

# Vermont Legislative Joint Fiscal Office

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## FISCAL NOTE

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### S. 241 Senate Finance Committee Amendment – revenue sections only

#### Cannabis License and Fee Structure (13th and 18th Amendments)

These amendments set up the number of retail and cultivation establishments and testing laboratories that will be permitted in the first two years of legalization as well as the initial application fees (nonrefundable) and annual license fee amounts. The cultivation facilities and testing laboratory fee application process begins in April 2017 and the retail store applications begin in May 2017 and the fees are staggered over the first two fiscal years.

#### Fee Revenue Projections

Establishment	Initial Application	Annual License Fee	Year 1	Year 2	Application	License	FY17	FY18	FY19	
Retail Store	15,000	15,000	15	15	5/15/2017	9/15/2017	375,000	525,000	450,000	
Cultivation Tier 1	15,000	15,000	10	10	4/15/2017	6/15/2017	375,000	375,000	300,000	
Cultivation Tier 2	25,000	25,000	5	5	4/15/2017	6/15/2017	375,000	375,000	250,000	
Labs/Testing	500	2,500	3	0	4/15/2017	6/15/2017	9,000	7,500	7,500	
Notes:							<b>Est. Total</b>	<b>1,100,000</b>	<b>1,300,000</b>	<b>1,000,000</b>

- 1) 25 retail applications in year one, 20 in year 2
- 2) 15 tier 1 cultivators in year one, 15 in year 2
- 3) 10 tier 2 cultivators in year one, 10 in year 2
- 4) all licenses fully subscribed and issued at earliest date
- 5) no assumption for increasing number licensed in year 3

These estimates anticipate revenue from initial application fees that are in excess of the number of licenses that can actually be issued and that subsequently the number of licenses will be fully subscribed and issued in a timely manner. There are no assumptions about future changes in the number of licenses authorized.

#### Marijuana Taxes (22nd-24th Amendments)

There are three significant tax changes in this amendment:

- a new state marijuana excise tax that is 25% of the retail price is implemented, effective upon passage
- marijuana businesses will be allowed to deduct business expenses for the purposes of state income taxes, in the same manner as other businesses without regard for IRS Code 280e provisions, effective January 1, 2017
- marijuana sold at a dispensary or by a retailer is exempt from the sales and use tax, effective January 2, 2018

## 25% Marijuana Excise Tax Revenue Estimates

(\$ millions)

Range	FY17	FY18	FY19
Low	N/A	5.6	13.4
Middle	N/A	7.0	16.8
High	N/A	8.7	20.8

The Joint Fiscal Office and the Tax Department worked together to develop a consensus methodology for estimating marijuana tax revenues. The revenue projections above utilize the approach developed, and reflect the implementation provisions included in the Finance Committee Amendment. There is a high degree of uncertainty surrounding potential revenue from a newly legalized commodity and while a few states, Colorado and Washington, have published data, there remain many differences between their economic and tax experience with marijuana legalization and the process envisioned for Vermont. Lastly, these are revenue projections only, and do not account for expenses associated with the administration of the new tax.

Additional notes on marijuana excise tax modeling:

- the estimates are for retail marijuana available to individuals aged 21 and older
- the model is divided into two sections: resident and traveler, and the estimates for each population are approached separately
- the high, middle and low revenue estimates represent different assumptions for each population
- the methodology uses many data sources that are similar to those utilized by Colorado which projected within \$1 million of actual revenues

### *Key Elements of Vermont Resident Estimates*

- Population figures are consensus single age population estimates (Kavet and Carr)
- The SAMHSA National Survey on Drug Use and Health is used to estimate the number of recreational users and is specific to Vermont. Prevalence rates for residents who used marijuana in the past month are applied to their respective age brackets. Medical marijuana users are subtracted.
- Average annual consumption of 3.5 ounces of retail marijuana annually is used as a baseline that is an average for daily, occasional, and newly induced users. This estimate is based on the Colorado model and Colorado's results suggest that this amount accounted for black market activity.
- A \$285 per ounce average price is estimated based on the current average prices in Vermont and neighboring states from the crowd-sourced website [priceofweed.com](http://priceofweed.com) and assumes a slight drop in the Vermont price due to legalization.

### *Key Elements of Traveler Estimates*

ACCD survey estimates of the number of travelers to Vermont are used as the basis for the estimate and NE Census Region age ratios were applied to estimate ages. The model does not assume an increase in travelers due solely to the legalization of marijuana. The SAMHSA prevalence rates for residents in the NE Census region were applied to the traveler population to determine the number of users. Drawing from markets in CO and WA we estimated range of prices.

### **Allow the deduction of business expenses excluded by IRS 280E**

IRS Code 280E does not allow a business selling controlled substances to deduct all business expenses, though it does allow for some deductions. The Senate Finance Committee amendment would allow marijuana businesses to take business deductions at the state level that typical businesses can take – deductions that are prohibited by 280E at the federal level.

There are two components of the revenue estimate for this provision: 1) The existing medical marijuana dispensaries, while operating like non-profits, are taxed as for-profit businesses by the IRS and the State of Vermont. Therefore, these businesses are not currently allowed to deduct business expenses, and they will realize a benefit from this change in tax year 2018 and after. Due to this change, it is estimated that the income tax revenues will be reduced by no more than \$50,000 for current medical marijuana businesses. 2) The second part of the estimate is the amount of foregone revenue from newly established businesses. Utilizing the number of licenses authorized, this deduction is estimated to result in no more than \$200,000 of foregone income tax revenue.

### **Sales and Use Tax Exemption**

Marijuana sold by dispensaries is not currently subject to the 6% state sales and use tax or 1% local option taxes. This provision, effective on January 2, 2018 would also exempt retail marijuana from the state and local sales taxes. In a full year, this is estimated to result in between \$3.2 and \$5.0 million in foregone state sales and use tax revenue. The state sales tax is dedicated 65% to the General Fund and 35% to the Education Fund.

There may be some additional revenue due to the economic activity of the newly created industry in Vermont that is not a part of these estimates.