

Recommendations Regarding New York State Proposed Cannabis Regulation and Taxation Act COMMITTEE ON CANNABIS LAW

Cannabis #1¹

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Proposed New York Cannabis Regulation and Taxation Act (“CRTA”)

On January 15, 2019, Governor Cuomo proposed a bill as part of the State’s budget, called the “Cannabis Regulation and Taxation Act” (“CRTA”). The CRTA is intended to amend the existing cannabis laws and make legal the adult use of cannabis, as well as to consolidate supervision by the State when it comes to all forms of cannabis. The CRTA would “create a regulatory structure” that monitors the “licensure, cultivation, production, distribution, sale and taxation of cannabis.”

NYSBA Committee on Cannabis Law

In late 2017, the New York Bar Association (NYSBA) formed a [Committee on Cannabis Law](#) with the following mission:

The Committee on Cannabis Law is charged with serving as the New York State Bar Association’s focal point for the evolving legal status of Cannabis at both the state and federal level. Cannabis law is perhaps one of the fastest growing yet complex areas of the law that poses a broad spectrum of challenges. This Committee seeks to help NYSBA lawyers give their clients better advice through sharing educational resources, and otherwise helping New York set the highest possible legal and business (including advice to medical professionals) standards for legalized Cannabis products.

The Committee is composed of subject matter experts in the key legal disciplines relevant to the developing area of cannabis law and includes an academic advisor, Professor Robert Mikos, Vanderbilt Law School, who wrote the first law school text book on cannabis law, *Marijuana Law, Policy, and Authority* in 2017.^[1]

In 2018 the Committee kicked off its activities with an Annual Meeting program in New York City (NYC) focusing on the federal and state regulation of cannabis, including a panel discussing the history of cannabis regulation in New York, [Cannabis Law in New York State and the U.S. 2018](#). Later that year, the Committee held three more programs in New York: (1) [Legislative Developments in Medical Marijuana in New York 2018](#) held in Albany, (2) [Patient, Provider and Registered Organizations Perspectives on Medical Marijuana and Adult Use in New York](#) held in

¹ The CRTA was not part of the final state budget. Therefore, this document is intended to serve as a resource for policy makers who will consider the CRTA and other related legislation during the remainder of the regular 2019 legislative session.

Buffalo, and (3) [Practical Implications of Decriminalized Marijuana for the Legal Practitioner](#) held in NYC. In 2019, the Committee again held an Annual Meeting in NYC, Hot Topics in Cannabis Law: What Lawyers Need to Know. In addition, the Committee has been meeting regularly, discussing developments in cannabis law nationally and in particular New York, along with reflecting on its learning from these legal programs.

Through its ongoing meetings and legal programs, the Committee has developed in a short amount of time deep legal expertise in the regulated area of cannabis law both nationally and in New York State. We aim to be one of the key legal resources on cannabis law in the country and for lawyers conducting business with companies involved in the cannabis industry. With these comments and recommendations, the Committee wishes to provide its thoughts on the CRTA by first discussing a little background how we got here, and then addressing certain sections of the CRTA.

Background Leading to CRTA Proposal

Like many states, New York has had a history regulating cannabis, at times unregulated or partially regulated as a medical product, available only by prescription, with varying degrees of tolerance for adult use or possession. Currently, cannabis possession is illegal in New York, except for individuals with prescriptions from qualified medical providers under the Compassionate Care Act in 2014, for certain medical ailments under specified conditions. In August 2018, New York Governor Andrew Cuomo created a panel charged with devising a plan to allow for the legalization of recreational marijuana in New York State along with revamping its prior medical marijuana program. New York also launched its Industrial Hemp Agricultural Research Pilot Program in 2015, which permitted a limited number of educational institutions to grow and research industrial hemp. In 2017, the State eliminated the cap on the number of sites authorized to grow and research the plant and expanded the program to include farmers and businesses. Governor Cuomo also introduced and signed new legislation to establish industrial hemp as an agricultural commodity under the State's Agricultural and Markets Law.

