

The Federal Shake-Up of America's Marijuana Taxes

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Reprinted from *Tax Notes State*, April 4, 2022, p. 35

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In this article, Oglesby explores the prospect of a new federal tax scheme for marijuana and its potential impact on state taxes.

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Marijuana¹ revenue policy keeps getting harder. New products and even new intoxicants² pop up all the time, and jurisdictions keep thinking up new tax regimes. Over this unsettled scene in the states loom a couple of federal shoes preparing to drop. Maybe.

Federal legalization could create a new federal tax and eliminate the controversial section 280E selling expense tax, to which many states conform. Any federal cannabis tax changes would jolt state tax regimes, as would opening state markets to interstate commerce. Ahead lies uncharted territory. The good news is that cannabis tax experiments in the laboratories of the republic and the world are

playing out, and there are new policies we haven't even tried yet. The bad news is that we don't know what we're doing.³

What's Happening Already

Marijuana taxation is so tricky that state ownership of marijuana commerce, already at work in Louisiana and in eastern Canada, seems an appealing alternative. But marijuana taxation is here to stay, and tax policy questions and traps keep arising. The evergreen issues, even before federal complications, are how much, how, and where to tax marijuana.⁴

How much? What's the proper tax burden? As much as the market will bear or an offset of negative externalities? Professor Ben Leff would aim to "capture as much of the marijuana legalization premium as possible without driving consumers into the illegal market," while Ulrik Boesen says that "excise taxes should only be levied when appropriate to capture some externality or to create a 'user pays' system."⁵ In practice, different jurisdictions — national, state, and local — aim for different tax burdens. And as the market evolves, a once-proper burden may miss the mark over time. Undertaxation is particularly possible as law enforcement marginalizes competition from bootleggers, the

³Ulrik Boesen, "Solving the Cannabis Tax Puzzle: Approaches for an Emergent Industry," Drug Enforcement and Policy Center, The Ohio State University, Jan. 26, 2022 ("I have been writing about cannabis taxes for almost three years now, and I think the number one thing that we've learned is that we don't know that much."). My own early work on marijuana revenue policy failed to spot some major issues. Patrick Oglesby, "Laws to Tax Marijuana," *State Tax Notes*, Jan. 24, 2011, p. 251. Oglesby, "Mistakes in 2011 'Laws to Tax Marijuana,'" Center for New Revenue (Jan. 28, 2015). We're still in primitive days. Beyond what we don't know now will be more unknown unknowns and unintended consequences.

⁴Federation of Tax Administrators, "Status of State Taxation/Sales of Marijuana" (updated Jan. 6, 2022).

⁵Benjamin M. Leff, "Marijuana Taxation: Theory and Practice," 101 *Bo. U. L. Rev.* 915, 922 n.37 (2021).

¹This article uses the terms marijuana and cannabis interchangeably.

²Like Delta-8, derived from the cannabis plant, discussed in note 41, *infra*.

legal market strengthens, and pretax prices go down, leaving room for taxes to increase.⁶ Meanwhile, how should medical marijuana be taxed?⁷ And whatever the tax burden, will tax evaders stymie it?⁸

How? What do we count? What is the tax base? The states and Canada are experimenting with excise tax bases like (1) ad valorem — that is, percentage-of-currency taxes, like Washington’s 37 percent retail tax; (2) non-percentage, quantity-based taxes,⁹ like those based on weight of flower, trim, and other categories of raw plant material in Alaska, California, Colorado, Maine, and Nevada — and Canada; (3) THC content of processed products, collected in Canada and planned for New York and Connecticut; and (4) THC content of raw plant material, planned for New York and Connecticut. A few localities have experimented with tax bases counting kilowatt-hours, square feet of growing area, and number of plants. Beyond excise taxes, cannabis commerce creates extra income tax from denied deductions for advertising, marketing, and other selling expenses under the theoretically suspect but practically useful section 280E selling expense tax, which allows deduction only of cost of goods sold.¹⁰

Where? Jurisdictions don’t agree on where in the supply chain to collect marijuana taxes — that is, who should be the taxpayer? Some collect from the cultivator, some at retail sale, some from an intermediate distributor in the middle of the supply chain, and some from multiple points.¹¹

So jurisdictions at all levels are running tax experiments, with dozens of iterations and variations. For now, while the federal government is running its own experiment with section 280E, it is de facto giving states a free tax hand.

