

Marijuana Legalization & Taxes

Approaches to Cannabis Taxation

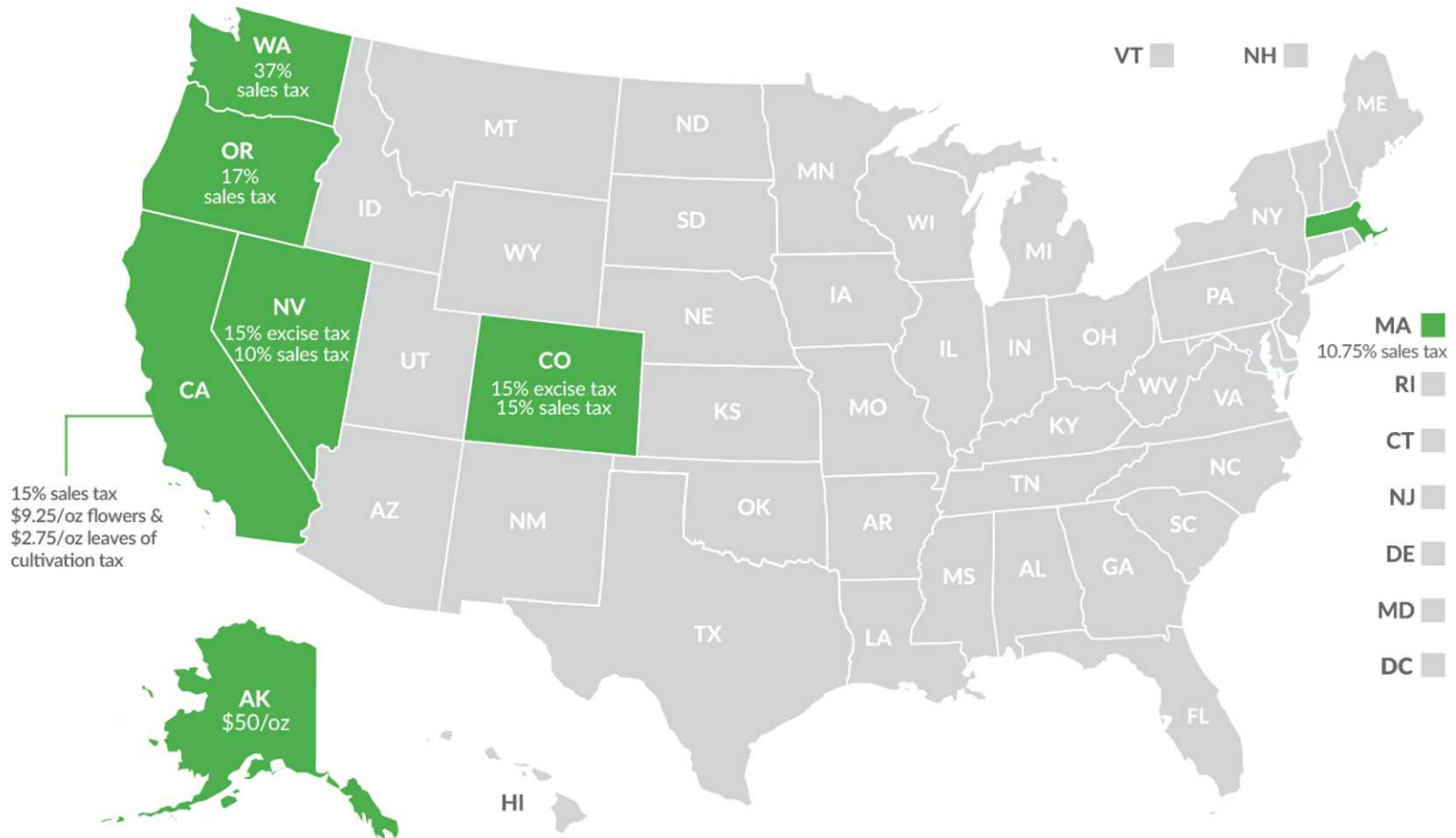
NCSL Executive Committee
Task Force on State and Local Taxation
May 10, 2019

Joseph Henchman
Executive Vice President
henchman@taxfoundation.org
www.taxfoundation.org



How High Are Recreational Marijuana Taxes in Your State?