On December 20, 2018, the Farm Bill was enacted into federal law, which changed the definition of "hemp" to be contain any part of the cannabis plant as long as the THC was below 0.3 percent on a dry weight basis, and decontrolled hemp (but not marijuana, which is also a form of cannabis) from the Controlled Substances Act (CSA). The Farm Bill further empowered states to develop industrial hemp programs consistent with certain conditions in the Farm Bill (or to make it illegal within the state), but each state program would need to be approved by the U.S. Department of Agriculture (USDA), which would also develop a federal hemp program. At the same time, the Farm Bill stated that the FDA would regulate hemp products that fell within its jurisdiction, i.e., food, dietary supplements, drugs, and medical devices that are sold in interstate commerce.

At this point, many other states and New York's bordering country, Canada, have already legalized the use of marijuana, or are in the process of doing so. However, for federal law purposes, use of cannabis still illegal, classified as a Schedule 1 controlled drug substance under the Controlled Substances Act ("CSA"), putting it in the same category as cocaine or heroin. This designation is for drugs perceived to show a high potential risk for abuse, contain minimal medical value, and cannot be safely prescribed. Therefore, the transporting of cannabis interstate is still illegal, as is the advertisement of cannabis products.

However, without a federal hemp program or USDA timetable to regulate state hemp, states and industry were uncertain what would become of the current state hemp programs, some of which

were only created legislatively in the state but had few or no registrants. On February 27, 2019 the USDA reiterated in a new webpage that until the USDA issues its regulations under the Farm Bill (due Fall 2019), no state program will be authorized under the Farm Bill, and industry/hemp farmers and producers should follow the Farm Bill 2014 provisions and 2016 joint USDA/DEA/DOJ/HHS/FDA Statement. According to the 2014 Farm Bill, industrial hemp growing was essentially only for research to consider the feasibility of hemp products (including marketing research). Further, the 2016 Statement said that under state industrial hemp programs, marketing is only for research, not commercial purposes, and while industrial hemp could be sold in other states with similar industrial hemp programs, such hemp could not be sold in states where such sale would be prohibited.

On February 26, 2019, the FDA's Commissioner, Scott Gottlieb, M.D., who days later announced his resignation from office effective a month later, stated that the FDA will hold a public meeting in April to initiate a rule making procedure on the key non-psychoactive component in cannabis, cannabidiol or "CBD". Gottlieb stated that FDA's goal was to create "an appropriately efficient and predictable regulatory framework for regulating CBD products." Gottlieb added that at this moment, it is illegal to introduce food or supplement products into interstate commerce that contain added CBD. On the following day, Gottlieb testified before the House Appropriations Committee, where he noted that FDA recognized that Congress intended there to be a pathway for CBD to be available, when Congress passed the Farm Bill in 2018. Gottlieb said he could "speculate" in a possible future framework where high-concentration, high-purity CBD would be regulated as a drug, whereas lower-concentration, lower-purity CBD products could be regulated as dietary supplements. But he cautioned that the FDA rulemaking process could take two to three years, so Congressional legislation may be necessary before then to address the CBD issue.

CRTA Proposal Comments

Opt-Out Provisions

Counties and cities with populations of more than 100,000 would be able to opt out of allowing adult use cannabis business licenses under Cannabis Regulation and Taxation Act § 132(1). If a municipality opts out of allowing any such licenses, however, this municipality also opts out of receiving any revenue generated by any sales of the drug statewide. Counties and cities with less than 100,000 residents, as well as all towns and villages regardless of population, could not opt out of allowing cannabis business licenses. However, all municipalities, regardless of size, can adopt laws relating to the time, place and manner in which adult-use dispensaries could be used under § 132(2).

As written, the opt-out could potentially harm local governments more than it protects them. There are towns in New York with more than 100,000 residents that will not be able to opt out under the current proposal, since it only applies to counties and cities. This could be an issue in population dense areas like, Nassau, Suffolk and Westchester Counties, where many towns have over 100,000 people.

