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Exercise the Right Tax: The Excise Tax and Recreational Marijuana Taxation

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INTRODUCTION

With all of the controversies surrounding the legalization of recreational marijuana, the most prominent contention amongst politicians and lawmakers has been how to tax marijuana.¹ With New Jersey inching closer to becoming the next state to legalize recreational marijuana, the issue with marijuana taxation has made no exception for New Jersey. Some of the principal issues encompassing marijuana taxation include what type of tax should be used, what should be the going tax rate, and how should the newly earned tax revenue be disbursed.² A majority of jurisdictions that have legalized recreational marijuana currently use or have used either an excise tax or a gross-receipt tax. Excise taxes are the taxes paid when purchasing a specific good, where the tax itself is combined with the price of the product.³ Gross receipts taxes are state taxes on the gross sales of a business.⁴ Although many states have shifted between these types of taxes, excise taxes have been proven to be more economically efficient when compared to gross receipts tax.⁵ In determining what tax method is better suited for New Jersey, this Note will detail the history of marijuana legalization in the United States and New Jersey, lay out the beneficial and negative aspects of both taxes, and explain why an excise tax should be implemented over a gross receipts tax.

¹ Mike Davis, *NJ marijuana legalization: 'We're not there yet,' Phil Murphy says of legal weed vote*, Asbury Park Press (April. 1, 2019, 8:09 AM), <https://www.app.com/story/news/local/new-jersey/marijuana/2019/03/21/new-jersey-marijuana-legalization-phil-murphy-legal-weed-vote/3236960002>.

² *Id.*

³ Internal Revenue Service, <https://www.irs.gov/businesses/small-businesses-self-employed/excise-tax> (last visited Mar. 15, 2019).

⁴ Jean Murray, *Gross Receipts Taxes*, The Balance Small Business (Mar. 25, 2019), <https://www.thebalancesmb.com/what-is-a-state-gross-receipts-tax-398284>.

⁵ Benjamin Hansen, *The Taxation of Recreational Marijuana: Evidence from Washington State*, University of Oregon (2017), http://faculty.washington.edu/ceweber/HMW_marijuanatax.pdf.

I. BACKGROUND

Prior its in the United States, marijuana played a role as an important commodity among early farmers as a source of hemp.⁶ It was not until the when an massive influx of immigrants the in the 1920s and 1930s coupled with the discovery of marijuana's hallucinogenic effects that American society begin to associate marijuana with crime and immigrants.⁷ As immigrant workers began to move and settle throughout the United States, so did marijuana prohibition.⁸ It was not until 1937, when Congress passed the Marijuana Tax Act that the federal government began their attempts to regulate marijuana.⁹ In effect, the Marijuana Tax Act forced the removal of marijuana from a list of permissible medicines recognized by the American Medical Association, thus effectively beginning the prohibition of marijuana.¹⁰ It was only after the passage of the Controlled Substance Act of 1970, which officially classified marijuana as a Schedule I drug, that marijuana became illegal in all fifty states.¹¹ The oppressive Controlled Substance Act subjugated persons who cultivated, processed, distributed, or possessed marijuana with punishment or imprisonment regardless of the amount of marijuana a person possessed.¹²

By the mid 1990s, however, the Federal government's and the general public's perception of marijuana began to change.¹³ In 1996, voters in California passed Proposition 215 which allowed citizens of California to purchase medical marijuana so long as the patient received a

⁶ Erwin Chemerinsky, *Cooperative Federalism and Marijuana regulation*, 62 UCLA L. Rev. 74 (2015), <https://www.uclalawreview.org/pdf/62-1-2.pdf>.

⁷ Id at 81.

⁸ Id. at 82.

⁹ Id.

¹⁰ Id.

¹¹ Controlled Substance Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (codified as amended at 21 U.S.C. § 812 (2012), <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf>.

¹² Chemerinsky, *supra* note 6, at 82-83.

¹³ Id at 84.

prescription from a certified doctor.¹⁴ Quickly thereafter, in 1998, Alaska, Oregon, and Washington state followed California’s footsteps and legalized medical marijuana.¹⁵ By January 2009, a total of thirteen states had enacted legislation allowing for the use of medical marijuana.¹⁶ Under President Obama’s tenure as President, many state governments believed that the Obama administration would make due on their promise to ease the nation’s marijuana laws.¹⁷ This belief was further reinforced when Deputy Attorney General David Ogden released his memorandum to U.S. Attorneys around the country, which highlighted new “enforcement priority guidance” regarding marijuana¹⁸ In sum, the memorandum provided that federal resources should not be used in States on individuals who are “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.”¹⁹ Initially, Ogden’s memorandum was seen as opening the gates for the unrestricted expansion of the marijuana industry.²⁰ The Department of Justice released another memorandum in 2013 addressing state misinterpretations regarding Ogden’s memorandum.²¹ On August 29, 2013 after months of silence by the Federal government, Deputy Attorney General James Cole released a new memorandum.²² The memorandum highlighted several federal government priorities in combating marijuana which include: (1)

¹⁴ Id at 85.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id at 86.

¹⁸ Chemerinsky, *supra* note 6, at 86.

¹⁹ U.S. Dep’t of Justice, Office of the Deputy Attorney General, *Memorandum for selected United States Attorneys: Investigation and Prosecution in State authorizing the Medical Use of Marijuana* 1-2 (2009),

<https://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana-marijuana.pdf>.

²⁰ Chemerinsky, *supra* note 6, at 86.

²¹ Id at 87.

²² U.S. Dep’t of Justice, Office of the Deputy Attorney General, *Memorandum all United States Attorneys: Guidance Regarding Marijuana enforcement* (2013),

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

“Preventing the distribution of marijuana to minors;” (2) “Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;” (3) Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;” (4) Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;” (5) Preventing violence and the use of firearms in the cultivation and distribution of marijuana;” (6) Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;” (7) Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands;” and (8) Preventing marijuana possession or use on federal property.”²³ Essentially, where state have legalized recreational marijuana, those states would be left to their own course of action so long as they are able to show compliance with the eight governmental priorities.²⁴

The hands-off approach adopted under the Obama administration was overturned by Attorney General Jeff Sessions memorandum on January 4, 2018.²⁵ Following the Sessions memorandum, the Trump administration seemingly reverted back to utilizing a hands-on approach by “direct[ing] all U.S. Attorneys to use previously established prosecutorial principles that provide them all the necessary tools to disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime across the country.”²⁶ The Sessions memorandum has effectively

²³ Id.