State Recreational Marijuana Excise Tax Rates, January 2019



Note: Michigan legalized recreational marijuana in 2018 by ballot initiative, but has until Dec. 6, 2019, to implement a legal market. Maine legalized recreational marijuana in November 2016 by ballot initiative, but the state is still working to create a legal market. District of Columbia voters approved legalization and purchase of marijuana in 2014, but federal law prohibits any action to implement it. In 2018, the New Hampshire legislature voted to legalize the possession and growing of marijuana, but did not permit sales. Alabama, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Nebraska, Oklahoma, Rhode Island, Tennessee, and Wisconsin impose a controlled substance tax on the purchase of illegal products.

Source: Bloomberg Tax; state statutes

APPROACHES TO CANNABIS TAXATION

CURRENT TAXES

State	Per Unit Tax	Excise Tax	Product Sales Tax	Product Local Tax	General Sales Tax	Local Sales Tax	Total Tax Rate
Alaska	\$50/oz flowers; \$25/oz buds; \$1/oz trim; \$1 per clone			up to 5%			~67%
California	\$9.25/oz flowers; \$2.75/oz leaves	15%		up to 9.75%	7.25%	avg. 1.3%	~45%
Colorado		15%	15%	5.5%	2.9%	avg. 4.7%	~43%
Massachusetts			10.75%		6.25%		~20%
Nevada		15%	10%		4.6%	avg. 1.3%	~33%
Oregon			17%				17%
Washington		37%			6.5%	avg. 2.7%	~46%
Maine (proposed)			10%				10%
Vermont (proposed)			16%				16%

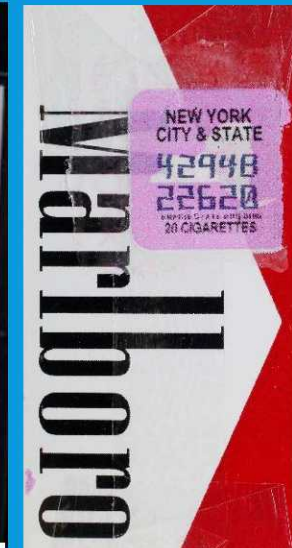
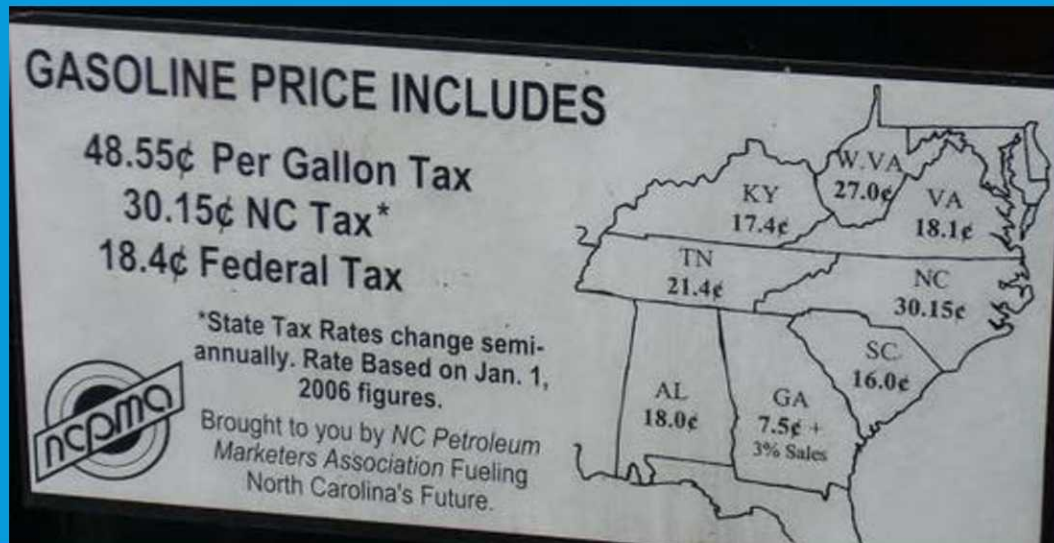
MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES

- **Who Collects?** Grower vs. Processor vs. Retailer.
- **How Imposed?** Per Item vs. Per THC content vs. Percentage of Price
- **How High?** Raising Revenue vs. Discouraging Black Market

APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES



Tax & Fees

3	Federal Subscriber Line Charge	\$6.00
4	Federal Universal Service Fee	.58
5	Local Number Portability Charge	.23
6	911 State/County Charges	.42
7	New Hampshire State & Local Tax	1.70
8	Federal Excise Tax	1.08
Total Tax & Fees		\$10.01

CITY OF CHICAGO
DEPARTMENT OF FINANCE
FOUNTAIN SOFT DRINK TAX - 7590

ACCOUNT NUMBER

DUE DATE

CHECK IF RETURN IS:

Mail Payme

Amended

APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES



APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES



APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES

- **Who Collects?** Grower vs. Processor vs. Retailer.
- Colorado taxes at retail sale (15% wholesale and 15% retail).
- Washington started by taxing all three levels (25% at each level) but in 2015 changed to just tax at retail level. (Vertical integration of some sellers led to inequity.)
- Alaska taxes at processor level, with set tax rates on flowers, buds, trim, and clones.

APPROACHES TO CANNABIS TAXATION

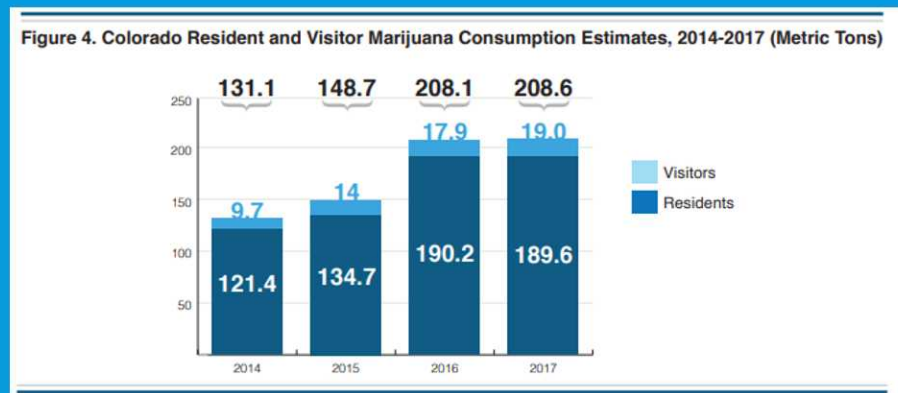
STRUCTURING MARIJUANA TAXES

- **How Imposed?** Per Item vs. Per THC content vs. Percentage of Price
- Per Item difficult due to variety of forms.
- Per THC content difficult because it would require frequent testing, and results can vary somewhat.

APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES

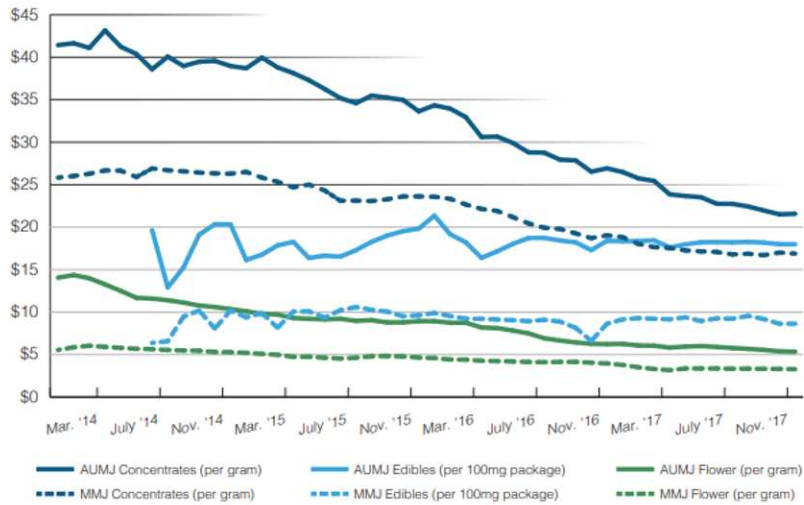
- **How High?** Raising Revenue vs. Discouraging Black Market
- Colorado (2017 study):
 - Legal market supplied 340.7 metric tons
 - Actual sales 301.7 metric tons (32.6t in inventory)
 - Consumption estimated at 208.7 metric tons
 - Update from 2014, when supply captured only 65% of resident and tourist consumption



APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES

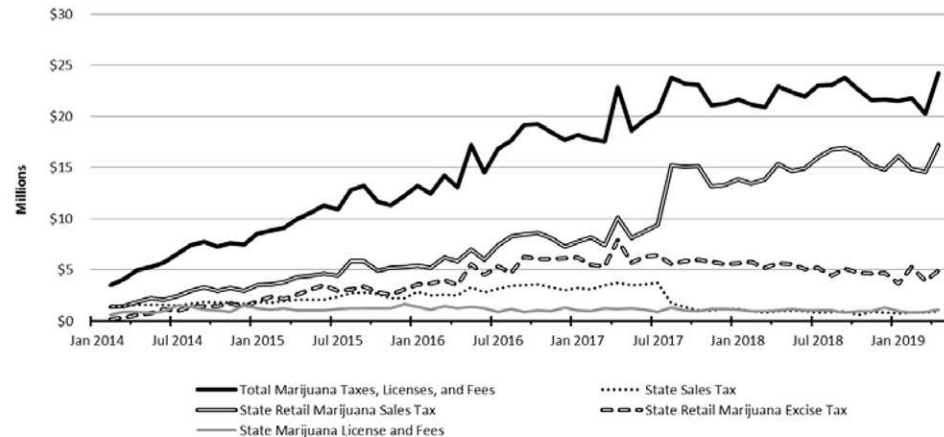
Figure 6: Price Trends for Marijuana Products in Colorado



Source: Study team calculations using state sales data.

- Falling prices in both markets have several implications for consumers, producers, and governments. For consumers, lower prices mean more affordable marijuana, which will likely increase overall demand and total sales, but may also increase addiction and dependency rates.¹⁴ In most cases, producers and retailers operate with narrowing profit margins as prices fall, putting pressure on the less-efficient and often smaller businesses. Since sales tax revenues are based on retail prices, per unit tax revenues will fall as prices fall. However, public revenues will likely continue to rise if sales volumes are increasing overall. As market growth slows and prices fall, tax revenues will eventually plateau.

State of Colorado
Marijuana Tax Revenue

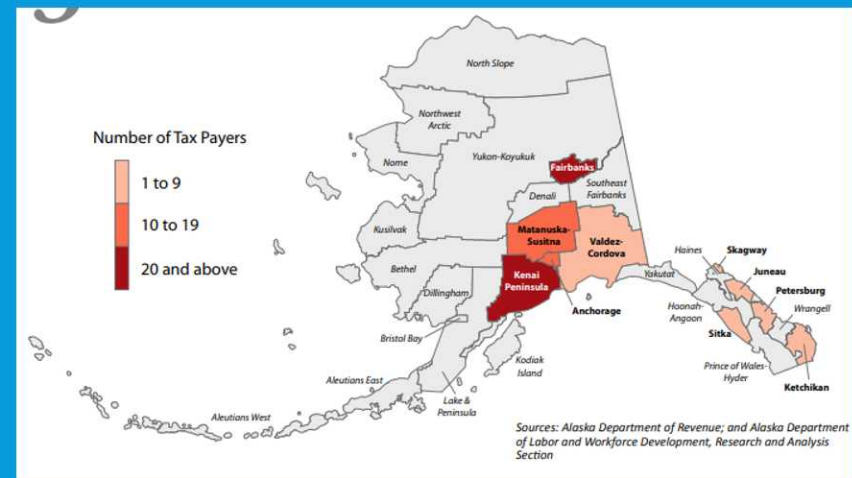


Source: Revenue collected monthly as posted in the Colorado state accounting system.
Prepared by: Colorado Department of Revenue, Office of Research and Analysis, dor_or@state.co.us.
Publish date: May 2019.

