofit medical marijuana dispensary need not be recognized as tax-exempt by the Internal Revenue Service." A.R.S. § 36-2806(A). This language implicitly recognizes that the distribution or dispensing of marijuana is a federal crime under the Controlled Substances Act, and it is therefore highly unlikely that the Internal Revenue

[2] In addition to meeting state law requirements, every person who dispenses a federally controlled substance must obtain registration from the United States Drug Enforcement Administration. 21 C.F.R. § 1301.11. This registration is available only for dispensing controlled substances listed on Schedules II, III, IV and V. 21 C.F.R. § 1301.13. Under the Controlled Substances Act, marijuana is listed as a Schedule I drug. 21 U.S.C. § 812(c). Therefore, marijuana cannot be dispensed under a prescription. *See also* 21 U.S.C. § 829 (governing "prescriptions" for controlled substances and establishing requirements associated with schedule II through V drugs only); *United States v. Oakland Cannabis Buyers' Co-op*, 532 U.S. 483, 492 n.5 (2001) (noting that Schedule I drugs cannot be dispensed under a prescription).

Service would grant § 501(c)(3) status to a medical marijuana dispensary. In the unlikely event, however, that (1) a medical marijuana dispensary invites federal scrutiny by applying to the Internal Revenue Service for § 501(c)(3) status, and (2) such an application is granted, the proceeds of medical marijuana sales at that dispensary would be exempt from transaction privilege tax under current Arizona law.

In summary, neither of the only two potentially applicable tax exemptions are likely to apply, and sales of medical marijuana should therefore be treated as taxable sales of tangible personal property sold at retail for purposes of A.R.S. § 42-5061.

II. Fifth Amendment Analysis.

The Act does nothing to alter the fact that the distribution of marijuana for any purpose, including medical treatment, is a federal crime. It is therefore possible that a medical marijuana dispensary would take the position that a requirement to submit transaction privilege tax returns to the Arizona Department of Revenue amounts to compelled self-incrimination, which is prohibited under the Fifth Amendment edict that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."

As discussed below, however, there is no valid Fifth Amendment defense to a generally applicable requirement to file transaction privilege tax returns.

A. The Fifth Amendment Applies Where There Is an Appreciable Threat of Prosecution.

As a threshold issue, the Fifth Amendment privilege may be invoked only where there are substantial and real, and not merely trifling or imaginary, hazards of self-incrimination. *Marchetti*, 390 U.S. at 53; *Brown v. Walker*, 161 U.S. 591, 599-600 (1896) (quoting *Queen v. Boyes*, 1 B. & S. 311, 330 (Q.B. 1861) ("[T]he danger to be apprehended must be real and appreciable . . . not a danger of an imaginary and unsubstantial character, having reference to

some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.")). Therefore, the Fifth Amendment privilege against self-incrimination may be invoked by the medical marijuana dispensaries only if the threat of federal prosecution is real and appreciable.

In a widely circulated memorandum dated October 19, 2009 (known as the "Ogden Memorandum"), the United States Department of Justice provided the following advice to federal prosecutors in states that have enacted laws authorizing the medical use of marijuana:

> [T]he disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department.[3]

While this memorandum may provide reassurance to medical marijuana users and their caregivers, it may not reflect an intent to permanently divert federal resources away from prosecuting medical marijuana clinics that are in compliance with state law, as indicated by the following language in a February 1, 2011, letter from the United States Department of Justice to the Oakland City Attorney:

> The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises

[3] A copy of this memorandum may be found on the website of the United States Department of Justice at http://blogs.usdoj.gov/blog/archives/192. On May 2, 2011, Arizona U.S. Attorney Dennis Burke issued a letter to the director of the Arizona Department of Health Services, Will Humble, reiterating the position taken in the Ogden Memorandum.

> that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law.[4]

It therefore appears possible that medical marijuana dispensaries in Arizona may be at risk of federal prosecution under the Controlled Substances Act. Because it cannot be assumed that a court would rule that there is no appreciable risk of federal prosecution under these circumstances, the merits of a Fifth Amendment defense to the tax filing requirement should be considered. As discussed below, however, Fifth Amendment jurisprudence does not allow the privilege against self-incrimination to be invoked in order to avoid generally applicable reporting requirements that do not target inherently suspect activities.

B. The Fifth Amendment Does Not Shield Medical Marijuana Dispensaries from a Generally Applicable Requirement to File Transaction Privilege Tax Returns.

A generally applicable requirement to file tax returns cannot be avoided on the basis of the Fifth Amendment privilege against self-incrimination, even if the information submitted would tend to incriminate a taxpayer. In *United States v. Sullivan*, 274 U.S. 259 (1927), the taxpayer, who sold liquor in violation of the National Prohibition Act, was convicted of failing to file an income tax return, and the U.S. Supreme Court concluded that "[i]t would be an extreme if not extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime." *Id.* at 263-64. While this 1927 opinion consists of only five paragraphs, it is directly on point, and it continues to be cited with approval by modern courts.

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[4] A copy of this letter is available on the website for the Arizona League of Cities and Towns at http://www.azleague.org/event_docs/medical_marijuana0211/us_atty_letter.pdf.

Similarly, in 1971 the U.S. Supreme Court held that the Fifth Amendment privilege against self-incrimination was not infringed by a generally applicable statute that required a motorist involved in an accident to stop at the scene and provide his name and address, where (1) the statute was regulatory and noncriminal, (2) self-reporting was indispensable, and (3) the burden was on the public at large, as opposed to a highly selective group inherently suspect of criminal activities. *California v. Byers*, 402 U.S. 424, 430-31 (1971). The Court distinguished cases in which the privilege had been upheld by noting that "[i]n all of these cases the disclosures condemned were only those extracted from a highly selective group inherently suspect of criminal activities and the privilege was applied only in an area permeated with criminal statutes—not in an essentially noncriminal and regulatory area of inquiry." *Id.* at 430 (internal quotation marks omitted).

In *Marchetti*, for example, the U.S. Supreme Court held that the defendant's assertion of the privilege against self-incrimination constituted a complete defense to prosecution for the failure to register and pay an occupational tax on wagering. In that case, the Court recognized that wagering was a crime in almost every state, and that the tax was not imposed in an essentially noncriminal and regulatory area, but directed to a selective group inherently suspect of criminal activities. *Marchetti*, 395 U.S. at 47; *see also Haynes v. United States*, 390 U.S. 85, 100 (1968) (upholding Fifth Amendment privilege as a defense to a registration requirement for sawed-off shotguns, where requirement was directed principally at persons who were inherently suspect of criminal activities); *Leary v. United States*, 395 U.S. 6, 18 (1969) (upholding Fifth Amendment defense to provisions of the Marihuana Tax Act requiring the defendant to identify himself as an unregistered transferee of marijuana, a selective group inherently suspect of criminal activities.)

Here, there is no suggestion that the sales tax imposed under A.R.S. § 42-5061 is designed to require the disclosure of incriminating information. The taxable classification is the business of selling tangible personal property at retail, and retailers can hardly be characterized as a "select group that is inherently suspect of criminal activities." Instead, the requirement to file transaction privilege tax returns generally applies to taxable business classifications and is not associated with criminal law enforcement efforts. As noted by the U.S. Supreme Court in *Byers*:

> An organized society imposes many burdens on its constituents. It commands the filing of tax returns for income; it requires producers and distributors of consumer goods to file informational reports on the manufacturing process and the content of products, on the wages, hours, and working conditions of employees. Those who borrow money on the public market or issue securities for sale to the public must file various information reports; industries must report periodically the volume and content of pollutants discharged into our waters and atmosphere. Comparable examples are legion.
>
> In each of these situations there is some possibility of prosecution—often a very real one—for criminal offenses disclosed by or deriving from the information that the law compels a person to supply. Information revealed by these reports could well be a link in the chain of evidence leading to prosecution and conviction. But under our holdings the mere possibility of incrimination is insufficient to defeat the strong policies in favor of disclosure called for by statutes like the one challenged here.

402 U.S. at 427-28. Therefore, notwithstanding the fact that transaction privilege tax returns filed by a medical marijuana dispensary might tend to incriminate the organization under federal law, the Fifth Amendment does not constitute a valid defense to a generally applicable requirement to report sales revenues and remit sales tax.

Conclusion

Under current law, the proceeds of medical marijuana sales are taxable under the retail classification of the transaction privilege tax. Moreover, medical marijuana dispensaries cannot

invoke a Fifth Amendment defense to a generally applicable requirement to file transaction privilege tax returns and pay the tax that is due.

Thomas C. Horne
Attorney General

Special Notice

STATE BOARD
OF EQUALIZATION

450 N Street
Sacramento
California 95814

Board website and Member contact Information:
www.boe.ca.gov

Taxpayers' Rights Advocate
888-324-2798

Information Center
800-400-7115
TDD/TTY: 800-735-2929

Information on Sales Tax and Registration for Medical Marijuana Sellers

1. **What is the Board of Equalization's (BOE) policy regarding sales of medical marijuana?**

   The sale of medical marijuana has always been considered taxable. However, prior to October 2005, the Board did not issue seller's permits to sellers of property that may be considered illegal.

2. **Is this a change of policy?**

   In October 2005, after meeting with taxpayers, businesses, and advocacy groups, the Board directed staff to issue seller's permits regardless of the fact that the property being sold may be illegal, or because the applicant for the permit did not indicate what products it sold. This new policy was effective immediately.

3. **What does the amended BOE policy say?**

   BOE policy regarding the issuance of a seller's permit was amended to provide that a seller's permit shall be issued to anyone requesting a permit to sell tangible personal property, the sale of which would be subject to sales tax if sold at retail. Previously, the Board would not issue a seller's permit when sales consisted only of medical marijuana.

4. **Who is expected to comply with the BOE policy by applying for a seller's permit?**

   Anyone selling tangible personal property in California, the sale of which would be subject to sales tax if sold at retail, is required to hold a seller's permit and report and pay the taxes due on their sales.

5. **Over-the-counter medications are subject to sales tax, but prescribed medications are not. Where does medical marijuana, "recommended" by a physician, fit in?**

   The sale of tangible personal property in California is generally subject to tax unless the sale qualifies for a specific exemption or exclusion. Sales and Use Tax Regulation 1591, *Medicines and Medical Devices*, explains when the sale or use of property meeting the definition of "medicine" qualifies for exemption from tax.

   Generally, for an item's sale or use to qualify for an exemption from tax under Regulation 1591, the item must qualify as a medicine *and* the sale or use of the item must meet specific conditions. Regulation 1591 defines a medicine, in part, as any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for that use. A medicine is also defined as any drug or any biologic, when such are approved by the U.S. Food and Drug Administration to diagnose, cure, mitigate, treat, or prevent any disease, illness, or medical condition regardless of ultimate use.

   In order to be exempt, a medicine must qualify under the definition, and it must be either (1) prescribed for treatment by medical professional authorized to prescribe medicines and dispensed by a pharmacy; (2) furnished by a physician to his or her own patients; or (3) furnished by a licensed health facility on a physician's order. (There are some other specific circumstances not addressed here such as being

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furnished by a state-run medical facility or a pharmaceutical company without charge for medical research.)

Generally, all of these requirements must be fulfilled in accordance with state and federal law.

6. **Many medical marijuana dispensing collectives consider themselves to be health care facilities. Are they exempt from applying for a seller's permit and paying sales tax for this reason?**

   Regulation 1591 exempts the sale or use of medicines furnished by qualifying health care facilities. (See response to Question 5, above, regarding the requirements to qualify as an exempt medicine.) State law defines a qualifying "health facility" as either a facility licensed under state law to provide 24-hour inpatient care or a state-licensed clinic.

7. **If I don't make any profit whatsoever from providing medical marijuana, do I still need to apply for a seller's permit?**

   Yes. Not making a profit does not relieve a seller of his or her sales tax liability. However, whether or not you make a profit, like other retailers making taxable sales, you can ask your customers to reimburse you for the sales taxes due on your sales, if you fulfill the requirements explained in Regulation 1700, *Reimbursement for Sales Tax.*

   As discussed in the response to Question 10, the Board may enter into a payment plan with a seller when the seller has difficulty meeting its tax liabilities. The Board has an Offers in Compromise Program that provides a payment alternative for individuals and businesses who have closed out their accounts.