Federal Legalization

Efforts to legalize cannabis federally may be stalling, but federal legalization, even without federal tax changes, would have big state tax implications. Legalization would eliminate the federal prohibition premium — the extra amount sellers can charge to bear the risk or stigma of illegality — that now keeps firms and capital out of the market. Let’s say the federal prohibition premium disappears, and banking access and other nontax federal law changes reduce the costs of selling cannabis. These reductions, if passed on to consumers, would reduce the pretax price of cannabis, maybe leaving room for states to collect more taxes and still marginalize bootleggers. But any reductions in pretax prices would cause jurisdictions that tax cannabis on an ad valorem basis to take a hit unless they raise rates.

There’s more, beyond federal legalization itself. Potential changes in federal cannabis taxation may cause states to reconsider their marijuana tax structures. So should interstate commerce, for some states, whether it develops with or without federal legalization.

Federal Tax Changes

Federal marijuana legalization is likely to be accompanied by a new federal tax scheme because a combination of legalization, elimination of section 280E, and no new taxation seems like a lot to ask for.¹² Any federal tax changes would probably also affect state taxes. For instance, any increased federal cannabis tax burden could crowd out state taxes and send buyers to

⁶ Jonathan P. Caulkins et al., “Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions,” RAND Corp., at Chapter 5 (2015).

⁷ Oglesby, “Supplemental Thoughts About Revenue From Marijuana in Vermont,” at Part I.A., “Medical Card Holders” (Jan. 16, 2015).

⁸ *Id.* at Part II, “How Much Tax Can the Marijuana Market Eventually Bear?”

⁹ The traditional term for excise taxes that aren’t ad valorem is “specific.” Specific seems confusing or obscure; quantity-based might better communicate meaning. Ad valorem, meaning price-based or currency-based, may be obscure, but it’s not confusing.

¹⁰ Oglesby, “280E Is a [Expletive]. So What?” Center for New Revenue (Apr. 15, 2021). The section 280E selling expense tax hits big business harder than small business, and it tends to avoid irritating parents and passersby by keeping the noise of advertising and promotion down.

¹¹ FTA, *supra* note 4.

¹² *See, e.g.*, the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act), H.R. 3617 (117th Congress). Despite advances in tax thinking in Canada and the states, the MORE Act simply copies the 2017 tax framework of an earlier proposal by Rep. Earl Blumenauer, D-Ore., the Marijuana Revenue and Regulation Act, S. 780 (115th Congress).

bootleggers.¹³ So state tax collections could go down. But state collections could instead have room to go up. A higher federal tax burden could be outweighed by the disappearance of the federal prohibition premium, so the price of marijuana to consumers net of state taxes could go down. States could maintain or increase their taxes and still keep bootleggers from gaining a competitive price advantage. And if the federal tax burden decreases rather than increases, states would have even more room to tax while fighting the illegal market.

It's not clear that a new federal tax would make up for the revenue loss from the disappearance of the Section 280E selling expense tax, which applies only to "controlled" substances. Since cannabis would no longer be controlled after legalization, the selling expense tax would presumably¹⁴ disappear automatically, there could be a federal tax *cut* for marijuana sellers. Indeed, a bill¹⁵ introduced by Rep. Nancy Mace, R-S.C., would impose a trivial 3 percent ad valorem tax equivalent on the drug, which might not be enough to offset the tax cut arising from the disappearance of section 280E, at least if we believe the marijuana industry's complaints about the financial pain created by the section.¹⁶

Finally, elimination of section 280E would reduce revenue for states that conform with that federal tax provision. While some legalizing states have decoupled from section 280E, not all have.¹⁷

Interstate Commerce

Interstate commerce should change state tax laws. It is often conflated with federal legalization because most legalization proposals would allow it. But federal legalization could happen without interstate commerce, and interstate commerce could happen without federal legalization. If Congress legalizes marijuana, it needn't automatically authorize interstate commerce. Congress could instead choose to slow things down by allowing states to ban imports of marijuana — at least temporarily — as professor Robert Mikos, a federalism expert, recommends.¹⁸

And Mikos suggests that the dormant commerce clause may require states to allow interstate commerce, even before federal legalization, since Congress has maintained passive silence on interstate commerce for cannabis. He points to three lower federal court findings that the dormant commerce clause means states can't prevent out-of-state interests from seeking licenses to sell marijuana in state.¹⁹ As the appeals process grinds on for those cases, Mikos argues persuasively that if the dormant commerce clause applies to licenses to sell, then in all likelihood it also applies to imports and exports.²⁰ That is, the dormant commerce clause, "vaguely recalled by practicing attorneys,"²¹ would provide marijuana sellers the federal right to sell marijuana in every state that has legalized