APPROACHES TO CANNABIS TAXATION

STRUCTURING MARIJUANA TAXES

- **How High?** Raising Revenue vs. Discouraging Black Market
- Washington – originally separate 25% taxes at cultivator, processor, and retailer levels. Replaced by 37% retail tax, in part due to 280E restrictions, administrative ease.
- Alaska – industry says high tax rate makes it difficult to compete against black market. Revenue beating projections.



- Tax revenue estimates for each state based on extrapolated results from Colorado & Washington
- Nationwide between \$5.3b to \$8.8b
- Federal law remains restraint, with Section 280E, federal prosecution, and banking restrictions

Potential Recreational Marijuana Tax Revenue by State, Based on Colorado and Washington Demand

State	15% tax	20% tax	25% tax
Alabama	\$80	\$107	\$134
Alaska	\$12	\$16	\$20
Arizona	\$113	\$150	\$188
Arkansas	\$49	\$66	\$82
California	\$646	\$861	\$1,076
Colorado	\$90	\$120	\$150
Connecticut	\$59	\$79	\$99
Delaware	\$16	\$21	\$26
District of Columbia	\$11	\$15	\$18
Florida	\$334	\$446	\$557
Georgia	\$169	\$225	\$281
Hawaii	\$24	\$31	\$39
Idaho	\$27	\$36	\$46
Illinois	\$212	\$283	\$354
Indiana	\$109	\$146	\$182
Iowa	\$52	\$69	\$86
Kansas	\$48	\$64	\$80
Kentucky	\$73	\$97	\$122
Louisiana	\$77	\$103	\$128
Maine	\$22	\$29	\$37
Maryland	\$99	\$132	\$165
Massachusetts	\$112	\$149	\$187
Michigan	\$164	\$218	\$273
Minnesota	\$91	\$121	\$151
Mississippi	\$49	\$66	\$82
Missouri	\$100	\$134	\$167
Montana	\$17	\$23	\$28
Nebraska	\$31	\$42	\$52
Nevada	\$48	\$64	\$79
New Hampshire	\$22	\$29	\$37
New Jersey	\$148	\$197	\$246
New Mexico	\$34	\$46	\$57
New York	\$327	\$436	\$544
North Carolina	\$166	\$221	\$276
North Dakota	\$12	\$17	\$21
Ohio	\$192	\$255	\$319
Oklahoma	\$65	\$86	\$108
Oregon	\$66	\$89	\$111
Pennsylvania	\$211	\$282	\$352
Rhode Island	\$17	\$23	\$29
South Carolina	\$81	\$108	\$135
South Dakota	\$14	\$19	\$24
Tennessee	\$109	\$145	\$182
Texas	\$453	\$604	\$755
Utah	\$49	\$66	\$82
Vermont	\$10	\$14	\$17
Virginia	\$138	\$184	\$231
Washington	\$118	\$158	\$197
West Virginia	\$30	\$41	\$51
Wisconsin	\$95	\$127	\$159
Wyoming	\$10	\$13	\$16
All States	\$5,304	\$7,071	\$8,839