8. **Is there a way to apply for a seller's permit without divulging the product being sold?**

   Yes. The Board will issue a seller's permit to an applicant who does not indicate the products being sold. The applicant, however, will be asked to sign a waiver acknowledging that his or her application is incomplete, which may result in the applicant not being provided with complete information regarding obligations as a holder of a seller's permit, or notified of future requirements by the Board related to the products sold. Applicants who do not wish to indicate the type of products they are selling should leave the line, "What items do you sell?" blank and discuss the issue with a Board representative regarding the incomplete application.

9. **If I have been providing medical marijuana for some time, but have never applied for a seller's permit, will I owe any back taxes?**

   Yes. As with any other seller who has operated without a permit, or who has failed to timely file and pay the taxes due, back taxes are owed on any taxable sales made, but not reported and paid. Generally, penalty and interest will also be due.

   When you apply for a seller's permit and your application is processed, Board staff will provide sales and use tax returns from prior periods for you to report your sales of medical marijuana and any other products you may have sold, but did not report. You will need to use these returns to self-report all your sales beginning with the month you first started selling taxable products. Once you have filed all your back returns, you will receive a current return for each reporting period in which you make sales. You will continue to receive a return until such time as you stop making sales and have notified the Board of the discontinuance of your business.

The Board, however, may grant relief from penalty charges if it is determined that a person's failure to file a timely return or payment was due to reasonable cause and circumstances beyond the person's control. If a seller wishes to file for such relief, he or she must file a statement with the Board stating, under penalty of perjury, the facts that apply. Sellers may use form BOE-735, *Request for Relief from Penalty*, available on the Board's website.

A seller who cannot pay a liability in full may be eligible for an installment payment agreement. Sellers in need of this type of plan should contact their local Board office, as eligibility is determined on a case-by-case basis.

10. Is there a deadline by which I must apply for a seller's permit?

All California sellers of tangible personal property the sale of which would be subject to tax if sold at retail are required to hold seller's permits. A seller's permit should be obtained prior to making sales of tangible personal property. If you are currently making sales of medical marijuana and you do not hold a seller's permit, you should obtain one as soon as possible. Sellers have a continuing obligation to hold a seller's permit until such time they stop making sales of products that are subject to tax when sold at retail.

11. Where will the money go that is collected from sellers paying this sales tax?

Sales tax provides revenues to the state's General Fund as well as to cities, counties, and other local jurisdictions where the sale was made.

12. Are these tax revenues tied to any specific programs in the state budget?

No. The tax from the sales of medical marijuana is treated the same as the tax received from the sale of all tangible personal property.

13. Does registering for a permit make my sales of medical marijuana any more lawful than they are currently?

Registering for a seller's permit brings sellers into compliance with the Sales and Use Tax Law, but holding a seller's permit does not allow sales that are otherwise unlawful by state or federal law. The Compassionate Use Act of 1996 decriminalized the cultivation and use of marijuana by certain persons on the recommendation of a physician. California's Medical Marijuana Program Act also exempted qualifying patients and primary caregivers from criminal sanctions for certain other activities involving marijuana. Apart from any provisions of state law, the sale of marijuana remains illegal under federal law.

14. Where can I find more information?

Sellers are encouraged to use any of the resources listed below to obtain answers to their questions. They may:

- Call our Information Center at 800-400-7115.
- Request copies of the laws and regulations that apply to their business.
- Write to the Board for advice. Note: For a taxpayer's protection, it is best to get the advice in writing. Taxpayers may be relieved of tax, penalty, and interest charges that are due on a transaction if the Board determines that the person reasonably relied on written advice from the Board regarding the transaction. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction.
- Attend a basic class on how to report sales and use taxes. A listing of these classes is available on the Board's website at *www.boe.ca.gov/sutax/tpsched.htm.* This page also includes a link to an on-line tutorial for Sales and Use Tax.
- Contact a local Board office and talk to a staff member.

JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

FORMAL OPINION	)	No. 09-06
OF	)	AG Alpha No. EX AD AGBDD
JOHN W. SUTHERS Attorney General	)	November 16, 2009

Governor Bill Ritter, Jr., through his Chief Legal Counsel Thomas M. Rogers, III, requested an opinion from this office regarding the applicability of state sales tax to the purchase and sales of medical marijuana.

QUESTIONS PRESENTED AND SHORT ANSWERS

The Governor's Chief Legal Counsel presented the following six questions:

Question 1. Is medical marijuana "tangible personal property" subject to the state sales tax under the Colorado tax code, section 39-26-104(1)(a), C.R.S.?

Answer 1. Yes. Medical marijuana is tangible personal property and is subject to the state sales tax, unless eligible for a specific sales tax exemption.

Question 2. Do transactions involving medical marijuana constitute "sales of drugs dispensed in accordance with a prescription" such that they would qualify for tax exemption under section 39-26-717(1)(a), C.R.S.?

Answer 2. No. Medical marijuana is not dispensed in accordance with a prescription.

Question 3. Do medical marijuana transactions qualify for the agricultural tax exemptions under section 39-26-716, C.R.S.?

Answer 3. Generally not, except as discussed in response to Question 4, below.

Question 4. Does the form of marijuana sold or purchased alter the tax treatment of the transaction?

Answer 4. Yes. Pursuant to section 39-26-716(4)(b), C.R.S., all sales and purchases of seeds are exempt from sales tax in Colorado. Other forms of marijuana sold or purchased would not qualify for this sales tax exemption.

Question 5. Regardless of the legality of the activity, are individuals and enterprises that engage in the sale of medical marijuana pursuant to Amendment 20 required to obtain a license and otherwise comply with the requirements of section 39-26-103, C.R.S.?

Answer 5. Yes. Unless subject to a particular exemption, it is unlawful under section 39-26-103(1)(a), C.R.S., for any individual or enterprise to engage in the business of selling at retail without first having obtained a retail sales license issued by the Colorado Department of Revenue.

Question 6. If such transactions are taxable, whose obligation is it to collect and remit any sales tax due for the purchase or sale of medical marijuana?

Answer 6. The obligation to collect and remit sales tax due is borne by the vendor.

BACKGROUND

In 2000, Colorado voters amended the Colorado Constitution by adopting an amendment (hereinafter "Amendment 20") authorizing the medical use of marijuana for persons suffering from defined "debilitating medical conditions." [1]

Amendment 20 left many legal questions unanswered. The Blue Book[2] circulated in connection with Amendment 20 stated that under the proposed amendment, possession of marijuana would be permitted for patients who have registered with the state, but distribution of marijuana would still be illegal in Colorado.[3] Consequently, Amendment 20 provides certain protections from state criminal liability for qualifying patients and primary care-givers, but "nothing in the amendment protects their original suppliers from prosecution or conviction on drug-related charges."[4]

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[1] Colo. Const. art. XVIII, § 14 (hereinafter "Amendment 20").

[2] The "Blue Book" is the explanatory publication of the Legislative Council of the Colorado General Assembly. It is not binding, but "provides important insight into the electorate's understanding" when passing a Colorado constitutional amendment and "also shows the public's intentions in adopting the amendment." *People v. Clendenin*, --- P.3d ----, 2009 WL 3464306 *5 (October 29, 2009), *citing Grossman v. Dean*, 80 P.3d 952, 962 (Colo. App. 2003).

[3] Colorado Legislative Council, Research Pub. No. 475-6, *An Analysis of 2000 Ballot Proposals* 1 (2000), *cited in People v. Clendenin*, --- P.3d ----, 2009 WL 3464306 *5 (October 29, 2009).

[4] *Id.* at *7 (Loeb, J., specially concurring).

Further complicating the application of Amendment 20, federal law prohibits the manufacture, distribution, dispensing, or possession with intent to manufacture, distribute or dispense marijuana.[5] The United States Supreme Court has held that under the Supremacy Clause of the United States Constitution, where federal and state law conflict, federal law prevails. [6] In another case, the Court has upheld application of federal law to enjoin distribution of medical marijuana under a California law that is similar to Amendment 20.[7]

Nevertheless, fourteen states, including Colorado, currently have laws in some form addressing the use of marijuana for medical purposes.[8] On October 19, 2009, the United States Department of Justice issued a memorandum addressing the issue (hereinafter, "Department of Justice Memorandum"). The Department of Justice Memorandum clarified that compliance with a state's medical marijuana laws does not constitute a defense to a charge under 21 U.S.C. § 841 and related provisions, but it stated that United States Attorneys should not "focus" federal resources on individuals "whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."[9] Recently, Colorado has witnessed a surge in dispensaries providing medical marijuana to patients.

Despite the legal confusion surrounding the medical marijuana industry, the taxation question is relatively straightforward. Colorado's sales tax applies to "the purchase price paid or charged upon all sales and purchases of tangible personal property at retail."[10] Colorado law contains no sales tax exemption for legally prohibited or otherwise unauthorized sales. Sales of medical marijuana are subject to state sales tax, unless a specific sales tax exemption applies.

DISCUSSION

Question 1. *Is medical marijuana "tangible personal property" subject to the state sales tax under the Colorado tax code, section 39-26-104(1)(a), C.R.S.?*

Colorado imposes a tax on "the purchase price paid or charged upon all sales and purchases of tangible personal property at retail."[11] Tangible personal property means corporeal personal property.[12] "Retail sale" is defined as "all sales made within the state except wholesale sales."[13] The Colorado Department of Revenue ("Revenue") further defines "tangible personal property" via regulation as follows:

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[5] 21U.S.C. § 841(a)(1); 21 U.S.C. § 812(c).
[6] *Gonzales v. Raich*, 545 U.S. 1, 29 (2005).
[7] *See U.S. v. Oakland Cannabis Buyers' Co-op*, 532 U.S. 483 (2001).
[8] http://www.justice.gov/opa/pr/2009/October/09-ag-1119.html
[9] http://blogs.usdoj.gov/blog/archives/192.
[10] § 39-26-104(1)(a), C.R.S.
[11] § 39-26-104(1)(a), C.R.S.
[12] § 39-26-102(15), C.R.S.
[13] Section 39-26-102(9), C.R.S.

> "Tangible personal property" embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things which are dealt in, capable of being processed or exchanged . . . .[14]

Under the plain language of both the statutory and the regulatory definition of "tangible personal property," medical marijuana constitutes tangible personal property subject to state sales tax, unless it qualifies for a specific sales tax exemption.[15]

Question 2. *Do transactions involving medical marijuana constitute "sales of drugs dispensed in accordance with a prescription" such that they would qualify for tax exemption under section 39-26-717(1)(a), C.R.S.?*

The State of Colorado applies its sales tax provisions broadly.[16] In construing tax statutes there is a strong presumption that taxation is the rule and exemption the rare exception.[17] The burden is on the taxpayer who claims an exemption to establish clearly the right to such an exemption.[18] Like Colorado courts, "[u]nless the statutes and the constitution place the property within a stated category of exemption, we resolve doubts regarding the meaning of statutes and the constitution in favor of subjecting the property to payment of its fair proportion of taxation."[19]

Section 39-26-717(1)(a), C.R.S., exempts from state sales tax, among other items, "[a]ll sales of drugs dispensed in accordance with a prescription." The words "prescription" and "dispensed" are medical terms not defined within state statutes governing sales tax, but are further discussed in regulation. Revenue's rule defining "prescription" for purposes of the sales tax exemption in section 39-26-717(1)(a), C.R.S. provides as follows:

> A "prescription" means any order in writing, dated and signed by a practitioner, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom a medicine, drug, or poison is ordered and directions, if any, to be placed on the label."[20]

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[14] Revenue Regulation 39-26-102.15, 1 C.C.R. 201-4 (further language setting forth inapplicable exemptions omitted).
[15] *See Telluride Resort and Spa, L.P., v. Colorado Department of Revenue* , 40 P.3d 1260, 1264 (Colo. 2002) ("In taxation matters, we commence our analysis with the statutory provisions.").
[16] *See A.D. Store v. Department of Revenue*, 19 P.3d 680, 682 (Colo. 2001).
[17] *Colorado Dept. of Revenue v. Woodmen of the World*, 919 P.2d 806, 810 (Colo. 1996).
[18] *Id.*
[19] *Telluride Resort and Spa, L.P. v. Colo. Department of Revenue*, 40 P.3d 1260, 1264 (Colo. 2002).
[20] Department of Revenue Regulation 39-26-717.1, 1 C.C.R. 201-4.