¹³To reduce an interstate race to the bottom via low cannabis taxes, a prominent drug policy expert suggests reducing any new federal cannabis tax to the extent that states impose their own taxes. Keith Humphreys, "What Tobacco Tax Advocates Can Learn From American Drug Policy," *The Huffington Post*, Aug. 4, 2013. That suggestion brings to mind the repealed federal "soak up" tax credit for state estate taxes. But giving credit or recognition for state taxes paid might be unwieldy in the context of the wide variety of state marijuana tax collection points and bases.

¹⁴The selling expense tax could be preserved by unambiguous, affirmative statutory language to the effect that the Act of Congress repealing prohibition "shall not apply to title 26 of the United States Code." Preservation would be unpopular with the marijuana industry and tax policy traditionalists, but easy to do as a technical drafting matter if Congress wanted. And the tax could be repealed without full federal legalization.

¹⁵The States Reform Act. H.R. 5977 (117th Congress). To reinforce its low-tax messaging, H.R. 5977 contains a moratorium on any marijuana tax increase for 10 years, unless three-quarters of each house agrees to an increase. But that moratorium might be viewed as a publicity stunt for tax haters, since it could be rescinded by a standard simple-majority act of Congress at any time.

¹⁶See, e.g., National Cannabis Industry Association, "Internal Revenue Code Section 280E: Creating an Impossible Situation for Legitimate Businesses" (Apr. 2015).

¹⁷For instance, New York's legalization legislation did not decouple.

¹⁸See Robert A. Mikos, "Interstate Commerce in Cannabis," 101 *Bos. U. L. Rev.* 857 (2021).

¹⁹*Id.*

²⁰While I know of no challenges to state import restrictions (as opposed to license restriction challenges), exporters have a more complicated route to success than out-of-staters challenging residency requirements, which, once stricken, get the out-of-state plaintiff into the pool of license applicants. Exporters that prevailed on the constitutional issue would still have several more hoops to jump through — for instance, either to comply with or challenge state packaging and testing requirements. And just because states might not be able to constitutionally ban interstate commerce doesn't eliminate federal illegality. The federal government is free to start meaningful enforcement of its laws against marijuana commerce at any time.

²¹Tommy Tobin and Andrew Kline, "A Sleeping Giant: How the Dormant Commerce Clause Looms Over the Cannabis Marketplace," *Yale L. and Pol'y Rev.* (Jan. 3, 2022).

it. That result seems surprising, but the courts are full of surprises.²²

If interstate commerce happens somehow, what would it mean for state cannabis taxes? Competition would increase, likely decreasing pretax prices independently of federal legalization or federal tax changes. So for another reason, states would have more room to tax, while ad valorem taxes would suffer.

But interstate commerce would bring little-noticed technical tax consequences. It would cause jolts to several states in two somewhat overlapping ways — by bypassing taxed local producers and by allowing imports of products made from raw plant material that has not been and cannot realistically be taxed.

Erosion of Producer Taxes

A reason we tax marijuana is that consumption is problematic to the extent it produces negative externalities like youth use, overuse, and impairment. Well-regulated marijuana production need not produce significant environmental or other externalities that people find negative, except maybe odor. So consumption is the tax target, not production.

Alaska, California, Colorado, Illinois, Maine, and Nevada tax marijuana cultivators.²³ That's not a problem yet. Early in the evolution of marijuana taxation, all U.S. states have been closed production-consumption-loop jurisdictions; that is, jurisdictions that allow neither imports nor

exports.²⁴ In a closed loop, everything produced in the state legally will be consumed in the state legally, and vice versa. An excise tax can be effectively collected at any point in those closed-loop supply chains and still target in-state consumption. Some states that track and trace every gram of marijuana from seed to sale have decided to tax it at the source — upstream at the cultivator level. That choice may have been shrewd²⁵ early in the evolution of marijuana taxation, but interstate commerce would upset that apple cart.

