



Robert W. Wood

THE TAX LAWYER

TAXES 6/10/2015

Colorado Cuts Marijuana Tax, Targets Black Market, While Oregon Eyes 20% Tax

Colorado is leading again, this time with a permanent tax break on recreational marijuana. The state is lowering the tax from 10% to 8% effective in July 2017, a move that could cut into Colorado's [black market](#). Colorado was the first state to legalize marijuana for recreational use, and now it's passed a marijuana tax relief. There is even a one-time tax holiday on September 16, 2015, from the 10% state sales tax.

Gov. John Hickenlooper signed the provisions into law, noting that this should lower the price of legal cannabis. A voter initiative is set too. The question for voters is whether Colorado can keep the estimated \$58 million in pot taxes collected this fiscal year. [Colorado's Taxpayer's Bill of Rights—TABOR](#)—requires the state to issue refunds to taxpayers if the state's spending or revenue collections exceed the previous projections. To try to avoid the refund requirement, legislators introduced HB [15-1367](#), creating a ballot initiative to allow Colorado voters to approve of the state keeping the \$58 million in marijuana revenue.



An unidentified pot reveler carries a modified version of the state flag of Colorado during activities on the unofficial marijuana holiday Monday, April 20, 2015, in Denver.

Regardless of whether the ballot initiative passes, Colorado did lower the sales tax on marijuana from 10% to 8% beginning July 2017. Eliminating the sales tax for just September 16, 2015 meets constitutional obligations. But even that one day tax hiatus has a price. The tax holiday is expected to cost about \$100,000, plus \$3.6 million for a one-day elimination of the 15% excise tax.

If [voters agree](#) to let Colorado spend the tax money, the earmarks are pretty clear. Colorado has already approved [Proposition AA](#), which outlines how marijuana taxes would be spent. If the ballot initiative passes, the revenues will be used for the voter-approved projects: \$40 million to the construction and repair of public schools, \$12 million to the Marijuana Tax Cash Fund (funding to oversee enforcement, prevention programs, public health initiatives, and costs of legalization), and the remaining \$6 million to the state's general fund.

If voters vote no, Colorado will have to issue refunds to growers and users to the tune of about \$33 million. The remaining \$25 million would go to all Colorado taxpayers, whether they bought marijuana or not. This \$25 million would go [via](#) the state's [tiered refund system](#), with \$19.7 million returned to cultivators who pay the 15% wholesale excise tax rate. Plus, on January 1, 2016, the government will reduce the sales tax rate on marijuana from 10% to 0.1% until the reduction in collections equals \$13.3 million or June 30, whichever occurs first.

With all this complexity, why the September 16, 2015 tax holiday? The one day tax break is due to what Gov. Hickenlooper called a "fiscal glitch" with the state constitution. September 16, 2015 was picked because an end-of-year fiscal report is due to be certified the previous day. And the revenue figures are looking better. According to state figures, \$700 million worth of legal cannabis was sold in Colorado in 2014. The tax tally was \$76 million.

In [Oregon, a 20% tax](#) is being considered but has not yet been passed. It may be learning from Colorado, which is proving to be flexible and innovative with its marijuana taxes. Even so, time will tell whether the still healthy illegal market will slow down.

For alerts to future tax articles, follow me on Forbes. You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.