Under Amendment 20, no such prescription is contemplated. Instead, a physician merely provides written documentation that a patient has a debilitating medical condition and "might benefit from the medical use of marijuana."[21]

Moreover, under federal law, marijuana – medical or otherwise – cannot be distributed by prescription. In addition to meeting any state licensure and regulatory requirements, any individual or entity aspiring to dispense a controlled substance must comply with federal law and obtain a registration from the United States Drug Enforcement Administration ("DEA").[22] Such registration is available only for dispensing of schedules II through V controlled substances.[23] Under federal law, marijuana is a schedule I controlled substance.[24] Unlike drugs in other schedules, schedule I controlled substances cannot be dispensed under a prescription.[25]

Sales of medical marijuana are not and cannot be "dispensed in accordance with a prescription" and therefore are not exempt from sales tax pursuant to section 39-26-717(1)(a), C.R.S.

Question 3. *Do medical marijuana transactions qualify for the agricultural tax exemptions under section 39-26-716, C.R.S.?*

Question 4. *Does the form of marijuana sold or purchased alter the tax treatment of the transaction?*

Section 39-26-716, C.R.S., exempts several agriculturally-related products from state sales tax. The majority of the provisions listed under section 716 are not applicable to retail sales of medical marijuana. Subsection 4(b) of section 716, however, exempts from state sales tax "all sales and purchases of seeds." Marijuana sold in the form of seeds would qualify for this exemption. Marijuana sold in the form of leaves, buds, flowers or plants would not qualify, and would be subject to sales tax.

Section 39-26-707(1)(e), C.R.S., generally exempts sales of food from sales tax. Marijuana sold in the form of food would not qualify for this exemption, however. Revenue Regulation 26-102.4.5, 1 C.C.R. 201-4, clarifies that the following items do not constitute "food" and do not qualify for sales tax exemption under section 39-26-707(1)(e), C.R.S.: medicines, therapeutic products and deficiency correctors such as vitamins and minerals, cod liver oil,

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[21] Colo. Const. art. XVIII, §§ 14(2)(a)(I) and (II); (2)(c)(I) and (II), and (3)(b)(I).
[22] 21 C.F.R. § 1301.11.
[23] 21 C.F.R. 1301.13.
[24] 21 U.S.C. §812(c).
[25] *See also* 21 U.S.C. § 829 (governing "prescriptions" and describing requirements associated with schedule II through V controlled substances only); *U.S. v. Oakland Cannabis Buyers' Co-op,* 532 U.S. 483, 492 n5 (2001) (Schedule I drugs cannot be dispensed under a prescription).

and "other such items which are primarily used for medicinal purposes or as health aids."[26] By definition, any food product containing medical marijuana and sold pursuant to Amendment 20 must be used "for medicinal purposes" and would not be exempt from sales tax under section 39-26-707, C.R.S.

Question 5. *Regardless of the legality of the activity, are individuals and enterprises that engage in the sale of medical marijuana pursuant to Amendment 20 required to obtain a license and otherwise comply with the requirements of section 39-26-103, C.R.S.?*

As discussed in the Background section above, distribution of medical marijuana is illegal under federal law. Except where transfer of medical marijuana between a primary care-giver and a patient is authorized by Amendment 20, distribution of marijuana is also illegal under state law.[27] Regardless of the legality of the activity, however, individuals and enterprises that engage in the sale of medical marijuana pursuant to Amendment 20 are required to obtain a retail sales tax license and otherwise comply with the requirements of section 39-26-103, C.R.S. Unless subject to a particular exemption, it is unlawful for any person to engage in the business of selling at retail without first having obtained a retail sales license granted and issued by the executive director of Revenue.[28]

Colorado is not the first state to consider this question. In February 2007, the California State Board of Equalization, which collects California's state sales and use tax, issued a "Special Notice" clarifying that those who sell medical marijuana in the state of California must hold a seller's permit and are generally subject to sales tax.[29] The "Special Notice" explains: "Having a seller's permit does not mean you have the authority to make unlawful sales. The permit only provides a way to remit any sales and taxes due."[30]

This analysis is consistent with federal treatment of illegally obtained income. While the federal government does not impose a sales tax, for federal income tax purposes, "gross income" includes income derived from illegal sources.[31]

Thus, under both federal and state tax law, an individual or business must pay applicable tax even if the taxpayer is noncompliant with the law, and even the taxpayer sells an illegal product. Failing to obtain the required sales tax license and remit required sales taxes would add another illegality to the operation.

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[26] Revenue Regulation 26-102.4.5, 1 C.C.R. 201-4, paragraphs (b)(8) and (9). *See also* Revenue Regulation 26-707.1(e), 1 C.C.R. 201-4, and § 39-26-102(4.5), C.R.S.

[27] *See, e.g.* § 18-1-406(8)(b), C.R.S. (offenses related to marijuana); Colo. Const. art. XVIII, § 14(2)(a) and (2)(b) (defenses under Amendment 20); and § 18-1-406.3, C.R.S. (statutory provision governing medical use of marijuana in light of Amendment 20).

[28] § 39-26-103(1)(a), C.R.S.

[29] *See* http://www.boe.ca.gov/news/pdf/medseller2007.pdf.

[30] *Id.*

[31] 26 U.S.C. § 61; 26 C.F.R. § 1.61-14. *But see* 26 U.S.C § 280E (disallowing any income tax deduction or credit for any amount paid or incurred in carrying on any trade or business activities related to trafficking in schedule I or II controlled substances prohibited by state or federal law).

A state retail sales tax license does not represent an endorsement of an enterprise's compliance with the law and does not legitimize an illegal act. As under federal tax law, however, state tax law should not allow an individual or business engaged in an unlawful or potentially unlawful enterprise to avoid tax liability.

Under Colorado law, an individual or enterprise that engages in the sale of marijuana pursuant to Amendment 20 (or otherwise, for that matter) must obtain a retail sales tax license and comply with the requirements of section 39-26-103, C.R.S.

Question 6. *If such transactions are taxable, whose obligation is it to collect and remit any sales tax due for the purchase or sale of medical marijuana?*

The obligation to collect and remit sales tax due is borne by the vendor.[32] The retailer must add the tax imposed, or the average equivalent thereof, to the sales price or charge, showing such tax as a separate and distinct item.[33] When added, such tax constitutes a part of the price or charge and is a debt from the consumer to the retailer.[34] All sums of money paid by the purchaser to the retailer as taxes constitute public money, the property of the state in the hands of such retailer, who holds the same in trust for the sole use and benefit of the State until paid to Revenue.[35]

Revenue Regulation 26-104.1(a), 1 C.C.R. 201-4, explains: "The tax is imposed upon the purchaser. However, if the transaction involves a licensed vendor, the duty is imposed upon the vendor to add the tax to the sales price and to collect and remit the tax to the state." The sales tax constitutes a part of the price, and is a debt from the consumer or user to the vendor or retailer until paid. [36] The vendor, however, is liable for remitting payment of the amount of the sales tax to Revenue, regardless of whether the vendor has actually collected from the consumer.[37]

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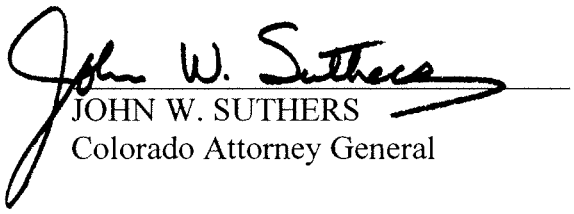
[32] *See* § 39-26-105(1)(a), C.R.S.
[33] § 39-26-106(2)(a), C.R.S.
[34] *Id.*
[35] § 39-26-118(1), C.R.S.
[36] § 39-26-106(2)(a), C.R.S.
[37] § 39-26-105(1)(a), C.R.S.

CONCLUSION

Medical marijuana is tangible property that is generally subject to state sales tax. Any individual or enterprise engaged in the sale of medical marijuana therefore must obtain a retail sales license from Revenue, and must collect and remit all state sales tax due.

Issued this 16th day of November, 2009.



JOHN W. SUTHERS
Colorado Attorney General

Analysis Data

The following presents estimates of nonmedical users of pain relievers.

Estimates of Nonmedical Users of Pain Relievers in Florida

Self-identified nonmedical pain reliever users

Florida Nonmedical Use of Pain Relievers [1]

Age Group	Percent of Users in Age Group	2011	2015
Population 12-17	5.50%	76,588	76,388
Population 18-24	8.59%	149,927	155,948
Population 25+	3.21%	421,925	443,764
Total		**648,440**	**676,099**

[1] Has used pain relievers for nonmedical reasons once or more times during the past year.

Note:
Nonmedical use of pain relievers rates for the 12-17 age group for Florida for 2012 were applied to Florida's April 1, 2011 and 2015 population estimate/projection for ages 12-17. Single ages 10 and 11 were excluded from the standard 10-17 age group by using shares from the U.S. Census Bureau's single age population counts from the 2010 Census. Nonmedical use of pain relievers rates for 18-25 and 26+ groups for Florida for 2011 were applied to Florida's April 1, 2011 and 2015 population estimate/projection for ages 18-24 and 25+ groups, respectively. The estimation assumes usage rates will remain the same.

Sources:
Substance Abuse & Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2010 and 2011 (2010 Data - Revised March 2012), http://www.samhsa.gov/data/NSDUH/2k11State/NSDUHsaeExcelTab8-2011.xlsx.
Florida Demographic Database, August 2013 based on results from the Florida Demographic Estimating Conference, February 2013 and the

Reference Table: Self-Identified Marijuana Users

(Note: This table has been revised from the one presented under Tab 10, subtab 3 with the addition of estimates for the population aged 12-17, and is provided here for reference only)

Florida Self-Reported Marijuana Use[1]

Age Group	Marijuana Users	2011	2015
Population 12-17	13.80%	192,120	191,618
Population 18-24	31.19%	544,678	566,525
Population 25+	7.61%	1,001,331	1,052,692
Total		**1,738,129**	**1,810,835**

[1] Has used marijuana once or more times during the past year.

Note:
Nonmedical use of pain relievers rates for the 12-17 age group for Florida for 2012 were applied to Florida's April 1, 2011 and 2015 population estimate/projection for ages 12-17. Single ages 10 and 11 were excluded from the standard 10-17 age group by using shares from the U.S. Census Bureau's single age population counts from the 2010 Census. Marijuana use rates for 18-25 and 26+ groups for Florida for 2011 were applied to Florida's April 1, 2011 and 2015 population estimate/projection for ages 18-24 and 25+ groups, respectively. The estimation assumes usage rates will remain the same.

Sources:
Substance Abuse & Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2010 and 2011 (2010 Data - Revised March 2012), http://www.samhsa.gov/data/NSDUH/2k11State/NSDUHsaeExcelTab2-2011.xlsx.
Florida Demographic Database, August 2013 based on results from the Florida Demographic Estimating Conference, February 2013 and the Florida Demographic Estimating Conference, July 2013.

Analysis Data

The following presents estimates of snowbird users of medical marijuana.

Estimates of Snowbird Users of Medical Marijuana in Florida

Snowbirds (extended stay temporary visitors) represent approximately 6% of Florida's resident population[a].

This analysis assumes there are no residency requirements for access to medical use of marijuana in Florida and tourists will have equal access. This analysis also assumes that in order to register, acquire, and use medical marijuana, a tourist would need to be in Florida for an extended stay (more than one month). Thus, the analysis excludes short-term visitors to Florida (less than 1 month). Snowbird population was used as a proxy for the extended stay visitor, since snowbirds are defined as visitors with a stay of a minimum of one month.

Snowbird Use of Medical Marijuana
2015

	Based on State Medical Marijuana Registrants (Approach I)	Based on Use Rates by Cancer Patients (Approach IV)
Florida resident population	19,745,376	19,745,376
Snowbirds (all ages)[1]	1,368,245	1,368,245
Self-reported snowbird marijuana users[2]	104,123	104,123
Snowbird Users of Medical Marijuana[3]	**41,271**	**17,178**

[1] Snowbird population was calculated by using an estimate of snowbirds 55 and older in 2005 from a study done by the University of Florida's Bureau of Economic and Business Research (BEBR) and expanding the estimate to include population of all ages from demographic characteristics of snowbirds (BEBR 1997 study, see sources below for more information).