With interstate commerce, cannabis cultivated in other states and imported in whatever form into Alaska, California, Colorado, Illinois, Maine, and Nevada would bypass in-state cultivators. Instead, the new supply chain for imported products would include untouchable and untaxable out-of-state cultivators. To the extent that imports replaced locally grown production, cultivation tax collections would decrease. If those six states wanted to maintain revenue, they would need to raise other taxes or find new taxpayers.²⁶

Continuing to tax local cultivators after the closed loop for cannabis is opened to interstate commerce would be odd. Take tobacco grown in North Carolina, manufactured into cigarettes in Virginia, and sold at retail in California. North Carolina and Virginia impose no excise tax. No state does in that situation. The race to the bottom for excise taxes on tobacco production has ended in a tie — at the bottom.

As with tobacco, taxing only in-state cannabis production would tend to favor out-of-state producers by making their products cheaper. In the long run, production would tend to move elsewhere — unfortunate, since states like to keep or attract economic activity and jobs. Cannabis production is more mobile than cannabis consumption. Except as a protest, what consumer would choose to pull up stakes and move to a new jurisdiction because marijuana taxes are too high?

²²When I was a law clerk for Judge John Minor Wisdom on the Fifth Circuit in the late 1970s, I suggested to him that a taxpayer with an unsympathetic case against the IRS had an irrefutable technical argument that the court might accept. No, I found out, as the panel ruled against the taxpayer unanimously. When I asked why, Wisdom explained: "Too cute." To some judges, a federal right to export in interstate commerce a federally illegal product might seem too cute.

²³Alaska Stat. section 43.61.010 ("Every marijuana cultivation facility shall pay an excise tax at the rate of \$50 per ounce, or proportionate part thereof, on marijuana that is sold or transferred from a marijuana cultivation facility"); Colorado Department of Revenue, "Marijuana Excise Tax" ("The excise tax is . . . to be reported and paid by the cultivation facility"); 410 Ill. Comp. Stat. 705/60-1 ("7 percent of the gross receipts from the first sale of cannabis by a cultivator"); Nevada Department of Taxation, "Tracking, Licensing and Taxes, Current Wholesale Cannabis Tax Return & Supplemental Form" ("on the first wholesale sale of cannabis by a cultivator"); Me. Stat. tit. 36, section 723 ("A cultivation facility licensee shall pay an excise tax of \$335 per pound or fraction thereof of marijuana flower"). In California, while cultivators are in a way responsible for the so-called "cultivation tax," distributors end up actually paying it to the state: "Distributors are required to collect the cultivation tax from you, as the cultivator." California Department of Tax and Fee Administration, "Tax Guide for Cannabis Businesses: Cultivators."

²⁴The term "closed loop" comes from Scott Bloomberg and Mikos, "Legalization Without Disruption: Why Congress Should Let States Restrict Interstate Commerce in Marijuana," *Pepp. L. Rev.* (forthcoming 2022).

²⁵Or maybe not — Washington and Oregon abandoned producer taxes early on.

²⁶All but Alaska collect retail taxes too, but maybe interstate commerce won't bother those.

Production, meanwhile, tends to end up in a low-tax environment.

Cannabis taxes on producers might not fade away immediately, but the pressure to get rid of them will be strong. Products from in-state producers will face a tax that products from out-of-state producers don't pay. To be sure, localities in California and elsewhere impose production taxes even though they are not in a closed production-consumption loop, but those taxes are eroding swiftly as an understanding of cannabis taxation grows.²⁷ Producer taxes in subordinate jurisdictions look like an opportunistic ploy that will not stand the test of time.²⁸

Erosion of Weight-Based Taxes

Weight-based taxes, whatever taxpayer pays them, face problems like those of cultivator taxes. The world's first known cannabis taxes, in 19th-century India, were based on weight and evolved to include tax categories that are mysterious to us today, like bhang, charas, round ganja, and chur ganja.²⁹ Alaska, California, and Maine tax cannabis by weight of raw plant material, with categories starting with high-taxed flower or bud and low-taxed trim or leaves.³⁰ Colorado and Nevada have de jure, nominal statutory wholesale 15 percent ad valorem taxes, but ad valorem taxes can be hard to collect pre-retail because vertically integrated sellers don't have an arm's-length transfer price. So Colorado and Nevada publish an artificial price as the base for their 15 percent ad valorem taxes. Nevada converts those ad valorem bases to periodically calculated quantity bases for a list of products like seeds and raw flower, while

Colorado converts ad valorem bases to quantity only when there is no arm's-length wholesale transfer price.