²⁴ Chemerinsky, *supra* note 6, at 90.

²⁵ U.S. Dep’t of Justice, Office of the Deputy Attorney General, *Memorandum all United States Attorneys: Marijuana enforcement* (2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

²⁶ Id.

permitted federal prosecutors to use their discretion in enforcing the CSA against all state-legalized marijuana business.²⁷ This hands on approach has complicated marijuana legislation

A. Overview of Gross Receipts and Excise Taxes

The Gross-Receipt Tax has gone through a resurgence throughout several States despite their well-known shortcomings. This section will specifically detail not only what a Gross-Receipt Tax is, but will also cover state implementation of Gross-Receipt Taxation and discuss the benefits and criticisms of Gross-Receipt Taxation.²⁸ Generally, a gross receipt tax is a tax on the total gross revenues of a business, irrespective of the source of income. As a result, the gross receipts tax is levied on the seller and or producer of goods or the service consumers.²⁹

The gross receipt tax is based on the dollar value of receipts received from either the sale of goods and services, but does not allow for the exclusion of sale categories nor provides cost allowance on the part of sellers.³⁰ Therefore, any business within a gross receipt taxing jurisdiction must report the total value of their receipts and apply the allocated tax rate to the receipts to determine how much tax is owed.³¹ However, it must be noted that many States that implement gross receipt taxes do allow for the omission of certain categories of receipts, situational cost adjustments, and differential tax rates among tax categories.³² Essentially, the ability of the gross receipt tax to collect taxes from businesses is a primary reason for implementing such a tax.

The principles of business taxation are grounded in the theory of economic efficiency which dictates that businesses must pay for the cost of their activities and taxation must be uniform

²⁷ Id.

²⁸ Thomas F. Pogue, *The Gross Receipts Tax: A New Approach to Business Taxation*, Vol. 60, No. 4 (2007), https://www.jstor.org/stable/41790620?seq=1#page_scan_tab_contents.

²⁹ Id at 799.

³⁰ Id at 800.

³¹ Id.

³² id at 799.

and neutral. Under the first principle, economic efficiency cannot be achieved unless businesses are taxed for the costs of their activities.³³ The costs of conducting business activity, also known as the “social cost” can be designated into two categories of “external costs”. The first category of “external costs” includes, but is not limited to environmental degradation caused by business production, or the cost of disposing a product once the product is no longer useful. Although external costs are never included in the price of the product produced, businesses must still be taxed for their external costs. The second category of “external costs” encompasses the costs the government incurs in providing services and facilities for businesses i.e. transportation, fire and police protection, access to the court system, and infrastructure. Unless the Federal Government were to internalize these costs, businesses must pay taxes for all the different types of “external costs”. If businesses were not compelled to pay taxes on “external costs”, the general public would then bear the brunt of the unpaid taxes, therefore causing economic inefficiency.

However, although economic efficiency requires that businesses are taxed on the cost of their activities, it further requires that businesses are taxed uniformly.³⁴ Economic efficiency through the lens of uniformity looks to ensure that the relative prices of a commodity remains unchanged, “unless tax differentials can be linked to differences in social costs”.³⁵ As a result, because economic efficiency takes account of different social costs between businesses it requires differential taxing between businesses. This translates to an efficient tax rate even though it appears to alter the relative price of a commodity. The effect of such a tax rate leads to the appearance that differential taxation transgresses the bounds of uniform and neutral taxation.³⁶ However, to the

³³ Id.

³⁴ Pogue, *supra* note 28, at 800.

³⁵ Id.

³⁶ Id.

extent that the taxes are neutral, the tax rates effect on relative prices is not violative of uniformity.³⁷ Furthermore, by directly taxing businesses, compliance and administrative costs should begin to decline, thus falling in line with the principles of business taxation.³⁸

For example, in Washington, recreational marijuana first became available at retail stores on July 8, 2014.³⁹ As dictated by Washington's regulation of the recreational marijuana market has created a supply chain consisting of three types of firms each dedicated with a different task.⁴⁰ Cultivators, who comprise the base of the Washington's legal marijuana supply chain, are in charge with the growing of the cannabis plant from seedling until maturity.⁴¹ Once the plant has reached maturity, the plants are sent to the second stage of the supply chain, the processors.⁴² The processor then converts the raw marijuana plant into marijuana that is suitable for consumption before sending the product to retailers at the final stage of the supply chain.⁴³ The retailers then take the processed marijuana and sell it directly to the consumer.⁴⁴ Additionally, it is also important to consider that each different firm within the Washington supply chain must comply with state law and turn over detailed information regarding their operations.⁴⁵ As a result, researchers in Washington are now able to assess the legal marijuana market and develop better taxation methods.⁴⁶

³⁷ Id.

³⁸ Id at 801.

³⁹ Benjamin Hansen, *The Taxation of Recreational Marijuana: Evidence from Washington State*, University of Oregon (2017), http://faculty.washington.edu/ceweber/HMW_marijuanatax.pdf.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Hansen, *supra* note 39, at 1.

⁴⁶ Id. at 2.

Prior to July 1, 2015, Washington effectuated a gross receipts tax of 25% at each stage of the recreational marijuana supply chain.⁴⁷ Under the original gross-receipt tax structure, cultivators would be taxed 25% on the revenue gained from the sales of grown marijuana to processors.⁴⁸ Processor would then be taxed 25% on the revenue made from selling processed marijuana to retailers.⁴⁹ Finally, retailers would be taxed 25% on profits gained by selling recreational marijuana to consumers.⁵⁰ Initially, Washington's implementation of their gross receipts tax was successful. However, due to Washington's unique licensing laws, cultivators were permitted to obtain the license needed to become processors, but processors could not obtain a retail licenses.⁵¹ Washington's licensing laws effectively created the problem of vertical integration within the recreational marijuana market, thus negating the gross receipts taxes' ability to maintain economic efficiency.⁵² Ultimately, it was the issue of vertical integration that compelled Washington to abandon the gross receipts tax.⁵³

B. Excise Tax

Generally, what makes an excise tax so unique is related to the taxes' selectivity in what is taxed, its facially discriminatory intent, and often adheres to a form of quantitative measurement in deciding the tax liability.⁵⁴ Essentially, excise taxes comprise all consumption-based taxes levied by the government on tobacco, alcohol, gambling, pollution, driving, other specific goods,

⁴⁷ Id.