If a town of over 100,000 people wants to prohibit adult-use cannabis business from operating within its boundaries, it would not be able to do so. Thus, a foreseeable result of the opt-out could be that more counties may end up prohibiting adult-use cannabis to appease one or more large towns within the counties' boundaries, even if the majority of towns or residents therein are in favor of adult use cannabis businesses and the tax revenue and jobs that will be realized therefrom.

By way of example, in Nassau County, the Town of North Hempstead enacted a local law on January 8, 2019 prohibiting the retail sale of recreational marijuana. See, Town of North Hempstead Local Law 1 of 2019. However, if proposed CRTA § 132(1) is enacted as drafted, this local law would be preempted. One reasonably foreseeable result of preemption would be that the Town of North Hempstead will lobby the Nassau County legislature to exercise the county wide opt-out, thereby prohibiting cannabis businesses from operating in one of the largest counties in the state.

Based on the foregoing, it is recommended that the opt-out provisions of § 132(1) be further considered and explained, particularly why certain municipalities, such as towns are treated differently than counties and cities, when such municipalities may have more than 100,000 residents and adult-use cannabis could be regulated within those municipalities separate from the county or city.

Social Equity Provisions

The following points bear on the social equity provisions raised by the CRTA.

Since Canada and states near to New York are starting to legalize recreational use of the drug, failure to legalize cannabis in New York State would cause New York State to have a disadvantage in earning revenues that would be generated by such sales, which then could be used for improvements.

Continuing to lock up people for these low-level drug offenses is unsustainable because of the other states legalizing the drug.

Communities of color are disproportionately affected by the illegal use of the drug, and its legalization would improve this situation as well.

The NYS Department of Health study found that the benefits of legalizing the drug outweighed the risks.

Assemblywoman Crystal People-Stokes sponsored the *Marihuana Regulation Taxation Act* (MRTA), which offers progressive legislation for social equity justice. The MRTA, which was proposed in 2013, targets a variety of issues that help disadvantaged communities. However, under the *Cannabis Regulation Taxation Act* (“CRTA”) sponsored by Governor Cuomo, we see a different take on the following issues: criminal penalties; criminal records; personal cultivation; and use of revenue.

Social Equity Comparative Analysis in MRTA v. CRTA

	MRTA	CRTA	SOCIAL EQUITY COMPARATIVE ANALYSIS
CRIMINAL PENALTIES	<p>Outside of an unlicensed sale, excessive possession and sale to minors, the only remaining criminalized areas are driving under the influence, cultivation on state or federal land and transporting marijuana across state lines.</p> <p>Reframes 221.05 of Penal Code as an allowance for personal use, possession, transfer, and home cultivation.</p>	<p>Repeals Penal Code 221.10 and 221.30</p> <p>Modifies existing penal code 221.05.</p>	<p>The CRTA creates harsher penalties where racial disparities in enforcement are more than likely to persist. CRTA actually has harsher criminal penalties for possession and use than the penal code right now.</p>
CRIMINAL RECORDS	<p>MRTA clears records for prior low-level convictions and arrests, and allows persons who have completed a sentence apply to have conviction dismissed or reclassified with no hearing requirement.</p>	<p>The CRTA removes a three-year waiting period for sealing of marijuana violation level convictions.</p>	<p>This directly impacts disadvantaged communities, expungement must be automatic to ensure that all New Yorkers with past marijuana convictions benefit from a criminal record clearing.</p>