Here's an example of the trouble for weight-based taxes. Take Alaska, which taxes cannabis flower at \$50 an ounce.³¹ Infused products like brownies bear no further Alaska tax because the intoxicating ingredient has already been taxed. Meanwhile, Oregon taxes cannabis only ad valorem at retail at a rate of 17 percent, and most municipalities add a 3 percent local tax.³²

What if interstate commerce opens and Alaska retailers buy, for resale to Alaska consumers, cannabis and cannabis products from Oregon suppliers, directly or indirectly? Alaska could realistically tax locally produced cannabis (as under current law) and imported raw cannabis by the pound if it wanted.³³ But Alaska could not realistically apply its weight-based tax scheme to non-raw material imported from and tax-free in Oregon like brownies or tinctures or other products that contain processed or concentrated cannabis. The weight of the raw plant material used in a brownie would not be discoverable, since no one would track ounces of raw plant material into infused products absent some unlikely requirement. Taxing the whole brownie by weight would penalize sugar and flour, absurdly.³⁴ So if interstate commerce happens, Alaska and other states would need to change their weight-based taxes, at least for products other than raw plant material.

²⁷ For one example among many, see David Garrick, "San Diego Lowers Some Cannabis Taxes to Encourage More Local Production," *The San Diego Union-Tribune*, Feb. 15, 2022. See generally Oglesby, "Marijuana Revenue Competition — Look Out Below," *State Tax Notes*, May 7, 2018, p. 541. An extension of that argument would eliminate all subordinate jurisdiction income taxes. Property taxes and sales taxes provoke less mobility on the part of taxpayers.

²⁸ See sources cited in *supra* note 23. See also Oglesby, "How Tax Competition Can Threaten Marijuana Revenue," *The Hill*, Feb. 6, 2018.

²⁹ Report of the Indian Hemp Drugs Commission, 1894-1895, Vol. 1, at 295.

³⁰ Oglesby, "California Marijuana Weight Taxes as of January 2020 — and Alaska, Maine, Colorado and Nevada," Center for New Revenue (Feb. 19, 2020). Oglesby, "Is Colorado's New Marijuana Tax Leaky?" Center for New Revenue (July 23, 2017). Illinois has statutory authority to construct a transfer price in non-arm's-length cases, but reportedly it has not converted to a weight-based tax yet.

³¹ Alaska DOR — Tax Division, "Marijuana Tax." Raw plant material other than flower is taxed at lower per-ounce rates.

³² Oregon DOR, "Marijuana Tax Program."

³³ But problems may lurk. If raw plant material were shipped across state lines in sealed packages, how could Alaska confirm the net weight (and maybe even the contents) of the taxable article exclusive of packaging without federal legalization and standardization? And raw plant material loses weight over time as it dries; in order to provide a level playing field for imported and locally produced raw plant material under a weight tax, that phenomenon would need to be accounted for. And would New York and Connecticut, which are about to tax cannabis and cannabis products by THC content, trust a THC calculation for products imported from another state?

³⁴ Although the States Reform Act would tax edibles by the "unit," Boesen notes that this language is ambiguous enough not to refer to total weight of the edible and should refer to THC content. *Supra* note 3.

Options for Base Replacement

Weight-based states have two obvious options if interstate commerce in cannabis happens — ad valorem taxes and THC taxes. While the pros and cons of those options have been explored at length,³⁵ here's a summary.

While ad valorem taxes are easy to introduce, the overriding problem with them is that they tend to produce diminishing revenue as the cannabis industry matures. Pretax prices inevitably decline, dragging ad valorem tax revenue down with them, along with any public health benefit of higher after-tax prices. Also, while they provide some progressivity, ad valorem taxes are susceptible not just to bundling — like free-pot-with-pipe deals — and outright transfer price manipulation,³⁶ but also to willy-nilly tax breaks for standard commercial practices like quantity discounts and employee discounts. Except for a 52.75 percent cap on the \$0.4026-per-unit tax on large cigars, all federal excise taxes on tobacco and alcohol, which are collected long before retail sale, are based on quantity, using weight or volume.³⁷ Federal fuel taxes are per gallon.³⁸ State tobacco and alcohol excise taxes also tend to steer clear of ad valorem calculation.

