Marijuana Excise Tax Review

February 25, 2019
City Council Study Session

Issues (if modifying)

1. Modify the excise tax?
2. If yes:
   1. Limit the tax to unprocessed marijuana?
   2. Exclude wholesale transfers to retail stores/keep taxing transfers to MIPs?
   3. **Impose tax only on cultivators in the city?**
3. Exclude industrial hemp?

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Background

- Voters approved a 5% tax on wholesale marijuana & marijuana product transfers
  - 2C – 53.14% Yes (3,610) to 46.86% No (3,184)
  - Different from standard sales and use tax (3.5%) and marijuana sales tax (7%)
  - Captures non-retail sales and addresses impacts of cultivation and manufacturing in the City
  - Dedicated to public safety
- Ordinance 2156 enacted April 2018

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Scope of Approved Ballot Issue

- Items subject to tax:
  - Unprocessed marijuana (at average market rate)
  - Marijuana products (e.g., oils, edibles, etc.)
  (at greater of price paid or cash value)

- Rate: 5% (can vary from 0-10%, including in the future)

- Transactions potentially subject to tax:
  - All wholesale transactions (not retail sales)
  - Includes intra-business (different licenses)
  - Includes transfers into/out of the city

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Ordinance 2156

- Effective June 1, 2018 at 5%
  - *June-November 2018: $259,047 (7 taxpayers; more coming)*

- Imposed on first wholesale transfer of either product to avoid double taxation

- Few cities with wholesale tax on "marijuana products" & among highest retail tax rates

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Industry Request

- The current tax creates a competitive disadvantage & ignores benefits to the city:
  - *Is difficult to administer;*
  - *Combined taxes are too high;*
  - *Is unfair to retail stores and MIPs; and*
  - *Is inconsistent with other jurisdictions & industries.*

- Modify excise tax:
  - *Limit tax to growers (in city)/ensure that recipient of marijuana does not have to pay excise tax.*
  - *Maybe raise license fee on MIPs.*

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Marijuana Sales Tax Comparison**

Jurisdiction*	Marijuana Sales Tax (Local)	Sales Tax (Local)	Total Local Tax
Aurora***	4%	3.75%	7.75%
Boulder***	3.5%	3.86%	7.36%
Commerce City	7%	4.5%	11.5%
Denver	5.5%	4.31%	9.81%
Northglenn	4%	4%	8%
Thornton	3.75%	5%	8.75%

*About 42 jurisdictions have retail taxes.
**Does not reflect effective tax rate. Excludes state sales taxes and marijuana sales tax and other generally applicable taxes.
***Also imposes excise tax on cultivators.

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Marijuana Wholesale Tax Comparison*

Jurisdiction (Front Range only)	Excise Tax (Local)	Transaction Taxed (Unprocessed Retail Marijuana Only)
Aurora	5%	Transfer from cultivator in city
Boulder	5%	Transfer from cultivator in city
Commerce City	**5%**	**First transfer from inside or outside city**
Federal Heights	5%	Transfer from cultivator in city
Lafayette	5%	Transfer from cultivator in city
Lyons	5%	Transfer from cultivator or MIP in city
Sheridan	5%	Transfer from cultivator in city

Commerce City requires recipient to pay tax if the vendor does not.

*Does not reflect effective tax rate. Excludes state excise tax (15%).

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Options

- No change
  - *Maintains revenue but could influence businesses to relocate or avoid tax*

- Grant relief for retailers (most impact to least):
  - **Reduce tax to cultivators in the city only.**
    - *Would reduce tax revenue significantly.*
    - *Could incentivize MIPs & retail businesses; eases administrative burden; aligns with other cities.*
  - **Reduce tax to unprocessed marijuana only (*from cultivators in city only?*) and only tax transfers to MIPs.**
    - *Less significant revenue impact; benefits retailers but not MIPs.*
  - **Reduce tax to unprocessed marijuana (*from cultivators in city only?*) but tax transfers to all businesses.**
    - *Protects revenue; very limited benefit to businesses.*

- Reduce excise or retail tax rate

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Industrial Hemp

- City definition of "marijuana" includes industrial hemp (by reference to genus *cannabis*)

- Federal and state law and other taxing local governments do not consider industrial hemp to be marijuana

- Should industrial hemp be excluded from marijuana retail and excise taxes?

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End