<p>USE OF REVENUE</p>	<p>MRTA directs 50% of revenue after program costs to Community Grants Reinvest Fund that shall provide job training, promote adult education, support youth development programming, establish of expand community centers, bolster re-entry services for the formerly incarcerated and otherwise support community focused programming in communities that have been disproportionately impacted by the drug war.</p>	<p>CRTA has no defined percentages or amounts. It does establish a NY Cannabis Revenue Fund that is permitted to spend on various programs.</p>	<p>Minority communities position is that any legislation truly concerned with the interest of New York must center the communities most harmed by marijuana prohibition through revenue reinvestment and offer remedies to the problems that stem from biased enforcement, which disproportionately affect minorities.</p>
<p>EQUITY FACTOR FOR APPLICANTS</p>	<p>Cannot be denied solely on basis of prior conviction.</p> <p>Office must implement social and economic equity plan to promote diversity in licensing. This includes an incubator license.</p> <p>Priority licensing for applicants who are from communities disproportionately impacted by marijuana prohibition, low income and/or had prior marijuana conviction.</p>	<p>Cannot be denied solely on the basis of prior marijuana convictions.</p> <p>Calls for equity program</p> <p>Gives weight in licensing to people impacted by prohibition.</p> <p>Incubator program for equity licensees.</p>	<p>CRTA frames these provisions as merely suggestions and not commitments.</p>

Medical Cannabis Provisions

In conjunction with the above analysis, the taxation of recreational use products will drive consumer (and thus patient) behavior in the legalized cannabis market. Other states in which pre-existing medical marijuana databases tracked the impact of recreational programs on medical cannabis programs, such as Colorado, Oregon and Nevada, show that legalizing recreational use correlates with noticeable decreases in medical cannabis patient counts.^[2] For patients navigating the certification process in New York's medical program, the price of high-quality, medical grade cannabis should be affordable enough to preserve the market and its tested products from recreational offerings. Patients who view the certification as too arduous or too expensive will turn to recreational products to self-medicate, effectively removing clinical oversight, product integrity, and targeted therapeutic relief from the use of cannabis.

Attrition from the medical program to recreational use will be driven by the economic framework of the two programs. The most common complaint among patients certified through New York State's medical cannabis program is that of cost. New York certified patients pay average monthly expenditures range from \$100 to \$500 for physician-recommended doses. Financial incentives, including reduced tax requirements, low cost medical cannabis cards, financial hardship discounts and exclusive access to higher dose formulations have been proposed in other states to prevent erosion of medical programs.^[3]

New York's organization of both medical and recreational programs under a single regulatory body should act to shield its medical program. Unlike the pure economic benefit to the State housed in the recreational framework, a robust medical marijuana program would be a driver for New York's leadership in cannabis legitimacy and clinical relevance and reliability. A broadening of opportunities for physician-led research on cannabis, its properties, and its various efficacy rates for the State's approved conditions would benefit the overall science as well as patient outcomes in the medical cannabis program.

The State program should lean on qualified medical professionals, New York's leading clinicians and pharmacists, to determine an appropriate measurement for impairment and to promote research-backed safety indications for all cannabis users. Coordination of both programs with the protection of the medical program in mind would benefit all cannabis users in New York State.

FDA/FTC and Advertising/Sampling/Marketing Provisions

The CRTA attempts to set up separate programs for all categories of cannabis – adult-use cannabis (high THC- content), medical cannabis (high THC or CBD content), concentrated cannabis (THC content above 0.3%), hemp cannabis (THC < some specified amount with CBD but not industrial or food), industrial hemp (THC < some specified amount, industrial or food uses), each which will have their own set of regulations. While the CRTA establishes some minimum requirements for adult use and medical cannabis advertising, it states that advertising requirements will be established for hemp cannabis, industrial hemp, and concentrated cannabis by regulation later. As noted above, the CRTA establishes some labeling for cannabis products with THC but also leaves other categories of cannabis without any specific labeling or packaging requirement, unlike the FDA. The CRTA also does not appear to mention the FDA as a federal regulatory body that may have oversight over cannabis in the programs managed under the CRTA, unlike other states that explicitly recognize the FDA's jurisdiction over products in interstate commerce. At the same time, the FDA has taken the stance that only hemp seeds are Generally Recognized As Safe (GRAS) for food products, and all products containing CBD are

drugs and that products with THC are Schedule I drugs and illegal. FDA's Commissioner Gottlieb, who just announced he would resign, had stated the agency would take up developing regulations for the CBD-containing products beginning in April that could loosen the drug-only stance for CBD, perhaps recognizing that lower-CBD content products could be regulated as dietary supplements or other products. With Gottlieb resigning, however, and CBD being a controversial issue, it is unclear how much action FDA will take until a new commissioner (not interim commissioner) has been sworn in.

