

# Solving the Cannabis Tax Puzzle: Approaches for an Emergent Industry

Wednesday, January 26, 2022 at 12-1:30 p.m. EST | Zoom

## Panelists:

**Ulrik Boesen**, senior policy analyst, Tax Foundation

**Hilary Bricken**, attorney, Harris & Bricken

**Benjamin Leff**, professor, American University Law School

**Pat Oglesby**, founder, The Center for New Revenue

## Moderators:

**Shaleen Title**, distinguished cannabis policy practitioner in residence, Drug Enforcement and Policy Center

## TRANSCRIPT

**Holly Griffin:** Thank you for attending "Solving the cannabis tax puzzle: Approaches for an emerging industry" hosted by the Drug Enforcement and Policy Center at The Ohio State University Moritz College of Law and the Center for New Revenue. Before we begin, we have just a few notes we'd like to share with you. First to streamline the appearance of the event today we suggest that you hide non video participants. To do that click on the three dots at the top right corner of any participant box that has their video off and click hide non video participants. Second, we want to draw your attention to the Q&A function, the bottom of the zoom window. You may submit questions at any time, however, please note we will often address those Q&A questions, towards the end of the program. Third, note that an auto generated transcription has been enabled for this event. To change how you view automated transcription or to hide, it click live transcript the menu at the bottom of your zoom window. Finally, this event is being recorded. The recording will be made available on the event page and social media channels as soon as possible after the event. Follow us @osulawdepc to stay up to date on our research, programming, and future events. Thank you again for joining us and we hope you enjoy the event. Shaleen?

**Shaleen Title:** Thank you Holly. I'm really excited to Host this panel, to moderate it today. I just want to quickly say that this is a really important topic, I think, because I probably represent a lot of people when I say we talk about cannabis a lot, I know a lot about it, I keep seeing those headlines - boom, we made this new number, right, a billion or 2 billion here. Um but we don't really talk about the policy that much. And you know, of course, with everything, with federal legalization on the horizon, it is a really good chance to stop and take stock of what we've done so far, is it working, is it not working, what should we change. And so we are joined by some of the nation's, the nation's top experts on tax cannabis policy. I think we have a really good range of people who practice on the ground, practitioners who can see how this is working for businesses, we have thinkers, we have professors who teach about this, and so I hope you enjoy it, I hope you learn a lot. We're trying something different today, before we introduce the panelists we're going to start with a couple of polls to see what the audience thinks. So I'll invite the OSU staff to put up the opening question: should marijuana bear any special special tax at all. Yes or no.

That's a quick one, I think we can move on. Okay, three quarters say yes, interesting a full quarter says no, no need for specialty tax. Okay and we'll explore that with our speakers today as well.

Alright next question. It will be interesting to see if people change their minds, after this panel, but let's see.

**Jana Hrdinova:** I think they're going to have the next questions toward the end of the panel.

**Shaleen Title:** Okay alright so let's start with introducing the panelists. I'm going to ask each of you to say what you work on, and one thing just to start with, one thing that you think the audience should know about cannabis tax policy. And we'll start with Ulrik Boesen, a senior analyst at the Tax Foundation.

**Ulrik Boesen:** Hi Shaleen, thanks for having me guys. I'm very excited to be on today's panel. So, I do excise tax analysis for the Tax Foundation. Tax Foundation is a nonprofit, we're situated in Washington DC. We're 501 C 3, which means all we do is think, analyze, and publish. We're not out there advocating or lobbying, we're purely a think tank. I have been writing about tad, 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. The markets have been developing fairly quickly, markets that have been around for the longest have sort of shown what that market development can look like, but really understanding what the tax does and doesn't do is hard to deduce as of yet. We have some knowledge from other excise tax policy areas that we can try and apply, but it's really hard yet to see what is different kinds of excise taxes do to the choice in the marketplace, to consumption patterns, to youth use and to revenues. So that's still learning in progress, and I think that that's really one of my key takeaways from last few years has been we're, we're mainly still learning.

**Shaleen Title:** I think that is key because we forget that for sure, and I encourage people to check out all Ulrik's work at the Tax Foundation, I found it really helpful. I'm sure we'll have some links. Next, Hilary Bricken, if you don't follow her blog you absolutely should. Very well known attorney. Hilary, what do you work on and what's one thing that you think audience should know about cannabis tax policy.

