

MARIJUANA REVENUE AND REGULATION ACT

Descheduling of Marijuana

Removal from Controlled Substances Act.

Under current law and related regulations, marijuana is classified as a Schedule I controlled substance under the Controlled Substances Act (CSA). Despite legalization of adult use and medical marijuana in states throughout the U.S., this federal classification subjects marijuana consumers and businesses to potential civil and criminal penalties, as well as the risk of asset forfeiture under federal law.

This provision would require that within 60 days of enactment of this Act, the Attorney General remove marijuana from the list of controlled substances under the CSA. It would also provide that the CSA does not apply to any conduct relating to marijuana that is legal under state law. Strict rules and penalties would prohibit the sale or transportation of marijuana into any state or jurisdiction in which it is illegal under the laws of such state or jurisdiction.

Income tax effects of descheduling marijuana.

While marijuana business operations are generally illegal under federal law, income from such businesses is still taxable under federal tax laws. In addition, Internal Revenue Code (IRC) section 280E prohibits marijuana businesses from claiming certain deductions and credits for federal tax purposes. This prohibition results in an effective income tax rate on marijuana businesses of as high as 80 percent. IRC section 280E applies only to substances classified under Schedule I and II of the CSA. As such, descheduling marijuana under the CSA removes marijuana businesses from the limitations under IRC section 280E. The income from marijuana businesses would still be taxable under general federal tax laws like any other business.

Descheduling marijuana and the related removal of IRC section 280E limitations is also expected to significantly increase federal income tax compliance among marijuana businesses, leading to additional federal income tax receipts from marijuana businesses.

Imposition of Tax

Excise tax on marijuana.

Under current law, alcohol and tobacco products are subject to federal excise taxes.¹ While marijuana businesses are subject to federal income taxes and certain state excise taxes, marijuana is not subject to any federal excise tax. A federal marijuana excise tax would provide significant revenues for deficit reduction or other federal priorities. In addition, a federal excise tax would serve to maintain a minimum price for marijuana across all states and provide a uniform model for future state excise tax regimes.

This provision would impose an escalating excise tax rate on marijuana products. Marijuana products are defined as any product containing marijuana or a marijuana derivative. Similar to the alcohol and tobacco tax regimes under current law, excise tax liability arises when the marijuana comes into existence; however, tax is determined and payable when marijuana products are removed from the

¹ Cigarettes are generally taxed at a rate equal to \$1.01 per pack, with similar rates applying to other tobacco products. Beer is generally subject to a tax of \$18 per barrel, wine is generally subject to a tax of \$1.07 per gallon, and spirits are generally subject to a rate of \$13.50 per proof gallon.

premises of a permitted marijuana producer or importer. Similar to current excise tax laws, marijuana producers and importers must obtain a surety bond covering the tax liability owed but not yet paid.

The marijuana excise tax regime would become effective within 180 days of enactment of this Act. Marijuana sold during the first two calendar years would be subject to a tax equal to ten percent of the sales price. Marijuana sold during the third, fourth and fifth years would be subject to a rate of 15 percent, 20 percent and 25 percent, respectively. Marijuana sold during the sixth and subsequent years would be subject to a per-ounce rate equal to 25 percent of the prevailing price for marijuana in the U.S. during the preceding year. In the case of any marijuana product containing a marijuana derivative, an equivalent rate would apply based on tetrahydrocannabinol (THC) content. This phased-in tax rate is intended to reduce barriers for marijuana businesses moving to the new tax regime. In addition, this framework is intended to accommodate price changes in the marijuana market which are expected as a result of descheduling and regulation.

Special rules apply to the use of marijuana products for research, transfer of marijuana products between manufacturing, import, and export facilities, and loss or destruction of marijuana products.

Occupational tax on producers of marijuana products.

Under current law, manufacturers of tobacco products and export warehouses are subject to an annual occupational tax, which is intended to compensate the government for administrative costs associated with regulation of the manufacture of tobacco products.

This provision would impose an occupational tax of \$1,000 per year on each marijuana production facility and each marijuana export warehouse. It would also provide an incremental increase in funding to the Alcohol, Tobacco, and Marijuana Tax and Trade Bureau (as so renamed) for implementation of this Act.

Establishment and Permitting

Permitting of marijuana businesses.

Under current law, manufacturers and importers of tobacco products are required to obtain a permit from the Department of Treasury before commencing operations. In addition, alcohol producers, importers, warehouse proprietors, and distributors must obtain a permit from Treasury before commencing operations. These permits generally may not be issued to any individual who has violated alcohol or tobacco laws in preceding years, and are conditioned upon compliance with all relevant laws and regulations.

This provision would require producers of marijuana products, importers, and wholesalers to obtain a permit from Treasury before commencing operations. Permits generally may not be issued to any person who operates a marijuana business in violation of state law or any person who has violated a federal or state marijuana law in the preceding five years. An exception provides that a violation will not be disqualifying if such conduct was legal under state law at the time of such violation. Permits are conditioned on compliance with all relevant federal and state laws.

Operations

Packaging and labeling.

Under current law, the Treasury and Health and Human Services departments share jurisdiction over alcohol and tobacco packaging and labeling. Generally, federal law grants federal regulators broad discretion with respect to packaging and labeling.

This provision would extend similar packaging and labeling authority over marijuana products.

Advertising.

Current law imposes strict limits on advertising of tobacco products. In addition, it provides the Secretary of the Treasury broad authority over advertising by alcohol producers, importers, and distributors, and imposes strict limits on certain types of advertising.

This provision would extend alcohol advertising limitations to advertising by marijuana producers, importers, and wholesalers. These rules generally require truth in advertising and fair marketplace conduct.

Penalties

Civil and criminal penalties.

Under current law, violations of federal alcohol or tobacco laws may result in civil and criminal penalties. In addition, federal law imposes a penalty on individual retail sales of more than 10,000 cigarettes. This retail sales limitation is intended to prevent individuals from trafficking contraband cigarettes from low-tax states to higher-tax states.

This provision would extend similar civil and criminal penalties to violations of federal marijuana laws. In addition, it prohibits the sale of more than one ounce of marijuana in any single retail transaction.