[2] The estimate of self-reported snowbirds marijuana users was calculated by applying the Florida percentage of self-reported users for the population 25 and over (7.6%) from Approach VI (Tab 10, subtab 3) to the estimate of snowbirds.

[3] EDR assumes medical marijuana users are a subgroup of self-reported marijuana users.
The analysis that is based on Approach I (Tab 10, subtab 3) applies the share of medical marijuana users (.396) to the estimate of self-reported snowbird marijuana users. This ratio was calculated from an estimate of Florida medical marijuana users (417,252) based on Colorado's usage rates divided by an estimate of Florida self-reported marijuana users (1,052,692) for those aged 25 and over.
The analysis that is based on Approach IV (Tab 10, subtab 3) applies the share of medical marijuana users (.165) to the estimate of self-reported snowbird marijuana users. The ratio was calculated by dividing 173,671/1,052,692.

Sources:
Smith, Stanley K.; House, Mark, Snowbirds, Sunbirds, and Stayers: Seasonal migration of elderly adults in Florida, Journal of Gerontology: Social Sciences, v. 61B, No 5, S232-S239, 2006, e-mail correspondence from BEBR dated 10/23/2013, http://www.bebr.ufl.edu/content/snowbirds
[a] Galvez, Janet, *The Florida Elusive Snowbird*, Bureau of Economic and Business Research, University of Florida, 1997, http://www.bebr.ufl.edu/files/snowbirds_0.pdf, accessed October 25, 2013.
Florida Demographic Estimating Conference, July 2013, population projection for April 1, 2015.

Tab 11

U.S. Department of Justice

U. S. Department of Justice

The following presents recent information from the U. S. Department of Justice

U. S. Department of Justice

The following presents:

- A memorandum from James M. Cole, Deputy Attorney General, U.S. Department of Justice, dated August 29, 2013 to all United States Attorneys, with the subject - Guidance Regarding Marijuana Enforcement

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

U. S. Department of Justice

The following presents:

- A report from the U.S. Department of Justice, entitled “Smart on Crime; Reforming the Criminal Justice System for the 21st Century”, released August 2013

SMART on CRIME

Reforming The Criminal Justice System for the 21st Century

August 2013

"By targeting the most serious offenses, prosecuting the most dangerous criminals, directing assistance to crime 'hot spots,' and pursuing new ways to promote public safety, deterrence, efficiency, and fairness – we can become both smarter *and* tougher on crime."

—Attorney General Eric Holder
Remarks to American Bar Association's Annual Convention in San Francisco, CA
August 12, 2013

INTRODUCTION

At the direction of the Attorney General, in early 2013 the Justice Department launched a comprehensive review of the criminal justice system in order to identify reforms that would ensure federal laws are enforced more fairly and—in an era of reduced budgets—more efficiently. Specifically, this project identified five goals:

- To ensure finite resources are devoted to the most important law enforcement priorities;
- To promote fairer enforcement of the laws and alleviate disparate impacts of the criminal justice system;
- To ensure just punishments for low-level, nonviolent convictions;
- To bolster prevention and reentry efforts to deter crime and reduce recidivism;
- To strengthen protections for vulnerable populations.

As part of its review, the Department studied all phases of the criminal justice system—including charging, sentencing, incarceration and reentry—to examine which practices are most successful at deterring crime and protecting the public, and which aren't. The review also considered demographic disparities that have provoked questions about the fundamental fairness of the criminal justice system.

The preliminary results of this review suggest a need for a significant change in our approach to enforcing the nation's laws. Today, a vicious cycle of poverty, criminality, and incarceration traps too many Americans and weakens too many communities. However, many aspects of our criminal justice system may actually exacerbate this problem, rather than alleviate it.

The reality is, while the aggressive enforcement of federal criminal statutes remains necessary, we cannot prosecute our way to becoming a safer nation. To be effective, federal efforts must also focus on prevention and reentry. In addition, it is time to rethink the nation's system of mass imprisonment. The United States today has the highest rate of incarceration of any nation in the world, and the nationwide cost to state and federal budgets was $80 billion in 2010 alone. This pattern of incarceration is disruptive to families, expensive to the taxpayer, and may not serve the goal of reducing recidivism. We must marshal resources, and use evidence-based strategies, to curb the disturbing rates of recidivism by those reentering our communities.

These findings align with a growing movement at the state level to scrutinize the cost-effectiveness of our corrections system. In recent years, states such as Texas and Arkansas have reduced their prison populations by pioneering approaches that seek alternatives to incarceration for people convicted of low-level, nonviolent drug offenses.

It is time to apply some of the lessons learned from these states at the federal level. By shifting away from our over-reliance on incarceration, we can focus resources on the most important law enforcement priorities, such as violence prevention and protection of vulnerable populations.

The initial package of reforms described below—dubbed the Justice Department's "Smart on Crime" initiative—is only the beginning of an ongoing effort to modernize the criminal justice system. In the months ahead, the Department will continue to hone an approach that is not only more efficient, and not only more effective at deterring crime and reducing recidivism, but also more consistent with our nation's commitment to treating all Americans as equal under the law.

We of course must remain tough on crime. But we must also be smart on crime.

FIVE PRINCIPLES OF "SMART ON CRIME"

I. PRIORITIZE PROSECUTIONS TO FOCUS ON MOST SERIOUS CASES

Given scarce resources, federal law enforcement efforts should focus on the most serious cases that implicate clear, substantial federal interests. Currently, the Department's interests are:

1. Protecting Americans from national security threats
2. Protecting Americans from violent crime
3. Protecting Americans from financial fraud
4. Protecting the most vulnerable members of society

Based on these federal priorities, the Attorney General is, for the first time, requiring the development of district-specific guidelines for determining when federal prosecutions should be brought. This necessarily will mean focusing resources on fewer but the most significant cases, as opposed to fixating on the sheer volume of cases.

The Attorney General's call for the creation of district-specific guidelines recognizes that each U.S. Attorney is in the best position to articulate the priorities that make sense for that area. A particular district's priorities will often depend on local criminal threats and needs.

In the coming months, the U.S. Attorneys' Manual will be updated to reflect the requirement that U.S. Attorneys develop district-specific guidelines for the prioritization of cases.

II. REFORM SENTENCING TO ELIMINATE UNFAIR DISPARITIES AND REDUCE OVERBURDENED PRISONS.

Our prisons are over-capacity and the rising cost of maintaining them imposes a heavy burden on taxpayers and communities. At the state level, costs for running corrections facilities have roughly tripled in the last three decades, making it the second-fastest rising

expense after Medicaid. At the federal level, the Bureau of Prisons comprises one-third of the Justice Department's budget.

This requires a top-to-bottom look at our system of incarceration. For many non-violent, low-level offenses, prison may not be the most sensible method of punishment. But even for those defendants who do require incarceration, it is important to ensure a sentence length commensurate with the crime committed. Our policies must also seek to eliminate unfair sentencing disparities.

It is time for meaningful sentencing reform. As a start, the Attorney General is announcing a change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins. Reserving the most severe penalties for serious, high-level, or violent drug traffickers will better promote public safety, deterrence, and rehabilitation – while making our expenditures smarter and more productive.

The Attorney General also plans to work with Congress to pass legislation that would reform mandatory minimum laws. A number of bipartisan proposals – including bills by Senators Dick Durbin (D-IL) and Mike Lee (R-UT), as well as Senators Patrick Leahy (D-VT) and Rand Paul (R-KY) – show the emerging consensus in favor of addressing this issue.

Sentencing reform also entails considering reductions in sentence for inmates facing extraordinary and compelling circumstances – and who pose no threat to public safety. In late April, the Bureau of Prisons (BOP) expanded the medical criteria that will be considered for inmates seeking compassionate release. In a new step, the Attorney General is announcing revised criteria for other categories of inmates seeking reduced sentences. This includes elderly inmates and certain inmates who are the only possible caregiver for their dependents. In both cases, under the revised policy, BOP would generally consider inmates who did not commit violent crimes and have served significant portions of their sentences. The sentencing judge would ultimately decide whether to reduce the sentence.

III. PURSUE ALTERNATIVES TO INCARCERATION FOR LOW-LEVEL, NON-VIOLENT CRIMES.

Incarceration is not the answer in every criminal case. Across the nation, no fewer than 17 states have shifted resources away from prison construction in favor of treatment and supervision as a better means of reducing recidivism. In Kentucky, new legislation has reserved prison beds for the most serious offenders and re-focused resources on community supervision and evidence-based programs. As a result, the state is projected to reduce its prison population by more than 3,000 over the next 10 years – saving more than $400 million.

Federal law enforcement should encourage this approach. In appropriate instances involving non-violent offenses, prosecutors ought to consider alternatives to incarceration, such as drug courts, specialty courts, or other diversion programs. Accordingly, the Department will issue a "best practices" memorandum to U.S. Attorney Offices encouraging more widespread adoption of these diversion policies when appropriate.

In its memorandum, the Department will endorse certain existing diversion programs as models. In the Central District of California, the USAO, the court, the Federal Public Defender, and the Pretrial Services Agency (PSA) have together created a two-track specialty court/post-plea diversion program, known as the Conviction and Sentence Alternatives (CASA) program. Selection for the program is not made solely by the USAO, but by the program team, comprised of the USAO, the Public Defender, PSA, and the court. Track one is for candidates with minimal criminal histories whose criminal conduct appears to be an aberration that could appropriately be addressed by supervision, restitution and community service. Examples of potential defendants include those charged with felony, though relatively minor, credit card or benefit fraud, mail theft, and narcotics offenses. Track two is for those defendants with somewhat more serious criminal histories whose conduct appears motivated by substance abuse issues. Supervision in these cases includes intensive drug treatment. Examples of eligible defendants are those charged with non-violent bank robberies, or mail and credit card theft designed to support a drug habit.

The Department will also recommend the use of specialty courts and programs to deal with unique populations. Examples include a treatment court for veterans charged with misdemeanors in the Western District of Virginia, and the Federal/Tribal Pretrial Diversion program in the District of South Dakota, which is designed specifically for juvenile offenders in Indian country.

IV. IMPROVE REENTRY TO CURB REPEAT OFFENSES AND RE-VICTIMIZATION.

After prison, recidivism rates are high. A reduction in the recidivism rate of even one or two percentage points could create long-lasting benefits for formerly incarcerated individuals and their communities.

To lead these efforts on a local level, the Department is calling for U.S. Attorneys to designate a prevention and reentry coordinator within each of their offices to focus on prevention and reentry efforts. As part of this enhanced commitment, Assistant U.S. Attorneys will be newly encouraged to devote time to reentry issues in addition to casework. The Executive Office of U.S. Attorneys will report periodically on the progress made in USAOs on the reentry front.

Other efforts to aid reentry are also being launched. It is well documented that the consequences of a criminal conviction can remain long after someone has served his or her sentence. Rules and regulations pertaining to formerly incarcerated people can limit employment and travel opportunities, making a proper transition back into society difficult. Currently, the Justice Department is working with the American Bar Association to publish a catalogue of these collateral consequences imposed at the state and federal level. To address these barriers to reentry, the Attorney General will issue a new memorandum to Department of Justice components, requiring them to factor these collateral consequences into their rulemaking. If the rules imposing collateral consequences are found to be unduly burdensome and not serving a public safety purpose, they should be narrowly tailored or eliminated.

The Attorney General's Reentry Council has published helpful materials on reentry efforts related to employment, housing, and parental rights. In an update to these materials, the Department will publish new fact sheets on ways to reduce unnecessary barriers to reentry in two areas: (1) to connect the reentering population with legal services to address obstacles such as fines and criminal records expungement when appropriate; and (2) to highlight efforts to reduce or eliminate fines at the local level.

V. 'SURGE' RESOURCES TO VIOLENCE PREVENTION AND PROTECTING MOST VULNERABLE POPULATIONS.

Even as crime levels have fallen, many of our communities still suffer from alarming rates of homicides, shootings and aggravated assaults. Confronting this problem and its root causes with a holistic approach remains a priority for the Department of Justice.