**Hilary Bricken:** I mainly do corporate transactional and m&a and regulatory work in the cannabis industry. I've been doing that for about 12 years now it's my main focus within the law firm. It is obviously private practice, so I get to see lots and lots of businesses of all different sizes, with all kinds of different goals from ancillary to plant touching. I would say, on the tax side, and I do not claim to be any kind of a tax expert I think my perspective, today, is really going to be the impact of these policies on living breathing clients in the marketplace. But I would caution anybody that's coming in. Your chances of having no tax, obviously in reality are extremely low and pretty much delusional. And I am in LA and in California and we do have some licensees that honestly think that some kind of tea party tax revolt is going to convince the regulators to reduce taxes, but the truth is the regulators don't have the power. It's up to the State and it's a pretty high threshold to change the taxes. And it's a very sobering reality for licensees that this is a very messy reality. At the end of the day, that they will have to face at some level, no gold standard has come out yet, at least in my opinion, in practice, but it's it's just not very wise to think that you're somehow going to escape it as a licensee.

**Shaleen Title:** If you think you're not going to have tax that is pretty much delusional, I love that. And I think that is so true and I second the sentiment that regulators get blamed for a lot of this, but really have no say over over taxes, that's a good good place to start at the beginning. Let's move on to Benjamin Leff, professor at the American University Law School. Ben what work do you do and what do you think the audience should know about cannabis and tax policy.

**Benjamin Leff:** Okay, so my name is Ben Leff I teach I, my main focus actually is nonprofit law, I teach nonprofit law and federal income tax at American University's law school. And I'm maybe as far from Hilary as possible, in other words, I am a tax expert and I've done a bunch of work, I got interested in marijuana cannabis taxation and I've done a bunch of work on that, but I am as far

from an expert on the actual thing, as I think we have on this panel of extreme national experts. The thing that I think people should know about cannabis taxation is just that it is extremely complicated and very fascinating. In other words there's all sorts of components of what it means to move in the way that cannabis has moved from an illegal to legal market that just turn all sorts of conventional thinking about tax policy on its head. And you know, one of I think my roles here is to just point out some of the ways that kind of the conventional thinking gets turned on its head, or could get turned on its head when thinking about cannabis taxation, thanks.

**Shaleen Title:** I love that point, because we do see so often that I guess you can say conventional tax policy experts, especially when it comes to different substances we get tripped up right we start talking about cannabis because it's so unique and yet there's so few cannabis experts with tax expertise, so thank you to all of you for joining so far. I'm going to turn it over to Pat Oglesby and let me say that we're really happy to have the Center for New Revenue collaborating with us for this panel, and I think that Pat probably spent more time thinking about tax and cannabis policy than anybody in the known universe, so very happy to have you here. Tell us about what kind of work you do, and one thing, people should know.

**Pat Oglesby:** Thanks Shaleen, yeah I started this about 12 years ago and I was doing, I was a tax lawyer, worked for Congress doing, writing tax law and about 2009 I thought cannabis prohibition is not going to stand the test of time and taxes are going to be part of it. And nobody wanted to deal with that. There's a little bit of a stigma with cannabis tax, now Ben you can speak to that too when the time comes. So I've been, this is my hobby you know, some people like to play golf, I'm terrible at golf so I like to think about cannabis taxes and it's fascinating. As Ulrik said, nobody knows how to do this. The farther we go, the harder it looks. Jana did you get my slides, and can you put out slide number one.

**Jana Hrdinova:** Yes, I did.

**Pat Oglesby:** Um one thing we do know is that, that voters like... We have all this this evidence from the initiative process and voters like cannabis taxes, better than they like cannabis legalization. Now some of my best friends are tomato model guys. You know, you should treat it like milk or tomato, tomatoes. Um that's not going to go anywhere as as Hilary said that. So here we are, thanks, that's all I got for now.

**Shaleen Title:** I did not know that. Um that taxing cannabis is more important, um more popular than legalizing cannabis, that's really interesting. Alright, so thanks for starting out with that everybody. I'm going to ask Ulrik to go over what we have learned so far from state level marijuana taxation and I want to ask you, what do you think is the best strategy for states. And let me just note it for the other speakers afterwards I'm going to ask you if you want to weigh in on the best strategy as well.