The Committee recommends that the CRTA identify for the State's anticipated cannabis programs when the FDA would have overlapping or exclusive jurisdiction to avoid confusion with the State's programs. For example, the CRTA could intend to regulate exclusive State CBD hemp products (referred to as "cannabis hemp" in the CRTA), while recognizing that the FDA would regulate CBD products involved in interstate commerce. On the other hand, the State and FDA could negotiate a shared role, where, for example, the State regulates the farming and handling/processing/testing of hemp, and the FDA regulates the packaging/labeling of CBD products intended for interstate commerce. The Committee also recommends that the State implement clear advertising policies regarding the variety of cannabis products, because at present it is unclear what constitutes "false advertising", particularly for products that merely state the contents, e.g., "CBD oil", when much of the safety information for cannabis products, particularly CBD products, is under development.

Labeling / Packaging Provisions

1. Incorporate Portions of the NY Medical Marijuana Law Into the Cannabis Law Related to Labeling Requirements (S. 1004.11(h), (i), (j), and (k) -- Manufacturing Requirements for Approved Medical Marijuana Product) and add more regulations on labeling requirements by analyzing other states' robust packaging and labeling regulations such as California's and Colorado's packaging and labeling laws.
2. Require all cannabis-infused product labels to state whether the product contains nut or dairy products or was processed in a facility also processing nut or dairy products.
3. Require all cannabis products to be packaged in child-resistant packaging that meets the requirements of 16 Code of Federal Regulations Part 1700 and in opaque packaging for exit packaging.
4. Require a minimum font size of a Primary Panel be no less than 6-point font and in relation to size of panel and container; and the Informational Panel be no less than 6-point font and in relation to size of primary panel. If the font cannot fit all required info, the product may be accompanied by a supplemental labeling with no less than 8-point font. In addition, warning statements must be on non-supplemental labels and in no less than 6-point font and should only be in black lettering with a white background.
5. Require the NY Universal Symbol Requirement and create an educational program to be taught to children in the public schools and in public service announcements about what the Cannabis universal symbol means akin to products containing highly toxic substances.
6. Prohibit untruthful or misleading statements.
7. Prohibit packaging that resembles packaging of certain commercially available products.

8. Add to §78(4) of the Cannabis Law to require multi-unit liquid ingestible infused products intended for adult use to be dispensed to a consumer in packaging with a device or mechanism for measuring a single-unit portion of the product.
9. Add that packaging must protect contents from contamination.
10. Prohibit Adult-use Cannabis manufacturers/processors from using the term, “Organic” in labeling of Cannabis products to refer to Cannabis or Cannabis products/edibles, unless the Cannabis is produced, processed and certified in a manner that is similar to the Organic Foods Production Act of 1990.
11. Require that NY State labeling law be applied to the Cannabis Law on labeling requirements and apply NY State labeling requirements for food products that are similar to the FD&C and FPLA but don’t cite directly to the FDA’s regulations on labeling. By applying NY State food allergen and protection laws into the Cannabis Law could provide NY cultivators/manufacturers/processors with a legal basis to defend themselves against FDA enforcement because they are acting lawfully in compliance with NY’s Cannabis Law/food labeling laws. *See specifically* Illinois and Connecticut’s medical marijuana regulations that apply their own respective state food labeling laws.
12. The Commission should establish standards for the minimization of packaging for cannabis products.

Tax Provisions

For a complete tax analysis please see <http://bit.ly/2EIodoV>.

1. Background

Both the type and amount of taxes should be designed to prevent business and consumers from operating in the gray and illicit markets. Cultivation taxes are imposed by some states and should be carefully considered. A sales tax that is more in the form of a traditional sales tax may make the most sense as it does not differentiate between products and is instead a function of price.

