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Buzzkill? Cash-strapped states eye pot tax

By: Rachel Bade – March 28, 2013

Now that voters in Colorado and Washington have legalized recreational marijuana use, dope smokers there can light up without the usual paranoid fear that the cops are at the door.

The taxman is another matter.

Cash-starved legislators are seeing dollar signs in dime bags — with talk that a tax on marijuana could pump hundreds of millions or even billions into budgets still reeling from the recession.

“I’ve seen some estimates in the high tens of millions, as much as \$100 million for [Colorado],” said Rep. Jared Polis (D-Colo.), who’s pushing a federal legalization in Congress. Money like that could make a big difference, he said — including a “substantial dent in needed school improvements, particularly in poorer districts.”

It’s long been a central argument of the pro-marijuana crowd: Get marijuana out of the hands of dope dealers, tax it like you do cigarettes, then sit back and watch the money pour in.

“We all know where the money from nonmedical marijuana sales is currently going,” said a narrator in a Colorado campaign ad from last year, nodding to Mexico. “It doesn’t need to be that way. If we pass Amendment 64, Colorado businesses would profit, and tax revenues would pay for public services and the reconstruction of our schools.”

Dale Gieringer, director of California National Organization for the Reform of Marijuana Laws, estimates that legalizing pot would bring in at least \$1.2 billion to his state alone. His study assumes a traditional sales tax plus an additional \$50 levy per ounce of marijuana, which runs between \$280 and \$420.

His study argues that legalization could also generate \$12 billion to \$18 billion in new economic activity for California.

The skeptics’ response: What are you smoking?

“This is not a cash cow that can solve anyone’s fiscal problems,” said Harvard economics professor Jeffrey Miron, a pro-legalization scholar at the libertarian Cato Institute who says Gieringer’s numbers are roughly three times what they should be.

“There is a lot of exaggeration about how big the revenue can be.”

Advocates “want to be allowed to smoke in peace,” Miron said. But, they’re “nervous about making that argument. They’re afraid that argument won’t win the day, so they have focused in many cases on the revenue side.”

Miron estimates that a nationwide legalization that taxed marijuana like alcohol and tobacco would mean \$6.4 billion in new tax revenue — \$4.3 billion for Uncle Sam and \$2.1 billion for the states.

The estimates are necessarily hazy. No one knows how much marijuana is bought and sold today, let alone how legalization will affect consumption and prices.

“When you go to legalize, you have reduced risk in producing and distributing the drug. That’s a real component of the monetary price of marijuana,” said Rosalie Liccardo Pacula, the co-director of the RAND Drug Policy Research Center.

She expects prices to fall by 70 to 85 percent in both Colorado and Washington — and that means taxes, if levied as a percentage of price or value, will also fall considerably.

But she acknowledges that it’s hard to know for sure.

“You have to know more about the structure of the demand curve, which we don’t have any data on because this is black-market; it’s all conjecture,” Liccardo Pacula said.

And even lawmakers looking to cash in know they’ve got to be careful. Tax marijuana too much and it drives users right back to illegal dealers. Nobody knows what that price point is.

“You want to make sure the black market doesn’t have an advantage over the regulated market because if it does, then the whole concept fails and people will continue to buy marijuana illegally — so there has to be a price advance for the legal market,” Polis said.

The federal government could swoop in at any moment and knock down legalization laws in both states because they violate federal marijuana prohibitions.

But in the meantime, Washington state lawmakers are considering tweaks to accompany a voter-approved 25 percent tax on each of the three levels of marijuana production.

In Colorado, lawmakers on a pot legalization panel met Friday to brainstorm how to tax it. The voter-approved November ballot initiative called for an excise tax of no more than 15 percent but didn’t specify a levy. Last week, a statewide task force on legalization recommended they levy an excise tax and a sales tax of up to 25 percent.

Colorado’s task force also advised Gov. John Hickenlooper and Colorado’s congressional delegation to push for a federal tax code modification in Washington, D.C., that would allow the state’s marijuana businesses to claim tax deductions. Companies selling illegal substances are currently barred from receiving federal deductions and credits.

Under Colorado’s constitution, voters will have to approve whatever statute lawmakers come up with in the state’s November 2013 elections.

The Colorado Center on Law and Policy last August estimated that legalization would bring in \$24 million in excise tax revenue, \$8.7 million in state sales tax revenue and \$14.5 million in local tax revenue.

Washington's Office of Financial Management estimates that marijuana revenues levied on growers, processors and retailers will bring in just over \$565 million in 2017.

Plus, the state's legislators are questioning whether they need to tax medicinal marijuana, which is currently tax-free, to keep people from claiming illness to get a better price.

Rep. Dave Reichert, a Washington Republican whose mother took a pill form of cannabis to ease pancreatic cancer pains during the last weeks of her life, said the debate exemplifies just how little his state thought through legalizing and taxing marijuana. Reichert opposes recreational-use legalization.

Then, there's the question of how much it will cost to regulate the newly legalized recreational drug — an expense that will likely come from marijuana taxes themselves.

That's where Reichert, a former cop, sees an issue.

"I don't think the revenue they raise will be near enough to cover the cost of regulating pot stores," he told POLITICO. "What I'm hearing from the police chiefs and sheriffs is that this is going to cost us more money to monitor those rules and regulations."

Although Colorado and Washington are the only states to have legalized recreational marijuana use so far, others could follow. Oregonians defeated a marijuana legalization ballot measure last November, but lawmakers there will hear testimony next week on a proposal legalizing and taxing pot at \$35 per ounce, with supporters saying new revenue will beef up money for schools and mental health programs.

And someday, there could be movement on the national level. Polis and Rep. Earl Blumenauer (D-Ore.) have introduced bills that ease federal laws on marijuana, as did former Reps. Ron Paul (R-Texas) and Barney Frank (D-Mass.) before them. And Paul's son Sen. Rand Paul (R-Ky.) called this week for a reduction in the penalties for recreational marijuana use.

"There are a lot of young people who do this, and then later on in their twenties they grow up and get married and they quit doing things like this," he told Chris Wallace on "Fox News Sunday." "I don't want to put them in jail and ruin their lives."