**Ulrik Boesen:** Thank you. I'm also going to share just a little bit of information with you guys just because there's a lot of data points and a lot of different taxation strategies that have been utilized in the states. I think it's important just to have somewhat of an overview of what is being done, because that really speaks to what we've learned so far. First of all, this market is big and it's going to get bigger. Some projections put it 60 to \$70 billion at the end of this decade. Now for tax purposes that's important because that sort of speaks to the interest of taxation, like, why is there, so much of an interest in taxing these products - well there's a lot of money out there. And then the other part of this slide is what's the cannabis plant. There's a few options for taxation, one is based on price that's what we call ad valorem and then another is based on quantity, that's what we call specific. If you do a specific tax you're likely to either tax the plant itself and the plant itself has multiple components, I'm sure there are people on this call who understand these components

better than I. But all you really need to know is that there are multiple multiple components that have different qualities.

So let's get on to what have the state's done thus far. Now these are 19 states in here and there are different tax systems. The majority of States have done an ad valorem system. The reason for that, in my opinion, is we're taxing emerging market. It has been said a few times already today, there's a lot we don't really understand and know about cannabis. How the market is going to react to taxation, what's an appropriate price, what does it take for a licensed retailer to compete with the illicit market. So we're learning. And one benefit of how this all has happened is that we have all these state experiments going on, so we can take it. Let's take New York as one example. New York is doing a potency based tax, which is based on the milligrams of THC in different components of the plant. And compared to Arizona, which is doing basically an additional sales tax on cannabis product, so an ad valorem on retail excise tax. When those markets have been operating for a while, we will be able to see which tax system does better in terms of internalizing externalities, does better in terms of limiting certain usages that maybe people don't want, in terms of raising revenue, in terms of keeping prices sort of stable and all these things that taxes are supposed to do. So that's how we're learning.

Now most states have done ad valorem, this is a very complex market, there are hundreds of different kinds of products everything from gummy bears to flower, to water solubles to topical. So an easy solution is to say, instead of creating different categories for all these products and tax the different categories, we're just going to tax the price because that's simple. There's certain issues with doing that kind of taxation. First of all, it's not commonly how we do excise taxes. You all know excise taxes from the world of tobacco, from the world of alcohol, from the world of gasoline. Those are all quantity based. We tax cigarettes per cigarette, we tax alcohol by volume and we tax gasoline by volume. That's how we traditionally have done it. It's the best way if we're trying to capture the negative externalities of the societal costs associated with consumption or use. Now that's the negative with ad valorem taxes, there are also trade offs when, if you were to say let's do something like New Jersey is doing. New Jersey is doing a weight-based tax. When do you weigh the product? It weighs more when it's first picked than when it's dried. That that's an issue, you got to figure that out. What do you weigh? Do you weigh just the flower, do you weigh the whole plant, what about trim? What about cut offs, all these things. So that can become a much more complex tax system. Then there's the New York model, the potency model. Is THC even a good proxy for negative externalities? If we assume negative externalities of, are associated with intoxication, maybe THC doesn't give us a good picture of what actually happens to the consumer.

So there are all these questions out there that federal prohibition really has limited the ability for the science community to answer them as of yet. Like, we're learning that probably THC alone doesn't tell you much about intoxication. But it's the best proxy as of yet. And then for weighing the product, you gotta do it early, but how early in the value chain? And no one's really answered these questions quite well and I think that's really what's driving this ad valorem focus in all these markets because they don't want to answer all these questions, they want to get their markets up and running. Right, they don't want to wait three years after the voters or the legislators decided to legalize recreational use. So they're saying "Okay, what can we do in the short term that will raise some revenue and that will allow us to sell this product, or allow people to sell this product." Ad valorem tends to be an easier, simpler tax system. And then now, to describe kind of what the trade offs are with three different strategies. That's specific to the current setup, right. Federal prohibition has one major impact on the market, and that is no interstate commerce. So everything that's consumed in the state of Michigan must be cultivated there, processed there and sold there. That has a pretty big impact on what the states can do and get away with. If that were to change, say the federal government did decide to reschedule cannabis and allow interstate commerce, I don't think it's too much to suggest that prices would decline quite rapidly. First of all, you would likely open up the bank system, which is currently not that accessible to cannabis companies. And the capital that