Though, as shown below, Colorado is generating the most tax revenue per capita of those 21 and over, the illicit market continues to grow due, at least in part, to a combined 30% sales tax rate. Unlicensed growers are growing cannabis for sale in other non-legal states, in search of higher profits.^[4] A 30% sales tax may lead consumers to seek illicit market products as those products are not taxed. This hurts both the state as well as legitimate businesses.

California’s cannabis taxes can amount to nearly 40%, including wholesale taxes, which has caused nearly 20% of consumers to purchase cannabis from the illicit market. Studies have shown that a reduction of 5% in taxes could move nearly a quarter of purchases made on the illicit market to legal purchases.^[5]

New York may be in a rare position to attempt to insulate itself from the continued growth of the illicit market. New York can impose a tax rate no more than 30% in total, keeping it in line with other states or even lowering the tax rate below other states to attempt to create a market that effectively prices the illicit market out of competition.

2. Current Tax Rates

As a comparison, states that have legalized cannabis for adult use have the following tax rates^[6]:

State	Retail	Wholesale	Population (21 and over)	Recreational Revenue (2018)	Per Capita Revenue of 21 and over
California	9.25% Sales Tax 15% Excise Tax Up to 10% Local Tax Total: 34.25%	\$9.25 per ounce of flowers \$2.75 per ounce of leaves	30,892,866 ^[7]	\$236,000,000 (estimate) ^[8]	\$7.63
Colorado	15% State Tax	15% Excise Tax	3,014,312 ^[9]	\$266,529,637 ^[10]	\$88
Maine	10% Sales Tax Total: 10%	\$335 per pound of flower \$94 per pound of leaves \$1.50 per immature plant \$0.30 per seed	1,131,622 ^[11]	NA	NA
Massachusetts	6.25% State Tax 10.75% Retail Tax 3% Local Tax Total: 20%	NA	4,587,935 ^[12]	NA	NA

Nevada	10% Excise Tax Up to 8% Local Tax Total: 18%	15% Excise Tax	1,411,378 ^[13]	\$69,400,000 (estimate through June 2019) ^[14]	\$49
Oregon	17% State Tax 3% Optional Local Tax Total (possible): 20%	NA	2,429,348 ^[15]	\$82,203,729 (fiscal year 2018) ^[16]	\$34
Washington	37% Excise Tax	NA	5,650,485 ^[17]	\$319,000,000 ^[18]	\$56

3. Analysis

The above table shows a probable correlation between tax rate and revenue per capita of those 21 and older. Colorado’s 15% retail tax along with a flat 15% excise tax on the wholesale side resulted in the highest tax revenue out of any adult use state. However, Colorado also has one of the most mature adult use markets. Upon legalized sales in Washington in 2014, taxes were imposed at a 25% rate on producers, 25% again on processors, and then 25% again at retail. This resulted in non-deductible taxes for cannabis businesses, leading to higher retail prices and lower tax revenue than projected. In 2015, Washington collapsed its tax rates to a single 37% retail tax that was not counted as income for federal tax purposes. The lowering of the excise tax rate caused Washington to beat its tax revenue projections by more than 200%, resulting in tax revenue in 2017 of \$315 million (compared to its \$120 million projection).^{[19], [20]}

Similarly, the cumulative tax rate in California can be as high as 45%, which has caused significant numbers of consumers to turn to the illicit market in order to avoid the substantially increased prices associated with legal purchases. The revenue shortfall of \$101 million in California has prompted the legislature to reduce the retail excise tax from 15% to 11% and suspend all cultivation taxes until 2022.

If New York were to follow California’s model of high taxes from inception (with New York’s proposed taxes potentially over 20% higher than California’s current tax rates) followed by lower taxes after revenues fail to meet expectations, New York runs the risk of small businesses being unable to withstand the initial high tax period. The smaller businesses will not be able to sustain high taxes and low profit margins and will not be able to push the ultimate cost to the end consumer in the form of higher retail prices as they would be undercut by larger businesses with bigger profit margins or prices in the illicit market. The result would be a New York market in which large businesses and the illicit market thrive after small businesses failed due to overly burdensome taxes, in complete contravention to one of the main purposes of legalizing cannabis in New York.