⁴⁸ Id at 7.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Hansen, *supra* note 39, at 7.

⁵² Id.

⁵³ Id at 3.

⁵⁴ Sijbren Cnossen, *Theory and Practice of Excise Taxation: Smoking, Drinking, Gambling, Polluting, and Driving*, 10 (Sijbren Cnossen et al. eds., 1st ed. 2005).

services, and activities.⁵⁵ For all intent and purposes, the major reason excise taxes are usually enacted is for generating revenue without the need of a complex taxation system in place to capture all the revenue.⁵⁶ However, it is important to note that the efficiency of excise taxes has more to do with what is being taxed than how the tax works.

Good potential sources of revenue such as tobacco, alcohol and marijuana are easily identifiable products that have a high sale volume and are produced by no more than several corporations, which streamlines the collection of taxes on these products.⁵⁷ Moreover, the fact that there are limited substitutions for these products in the open-market causes the consumption of these products to remain high irrespective of increased prices due to excise taxation.⁵⁸ The reason the government is able to impose higher tax rates on these products is grounded in the products' inelasticity. This means that the prices of these product are not dependent on the supply or demand of the product itself.⁵⁹ For example, most Americans require gasoline to work or travel, therefore, although the price of gasoline may rise due to a tax increase on oil, most of Americans will continue to purchase the same amount of gas.⁶⁰ In sum, the ability of the government to subjugate these products to a higher tax rate is based in the products inherent inability to be duplicated, therefore suggesting that people will continue to purchase these types of products regardless of the final consumer purchase price.

⁵⁵ Tax Policy Center Urban Institute & Brookings Institution, <https://www.taxpolicycenter.org/briefing-book/excise-taxes> (last visited Mar. 30, 2019).

⁵⁶ Sijbren Cnossen, *Theory and Practice of Excise Taxation: Smoking, Drinking, Gambling, Polluting, and Driving*, 15 (Sijbren Cnossen et al. eds., 1st ed. 2005).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

C. New Jersey and Marijuana Taxation

The purpose of this section is to lay out the structure of the New Jersey recreational marijuana market and method of taxation. Prior to delving into the preferred system of taxation and why that method of taxation would be best for a New Jersey, it is important to establish the base of the recreational marijuana market and to discuss the issues the state is currently facing with the legalization of recreational marijuana in terms of public opinion.

I. *Public Opinion:*

Currently in the State of New Jersey, marijuana is only permitted for medical use. A majority of New Jersey's citizens support the legalization and taxation of marijuana for adults over the age of 21.⁶¹ According to the Rutgers-Eagleton poll released in 2018, approximately 33 percent of New Jersey residents strongly support legalizing recreational marijuana, so long as the recreational marijuana industry is regulated and taxed.⁶² Furthermore, another 25 percent of New Jerseyans somewhat support the idea of legalizing recreational marijuana.⁶³ Although a majority of New Jersey's citizen support the legalization of marijuana in some form, there is still a large minority who strongly oppose any legislation legalizing marijuana, approximately 25 percent.⁶⁴

Initially, it was New Jersey state Senator Scutari who introduced Senate Bill 1896 which intended to legalize, tax, and regulate marijuana similar to the system implemented in Colorado,

⁶¹ *Marijuana legalization for adults with taxation and regulation supported by most New Jerseyans: Rutgers-Eagleton Poll*, (Apr. 7, 2019), <https://eagletonpoll.rutgers.edu/rep-marijuana-apr2015>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

with “marijuana regulated like alcohol at every step of the production and sales process.”⁶⁵ Supporters of marijuana legalization, taxation, and regulation emphasize that the tax revenue generated from the sale of recreational marijuana could generate substantial sums of money that could help fund several categories of projects in New Jersey.⁶⁶ According to the 2015 Rutgers-Eagleton Poll, approximately 36 percent of residents supporting marijuana legalization assert that the new tax revenue could be prioritized into three categories: education, drug treatment programs and transportation infrastructure.⁶⁷ However, it should be noted that there are huge racial disparities when determining how tax revenue should be allocated. For example, 46 percent of non-white residents would rather have the additional tax revenue invested in education as compared with 30 percent of white residents.⁶⁸ In contrast, non-white residents are 50 percent less likely to allocate the marijuana tax revenue to transportation and social services.⁶⁹ One shocking piece of data discovered by the 2015 poll was the noticeable difference of opinion between political parties, specifically between Republicans and Democrats.⁷⁰ Democrats are more than likely to support legislation legalizing recreation marijuana.⁷¹ More than six out of ten Democrats support legalization with 39 percent strongly agreeing with legislation and 25 percent somewhat supporting legislation of recreational marijuana.⁷² On the other hand, only 41 percent of Republicans agree with legalizing recreational marijuana and of those 41% only 18 percent

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ *Marijuana legalization for adults with taxation and regulation supported by most New Jerseyans: Rutgers-Eagleton Poll*, (Apr. 7, 2019), <https://eagletonpoll.rutgers.edu/rep-marijuana-apr2015>.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

strongly support marijuana legalization.⁷³ Furthermore, approximately 46 percent of Republicans strongly oppose the legalization of marijuana.⁷⁴ Interestingly, when comparing the Rutgers-Eagleton poll of 2014, the amount of Republican support has substantially increased “legalizing, taxing, and regulating for adult use – garners much more GOP support than we saw a year ago when we asked about completely legalizing marijuana. Then only 28 percent of Republicans agreed; here it is 41 percent.”⁷⁵