most entrepreneurs have access to is still limited in the cannabis space. You would fix certain things around the federal taxation of cannabis, which is punished under a provision called 280E, which I'm happy to elaborate on at a later point. But basically they're not allowed to take any business deductions which drives up their effective rate and their income tax, which shrinks their margins, so they have to charge more. Those two things alone would drive prices down, but if you also introduce economies of scale prices would likely plummet. Now states that tax based on weight or based on potency will have a much more stable revenue source going forward than states that have based their tax revenue on price. Obviously, if you tax 15% of \$100 you get \$15, if that price drops to \$50 so does your tax revenue. And that's a that's a big uncertainty in the majority of states that tax based on price. There are other tax technicalities surrounding exports of products and an interstate market that all the states would have to look at, but for now I think suffice to say that the longevity of the ad valorem based tax is very uncertain. And I think a number of these states will have to come back and look at it, in a situation where interstate commerce as possible, whereas the specific states like Alaska like New Jersey like New York will have a much more stable source of revenue.

Then I just wanted to share a little bit with you in terms of what does burden look like. Now, we discuss kind of design. What is, what is order and rate based what is, what is burden look like and revenue look like. Not surprisingly, Washington state, which was one of the first states to open a recreational market and which has one of the highest effective tax rates also raises more revenue per capita than any other state. Then you have Colorado the other early mover on this almost as much per capita. And then, at the bottom, we have some of the newer states. Now as time goes on, and more and more states will have operated for four or five years, we will get a much better sense, not only of which tax system is successful and efficient in terms of raising revenue, but also what would the impact be of the different kinds of taxes. So does one kind incentivize cross border trade more than other? Does one kind incentivize use of high THC, low THC products more than others? The two states that have been doing this for the longest both use an ad valorem system that doesn't take account of any of these things. So we can't really deduct much more from that. But as more states with with specific systems built data we will learn more.

There's another point on this slide that's important because we hear a lot about revenue. And I started this by saying this market is very valuable and can become huge in the next seven eight years. But for state governments when they talk about tax revenue, the most successful states, Washington and Colorado, raise a little bit more than 1% of their own source revenue. Now, their own source revenue doesn't include their federal transfer, so their own source revenue is just their own tax revenue from their own taxes. Now that's meaningful revenue, but it's not revolutionary. It doesn't allow them to reform other sections of the tax code. This is money that they can spend on, in my opinion, putting back into the system. That means offsetting the negative externalities associated with consumption. And the negative externalities associated with prohibition. So those two spending priorities there's revenue for that, but there's not revenue for much else. Whether that be some lawmakers talking about conservation, or let's spend more on wildlife or whatever else um. To me there's not there's not enough revenue to be raised in the cannabis space for for those sort of things to make sense. And it's also not very sound tax policy. There's meaningful revenue for reinvesting in communities, for reinvesting into the cannabis market and to offset some of the negative externalities associated with consumption but outside of that it's it's really it's really minor. And I think those are the main lessons that I wanted to share here at first, and hopefully that has sparked some questions, so we can get to where people want to know and want to learn at the end of this.

**Shaleen Title:** Thank you so much. So we probably have a mix of experts and people who are just starting to learn about this in the audience so just to recap the terms for them. So ad valorem means a percentage of price, right?

**Ulrik Boesen:** Yep.

**Shaleen Title:** And then, when you talk about weight and potency based taxes, those are all considered specific taxes?

**Ulrik Boesen:** Yep, that's correct.

**Shaleen Title:** Okay, all right, so thank you for that. I think I'll actually move on to Hillary and everyone will have a chance to say what they think the best state level tax strategy is. So Hillary I specifically wanted to ask you, as a project practitioner like you said you work with living breathing clients who live this, how do you tax rules affect your clients and in different states and specifically how has tax policy impacted a state like California?

**Hilary Bricken:** So off the bat, and I was in Washington, when they passed initiative 502, I was there for seven years I was doing the medical market before adult use hit. Everybody was very excited when I 502 passed in Washington state, because it was avant-garde. I think a lot of those licensees that embarked on that regulatory process completely ignored the tax impact because the momentum of getting in on the ground floor, hanging on through the turbulence of legalization and potentially having a big exit at the end when the federal curtain falls was enough for them to kind of blindly ignore the details and I will say that's a theme, with a lot of our clients and, in particular licensees. Where they're just not focused on the bottom line, let alone things like the federal income tax impact which I'm sure Ben will touch on a little bit.