THC taxes are already in place for concentrates (but not raw plant material) in Canada and are on the books, though not yet collected, for all cannabis products in New York and Connecticut.³⁹ THC taxes are weight-based, but they measure the weight of a sampled component of a product rather than the entire

product. It's not clear how well THC content relates to negative externalities arising from cannabis consumption. Some of the 500-plus other components of raw cannabis might increase or mitigate intoxication, for instance via an entourage effect or some calming effect of the nonintoxicating CBD cannabinoid.⁴⁰ THC is not the only intoxicant derived from the cannabis plant.⁴¹ Moreover, the sampling of raw plant material to tax a targeted component is not mainstream — no known jurisdiction in the world taxes tobacco by nicotine content, for instance.

But a kind of automatic backstop may help a THC tax base: Understating THC content can create a conundrum for the seller trying to cheat on taxes if consumers who will pay more for higher THC content see the same quantification as the tax collector. So the temptation to cheat is tempered.

A Federal Coda

What if the United States legalizes cannabis and starts allowing imports of cannabis products like edibles? Maybe trade treaties will mandate imports of legal goods. We will no more know the weight of raw plant material that went into edibles imported from Canada or from Jamaica than Alaska knows about edibles from Oregon. Like state taxes eventually, a federal excise tax will likely need to be based on price or weight of components like THC.

Or maybe both? For cigarettes, European countries use both price and quantity excise tax bases in addition to the general VAT.⁴² America is unlikely to tax cannabis as heavily as Europe taxes cigarettes. The ad valorem equivalent rate for all European cigarette taxes combined, including

³⁵ Caulkins et al., *supra* note 6; Transform Drug Policy Foundation, "How to Regulate Cannabis: A Practical Guide" (Sept. 1, 2016); Boesen, "A Road Map to Recreational Marijuana Taxation," Tax Foundation (June 9, 2020); Carl Davis, Misha Hill, and Richard Phillips, "Taxing Cannabis," Institute on Taxation and Economic Policy (June 23, 2019).

³⁶ Calculating arm's-length transfer prices seems so speculative that the international tax system barely functions. See Charles Kingson, "Taxing the Future," 51 *Tax L. Rev.* 641, 658 (1995-96).

³⁷ Alcohol and Tobacco Tax and Trade Bureau, "Tax Rates" (updated Dec. 22, 2020).

³⁸ Urban-Brookings Tax Policy Center, "Key Elements of the U.S. Tax System: Excise Taxes" (updated May 2020).

³⁹ A novel scheme in Illinois taxes edibles and the like at 20 percent ad valorem but then taxes cannabis, including raw plant material and concentrated cannabis, at 10 percent ad valorem if THC content is at or below 35 percent (aimed at raw plant material) and at 25 percent ad valorem if THC content is 35 percent or greater (aimed at concentrate cannabis). 423 Ill. Comp. Stat. 110. The novelty of that scheme shows how cannabis tax policy is still in its infancy.

⁴⁰ Some suggest measuring and accounting for cannabinoids and cannabis components other than THC in taxing cannabis. See Caulkins et al., *supra* note 6, at 80 n.13.

⁴¹ Beyond standard "Delta-9" THC, new stand-alone intoxicants derived from the hemp plant call for new tax thinking. Delta-8 THC is one of several intoxicants derived from cannabis that jurisdictions don't know how to address. U.S. Food and Drug Administration, "5 Things to Know About Delta-8 Tetrahydrocannabinol — Delta-8 THC" (Sept. 14, 2021). Some states have banned it; some have not. Other new intoxicants include Delta-10 and THC-O.

⁴² European Commission, Directorate-General, Taxation and Customs Union, "Indirect Taxation and Tax Administration, Indirect Taxes Other Than VAT, Excise Duty Tables Part III — Manufactured Tobacco" (July 1, 2021).

VAT, is typically in the range of 400 percent.⁴³ Even if we aim at collecting as much tax as the illegal market will allow, cannabis won't bear anything like the European cigarette burden. Cannabis is much more valuable by weight and volume than tobacco. Illegal, tax dodging backyard tobacco farms and basement grows are unheard of. The illegal market for cannabis is more persistent than that for cigarettes. So maybe one federal tax base is all the U.S. cannabis market needs. America's federal cannabis tax future is cloudy, but given the lack of federal ad valorem tobacco and alcohol taxes and the difficulty of weight-based taxation of cannabis products, THC taxation is in the forecast.

And any new federal tax is likely to influence state models. Today, the federal government taxes cigarettes by weight using a standard pack weight. States do the same, but they don't have to weigh anything. They just piggyback on the federal government's assessment of weight in packs. Any federal THC tax is likely to form the base for similar state taxation. ■

⁴³ *Id.*

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