The 2018 Rutgers-Eagleton poll has established that an overwhelming percentage of New Jerseyans support marijuana legalization although there are concerns that New Jersey citizens are still split about.⁷⁶ For example, New Jersey citizens are divided about the extent to which marijuana would be acting as a gateway drug with 21 percent believing that marijuana legalization would increase use of other drugs while 27 percent believe that there will be a decrease in the use of other drugs.⁷⁷ Opinion is also split about whether or not legalization will increase or decrease the amount of violent crimes, with 21 percent believing that it will increase and 27 percent that it will decrease.⁷⁸ With all things considered, the prospects are still positive, 64 percent of New Jersey citizens believe that legalization of marijuana will substantially improve or help the state’s economy, and 57 percent of citizens believe that legalization will decrease the high arrest records

⁷³ *Marijuana legalization for adults with taxation and regulation supported by most New Jerseyans: Rutgers-Eagleton Poll*, (Apr. 7, 2019), <https://eagletonpoll.rutgers.edu/rep-marijuana-apr2015>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Marijuana legalization for adults with taxation and regulation supported by most New Jerseyans: Rutgers-Eagleton Poll*, (Apr. 7, 2019), <https://eagletonpoll.rutgers.edu/rep-marijuana-apr2015>.

for marijuana in the state.⁷⁹ In understanding the public's opinion about the legalization of marijuana, it allows further analysis into the legal issues in the state.

II. *Political and Social Issues:*

In New Jersey, marijuana prohibition has been in full effect for a little over eighty years.⁸⁰ However, recent findings suggest that the laws enforcing marijuana prohibition have led to several adverse effects.⁸¹ From the year 2000 through 2013, arrests for marijuana possession by New Jersey law enforcement has increased by 26 percent.⁸² By 2016, arrest rates for marijuana increased to a staggering 400 arrests per 100,000 people becoming the second highest arrest rate in the nation.⁸³ As a result, New Jersey spends approximately \$130 million per year to enforce marijuana prohibition.⁸⁴ Besides the cost associated with enforcing marijuana prohibition, another issue compounding the high arrest rate is the observable racial disparities in New Jersey marijuana arrests.⁸⁵ In a study conducted between 2000 through 2013 by the ACLU on racial disparities in New Jersey's marijuana arrest rates, New Jersey residents of African-American decent were three times more likely to be arrested for marijuana possession, although consumption rates were similar to White residents.⁸⁶ When beginning the study in 2000, it was found that compared to White

⁷⁹ Id.

⁸⁰ *Unequal & Unfair: NJ's War On Marijuana Users*, ACLU NJ (Apr. 15, 2019, 12:34 PM), <https://www.aclu-nj.org/theissues/criminaljustice/unequal-unfair-njs-war-marijuana-users>.

⁸¹ Id.

⁸² Id.

⁸³ Payton Guion, *New Jersey arrests more people for weed than almost any other state*, NJ Advance Media for NJ.com (Apr. 17, 2019), https://www.nj.com/marijuana/2018/04/new_jersey_arrests_more_people_for_marijuana_than.html.

⁸⁴ *Unequal & Unfair: NJ's War On Marijuana Users*, ACLU NJ (Apr. 15, 2019, 12:34 PM), <https://www.aclu-nj.org/theissues/criminaljustice/unequal-unfair-njs-war-marijuana-users>.

⁸⁵ Id.

⁸⁶ Id.

residents, African-Americans were 2.2 times more likely to be arrested.⁸⁷ By 2013, the average New Jersey resident of African-American decent was 11.3 times more likely to be arrested for marijuana possession.⁸⁸ One of the key recommendation made by the ACLU to stem this racial disparity was for New Jersey to legalize, tax, and regulate marijuana for those over the age of 21.⁸⁹ This racial disparity has been a keystone in Governor Murphy's attempt to legalize marijuana as he has repeatedly stated that social justice is the purpose of marijuana legalization.⁹⁰

On March 5th, 2019, Governor Murphy delivered a state budget address, which in part dealt with the projected revenue earnings recreational marijuana would expect if legalized.⁹¹ His administration projected tax revenue to exceed \$60 million within a six-month period.⁹² Both notions of financial gain and social justice were both largely considered when Gov. Philip Murphy and leaders of the Democratic State Legislature finally threw their support behind a proposed bill that would have legalized recreation marijuana in New Jersey.⁹³ However, despite the data from statewide polls indicating strong support for marijuana legalization, many lawmakers remained unsure and or opposed because of the issues legalization would bring forth.⁹⁴ Some of the issues

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Dustine Racioppi, *NJ marijuana legalization: We're not there yet, Phil Murphy says of legal weed vote*, Asbury Park Press (Apr. 17, 2019, 3:43 PM), <https://www.app.com/story/news/local/new-jersey/marijuana/2019/03/21/new-jersey-marijuana-legalization-phil-murphy-legal-weed-vote/3236960002>.

⁹¹ Samantha Marcus, *What you absolutely need to know about Murphy's budget-taxes, pensions, spending and weed*, NJ Advance Media for NJ.com (Apr. 18, 2019, 5:54 PM), <https://www.nj.com/politics/2019/03/what-you-absolutely-need-to-know-about-murphys-budget-taxes-pensions-spending-and-weed.html>.

⁹² Id.

⁹³ Nick Corasaniti, *Why the Plan to Legalize Marijuana in New Jersey Suddenly Unraveled*, The New York Times (March 27, 2019, 8:02 AM), <https://www.nytimes.com/2019/03/27/nyregion/marijuana-legalization-new-jersey.html>.

⁹⁴ Id.

Lawmakers had with marijuana legalization dealt with how marijuana taxation would be implemented in the State, the increased rates of impaired driving, and the effect marijuana legalization would have on the public health.⁹⁵ Ultimately, it was the issue of “whether it was necessary to expunge criminal records for marijuana-related offenses for those found with as much as five pounds of [marijuana]” that proved to be a major source of contention.⁹⁶ Essentially, this provision in the bill would expunge the criminal record of any New Jersey resident who had been convicted of marijuana related offenses while possessing up to five pounds of marijuana.⁹⁷ On one hand, many lawmakers insist that expungement for marijuana related offenses is too high and would create a public safety concern, while other lawmakers assert that it would be hypocritical to prevent those who have served their time prior to legalization from getting work due to their criminal history.⁹⁸ This dispute has prevented party leaders from changing the provision at the risk that they would lose more support than gain by amending the provision.⁹⁹ Although Governor Murphy and his constituents have a large hold on state government, inter-party disputes and the lack of required votes led to the decision to pull the bill.¹⁰⁰

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Brent Johnson, *Legal weed remains stalled in N.J. as politicians don't know how to solve this big issue*, NJ Advance Media for NJ.com (April 15, 2019 1:32 PM), <https://www.nj.com/marijuana/2019/04/legal-weed-remains-stalled-in-nj-because-politicians-dont-know-how-to-solve-one-big-issue.html>.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Nick Corasaniti, *Why the Plan to Legalize Marijuana in New Jersey Suddenly Unraveled*, The New York Times (March 27, 2019, 8:02 AM), <https://www.nytimes.com/2019/03/27/nyregion/marijuana-legalization-new-jersey.html>.

