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Tweaked NY Pot Bill Drops Tax Rate As Budget Deadline Looms

By **James Nani**

Law360 (March 12, 2020, 9:05 PM EDT) -- New York legislation that would legalize and tax cannabis underwent a series of changes Thursday, including a reduction of the effective tax rate, as the state budget deadline drew near.

New York State Sen. Liz Krueger is among the sponsors of a bill that would legalize and tax marijuana in New York State. (AP)

New versions of the Marihuana Regulation and Taxation Act, S.B. 1527C and A.B. 1617C, were introduced Wednesday and Thursday. Included in the new version of the bill is the elimination of proposed taxes on the cultivation of cannabis flower and cannabis trim.

Previous versions of the bill proposed a tax of $1 per dry-weight gram of cannabis flower and 25 cents per dry-weight gram of cannabis trim, according to Justin Flagg, a spokesman for Senate sponsor Liz Krueger, D-Manhattan.

A proposed 18% excise tax imposed on wholesalers to retailers and allocated to the state remains the same in the new version, Flagg said. An additional 4% excise tax on those sales would send 1% to the state's cities with more than 1 million people — New York City is the only one — and 3% to other towns, villages and cities. The bill would also exempt adult-use cannabis products from sales and use tax, according to a bill summary.

The goal of the changes is to reduce the burden on producers and the overall tax rate to make legal cannabis more competitive with illicit pot, Flagg said.

The new versions of the bill make a series of other changes. Those include increasing from previous versions the penalties for illegal possession or sale of large amounts of cannabis and adding language for school-based education programs on the dangers of cannabis and vaping use, Flagg said.

In addition, the new version of the bills would allow an additional four medical cannabis dispensaries, with the first two in underserved communities, and allow the training of drug recognition experts and other road safety measures, Flagg said.

The changes are part of an ongoing effort to strengthen the bill by incorporating lessons from other localities and addressing the concerns of legislators who are on the fence, Flagg said.

“In terms of the budget, this version represents our view of the best option, as worked out between the Senate and Assembly sponsors,” Flagg said. “It would be our opening position in any negotiations with the governor during the budget.”

Democratic Gov. Andrew Cuomo proposed **legalizing and taxing cannabis** through his executive budget in January. Under his proposal, cannabis cultivation would be taxed at $1 per gram of dry flower, 25 cents per gram of trim and 14 cents per gram of wet cannabis. And a sale to a dispensary would be taxed at 20% of the invoice price. The same sale to a dispensary would also be subject to an additional 2% tax on the invoice price in and for cities or counties with populations of 1 million or more, an element that wasn't in Cuomo's 2019 proposals.

Cuomo's administration estimated cannabis taxation would generate $20 million in revenue in fiscal year 2021 and $63 million in fiscal year 2022. Sponsors of the bill have previously said the measure could raise $436 million in tax revenue for New York state and $336 million for New York City, though new projections under the changed tax structure weren’t immediately available.

Nicole Leblond, a spokeswoman for Cuomo’s office, said it was evaluating the proposal and will continue to negotiate. The deadline for a passed budget, which Cuomo has previously said is the best chance for a deal on legal cannabis, is April 1.

Efforts in New York to legalize and tax recreational cannabis in 2019 failed after Cuomo's proposal **didn't make it** into the final budget and Krueger, the prime sponsor of a legalization bill in the state Legislature, said the measure **didn't have enough support**.

Carl Davis, research director with the Institute on Taxation and Economic Policy, panned the tax changes in the bill as “poorly designed” and “completely backward.” He told Law360 that when prices declined, the tax would quickly lose its bite as a tool for discouraging consumption because the amount of tax owed per gram would fall. Further, he said that once the legal market took hold against the illicit market and prices fell, the tax structure would trigger automatic tax cuts per gram.

“The writing is on the wall that cannabis prices are going to collapse, and yet this bill bases its tax regime entirely around taxing those prices,” Davis said. “This is a recipe for fiscal disappointment.”

Davis said the original proposed legislation, which based the cultivation tax on weight, would have made the tax structure much more stable.

But Allan Gandelman, president of the New York State Cannabis and Processors Association Inc., which represents hemp farmers, processors and CBD companies, said he favored the adjustments in the tax structure.

“We definitely support the changes on the legislative side because the tax level at that rate of just 18% just on the distributor and not on the per-gram weight, what that does is it makes the price-per-gram to the consumer almost competitive with the illicit market,” Gandelman said.

Gandelman said his group thought one of the biggest threats for farmers, processors and businesses of cannabis would be competing with New York’s illicit market. If the prices, because of high tax rates, were higher than what people in New York were currently spending, they wouldn’t buy the product legally, making it available only to those with more money and undercutting the social justice aspects of the proposal, he said.

Zachary E. Gordon, a certified public accountant with Janover LLC working with the New York State Cannabis and Processors Association, told Law360 that lawmakers and the executive branch are both looking to make sure that New York has the infrastructure to set up the cannabis market in the right way. If so, it can be a long-term, sustainable market while also making sure the taxes being collected are in line with expectations, he said. In addition, since last year the cannabis market has changed so that it’s become much more difficult to find any level of funding, he said.

Because of financing issues and **federal tax prohibitions** for entities dealing with cannabis — which can prevent tax deductions for items like rent and most personnel costs — Gordon said there was a need for tax relief consideration.

“It does all come back to the end of the day,” Gordon said.

A request for comment from a representative of the Senate Republicans did not draw an immediate response.

--Additional reporting by Daniel Tay and Amy Lee Rosen. Editing by Neil Cohen.