The CRTA's proposed tax rate would be in excess of a 60% effective rate and would result in prices of legal cannabis exceeding illicit market prices by over 30%. Given California's \$101 million tax revenue shortfall from its average tax rate in excess of 40%, and a mere 11% over illicit market prices, it can be demonstrated that New York's proposed tax rate will drive legal consumers to the illicit market in search of lower prices, thereby decreasing cannabis tax revenue and undermining the goals of the legislation.[21]

4. Suggested Taxation Regime

New York would be advised to adopt a taxation regime similar to Colorado's in order to avoid increasing illicit market sales. It is also imperative that any adult use law in New York contain language to decouple the New York tax code from 280E for cannabis business purposes to ensure that legal cannabis businesses can deduct ordinary and necessary expenses for state tax purposes. The suggested tax regime would allow small businesses, who cannot afford sophisticated planning techniques, to compete with large cannabis companies who can engage expensive legal and tax professionals to render advice to reduce effective tax rates through exotic and complex business structures. It would also be advisable that New York refrain from imposing an excise tax at the production and wholesale levels. Instead of imposing a weight based or flat tax on producers and processors, the excise tax should instead be borne by consumers, as it has been in Washington since 2015. The tax revenue to New York would be indistinguishable but this would allow businesses to simplify their tax accounting and tax collection and help alleviate some of the pressure caused by 280E.

Further, to the extent New York imposes excise taxes, it is imperative New York include language to exempt adult-use cannabis from Article 28 of the New York State Tax Law requiring all purchases of physical goods, except those exempted under Art. 28, Part 3 of the Tax Law, to incur a sales and compensating use tax. The proposals do not address sales tax and the potential increase to consumer prices by 8% or more. Currently, medical cannabis is exempt from sales and use tax under the blanket exemption for medical supplies and related items. Failure to exempt adult-use cannabis from sales and use tax will result in exacerbating the problems associated with high excise tax rates as discussed above.

Lastly, instead of modeling our tax rates on California's (lower) rates that have resulted in a \$101 million shortfall, which have stifled legal businesses and threatened an emerging industry, and ultimately has led to a planned reduction in retail tax rates and elimination of cultivation taxes, it is proposed that New York adopt rates similar to Colorado's which have proven efficacy to facilitate legal sales, sustain increased tax revenue growth year-over-year and support a thriving market. Upon a change in federal tax law, New York would have the ability to increase its tax rates and maintain price equilibrium as companies will be allowed to deduct their ordinary and necessary business expenses.

Environmental Considerations

In the current bill, pesticides are the primary focus of environmental issues, with three separate references. There is one reference to "energy standards." A review of the three pesticide provisions shows they are not totally consistent, as there are two references to "standards and guidelines" for pesticides, while the third provision refers to "restrictions on the use of pesticides."

Experience has shown that even with the most sophisticated Integrated Pest Management (“IPM”) programs, some use of pesticides, particularly fungicides is likely to be necessary. The statute should mandate that rules require that IPM programs be part of any cultivation license application, but should not speak in terms of restrictions as such language may well encourage the Office of Cannabis Management (“OCM”) to be overly restrictive in its approach to pesticides.

As to other considerations, such as energy management, air quality and waste disposal, the statute should mandate that the implementing rules require that these issues be addressed as part of any cultivation license application.

Proposed Amended Environmental Provisions of S. 1509-A/A. 2009-A.

Article 2, §12(4) Office of Cannabis Management Rulemaking Authority P. 8

4. The office, in consultation with the department of agriculture and markets, the department of environmental conservation and the department of public service, shall promulgate necessary rules and regulations governing the safe production of cannabis. Such rules and regulations shall address the potential environmental impacts of cannabis cultivation, including standards for energy consumption, water consumption, air quality and odor emissions, pesticide use and waste disposal. With respect to pesticide use the rules shall require the development and implementation of integrated pest management plans incorporating to the extent practicable sanitation and the use of cultural controls including beneficial pests as well as the appropriate use of pesticides.