But also the state taxes and in Washington, you know they've got that 37% excise tax and the effective rate is really high. In California, we get a lot of complaining about the high taxes, but the truth is we don't have the highest taxes, out of all the States. We're up there, but we're not the highest. And, focusing in on California, we also have the issue of local control, and I know that this panel is not about regulatory trends or anything like that, but it plays into this narrative about tax policy because it's not just a State law issue, that gets a lot of play, but in a state like California, which is seemingly tax-obsessed and we love to regulate to regulate sometimes, the locals have a tremendous amount of power to levy additional taxes and sometimes things like gross receipts, based on the size of your cultivation site which some of these are very large. And a lot of licensees think that that's patently unfair, but the truth is, you are not getting into a given city or county unless you completely comply and receive local approval, and that includes paying the taxes, but again getting caught in the up swell and the momentum and basically the romantic notion of being the next Jack Daniels which, for most people will not happen there's going to be a tremendous amount of failure there's already been a huge amount of failure. They just don't think through the implications of the tax and, in particular, again, going back to California, there's been a lot of recent complaining because of inflation and when prop 64 passed, which I should set this up a little bit, specifically regarding California because we do get a lot of negative play on our regulatory scheme and our licensing.

We actually have two laws that are married together. It's the medicinal and Adult Use Cannabis Regulation and Safety Act, which was passed by the legislature back in 2017. And prop 64, which is the voter initiative that passed back in November 2016. The state basically combine those two laws in that 2017 piece of legislation which I'll refer to as MAUCRSA. The tax scheme in both pieces of law completely and totally lineup and they both dictate that annually our cultivation taxes, which are flat rate based on weight, will be adjusted for inflation and it doesn't say according to any particular price index it just says inflation. And that's what the people voted for that's what the legislature has to deal with unless they want to change it by a two thirds vote. Which is a very, very high barrier. So we had lots of licensees that had a very bad reaction to our cultivation taxes, increasing which I wrote them down. And I know Ulrik had them on his slide but they've increased a little bit since then, and they will remain that way for 2022. Additionally, we have a mandatory

markup that the California department of tax and fee administration must set by law again they have no choice but to apply the law. And it's going to be 80% it's been 80% for a while, through summer of this year and distributors have to use that markup to calculate the average market price of the cannabis, which, when we are looking at weight in California, we don't apply the tax until the cannabis essentially is in its final form for retail, meaning that it's been tested, but the distributors have to use that markup basically to calculate the total tax owed in an arm's length transaction.

Licensees are not happy about this, but again, this writing was on the wall from the inception of this democratic experiment. And I think a lot of that impact is finally coming home to roost as prices have increased, which they are supposed to do, in line with inflation. And to Pat's point and to Ulrik's multiple points when people vote for these things and I've written about this before just anecdotally, we cannot deny that there's some social costs that comes from legalization whether it's increased use, messed up driving traffic patterns, whatever more youth being exposed to advertising, I mean you could go down a rabbit hole with some of the theories conspiratorial or not about the impact. And I think the voters honestly think that taxes are a way to mitigate some of that societal cost. Meaning if the price is high enough you're going to disincentives things like routine use or habitual use, etc. I'm not sure that anybody can say that that's actually come to fruition, but I do think that that's some of the psychological desire in voting for these initiatives, and I think it's going to be very interesting going forward as more legislators take the risk of legalization out of the hands of the voters and they can be in these bills and pieces of legislation what they will have learned from all of these states that have all these different tax schemes, and of course that's all assuming that the Federal Government isn't going to do anything anytime soon either via the State's Reform Act or some other piece of legislation that could add more tax or not. I think that that's probably undecided and nobody has a crystal ball. Sure the feds will have some kind of tax - nominal. The panel can probably speak to that, but for now, at least in a place of California we have a lot of licensees that are very unhappy with the situation and frankly they're attacking the wrong bodies of control, they're appealing to our licensee regulators and our tax department whose hands are tied, they have no choice they must enforce these laws and the key basically, instead of not paying the tax or trying to hold back the tax and make some unfounded argument without standing about why you shouldn't pay the tax and it's constitutionality is probably to do things like lobby and engage in government relations and appeal essentially to legislative lawmakers about how the negative impact is affecting these licensees and not to go on too much further or go off on a tangent, but California gets a bad rap because we have a very robust illegal market. Licensees seem to be married to the idea that this is because the taxes are too high.