Notwithstanding the major roadblocks to legalizing marijuana in New Jersey, Governor Murphy has recently announced a May deadline to pass a bill legalizing marijuana.¹⁰¹ Moreover, Governor Murphy mentioned that if the May vote did not pass muster he would then take executive action to expand the already established medical marijuana industry in New Jersey.¹⁰²

III. *The New Jersey Marijuana Supply Chain*

The purpose of this section is two-fold, first this section will detail the intricacies of establishing a hypothetical recreational marijuana supply chain in New Jersey, and the legal implications that may arise depending on how New Jersey decides to structure their supply-chain. It should be emphasized how important defining the supply chain is to collecting reliable tax revenue data.

To begin, New Jersey should follow the basic supply chain structure currently being utilized in many jurisdictions where marijuana is legal. Cultivators would form the base of the marijuana supply chain. As previously mentioned their job requires them to grow the plant from seedling to maturity. The next stage of the marijuana supply chain would be processors, who process the marijuana plant to marijuana bud fit for consumption. Finally, the processed marijuana bud would make its way to dispensaries who form the final relevant part of the supply chain; they sell the processed marijuana directly to the consumers.

¹⁰¹ Mike Davis, *NJ marijuana legalization: Phil Murphy sets May deadline for legal weed vote, what's next*, Asbury Park Press (Apr. 11, 2019, 9:43 PM), <https://www.app.com/story/news/local/new-jersey/marijuana/2019/04/10/new-jersey-marijuana-legalization-legal-weed-vote-phil-murphy/3401239002>.

¹⁰² Id.

II. CULTIVATORS, PROCESSORS, AND RETAILERS

Although the proposed supply chain seems simple enough, there are some specific issues that must be addressed before New Jersey opens the supply chain to New Jersey citizens. One of the leading issues deals with whether New Jersey would allow cultivators to grow the marijuana plant within the state or would New Jersey import their marijuana from other states. On the one hand, if New Jersey were to allow cultivators to grow marijuana within the states border, New Jersey may be opening itself up to attack from federal agencies who still have an interest in enforcing marijuana prohibition. This means New Jersey cultivators would have to deal with the constant threat of the federal government's interference, unless there is a change in federal marijuana laws or the federal marijuana prohibition ends.¹⁰³ Put differently, New Jersey could do little to curb the federal government from interfering with cultivators. Cultivators are highly susceptible to interferences from government agencies because they are highly visible.¹⁰⁴ The land on which cultivators grow marijuana is easily visible and holds a large enough amount of marijuana that attracts governmental interference.¹⁰⁵ Furthermore, the fact that marijuana remains illegal under federal law has several implications on New Jersey's marijuana industry. For instance, banks cannot lawfully provide financial services to the marijuana industry, thus it implies that only those who have enough liquid capital can start such a venture, therefore, effectively preventing those most affected by marijuana prohibition from partaking in the industry. Although

¹⁰³ Johnathan H. Adler, *Will marijuana make federalism go up in smoke?*, Volokh Conspiracy (Apr. 17, 2019, 4:50 PM), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/08/14/will-marijuana-make-federalism-go-up-in-smoke/?utm_term=.8649cb356a24.

¹⁰⁴ Id.

¹⁰⁵ Id.

federal governmental interferences may slightly hinder state governments from maximizing their respective marijuana industry's profitability, other states have demonstrated that federal interference, albeit a nuisance, does not outweigh the benefits marijuana legalization and taxation have brought to their states.

Conversely, if New Jersey were to prevent cultivators from growing the marijuana plant in the state, cultivators would no longer be pertinent to the marijuana supply chain because states would import their raw marijuana from established marijuana cultivators from interstate sources. Although such a provision would decrease the levels of interference from government agencies intrastate, it would however also come with separate and distinct issues. One such problem arises under the Commerce Clause. Pursuant to the Commerce Clause, Congress may regulate, or even proscribe, marijuana within interstate commerce, as well as exercise a certain degree of incidental authority. In view of the countervailing issues surrounding cultivators, the former provision would benefit New Jersey much more until Congress decides to end marijuana prohibition.¹⁰⁶

Processors and retailers face an even larger threat stemming from the federal prohibition of marijuana possession and distribution. Specifically, marijuana possession and distribution offenses fall under the Racketeer Influenced and Corrupt Organizations Act (RICO).¹⁰⁷ Effectively, this puts processors and retailers under direct threat from civil RICO suits, irrespective of whether possession and distribution is permissible under state law.¹⁰⁸ Stated differently, any

¹⁰⁶ Id.

¹⁰⁷ Johnathan H. Adler, *Will marijuana make federalism go up in smoke?*, Volokh Conspiracy (Apr. 17, 2019, 4:50 PM), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/08/14/will-marijuana-make-federalism-go-up-in-smoke/?utm_term=.8649cb356a24.

¹⁰⁸ Id.

firm that possess, transports, and/or distributes marijuana will be committing a federal offense.¹⁰⁹ Again, the issues expressed with respect to cultivators will also be prevalent to processors and distributors. If retailers or processors are restricted from purchasing marijuana from interstate cultivators or vice versa, commerce clause issues would arise.

Although there are several legitimate concerns regarding how to establish the marijuana supply chain, other states have shown that the benefits of establishing an intrastate supply chain outweighs the negatives. Therefore, New Jersey should adopt a three-step supply chain comprised of cultivators, processors, and retailers.