Note: millions of dollars

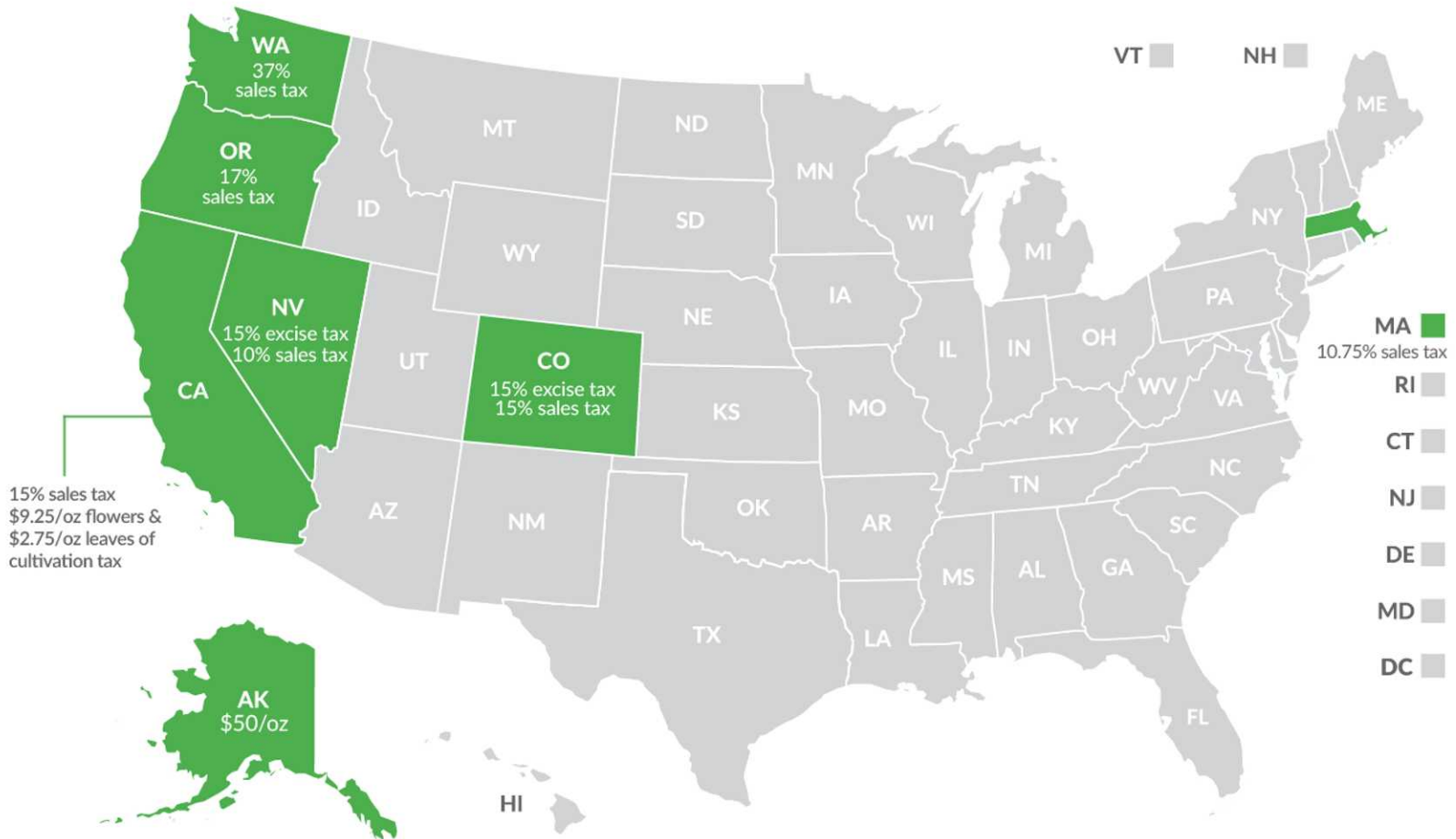
APPROACHES TO CANNABIS TAXATION

LESSONS FOR OTHER STATES

- Tax rate should not be so high as to prevent elimination of the black market.
- Taxes on final retail sales have proven the most workable form of taxation.
- Be conscious of the medical marijuana market.
- Be cautious with revenue estimates.
- Resolve health, agricultural, zoning, local enforcement, and criminal penalty issues.

How High Are Recreational Marijuana Taxes in Your State?

State Recreational Marijuana Excise Tax Rates, January 2019



Note: Michigan legalized recreational marijuana in 2018 by ballot initiative, but has until Dec. 6, 2019, to implement a legal market. Maine legalized recreational marijuana in November 2016 by ballot initiative, but the state is still working to create a legal market. District of Columbia voters approved legalization and purchase of marijuana in 2014, but federal law prohibits any action to implement it. In 2018, the New Hampshire legislature voted to legalize the possession and growing of marijuana, but did not permit sales. Alabama, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Nebraska, Oklahoma, Rhode Island, Tennessee, and Wisconsin impose a controlled substance tax on the purchase of illegal products.

Source: Bloomberg Tax; state statutes