By exploring cost-effective reforms to our prison system, it will allow law enforcement to redirect scarce federal resources towards the priority of violence prevention.

Under a new memorandum issued by the Deputy Attorney General, U.S. Attorneys will put in place updated anti-violence strategies that are specific to their district. As an initial step, they will be urged to lead anti-violence forums to include Special Agents-in-Charge,

Assistant Special Agents-in-Charge, U.S. Marshals and Chief Deputy Marshals, and State and Local Police Chiefs, Commanders, and Captains. With multiple federal, state, and local agencies involved in the fight against violent crime, strong relationships and robust information sharing are critical to achieve common goals and to avoid the unnecessary duplication of competing resources and efforts.

To monitor the success of these district-based anti-violence strategies, the Department will, in the coming months, implement new information-sharing techniques to share data from high-crime communities across Justice Department components.

The Department will also stress efforts to reduce and respond to violence, particularly violence against women and youth violence.

Within the Department, the Office of Community Oriented Policing Services (COPS), the Office of Victims of Crimes (OVC), and the Office of Violence Against Women (OVW) have partnered together to provide law enforcement agencies with the resources, technical assistance, and support they need to combat gender bias and sexual assault.

In April, the Department issued a revised Sexual Assault Forensic Examinations (SAFE) Protocol to standardize up-to-date approaches to victim-centered forensic medical examinations. In a new step, OVW will release a companion document that applies the protocol's recommendations for use in correctional facilities. A similar document will be released in the coming weeks for tribal communities.

In the coming months, the Department will also work with the Federal Bureau of Investigation to support states' implementation of the revised Uniform Crime Report definition of "rape."

In the effort to further protect children, the Department envisions several new steps:

- As part of the Attorney General's Defending Childhood Initiative:
    - This fall, the Department will launch a public awareness and community action campaign to stem youth violence.
    - The Department will establish a Task Force on American Indian/Alaska Native Children Exposed to Violence.
    - The Department will partner with select states to form "State Commissions" that will implement model public policy initiatives at the state and local level to reduce the impact of children's exposure to violence, including the adaptation and implementation of recommendations of the Attorney General's Task Force on Children Exposed to Violence.
- The Department will prioritize School Resource Officer requests in its COPS Hiring grant awards this year.

- The Department and the Department of Education will jointly issue guidance to public elementary and secondary schools on their federal civil rights obligations to administer student discipline without discrimination on the basis of race, color, or national origin, and the Department will continue to vigorously enforce civil rights laws to ensure that school discipline is fair and equitable.

- In September, the Department will host the National Forum Youth Violence Prevention Summit, which, for the first time, will convene stakeholders from the Forum, Defending Childhood, Community-Based Grant Programs, and youth violence prevention initiatives at other federal agencies to collaborate on innovative strategies and comprehensive solutions to end youth violence, protect the children that are exposed to it, and create safer and healthier communities.

In addition to these violence prevention efforts, the Department also remains focused on serving victims of crime. In June, the Justice Department issued the *Vision 21* report that offers an unprecedented snapshot of the current state of victim services and calls for sweeping, evidence-based changes to bring these services into the 21st century. It will empower survivors by closing research gaps and developing new ways to reach those who need our assistance the most.

Tab 12

Responses from State and Local Agencies

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The following presents responses from state and local agencies.

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The following presents responses from state and local agencies.

- A letter from Pamela Jo Bondi, Attorney General, to Chief Justice Polston and Justices, dated October 24, 2013

STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

October 24, 2013

The Honorable Ricky Polston
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Polston and Justices:

A political committee called People United for Medical Marijuana (the "Sponsor") has sponsored an initiative petition to amend the Florida Constitution. On September 26, 2013, this office received the initiative petition from the Secretary of State, along with a certification that the Sponsor obtained sufficient signatures to initiate this Court's review. *See* Fla. Const. art. IV, § 10; § 16.061, Fla. Stat. Accordingly, I now petition this Honorable Court for an opinion regarding the initiative petition's validity.

Introduction

When asked to amend our Constitution, Florida voters deserve full disclosure. They deserve proposals presented accurately and fairly—proposals that allow "an intelligent and informed vote." *Advisory Opinion to Atty. Gen. re Ltd. Casinos*, 644 So. 2d 71, 74 (Fla. 1994). Some proposals, though, use "wording techniques in an attempt to persuade voters." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008). These techniques can hide an amendment's true meaning, and when they "render a ballot title and summary deceptive or misleading to voters, the law requires that such proposal be removed from the ballot—regardless of the substantive merit of the proposed changes." *Id.*

In this case, the Sponsor has presented its proposal in a way that does not convey its "true meaning and ramifications." *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 495 (Fla. 1994). Indeed, the Sponsor has obscured the most fundamental issue underlying its proposal: the nature and scope of marijuana use the amendment would allow. The ballot title and summary suggest that the amendment would allow medical marijuana in narrow, defined circumstances, and only for patients with "debilitating diseases." But if the amendment passed, Florida law would allow marijuana in limitless situations. Any physician could approve marijuana for seemingly

any reason to seemingly any person (of any age)—including those without any "debilitating disease." So long as a physician held the opinion that the drug use "would likely outweigh" the risks, Florida would be powerless to stop it.

In addition, rather than informing voters that federal criminal law restricts medical marijuana, the ballot summary misleadingly suggests the opposite. The summary says the amendment "[a]llows the medical use of marijuana," even though federal law prohibits it. And by saying that the amendment "[d]oes not authorize violations of federal law," the summary implies that the amendment squares with existing federal law, rather than flatly contradicting it.

Because of how the amendment is presented, its true scope and effect remain hidden. And because Florida voters deserve the truth, this Court has long rejected proposals that "'hide the ball' as to the amendment's true effect." *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000).

The Amendment's Text, Ballot Title, and Ballot Summary

The full text of the proposed amendment, which would add a new section 29 to Article X of the Florida Constitution, is:

> ARTICLE X, SECTION 29. Medical marijuana production, possession and use.—
>
> (a) PUBLIC POLICY.
>
> (1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to criminal or civil liability or sanctions under Florida law except as provided in this section.
>
> (2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.
>
> (3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.
>
> (b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:
>
> (1) "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune

deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) "Department" means the Department of Health or its successor agency.

(3) "Identification card" means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient's medical use of marijuana.

(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).

(5) "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

(7) "Personal caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.

(8) "Physician" means a physician who is licensed in Florida.

(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of

marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.

(2) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.

(3) Nothing in this section allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.

(4) Nothing in this law section requires the violation of federal law or purports to give immunity under federal law.

(5) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place.

(6) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance of qualifying patient identification cards to people with physician certifications, and standards for the renewal of such identification cards.

b. Procedures for the issuance of personal caregiver identification cards to persons qualified to assist with a qualifying patient's medical use of marijuana, and standards for the renewal of such identification cards.

c. Procedures for the registration of Medical Marijuana Treatment Centers that include procedures for the issuance, renewal, suspension, and revocation of registration, and standards to ensure security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Issuance of identification cards and registrations. The Department shall begin issuing qualifying patient and personal caregiver identification cards, as well as begin registering Medical Marijuana Treatment Centers no later than nine months (9) after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering Medical Marijuana Treatment Centers within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this provision.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

The proposed amendment's ballot title is "Use of Marijuana for Certain Medical Conditions," and the proposed amendment's ballot summary is:

Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate

centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not authorize violations of federal law or any non-medical use, possession or production of marijuana.

Pursuant to Rule 9.510(b), Florida Rules of Appellate Procedure, I also provide the following information:

1. The name of the sponsor and address: The sponsor of the initiative is People United for Medical Marijuana, 20 North Orange Avenue, Suite 1600, Orlando, Florida 32801.

2. The name and address of the sponsor's attorney, if the sponsor is represented: Mr. Jon L. Mills, Boies, Schiller & Flexner, LLP, 100 Southeast 2nd Street, Suite 2800, Miami, Florida 33131.

3. A statement as to whether the sponsor has obtained the requisite number of signatures to have the initiative placed on the ballot: As of September 26, 2013, the sponsor had not obtained the necessary number of signatures to place the initiative on the ballot.

4. The current status of the signature collection process: The Secretary of State's September 26, 2013, letter states that the Supervisors of Elections have certified to the Division of Elections a total of 94,541 valid petition signatures. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in a least one-fourth of the congressional districts in order to place the initiative on the general election ballot.

5. The date of the election during which the sponsor is planning to submit the proposed amendment: The initiative itself does not specify the date of the election. The Department of State advises that the earliest date that this proposed amendment could be placed on the ballot is November 4, 2014, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2014.

6. The last possible date that the ballot for the target election can be printed in order to be ready for the election: The Department of State advises that this date is September 4, 2014, if the amendment is to be placed on the November 2014 ballot.

7. A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the

request: This office has been advised that the Financial Impact Estimating Conference intends to file the financial impact statement no later than November 8, 2013.

8. The names and complete mailing addresses of all of the parties who are to be served:

Mr. John Morgan, Chairperson
People United for Medical Marijuana
Post Office Box 560296
Orlando, Florida 32856

Mr. Jon L. Mills
Boies, Schiller & Flexner, LLP
100 SE 2nd Street, Suite 2800
Miami, Florida 33131

The Honorable Rick Scott
Governor, State of Florida
The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Mr. Ken Detzner, Secretary
Florida Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

The Honorable Don Gaetz
President, Florida Senate
Senate Office Building, Room 212
420 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable Will Weatherford
Speaker, Florida House of Representatives
402 South Monroe Street
Tallahassee, Florida 32399-1300

Financial Impact Estimating
Conference Director's Office
Attention: Amy Baker, Coordinator
Office of Economic and
Demographic Research
111 West Madison Street, Suite 574
Tallahassee, Florida 32399-6588

Department of State
Division of Elections
Room 316, R. A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

Mr. Allen Winsor
Solicitor General
The Capitol PL-01
Tallahassee, Florida 32399-1050

The Ballot Title and Summary Do Not Convey the Amendment's True Meaning

As this Court has explained, "[t]he citizen initiative constitutional amendment process relies on an accurate, objective ballot summary for its legitimacy." *In re Advisory Opinion to the Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004). Indeed, because the actual text of a proposed amendment does not appear on the ballot, "an accurate, objective, and neutral summary of the proposed amendment is the *sine qua non* of the citizen-driven process of amending our constitution." *Id.* at 653-54. The proposal at issue falls short because it misleads regarding both the amendment's scope and its conflict with existing federal law.

This Petition identifies these two prominent defects, which I respectfully suggest require this Court's attention. *See* § 16.061(1), Fla. Stat. (petition may identify issues for resolution). Within the Court's deadline for doing so, this office will also submit a brief with legal argument regarding the proposal's validity, addressing the issues raised here and identifying other, independent defects. *See* Fla. Const. art. IV, § 10 (providing for "interested persons to be heard on the questions presented").

The Ballot Title and Summary Mislead Voters Regarding the Amendment's True Scope.

Among other requirements, a ballot title and summary must "accurately describe the scope of the text of the amendment." *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010). When the title or summary suggest a more limited scope than the amendment provides, they mislead the public and invalidate the proposal. *See, e.g., Advisory Opinion to the Atty. Gen.*, 656 So. 2d 466, 469 (Fla. 1995). Here, the narrow scope presented in the title and summary cannot square with the amendment's true scope, which is anything but narrow.

According to the ballot summary, medical marijuana would be only for those "with debilitating diseases." But the amendment itself does not limit use to individuals with "debilitating diseases," instead allowing marijuana for those with imprecise "other conditions." Nowhere does the amendment even require that the individual's "condition" be a "disease" or "debilitating." Rather, the amendment creates a defined term—"debilitating medical condition"—that includes not only cancer, ALS, HIV, AIDS, and Parkinson's disease, but also "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." Amendment § 29(b)(1). This open-ended catchall includes no qualification: so long as

a "physician"[1] conducts "a physical examination of the patient and a full assessment of the patient's medical history," that physician may certify "that in the physician's professional opinion," the patient has a "debilitating medical condition." Particularly for a physician who considers marijuana's health risks low, there is no "condition" beyond the amendment's reach. The ballot summary does not convey this breathtaking scope, instead telling voters that marijuana would be limited to "individuals with debilitating diseases."