III. ANALYSIS AND RECOMMENDATIONS

The purpose of this section is to highlight the benefits of implementing an excise tax over a gross-receipts tax. There are several important pieces of data that must be analyzed to successfully determine why an excise tax is better than a gross receipts tax. First, Washington will be a case study to highlight the deficiencies of a gross receipts tax and the strengths of excise taxes. Next, by looking to other states where recreational marijuana is legal and determining the percentage of people in those states who use marijuana those figures can then be extrapolated to New Jersey. Further, the analysis will look to propose a specific tax rate on marijuana in New Jersey. The analysis will then look to the results of applying a gross receipts tax and an excise tax on marijuana in New Jersey. Finally, an in-depth comparison of the results will lead to the final assessment of which method of taxation is more beneficial to New Jersey, ultimately excise tax being the winner.

¹⁰⁹ Id.

A. WASHINGTON SAMPLE I

To better comprehend the issues with the application of a gross-receipt tax on recreational marijuana, guidance can be found from looking at how the State of Washington implemented their own gross-receipt tax on the recreational marijuana market.

Prior to July 1, 2015, Washington effectuated a gross receipts tax of 25% at each stage of the recreational marijuana supply chain.¹¹⁰ Under the original gross-receipt tax structure, cultivators would be taxed 25% on the revenue gained from the sales of grown marijuana to processors.¹¹¹ Processor would then be taxed 25% on the revenue made from selling processed marijuana to retailers.¹¹² Finally, retailers would be taxed 25% on profits gained by selling recreational marijuana to consumers.¹¹³ Initially, Washington achieved success with the implementation of their gross receipts tax. However, due to Washington's unique licensing laws, cultivators were permitted to obtain the license needed to become processors, but processors could not obtain a retail licenses.¹¹⁴ Washington's licensing laws effectively created the problem of vertical integration within the recreational marijuana market. Thus negating the gross receipts taxes' ability to maintain economic efficiency.¹¹⁵ Ultimately, it was the issue of vertical integration that compelled Washington to abandon the gross receipts tax.¹¹⁶

B. CRITICISMS OF THE GROSS RECEIPTS TAX

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

¹¹³ Johnathan H. Adler, *Will marijuana make federalism go up in smoke?*, Volokh Conspiracy (Apr. 17, 2019, 4:50 PM), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/08/14/will-marijuana-make-federalism-go-up-in-smoke/?utm_term=.8649cb356a24.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

In the most general sense, vertical integration occurs when a single firm owns multiple or successive parts of the supply chain hierarchy.¹¹⁷

In Washington, vertical integration was abundant among cultivators, with approximately 95% of cultivators carried a license to process and cultivate marijuana.¹¹⁸ Under Washington's gross receipt tax, any vertically integrated cultivators would avoid paying taxes on "internal transfers of marijuana."¹¹⁹ Therefore, vertical integration in Washington's recreational marijuana market diminished the taxable portion of the supply chain preventing the state from fully benefiting under the gross receipts tax scheme.¹²⁰ Furthermore, in light of the 25% gross receipts tax, vertically integrated firms forego the opportunity to sell their own raw materials to other processors or purchase raw materials from other cultivators to avoid the tax. This prevents vertically integrated firms from efficiently participating in the legal marijuana market, further compounding Washington's tax issues under the gross receipt tax.¹²¹ In sum, it is clear that gross receipts taxes, under Washington's system, lead to unhealthy levels of vertical integration. Ultimately, Washington recognizing the deficiencies with the gross receipts tax introduced tax reform under House Bill 2136.¹²²

C. WASHINGTON SAMPLE II

Looking to Washington's tax reform, the shift from a gross-receipts tax that imposed a 25% tax within the supply chain, to an excise tax created a more economically efficient method of

¹¹⁷ John S. McGee, "Vertical Integration Revisited," *The Journal of law and economics* 17 (Lowell R. Bassett et. Al. eds., 1st ed. 1976).

¹¹⁸ Hansen, *supra* note 39, at 14.

¹¹⁹ *Id* at 7.

¹²⁰ *Id* at 16.

¹²¹ *Id* at 17.

¹²² *Id* at 8.

taxing.¹²³ The reform enacted a retail tax rate of 37% while contemporaneously eliminating the 25% tax assessment between each transfer of marijuana.¹²⁴ To understand the substantial effect the tax reform had on the marijuana industry in Washington, each part of the supply chain must be independently observed.¹²⁵

When looking at cultivators and processors together before the tax reform, cultivators did not want to vertically integrate but could not thrive under the gross receipt tax unless they vertically integrated.¹²⁶ Essentially, the tax not only compelled the firms to vertically integrate, but also prevented the vertically integrated firms from being able to purchase or sell their marijuana to other firms in lieu of the 25% tax.¹²⁷ As a result, only 5% of the marijuana sold by processors were from dis-integrated marijuana while 93% came from vertically integrated marijuana.¹²⁸ Specifically when looking at cultivators, vertical integration was a widespread issue under the gross receipts tax, however, the implementation of the excise tax significantly reduced the incentive for firms to vertically integrate.¹²⁹ Pre-tax reform, approximately 95% of cultivators were vertically integrated.¹³⁰ After the tax reform however, cultivators no longer had to circumvent the tax on transfers of marijuana between firms by vertically integrating successive parts of the supply-chain.¹³¹ As a result, within the first week of the switch, the amount of vertically integrated marijuana sales declined by 16% and the portion of vertically dis-integrated marijuana increased

¹²³ *Id* at 2.

¹²⁴ Hansen, *supra* note 39, at 14.

¹²⁵ *Id* at 12-13.

¹²⁶ *Id* at 17.

¹²⁷ *Id* at 17.

¹²⁸ *Id* at 17.

¹²⁹ *Id* at 13.

¹³⁰ Hansen, *supra* note 39, at 14.