Article 4, §80(4) Provisions Governing the Cultivation and Processing of Adult-Use Cannabis P. 38

4. Cultivators of adult-use cannabis shall only use pesticides that are registered by the department of environmental conservation or that meet the United States environmental protection agency registration exemption criteria for minimum risk pesticides, and only in compliance with regulations and guidance issued by the department of environmental conservation. Such regulations and guidance shall require the use of integrated pest management principles, including where required the appropriate use of pesticides.

Article 5, §104(2) Provisions Governing the Growing and Extracting of Hemp Cannabis P. 48

2. Licensed cannabinoid growers shall only use pesticides that are registered by the department of environmental conservation or that meet the United States environmental protection agency registration exemption criteria for minimum risk pesticides, and only in compliance with regulations and guidance issued by the department of environmental conservation. Such regulations and guidance shall require the use of integrated pest management principles, including where required the appropriate use of pesticides.

Conclusion

The Committee hopes that the above comments are useful in consideration of possible amendments to the CRTA. We look forward to reviewing any amendments made to the CRTA as well as assist in finalizing the CRTA to provide New York with a comprehensive and effective regulation of all forms of cannabis in the State. Our hope is that New York's CRTA will then become a model for other states to adopt, along with the federal government in certain aspects.

[1] The Committee is Co-Chaired by Aleece Burgio and Brian Malkin and is composed of members from the following NYSBA Sections, as well as other legal disciplines: Business Law; Corporate Counsel; Criminal Justice; Elder Law and Special Needs; Entertainment, Arts and Sports Law Section; Food, Drug and Cosmetic Law, General Practice; Health Law; Intellectual Property Law; International Law; Labor and Employment Law; Real Property Law; Tax Law; Trusts and Estates Law; and Young Lawyers.

[2] <https://mjbizdaily.com/chart-can-medical-marijuana-programs-survive-in-states-with-recreational-markets/>

[3] https://www.masslive.com/politics/index.ssf/2018/05/will_recreational_marijuana_st.html

[4] <https://www.cbc.ca/news/world/colorado-marijuana-black-market-1.4647198>

[5] https://mjbizdaily.com/wp-content/uploads/2018/08/High-Cost-of-Illegal-Cannabis_FINAL_.pdf

[6] <https://www.leafly.com/news/industry/marijuana-tax-rates-by-state>

[7] <https://suburbanstats.org/population/how-many-people-live-in-california>

[8] <https://www.sacbee.com/news/politics-government/capitol-alert/article225185310.html>

[9] <https://www.infoplease.com/us/comprehensive-census-data-state/demographic-statistics-33>

[10] <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

[11] <https://suburbanstats.org/population/how-many-people-live-in-maine>

[12] <https://www.infoplease.com/us/comprehensive-census-data-state/demographic-statistics-149>

[13] <https://www.infoplease.com/us/comprehensive-census-data-state/demographic-statistics-217>

[14] <https://www.reviewjournal.com/news/pot-news/nevada-marijuana-tax-revenues-top-31m-from-july-to-october-1562785/>

[15] <https://www.infoplease.com/us/comprehensive-census-data-state/demographic-statistics-245>

[16] <https://www.oregon.gov/DOR/programs/gov-research/Documents/Financial-reporting-receipts-public.pdf>

[17] <https://suburbanstats.org/population/how-many-people-live-in-washington>

[18] <https://www.tre.wa.gov/portfolio-item/washington-state-marijuana-revenues-and-health/>

[19] <https://www.gleamlaw.com/wa-state-mj-tax/>

[20] https://taxfoundation.org/marijuana-taxes-lessons-colorado-washington/#_ftnref27

[21] <http://bit.ly/2CajbRx>