In preparation for this panel and in talking with my fellow panelists I think that taxes have been demonized as a result and they're a very easy scapegoat, but the truth is it's more than just taxation that's fueling things like the legal market. There's so much more that goes into it regarding things like enforcement, access, are there enough licenses, is local control permitting enough access? So it's really just not the tax impact that's the culprit here and per my introduction it's here to stay, anyway. But hitting the right rates that makes sense that are sustainable to put money back into communities. Again, you know being licensed in Florida California and Washington, I don't think there's a gold standard I think there's a lot of room for study, education and experimentation at this point, which is exciting, but licensees really need to calm down about the tax situation because it's their reality and if they want to change, they need to appeal to lawmakers, and probably stop trying to bully regulators. And I don't think any amount of litigation is going to solve that process.

**Shaleen Title:** So insightful. Thank you. That was really interesting, not a tangent at all super interesting. And I love this balance of people who work on theory versus people who work on the ground because you're right like we say that higher taxes potentially, theoretically right reduce these negative impacts, but do they and do we does it deter the illicit market based on taxes? We really don't know so I thank you for raising those and I especially just wanted to quickly underscore

how important local taxes are because we've been talking about state level taxes, but it seems from the business perspective, I think a lot of smaller entrepreneurs in particular underestimate the two at 280E tax burden and certainly local taxes as well you know they end up being so much more than planned for so thank you for making those points. I want to move on now to Ben and going back to our first question is it a good idea in the first place to tax marijuana at a higher rate than just the regular sales tax rate? Is that even a given? We know one fourth of our audience as no so I'm really interested in your take on that Ben.

**Benjamin Leff:** Thanks, so much so, you know, unfortunately, there you know way too many things, that one could say that one would want to say about that so. I'm going to try and identify some things as kind of the thing that I think is the conventional wisdom on something and then some complication of that. The first thing I want to start with, is just that I really think about questions, I mean tax policy questions in general, as having a political component and having a policy component. And I really don't know anything about the political component of anything so. You know, one of the political considerations of taxation as Pat pointed out at the beginning, is, if you want to build a huge coalition in favor of legalization, then, or a coalition in favor of legalization then tax is a component of building that coalition and higher taxes builds a coalition of people who kind of want the use of that money as part of the Community. I, I think that there's a lot of unrealistic political debate about that, but that's really a political issue not not so much a policy issue, so I just want to bracket all those political things and and I, you know anyway. Okay, from a policy perspective, the first conventional thing that people say is, and both Ulrik and Hilary have made reference to this, is the idea that if you tax the licit market too high, then you drive people into the illicit market.

So that's kind of the conventional wisdom on this and as Hilary points out tax, price, is just a small component of what makes people determine what market to exist in. In other words whether to purchase illicitly or licitly, price is just one component of that, but it there's nothing, and it's an empirical question what people actually do, but there's no reason to think that price is not a component at least to a certain extent, so if you tax so high that it's really easy to get same quality goods at a much lower price on the illicit market, you're going to push a bunch of people into the illicit market. And if you're doing tax design, if you ignore that that is like the number one mistake of of tax design so there's sort of a ceilingish on price things. But once you kind of establish that most important conventional wisdom thing, that there's a kind of a ceiling ish on price things, then there's a question of because of a move from it from prohibition to a licit market that should and has, you know related to different predictions different ways, produced what you might call legalization bonus. In other words, the cost of production falls as you move into a legal regulated market and the question of well what should happen to that bonus sometimes the rhetoric of how to tax marijuana obscures the fact that really that's the question you're asking. The government through legalization is creating an economic bonus. Should it go to producers, should it go to consumers, or should it go to anything else? And the government's role, that's what taxes are they take money out of a market transaction and distribute it to anything else, including the cost of you know, regulating the market that's one thing or mitigating harm caused by prior prohibition or you know any number of other things. And the kind of the thing that doesn't get said I think conventionally which is kind of the unconventional take on this is that, my view is that a well-designed tax on marijuana, first of all, the existence of a bonus justifies an extra tax on marijuana products. And costs associated with keeping that say for regulating that market also might justify it, but the main thing is the creation of the economic bonus through legalization creates a justification for a tax. And a well designed tax does the best it can to take a significant chunk of that bonus, not the regular economic returns on the market and but, that legalization bonus and use it for socially beneficial purposes, ideally associated with the creation to market or that are there for the transfer from the prohibition. But even if not, it still is justified. It's very, very hard to design a tax that does that well, but that should be the goal of designing a special marijuana tax. Thanks.