This Court has invalidated summaries that use narrower terms than the amendment's text. In *Advisory Opinion to the Atty. Gen.*, 656 So. 2d 466, 469 (Fla. 1995), for example, the summary described allowing casinos in "hotels." The amendment itself, though, used the phrase "transient lodging establishments"—not "hotels". As this Court explained, "the public perceives the term 'hotel' to have a much narrower meaning than the term 'transient lodging establishment.'" *Id.* "Thus, while the summary leads the voters to believe that casinos will be operated only in 'hotels,' the proposed amendment actually permits voters to authorize casinos in any number of facilities, including a bed and breakfast inn." *Id.* Similarly, while this summary leads voters to believe that medical marijuana is for "debilitating diseases" only, the proposed amendment actually permits marijuana for any number of conditions, including those that are neither "debilitating" nor "diseases." *Cf. Advisory Opinion to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 897 (Fla. 2000) (invalidating amendment because summary used "divergent terminology" from amendment's text).

The ballot title is likewise defective because it, too, suggests a more restrictive scope than the amendment delivers. The title—"use of marijuana for certain medical conditions"—wrongly indicates the specific conditions are determined. The term "certain" is understood to mean fixed, definite, or settled. *See, e.g.,* Am. Heritage

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[1] The amendment's text defines "physician" only as "a physician who is licensed in Florida," without specifying whether the term is limited to medical doctors or includes chiropractors, podiatrists, and others who are considered "physicians" under some provisions of Florida law. *Compare, e.g.*, § 456.056(a), Fla. Stat. ("'Physician' means a physician licensed under chapter 458, an osteopathic *physician licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, or an optometrist licensed under chapter 463.") with id. § 409.9131(2)(e) ("'Physician' means a person licensed to practice medicine under chapter 458 or a person licensed to practice* osteopathic medicine under chapter 459.").

Dictionary, 254 (2d ed. 1990) ("definite" or "fixed"); Merriam-Webster Dictionary ("fixed" or "settled") (available at www.m-w.com).[2] For example, the ballot title "limited political terms in certain elected offices," used the term "certain" to refer to a fixed and settled set of offices—not an open-ended group to be determined later. *See Advisory Opinion to Attorney Gen.—Ltd. Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991). Here, by contrast, there is nothing "certain" about the medical conditions to which the amendment would apply.

Next, the proposal is not saved by the summary's suggestion that the amendment allows marijuana only "for individuals with debilitating diseases *as determined by a licensed Florida physician*." (emphasis added). This only adds to the problem by misleadingly signaling that the physician is, in fact, diagnosing the presence of a "debilitating disease." The summary offers no hint that the amendment requires no such finding. Indeed, under the amendment, a "debilitating medical condition" means anything a physician wants it to mean.

The limitless definition of "debilitating medical condition" has even greater significance because of another undisclosed feature of the amendment: a physician's certification is effectively unreviewable. Specifically, the amendment provides that "[a] physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section." Amendment § 29(a)(2). While existing law allows for discipline when physicians fall short of the appropriate standard of care, *see, e.g.*, §§ 458.331(1)(t); 456.50(1)(g), Fla. Stat., the amendment purports to immunize physicians from consequences of negligently authorizing marijuana. Neither the title nor the summary notifies voters that the amendment frees physicians from existing requirements regarding standard of care—or that the current cause of action for medical negligence will be unavailable for the negligent prescription of marijuana.

If Florida voters are asked to approve an amendment to grant physicians unbridled discretion to allow marijuana for limitless "conditions," they should have adequate notice to allow intelligent and informed ballots. *See Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 495 (Fla. 1994) ("[T]he ballot title and summary must advise the electorate of the true meaning and ramifications of the amendment and, in particular, must be accurate and informative."). Here, though, the

---

[2] Black's Law Dictionary defines "certain" this way: "Ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous; or, in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given. Free from doubt." *Black's Law Dictionary*, 225 (6th ed. 1990).

title and summary hide the amendment's true scope and purpose. *Cf. Doyle*, 43 So. 3d at 659 ("A proposed amendment must be removed from the ballot when the title and summary do not accurately describe the scope of the text of the amendment, because it has failed in its purpose.").

The Ballot Summary Leads Voters To Believe there Is No Conflict With Federal Law.

The summary is defective for an additional, independent, reason. Its first words are: "Allows the medical use of marijuana for individuals with debilitating diseases." But what the ballot summary says the amendment "allows" is forbidden under federal law. *See* 21 U.S.C. § 801, *et seq.*; *see also Gonzales v. Raich*, 545 U.S. 1, 14 (2005) ("By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of marijuana became a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration preapproved research study."). The amendment's legal effect, then, is not to "allow" marijuana, notwithstanding the summary's suggestion. *See In re Advisory Opinion to the Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) ("This misleading language does not reflect the true legal effect of the proposed amendment.").

Nonetheless, rather than remain silent about federal law, the summary raises the topic by cryptically stating that the amendment "[d]oes not authorize violations of federal law." This tells the voter nothing. Certainly, the amendment does not authorize violations of federal law, which no state law could. Yet the Sponsor chose this "wording technique" rather than explaining that marijuana use is criminal under federal law. Because voters know that state law cannot authorize violations of federal law—and because voters would find it counterintuitive that Florida law would authorize conduct federal law prohibits—the summary will mislead some voters into believing that federal law already permits medical marijuana (as opposed to recreational marijuana) or that the amendment utilizes some federal-law exception. This, of course, is not correct. Congress has "designate[d] marijuana as contraband for any purpose" and "expressly found that the drug has no acceptable medical uses." *Gonzales*, 545 U.S. at 27. Voters deserve to know that. As this Court has said, "[t]he voters of Florida deserve nothing less than clarity when faced with the decision of whether to amend our state constitution, for it is the foundational document that embodies the fundamental principles through which organized government functions." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008).

* * *

Pursuant to Section 16.061, Florida Statutes, I respectfully request this Honorable Court's opinion as to whether the proposed amendment complies with Article XI, section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Respectfully submitted,

Pamela Jo Bondi

Pamela Jo Bondi
Attorney General

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

September 26, 2013

The Honorable Pam Bondi
Attorney General
Department of Legal Affairs
PL-01 The Capitol
Tallahassee, Florida 32399-1050

Dear General Bondi:

Section 15.21, Florida Statutes, provides that the Secretary of State shall submit an initiative petition to the Attorney General when the sponsoring political committee has obtained ten percent of the signatures in one fourth of the Congressional Districts, as required by section 3, Article XI of the Florida Constitution, and has met registration and submission requirements.

Section 16.061, Florida Statutes, provides that the Attorney General must then petition the Supreme Court for an advisory opinion regarding the compliance of the text of the proposed amendment with the State Constitution, and its ballot title and substance with section 101.161, Florida Statutes.

People United for Medical Marijuana has successfully met the requirements of section 15.21, Florida Statutes, for the initiative petition titled *Use of Marijuana for Certain Medical Conditions*, Serial Number 13-02. Therefore, I am submitting the proposed constitutional amendment, ballot title, and substance of the amendment, along with a status update for the initiative petition, and a current county-by-county signature count.

Sincerely,

Ken Detzner
Secretary of State

KD/am

pc: John Morgan, Chairperson
People United for Medical Marijuana

Enclosures

R.A. Gray Bldg., Rm. 316 • 500 S Bronough St. • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6200 • Facsimile: (850) 245-6217 elections.myflorida.com
Commemorating 500 years of Florida history www.fla500.com

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CONSTITUTIONAL AMENDMENT PETITION FORM

Note:
- All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.
- Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes, to knowingly sign more than one petition for a candidate, a minor political party, or an issue. [Section 104.185, Florida Statutes]
- If all requested information on this form is not completed, the form will not be valid.

Your name_____
Please print name as it appears on your Voter Information Card

Your residential street address_____

City_____ Zip_____ County_____

Voter Registration Number_____ **OR** Date of Birth_____

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

BALLOT TITLE: Use of Marijuana for Certain Medical Conditions

BALLOT SUMMARY: Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not authorize violations of federal law or any non-medical use, possession or production of marijuana.

ARTICLE AND SECTION BEING AMENDED OR CREATED: Article X, Section 29

Full text of proposed constitutional amendment is as follows:

ARTICLE X, SECTION 29. Medical marijuana production, possession and use.—

(a) PUBLIC POLICY.

(1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

(2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.

(3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) "Department" means the Department of Health or its successor agency.

(3) "Identification card" means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient's medical use of marijuana.

(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).

(5) "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department.

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

(7) "Personal caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.

(8) "Physician" means a physician who is licensed in Florida.

(Continues on next page)

(Continued from previous page)

(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.

(2) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient

(3) Nothing in this section allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.

(4) Nothing in this law section requires the violation of federal law or purports to give immunity under federal law.

(5) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place.

(6) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance of qualifying patient identification cards to people with physician certifications, and standards for the renewal of such identification cards.

b. Procedures for the issuance of personal caregiver identification cards to persons qualified to assist with a qualifying patient's medical use of marijuana, and standards for the renewal of such identification cards.

c. Procedures for the registration of Medical Marijuana Treatment Centers that include procedures for the issuance, renewal, suspension, and revocation of registration, and standards to ensure security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Issuance of identification cards and registrations. The Department shall begin issuing qualifying patient and personal caregiver identification cards, as well as begin registering Medical Marijuana Treatment Centers no later than nine months (9) after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering Medical Marijuana Treatment Centers within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this provision.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

_____
DATE OF SIGNATURE

X_____
SIGNATURE OF REGISTERED VOTER

Include below the name and address of paid petition circulator if one was used to obtain signature (Section 106.19(3), F.S.)

_____
Name of paid circulator (if applicable)

_____
Address

RETURN TO:

People United for Medical Marijuana
Post Office Box 560296
Orlando, FL 32856

For official use only: *Serial number* 13-02
Date approved 7/10/2013

Pd. pol. adv. paid for and sponsored by People United for Medical Marijuana, P.O. Box 560296, Orlando, FL 32856

Attachment for Initiative Petition
Use of Marijuana for Certain Medical Conditions
Serial Number 13-02

1. **Name and address of the sponsor of the initiative petition:** People United for Medical Marijuana, 20 North Orange Avenue, Suite 1600, Orlando, Florida 32801; Chairperson is John Morgan, Esq.

2. **Name and address of the sponsor's attorney, if the sponsor is represented:** Unknown

3. **A statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot:** As of September 26, 2013, the sponsor has not obtained the requisite number of signatures to have the proposed amendment placed on the ballot. A total of 683,149 valid signatures is required for placement on the 2014 general election ballot.

4. **If the sponsor has not obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot, the current status of the signature-collection process:** As of September 26, 2013, the Supervisors of Elections have certified a total of 94,541 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2014 general election ballot.

5. **The date of the election during which the sponsor is planning to submit the proposed amendment to the voters:** Unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 4, 2014, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2014.

6. **The last possible date that the ballot for the target election can be printed in order to be ready for the election:** September 4, 2014, if amendment is to be placed on November 2014 Ballot.

7. **A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request:** Unknown (The Secretary of State forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on September 26, 2013.)

8. **The names and complete mailing addresses of all of the parties who are to be served:** This information is unknown at this time.