¹³¹ *Id*.

by 105%.¹³² However, it is important to note that although cultivators no longer had an incentive to vertically integrate, established cultivators did not have an incentive to dis-integrate their firms even though dis-integration would be more efficient in the absence of the gross receipts tax.¹³³ Moreover, processors benefited substantially under the new tax reform.¹³⁴ Prior to the tax reform, processors would receive the after-tax price while retailers would pay the list price.¹³⁵ When analyzing the effect of the tax on the prices charged to retailers, the after-tax prices, and the total number of sales, the only notable changes were the changes in list price and the after-tax price.¹³⁶ Accordingly, the price charged to retailers by processors fell by 8% while contemporaneously increasing the tax-inclusive price processors received by 21%.¹³⁷ The decrease in the price charged to retailers and the increase in the after-tax price received by processors suggests that the gross receipts tax substantially interfered with the profitability of the legal marijuana market in Washington.¹³⁸

Finally, retailers, unlike cultivators and processors were not allowed to vertically integrate under Washington law.¹³⁹ Therefore, the effect of the tax reform on retailers changed the retail tax from a 25% gross receipts tax to an 37% excise tax.¹⁴⁰ Further, the tax reform also switched the state sales tax to a tax-exclusive price from a tax-inclusive price.¹⁴¹ The goal of the tax reform in

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 16.

¹³⁵ *Id.* at 15.

¹³⁶ Hansen, *supra* note 39, at 15.

¹³⁷ *Id.*

¹³⁸ *Id.* at 16.

¹³⁹ *Id.* at 19.

¹⁴⁰ *Id.* at 19.

¹⁴¹ *Id.* at 10.

the retail market was to keep the revenue neutral.¹⁴² Pre-tax reform, the average tax revenue collected on a gram of marijuana was \$3.46.¹⁴³ Post-tax reform, the average taxes paid on a gram of marijuana decreased a few cents to \$3.42, therefore achieving their goal of neutrality.¹⁴⁴ It is important to highlight that under the new tax regime retailers oversaw collecting and paying all the taxes, which streamlined the tax collection process for the state government.¹⁴⁵ Furthermore, when considering the added sales tax into the scenario, the total amount of taxes collected prior to the change was \$4.51 and after the change decreased by 28 cents to \$4.23.¹⁴⁶

Moreover, processors before the tax change paid out \$1.03 in taxes for each gram of marijuana sold. The significance of what processors paid is relevant to the discussion because although the tax reform did decrease the taxes paid overall by 28 cents, the remaining balance was shifted from the processors to the retailers. As a result of the tax shift, it follows that processors should have lowered their prices by approximately 75 cents (the amount shifted to retailers), however, processors lowered their price per gram of marijuana by only 26 cents.¹⁴⁷ The implication of the tax shift means the that retail tax rate increased by 7% and consumers saw an increase of 2.33%. The total amount of taxes faced by the consumers due to the tax pass-through is 33%.¹⁴⁸ In sum, when considering all the cost shifting, it seems that although the revenue generated by

¹⁴² Hansen, *supra* note 39, at 23.

¹⁴³ *Id* at 22.

¹⁴⁴ *Id* at 22.

¹⁴⁵ *Id* at 23.

¹⁴⁶ *Id* at 23.

¹⁴⁷ *Id* at 23.

¹⁴⁸ Hansen, *supra* note 39, at 23.

shifting from a gross receipts tax to an excise tax would remain neutral, the consumers would be charged with the marginal costs associated with the tax changes.¹⁴⁹

The Washington example is the perfect illustration of what challenges New Jersey would face if they were to implement a gross receipts tax over an excise tax. By choosing a gross receipt tax, New Jersey would face the same problems of multiple taxation and vertical integration that Washington faced.

i. Percentage of Marijuana Users in New Jersey

By determining the percentage of marijuana consumers in jurisdictions where marijuana is legal and regulated, it will allow for the allocation of a reliable percentage of marijuana users in the state of New Jersey from which to extrapolate results. Specifically, the analysis will look to include the percentage of marijuana users who have consumed marijuana in the year of 2016 in the states of including but not limited to Colorado, Oregon, Washington. According to the 2016 Substance Abuse and Mental Health Services Administration report, in states where recreational marijuana is legal, the average percentage of marijuana users who have consumed marijuana at least once in the year of 2016 is 19.5 percent.¹⁵⁰ Therefore, going forward 19.5 percent will be used as the set percentage of marijuana consumers for the state of New Jersey to obtain clear results. It is important to note that this percentage is only an average and may not reflect the actual

¹⁴⁹ Id.

¹⁵⁰ See., Huffpost.com, 12 states smoking the most marijuana, 24/7 Wall St., Contributor, July 7, 2016. Colorado (21.6), Massachusetts (17.6), Oregon (19.9), Washington (19.5), Alaska (19.6), Rhode Island (18.7), Vermont (19.8) and Maine (19.4). https://www.huffpost.com/entry/12-states-smoking-the-most-marijuana_b_577e900be4b03288ddc58433.

percentage of marijuana consumers in the state of New Jersey. Moreover, based Colorado (665,134 lbs.)¹⁵¹ Washington (330,000 lbs.)¹⁵² 7.5 million 9 million

New Jersey's population is currently 9.06 million people, according to the most recent estimates.¹⁵³ Roughly 1,776,700 million New Jersey resident would consume marijuana at least once in a given year by applying the 19.5 percent average to the New Jersey population.

TAX RATE

This section of the analysis will look to set the going tax rate on marijuana in New Jersey. To do this there are several factors that must be taken into consideration. First, analyzing the going tax rate on marijuana in other jurisdictions must be done to provide useful insight in determining the applicable tax rate for New Jersey. Next, the Laffer scale must be utilized to determine whether the proposed tax rate is economically efficient for generating tax revenue. By setting a tax rate, the results of any method of taxation will be clear and consistent.

COLORADO

In 2016, Colorado generated sales of \$875 million from its cannabis market, an increase from \$588 million the year prior.¹⁵⁴ The massive growth of the marijuana industry has generated

¹⁵¹ Thomas Mitchell, *Colorado Sold 665,134 Pounds of Legal Pot in 2017; How Much Did it Consume?*, (Apr. 16, 2019 3:54 PM), <https://www.westword.com/marijuana/colorado-sold-nearly-700000-pounds-of-legal-weed-in-2017-but-how-much-did-it-consume-10614406>.

¹⁵² Bob Young, *Average pot user consumer 123 joints per year, state estimates*, The Seattle Times (Apr. 16, 2019, 3:00 PM), <https://www.seattletimes.com/seattle-news/average-pot-user-consumes-123-joints-per-year-state-estimates>.

¹⁵³ Worldpopulationreview.com, <http://worldpopulationreview.com/states/new-jersey-population> (last visited Apr. 20, 2019 1:23 PM).

¹⁵⁴ Jacob Kirsch, *Discussion Papers in Economic: Taxation and Welfare in the Cannabis Industry: Evidence from Colorado Edibles 2014-2016*, Working Paper No. 18-02 (Mar. 24, 2019 2:55 PM), https://www.colorado.edu/economics/sites/default/files/attached-files/18-02_-_kirsch.pdf.

significant tax revenue. Cultivators in Colorado currently face a 15 percent excise tax on the first transfer of unprocessed marijuana to manufacturers, retailers, or other cultivators.¹⁵⁵ All sales of cannabis were hit with a 15 percent special tax in addition to the state sales tax of 2.9 percent.¹⁵⁶ Colorado seems to be having a lot of success under their current tax regimen, however, it is significant to point out that the main reason marijuana taxes are not higher is due to Colorado law.¹⁵⁷ Any increase of the excise or sales tax rate would need approval the approval of the state legislature.¹⁵⁸ This means, that although Colorado's current tax rate is effective and economically efficient, it is not necessarily indicative that Colorado currently implements the best going tax rate on marijuana according to the Laffer scale. It should be noted that in 2018, Colorado generated \$266,529,637 million in marijuana taxes.¹⁵⁹

WASHINGTON

In 2017, Washington state collected approximately \$319 million in tax revenue.¹⁶⁰ Among states that allow the recreational use of marijuana, Washington's 37 percent state excise tax on marijuana is the highest going tax rate on marijuana in the country.¹⁶¹ Although many believed that Washington would be unable to sustain their record-breaking tax revenue gains, Washington is still projected to increase the amount of tax revenue generated with total marijuana revenues expected to grow by \$75 million by 2019.¹⁶² The reason Washington is able to sustain is because

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Id.

¹⁵⁹ Colorado Department of Tax (2019), <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id.

their going tax rate of 37 percent is because it is at the peak of the Laffer scale.¹⁶³ In other words, Washington has been able to find an optimal tax rate that would generate the most income without burdening consumers to the point where they would forgo purchasing marijuana.

OREGON

In Oregon, the state legislature set the going tax rate on marijuana at 17 percent, but also added provisions that would allow for certain counties to add an extra 3 percent tax.¹⁶⁴ Despite Oregon having some of the lowest taxes on marijuana, the state government was still able to collect \$70 million in taxes in the 2016-2017 that increased a further \$12 million in 2018.¹⁶⁵ The low tax rate coupled with greater than expected tax revenue generation suggests that even a going tax rate at the lower end of the Laffer scale can still attain economic efficiency.

Proposed Tax Rate for New Jersey:

After gauging the effects of different tax rates along the Laffer scale, a 30 percent tax rate for New Jersey would be optimal. New Jersey has a high population and is near major metropolitan areas. If New Jersey were to legalize recreational marijuana it would be the only state in the tristate area to have done so. Essentially, not only would New Jersey benefit from intrastate consumers, but interstate consumers flocking from the surrounding areas to partake in the legal market. These factors tend to prove that New Jersey's legal marijuana, as a commodity, would be inelastic with high demand and no substitutions, therefore justifying a tax rate of 30 percent.

RESULTS

¹⁶³ Hansen, *supra* note 39, at 4.

¹⁶⁴ Oregon Department of Tax (2019), <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Taxes.aspx>.

¹⁶⁵ Pete Danko, *Oregon cannabis tax revenue hits record high*, Portland Business Journal (Apr. 22, 2019, 4:30 PM), <https://www.bizjournals.com/portland/news/2018/08/28/oregon-cannabis-tax-revenue-hits-record-high.html>.

The purpose of this section is to determine the best method of taxation for New Jersey to adopt. To accomplish this, the proposed tax rate and the estimated percentage of New Jersey marijuana consumers must be used in applied to the specific method of taxation. For purposes of this section the figures will be applied to the excise tax.

If New Jersey were to implement an excise tax, the brunt of the tax would be felt by the consumers. To obtain an estimate number showing the amount of money that could be made from taxing marijuana in New Jersey, a mathematical equation must be used. For purposes of this section, the analysis will be limited to the states of Washington, Colorado, and Oregon. As mentioned previously, to predict the percentage of New Jersey residents that would use marijuana, the average percentage of marijuana users of every state with recreational marijuana was added and then divided by the number of states to come to up with the 19.5 percent marijuana use rate in New Jersey. Next, the average sales revenue of marijuana from each relevant state must be gathered. Finally, the average population of each state used in the study must be brought into the equation as well. The combined average sales revenue of marijuana for the states of Washington (\$975,287,777.00), Colorado (\$1,128,727,015.00), and Oregon (\$502,279,422.00) is approximately \$868,764,738 million.¹⁶⁶ Moreover, the combined average population for the states of Washington (7,405,743), Colorado (5,607,154), and Oregon (4,142,776) is approximately 5,718,673 people.¹⁶⁷

¹⁶⁶ Andrew DePietro, *Here's How Much Money States Are Raking In From Legal Marijuana Sales*, Contributor (Apr. 23 2019 8:34 PM). <https://www.forbes.com/sites/andrewdepietro/2018/05/04/how-much-money-states-make-cannabis-sales/#3afd6b4af181>.

¹⁶⁷ Worldpopulationreview.com, <http://worldpopulationreview.com/states/new-jersey-population> (last visited Apr. 20, 2019 1:23 PM).

The equation that will be used to predict the tax revenue for New Jersey will be $A * (\text{NJ Tax Rate}) * (\text{NJ Population}/B)$; A indicates the average sale revenue of marijuana and B indicates the average population of the states. Therefore, when applying the numbers to the equation $(\{868,764,738 * 30\% \} * \{9,000,600/5,718,673\})$, New Jersey will generate approximately \$410,203,760.60 by taxing marijuana.

IV. CONCLUSION

For the foregoing reasons, New Jersey should implement an excise tax as the state would see immediate benefit without having to deal with issues posed by using a gross receipts tax. The excise tax is an easy and economically efficient method of taxation to produce a significant amount of revenue quickly.