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SUMMARY OF PETITION SIGNATURES

Political Committee: **People United for Medical Marijuana**

Amendment Title: **Use of Marijuana for Certain Medical Conditions**

Congressional District	Voting Electors in 2012 Presidential Election	For Review 10% of 8% Required By Section 15.21 Florida Statutes	For Ballot 8% Required By Article XI, Section 3 Florida Constitution	Signatures Certified
FIRST	356,435	2,851	28,515	0
SECOND	343,558	2,748	27,485	2,022
THIRD	329,165	2,633	26,333	1,277
FOURTH	351,564	2,813	28,125	3,307
FIFTH	279,598	2,237	22,368	4,986
SIXTH	363,402	2,907	29,072	4,624
SEVENTH	333,990	2,672	26,719	2,912
EIGHTH	365,738	2,926	29,259	2,168
NINTH	277,101	2,217	22,168	1,995
TENTH	329,366	2,635	26,349	1,749
ELEVENTH	359,004	2,872	28,720	1,166
TWELFTH	345,407	2,763	27,633	3,723
THIRTEENTH	344,500	2,756	27,560	4,298
FOURTEENTH	295,917	2,367	23,673	6,340
FIFTEENTH	304,932	2,439	24,395	2,472
SIXTEENTH	360,734	2,886	28,859	2,383
SEVENTEENTH	299,464	2,396	23,957	790
EIGHTEENTH	345,399	2,763	27,632	2,568
NINETEENTH	323,317	2,587	25,865	949
TWENTIETH	264,721	2,118	21,178	8,271
TWENTY-FIRST	326,392	2,611	26,111	2,927
TWENTY-SECOND	329,816	2,639	26,385	5,110
TWENTY-THIRD	290,042	2,320	23,203	5,694
TWENTY-FOURTH	263,367	2,107	21,069	13,000
TWENTY-FIFTH	240,521	1,924	19,242	1,932
TWENTY-SIXTH	268,898	2,151	21,512	4,441
TWENTY-SEVENTH	247,023	1,976	19,762	3,437
TOTAL:	**8,539,371**	**68,314**	**683,149**	**94,541**

Date: 9/26/2013 11:18:06 AM

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery this 24th day of October, 2013, to the following:

Mr. John Morgan
Chairperson, People United for Medical Marijuana
P.O. Box 560296
Orlando, FL 32856

Mr. Jon L. Mills
Boies, Schiller & Flexner, LLP
100 SE 2nd Street, Suite 2800
Miami, Florida 33131

Financial Impact Estimating Conference
Attention: Amy Baker, Coordinator
Office of Economic and Demographic
Research
111 West Madison Street, Suite 574
Tallahassee, Florida 32399-6588

I hereby certify that a true and correct copy of the foregoing has been furnished via interoffice mail delivery this 24th day of October, 2013, to the following:

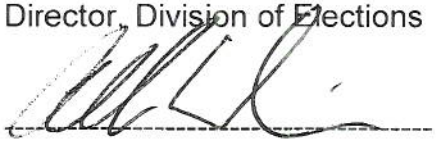
Mr. Ken Detzner, Secretary of State
ATTN: General Counsel

The Honorable Rick Scott Governor, State of Florida
ATTN: General Counsel

The Honorable Don Gaetz, President, Florida Senate
ATTN: General Counsel

The Honorable Will Weatherford, Speaker, Florida House of Representatives
ATTN: General Counsel

Director, Division of Elections



Allen Winsor
Solicitor General
Florida Bar Number 016295

Responses from State and Local Agencies

The following presents:

- An email from Amy Mercer, Executive Director, The Florida Police Chiefs Association, to Amy Baker, dated October 25, 2013

Baker, Amy

From: Amy Mercer <amercer@fpca.com>
Sent: Friday, October 25, 2013 12:22 PM
To: Baker, Amy
Subject: FW: Financial Impact Estimating Conference
Attachments: medical marijuana laws.docx; CFC-Amendment-64-Study-final2.pdf

Importance: High

Hello Amy, I pulled together the attached chart on state medical marijuana laws. Most of the info was gathered from the NCSL. If you look under Colorado in the attached chart there is a link to the cost analysis of amendment 64 from an April 2013 report. I have also attached the report for your reference. I hope you find this helpful.

Also, at this time the Florida Police Chiefs Association will not be able to provide accurate information relating to what we anticipate to be a negative fiscal impact to our agencies.

Thank you, Amy

Amy Mercer
Executive Director
The Florida Police Chiefs Association
P.O. Box 14038
Tallahassee, FL 32317
Phone: 850-219-3631
Fax: 850-219-3640
Email: amercer@fpca.com

STARS... *By providing Selection, Training, Assessment, Recruitment and support, the* ***Florida Police Chiefs STARS Program*** *is setting the standard for finding, retaining and supporting the best police chiefs available. To learn more about STARS visit us at:*
http://www.fpca.com/stars-program

State	Statutory Language (year)	Patient Registry	Allow Dispensaries	State Allows for Recreational Use
Alaska	Measure 8 (1998) SB 94 (1999) Statute Title 17, Chapter 37	Yes	No	
Arizona	Proposition 203 (2010)	Yes	Yes	
California	Proposition 215 (1996) SB 420 (2003)	Yes	Yes	
Colorado	Amendment 20 (2000)	Yes	Yes	Amendment 64 (2012) Task Force Implementation Recommendations (2013) Analysis of CO Amendment 64 (2013)
Connecticut	HB 5387 (2012)	Yes	Yes	
Delaware	SB 17 (2011)	Yes	Yes	
District of Columbia	Initiative 59 (1998) LR 720 (2010)	Yes	Yes	
Hawaii	SB 862 (2000)	Yes	No	
Illinois	HB 1 (2013) *Eff. 1/1/2014*	Yes	Yes	
Maine	Question 2 (1999) LD 611 (2002) Question 5 (2009) LD 1811 (2010) LD 1296 (2011)	Yes	Yes	
Maryland* (NOT a fully functioning public program, see	HB 702 (2003) SB 308 (2011) HB 180/SB 580 (2013) HB 1101- Chapter	No	No	

below)	403 (2013)			
Massachusetts	Question 3 (2012) Regulations (2013)	Yes	Yes	
Michigan	Proposal 1 (2008)	Yes	No	
Montana	Initiative 148 (2004) SB 423 (2011)	Yes	No**	
Nevada	Question 9 (2000) NRS 453A NAC 453A	Yes	No	
New Hampshire	HB 573 (2013)	Yes	Yes	
New Jersey	SB 119 (2009)	Yes	Yes	
New Mexico	SB 523 (2007)	Yes	Yes	
Oregon	Oregon Medical Marijuana Act (1998) SB 161 (2007)	Yes	No	
Rhode Island	SB 791 (2007) SB 185 (2009)	Yes	Yes	
Vermont	SB 76 (2004) SB 7 (2007) SB 17 (2011)	Yes	Yes	
Washington	Initiative 692 (1998) SB 5798 (2010) SB 5073 (2011)	No	No	Initiative 502 (2012)

* Maryland's law allows for medical marijuana use as a legal defense in court. Possession of more than one ounce of marijuana and public consumption for medical reasons is still illegal.

** While Montana's revised medical marijuana law limits caregivers to three patients, caregivers may serve an unlimited number of patients due to an injunction issued on January 16, 2013.

The Fiscal Impact of Amendment 64 on State Revenues

April 24, 2013

Prepared by:

Charles Brown
Director
Colorado Futures Center

Phyllis Resnick
Lead Economist
Colorado Futures Center

www.colostate.edu/coloradofutures

Summary

Colorado voters approved Amendment 64 in November 2012, legalizing the production, sale and use of adult recreational marijuana under Colorado law. Since then, various mechanisms of state government have been looking at how to implement the amendment, including how best to regulate and tax the sale of recreational marijuana. The Colorado General Assembly's Joint Select Committee on the Implementation of Amendment 64 recently handed down legislation that includes the following proposed taxes related to Amendment 64:

- An excise tax levy of 15% of the wholesale value of marijuana;
- A special sales tax of 15% on the retail sale of marijuana; and
- Extension of the state's existing 2.9% general sales tax to sales of marijuana and marijuana products.

The Colorado Futures Center at Colorado State University sought to provide a clear-eyed and unbiased analysis of the fiscal impact of the proposed Amendment 64 tax measures as part of a broader commitment to look holistically at the sustainability of Colorado's state budget. This paper will address the following key findings:

1. ***The adult recreational marijuana market in Colorado will be $605.7 million and taxation of that market will bring an additional $130.1 Million in state tax revenue in fiscal year 2014-15.***[1,2]
2. ***The 15% wholesale excise tax created by the amendment will not reach the goal of $40 Million for school construction as stipulated in the ballot language approved by voters.***
3. ***The high water mark for marijuana tax revenue is likely to be in the first few post-legalization years with revenue flattening or declining thereafter.***
4. ***Marijuana tax revenues may not cover the incremental state expenditures related to legalization.***
5. ***Marijuana tax revenues will not close Colorado's structural budget gap.***

[1] This amount does not include sales tax revenue from the sale of marijuana paraphernalia but does include consumables such as baked goods. It also does not account for the effect of local sales taxes on consumption and the price of marijuana or the offsetting loss in state revenue from declining medical marijuana sales as medical patients transition to the adult recreational marijuana market.

[2] These revenue estimates come from a model CFC built to estimate the revenue potential of marijuana taxation. The model was populated with what we believe are the most likely assumptions concerning cost, consumer behavior and tax rates. However, others may hold different assumptions. To allow for changes to the assumptions, the model is available on our website, www.colostate.edu/coloradofutures, in an interactive form for users to assess the revenue impact under different assumptions than those used for this study.

Background

Amendment 64, legalizing adult recreational marijuana for Coloradans 21 years and over, was passed by Colorado voters in November 2012. In December 2012, Governor John Hickenlooper created a task force charged with making recommendations concerning the regulatory and taxing environment for this new industry. In February 2013, the task force reported to the governor a series of 58 recommendations, a copy of which is available at www.colorado.gov/cms/forms/dor-tax/A64TaskForceFinalReport.pdf.

The gubernatorial task force recommended two separate and distinct taxes for marijuana, which are now being considered by the General Assembly. The first is a 15% excise tax imposed at the point of transaction between marijuana cultivators and production facilities or retail stores. This tax was proposed in the original language of the amendment, but since the taxing language in Amendment 64 was not TABOR compliant, the excise tax must be resubmitted for approval by the voters. The language of the amendment dedicates the first $40 million of proceeds from the excise tax to the Building Excellent Schools Today (BEST) program for school capital construction.

In addition to the excise tax, the task force recommended that voters be asked to approve a special sales tax of up to 25% imposed at the point of retail for marijuana products and paraphernalia. A select committee of the legislature lowered the special sales tax cap to15% and recommended a mechanism for the proceeds to be shared with localities. Cities or counties that prohibit marijuana licensees would not be eligible for a share of proceeds from the special sales tax.

Finally, under the current tax code, the sale of marijuana products and paraphernalia will be subject to the 2.9% existing state sales tax as well as local sales taxes without a vote of the people. A separate recommendation of the legislative select committee directed that all proceeds from the taxation and fees on marijuana transactions be deposited into a newly formed marijuana cash fund for the purposes of regulating the industry. Currently, the General Assembly is considering the committee recommendations, and assuming the tax recommendations will not be amended, we estimated the revenue potential of the proposed taxes as currently proposed.

Revenue Potential of the Proposed Marijuana Taxes

Estimating the revenue potential of proposed marijuana taxes is a four step process. Building on previously published methodologies[3], the Colorado Futures Center model estimates post-legalization demand for marijuana, the wholesale cost and retail price, the price induced changes in consumption behavior likely to result from a decision to legalize, and ultimately the tax revenue that will result from legalization. Estimations of tax revenue are heavily influenced by assumptions about demand for and the wholesale and retail prices of marijuana. Assumptions used in the Center's model, along with the rationale for each, are detailed in the sections below. However, to allow for changes to the assumptions, the model is available on our website, www.colostate.edu/coloradofutures, in an interactive form for users to assess the revenue impact under other assumptions.

- *STEP ONE: Estimate Demand for Adult Marijuana (not including consumables)*

The demand for adult marijuana is dependent on the number of consumers and the amount consumed per user. Under Colorado law, the purchase of adult recreational marijuana will be legal for anyone 21 years old and over. The current recommendation from the legislature would not limit access to Coloradans, making the purchase of marijuana legal for those 21 and over regardless of their place of residence. This extension to non-Coloradans makes the estimation of demand more complicated. While there are data by state on the rate of marijuana usage, it is difficult to determine the extent of the demand for marijuana that will come from non-Coloradans. In addition, while illegal, it is likely that marijuana will be purchased and transferred to those under the age of 21. Since there is no reliable data on the probable extent of marijuana tourism and illegal transfers to minors, these activities are not accounted for in the Center's model, so our estimates may be understated to some extent.

The most reliable data on marijuana usage comes from the National Survey on Drug Use and Health.[4] The latest survey data from 2010-11 report shares of the population, by age cohort, that have used marijuana in the previous year. For those years, the survey reports the following usage rates for Colorado:

- 41.29% in the age cohort 18 – 25
- 11.54% in the age cohort 26 and above

To establish our estimate for the number of Coloradans using marijuana in 2014, the first year of legalization, we applied the usage rates from the survey to the Colorado State Demography Office's 2014 forecast for population in those age cohorts. To adjust the 18 – 25 cohort to the 21-and-over cohort that is legally able to purchase marijuana, we assumed that the usage was evenly distributed and used a straight line approach. Initially we estimate that 554,710 Coloradans will use marijuana in 2014.

Since this estimate is based on survey data concerning a topic that is both illegal and may carry a social stigma, we assume that usage is underreported in the survey. Studies suggest that the range of underreporting may be anywhere between 0% and 40%. Consistent with the CCLP's analysis, we assume an underreporting rate of 20%. Adjusting our estimate of users for underreporting, we forecast that 665,652 Coloradans will use legal marijuana in 2014. However, as of February 2013, 108,951

[3] See for example the Colorado Center on Law and Policy (CCLP) at http://www.cclponline.org/postfiles/amendment_64_analysis_final.pdf

[4] http://www.samhsa.gov/data/NSDUH/2k11State/NSDUHsaeTOC2011.htm

Coloradans held medical marijuana cards. Again, consistent with the CCLP analysis, we assumed that 79% of those currently purchasing medical marijuana will migrate to the adult recreational marijuana market with the remainder continuing to access marijuana through medical marijuana establishments. Accounting for this adjustment, we estimate that the market for legal marijuana to be 642,772 Coloradans. Finally, we assumed a per person per year usage rate of 3.53 ounces, again consistent with the CCLP analysis. ***This results in a pre-legalization estimate of demand for marijuana of 2,268,985 ounces annually.***

There are threats to this estimate. Two that are mentioned above – marijuana tourism and the purchase of marijuana to be illegally transferred to those under the age of 21 – make our estimate of use somewhat conservative. If either or both of those effects occur, demand will be higher than we estimate. Our estimate of demand also does not account for changes in behavior due to legalization. There are likely to be offsetting effects of those attracted to marijuana or inclined to consume larger quantities because it is now legal and those who lose interest in marijuana now that the "forbidden fruit" aspect of marijuana use is eliminated. We implicitly assume that those effects offset.

- *STEP TWO: Estimate the Post Legalization Wholesale and Retail Prices*

The next component necessary to estimate the size of the legal marijuana market, and thus the tax revenue potential, is the price of marijuana. Because of the differing structure of the proposed excise and special sales taxes, both the wholesale and retail prices of marijuana are relevant.

Since growing marijuana is federally illegal and continues to be illegal in most states, there is scant data on the cost structure of a grow operation. However, in 2010 researchers at the Rand Institute estimated a range on the cost of growing marijuana in California. Their estimates vary widely – from de minimis to a top estimate of $400/lb for a grow operation that uses a 1500 square-foot home as the location of the cultivation.[5] Inflating Rand's high end 2010 estimate of $400/lb with a producer price index forecast for all farm products from Moody's Economy.com, we estimate that marijuana will cost $592/lb to grow in 2014. In our model we used a rounded assumption of $600/lb to grow marijuana.

Building from wholesale cost to retail price requires accounting for excise taxes, distribution costs, and various markups along the supply chain. ***After accounting for all of the additions to wholesale cost, we estimate the post legalization, pre sales tax retail price of marijuana to be $2,509/lb or $157/oz. After applying the recommended sales taxes, we estimate that the retail price for marijuana will be $2,959/lb or $185/oz.*** Again, the retail price calculation is extremely sensitive to the assumptions made for all adjustments along the supply chain as well as to the cultivation (wholesale) cost of marijuana. The table below shows our calculations from cultivation cost to retail price, along with the basis for our assumptions. Users wishing to vary some of these assumptions may do so on our interactive model at www.colostate.edu/coloradofutures.

[5] http://www.rand.org/content/dam/rand/pubs/working_papers/2010/RAND_WR764.pdf and http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP315.pdf

Table 1. Calculations from Cultivation Cost to Retail Price

Cost Item	Value (all per lb. unless noted)	Basis for Assumption
Wholesale Cost, per lb.	$ 600	Rand Study, adjusted for inflation
Excise Tax at 15%	$ 90	Amendment 64
Producer Markup Rate at 25%	$ 183	CCLP study, based on similar agricultural product markups
Distribution Cost, per lb.	$ 40	CCLP assumption, based on Rand analysis
Retailer Markup Rate at 175%	$1,597	Middle estimate between CCLP analysis and numerous marijuana blogs. Also accounts for overhead costs associated with operating marijuana retail establishments.
Retail Price, per lb/oz. (before sales tax)	$2,509/lb. $157/oz.	
Special Sales Tax at 15%	$ 376	Select Committee recommendation for maximum rate
State Sales tax at 2.9%	$ 73	
Retail Price, per lb. (after sales tax)	$2,959/lb.	
Retail Price, per oz. (after sales tax)	$185/oz.	

- *STEP THREE: Estimate Price Induced Consumption Changes and the Post Legalization Demand for Adult Marijuana*

Assuming high end estimates for the cost of cultivation and retailer markups on marijuana and accounting for the tax burden, we forecast the post legalization price of $185/oz to be lower than current black market prices in Colorado. The best source for prices for black market marijuana in Colorado is the crowdsourcing website The Price of Weed[6] which reported, as of April 10, 2013, that the average price of an ounce of marijuana of all qualities was $206. As with most other goods, a reduction in the price results in an increase in the quantity demanded. We expect the same to be true for marijuana.

The relationship between price and quantity of goods consumed is characterized by the elasticity of demand. Elasticitities measure the percent change in quantity demanded that results from a 1% change in the price of a good. The best estimate for the elasticity of demand for marijuana comes from the researchers at the Rand Institute[7] who estimate that marijuana has a price elasticity of demand of -0.54. The interpretation of this measure is that a 1% decrease in the price of marijuana results in a 0.54% increase in quantity demanded. Applying this measure to our forecast 10% decrease in the price of marijuana after legalization, we expect a 6% increase in quantity demanded, ultimately ***resulting in a post legalization demand for marijuana (not including consumables) of 2,394,428 ounces.***

[6] http://www.priceofweed.com/

[7] Kilmer et al 2010 pg. 23 at http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP315.pdf

- *STEP FOUR: Calculate Tax Revenue*

Under the proposed tax measures, and assuming approval by the voters, all marijuana and marijuana related purchases will be subject to the excise, special sales and existing state sales tax. While we do not have good data on the sales of marijuana paraphernalia, we can use the model above and other research to estimate the tax revenue potential from all other marijuana purchases, including consumables such as baked goods.

According to the investor relations website for Medical Marijuana Inc.[8], consumable (or edible) marijuana accounts for 38% of the total market for medical marijuana. Assuming that the share will remain the same for recreational marijuana, we can impute the size of the total market for all marijuana, including consumables, by knowing that the non-edible purchases, estimated above, account for 62% of the total market. By that calculation, and assuming the demand and cost structure outlined above, the total dollar value of the retail and wholesale markets for adult marijuana are estimated to be $605.7 Million and $144.8 Million, respectively. Applying the 15% tax at wholesale, the 2.9% state sales tax at retail and the proposed special sales tax at retail of 15% yields the following tax revenue estimates for 2014-15, the first fiscal year of adult marijuana:

- ***A 15% excise tax imposed at the point of cultivation will yield $21.7 Million***
- ***A special sales tax of 15% will yield $90.9 Million***
- ***The existing state sales tax of 2.9% will yield $17.6 Million***

[8] http://www.medicalmarijuanainc.com/index.php/press/22-press-releases/2012-press-releases/107-medical-marijuana-inc-portfolio-company-red-dice-holdings-sees-continued-brand-recognition-with-co-based-dixie-elixirs

Concluding Thoughts: What will Marijuana Taxation Mean for the State Budget?

In November 2013, Colorado voters will be asked to approve taxes related to this new industry. Passage of the tax measures would result in approximately $130.1 Million in additional state revenue in FY 2014-15 (including the $17.6 Million estimated to be generated by the existing state sales tax). What will these new revenues mean for the fiscal position of the state?

- *IMPACT: The 15% Excise Tax will not Yield $40 Million for the Building Excellent Schools Today (BEST) Program*

The language of Amendment 64 dedicated the first $40 Million in revenue from the marijuana wholesale excise tax to the BEST program. Although the excise tax rate will need to be submitted to the voters, the 2013 ballot language is likely to comport with the language of Amendment 64 and dedicate the first $40 Million to school construction.

Consistent with Amendment 64, the excise tax likely will be structured as 15% of the wholesale cost of marijuana. In the current vertically integrated system for medical marijuana, with few or no arm's-length transactions between cultivator and seller, it is difficult to ascertain the wholesale cost of marijuana. Our assumption of $600/lb. based on estimates by the Rand Institute and adjusted for inflation results in ***our $21.7 million estimate for the revenue potential from the excise tax, which falls significantly short of the target of $40 Million for school construction***. In order to generate $40 Million for the BEST program, the cost to grow a pound of marijuana would need to be in the range of $1,100/lb., a level almost two times the Rand estimate adjusted for inflation and one which risks raising the retail price of marijuana to a level that would encourage the continuation of a black market.

- *IMPACT: Revenue Likely to be Highest in Early Years with Revenue Flattening or Declining in Subsequent Years*

While this study did not model beyond the first full year after legalization, our preliminary analysis suggests that the high water mark for marijuana tax revenues will be in the years just following legalization. This will be the result of core and interrelated economic and behavioral phenomena including:

- *Increased competition in the cultivation (wholesale) and retail markets for marijuana which will drive efficiencies and erode margins in the industry.* As competition forces growers and sellers to be more efficient, margins will erode and both wholesale cost and retail prices will forecast to fall. Without offsetting increases in consumption, falling prices result in lower tax revenue.

- *A decline in the rate of growth of consumption as the "wow" factor erodes over time and any marijuana tourism begins to decline, particularly if other states follow Colorado and Washington and legalize marijuana.* One way to stabilize revenue in an environment of falling cost and price is for consumption increases to be sufficient to offset the lower prices. However, our expectation is that after an initial post legalization period of intense interest and curiosity, consumption growth rates will stabilize or even perhaps decline as has been the case with cigarette consumption.

- *IMPACT: Marijuana Related Revenues May Not Cover Incremental State Expenditures Related to Legalization*

While it was outside the scope of our study to estimate the expenditure implications of legalized marijuana, we recognize that the recommended regulatory structure, public health and safety initiatives, human services responsibilities, and potential law enforcement needs will place a demand on the state's budget. The General Assembly's Joint Select Committee also recognized this and made a recommendation that all marijuana related revenues be deposited into a marijuana cash fund dedicated to funding the regulatory function in the Department of Revenue.

In recognition that the cash fund may be insufficient to support the regulatory function, the committee recommended a general fund supplement for marijuana enforcement with an expectation that it will be reimbursed in the future. This structure raises some questions and concerns:

- *Will the revenues from marijuana, either in the early years or as the industry matures, ever be sufficient to fund the regulatory structure and other state expenditure needs?*
- *If not, what will be the longer term mechanism for funding the required regulation, making any necessary reimbursements to the General Fund, and funding the other public health, public safety and human service initiatives recommended by the Amendment 64 Task Force?*

These questions are of even more concern in light of our expectation that the most productive marijuana tax revenue years will be the years just after legalization.

- *IMPACT: Marijuana Tax Revenues will not Close Colorado's Structural Budget Gap*

Colorado's long term general fund structural gap is well documented in previous work done by the staff of the Colorado Futures Center at CSU. One conclusion from our work was that raising sin taxes, particularly those on cigarettes and tobacco, will not close the structural budget gap. We have every reason to believe that the same is true for marijuana. ***After meeting the obligations for BEST and funding the regulatory and other public health and safety budget demands, revenue from marijuana taxes will contribute little or nothing to the state's general fund.*** While taxes from marijuana will contribute to school capital construction needs and may cover the incremental costs associated with legalization, they will not contribute in any significant way to solving the structural gap developing in the state budget.