**Shaleen Title:** Thank you, Ben. Now I'm just curious, if it always comes back to this it feels like in this panel, but if we're collecting enough data to be answering these questions. Alright, so now we're going to move to our last speaker, Pat Oglesby. And so, if you are new to this topic, one of the most important questions is the tax base, which Ulrik talked on touched on earlier, but I want to ask you Pat, could you explain the concept of tax base, what's an effective tax base here, and what do you think is the best choice?

**Pat Oglesby:** Your tax basis is what you measure and then apply your tax rate to. So you can tax grams of flower, you can try to tax grams of THC, you can tax the price. That's one thing. I mean, in general, look at the income tax, we have an income tax now where we try to tax people's income, people say well let's try to tax wealth. Let's make rather than the inflows the flow let's tax the stock, let's tax what you got rather than what you're getting. So people were talking for a wealth tax base that's very hard to do it's wealth is hard to find hard to measure. How about how much is that Rembrandt worth? And, what is that Rothko worth? So, these are the kinds of that's what a tax base, it is what you're trying to tax. For cannabis, we really don't know. We are, we have Ulrik went through this and showed kind of showed the options ad valorem um I think. One thing I've learned I don't think ad valorem is the way to go. This is there they're a bunch of objections to it, the collapsing price argument is great, but there are there are other problems with with ad valorem tax, that is to tax by percentage of price. So if you go to the liquor store and you buy a gallon of liquor, that's gonna that's gonna bear the same tax as, if you buy 8 pints, but if you if you go to ad valorem you give a discount for quantity, if you go to ad valorem you give a discount for employees, you know standard business practice they're not trying to beat tax. Shareholder discount. How about supplier discount? Prices is a very slippery, I used to work in international tax. And when you read about Apple and Google and Microsoft beating the system it's because nobody knows what the right prices they charge their affiliates a price that nobody knows what it is so I'm I'm against the ad valorem or price based tax.

Whether whether we can actually measure and I'm going to see, I want to go to some slides did have some slides online try to go to here. Whether we can actually measure the THC, no forget the slides, but the THC in flower, well I don't know there's sampling error. And there's there's there's a there's a desire on the part of the seller or the taxpayer to understate the amount of THC. Now that the consumer will may want more THC so that there's a bit of a conundrum. And the jury's out on what to tax on whether we're on whether, now Canada taxes, and I go to slide 10 if you will Jana that's one I remember. Um Canada taxes has a bifurcated model where they tax flower and bud by the gram. They tax bud at 25 cents per gram and they tax concentrates by potency at \$1 a milligram of THC. Now the thinking is that yeah we can measure the THC in concentrates, Fine, no problem. For flower, we're not sure so they're still sticking with weight based tax. New York and Connecticut are trying out THC-based tax for flower and that's going to be a great experiment and it's going to show us the way to go, I think it's going to work. Um time will tell.

I want to, I want to digress for a minute and go to another topic, if I can. And go to go to slide number 47. And this is about enforcement and the whatever tax you try to collect if you don't go against cheaters you don't collect the tax. So slide 47 is a here we go is when Mark Kleiman was a kind of Marty Ginsburg figure in drug policy. That he was in on this for a long time, and he points out that if if these illegal operators operate with impunity, and you hear about California hear about storefronts in Los Angeles, where they're illegal dispensaries and they're just you know they close them down or they try to cut off their electricity and cut off their water and they just pop up somewhere else. And unless the public is going to get it unless prosecutors, are going to take these cases to juries unless the juries are going to convict these illegal operators, tax is not going to be sustainable. So that's a that's another.

I got one more thing to say, and that is, I want to go to slide number 29 and 30. And, as I say, a lot of my friends are tomato model guys. I'm a legalizer. I think I'm I'm with the majority of Americans

who say let's look, prohibition isn't working. But there are a lot of people who are just nervous about cannabis and they're part of the political system and here out in California you're a former governor thought of as a great liberal um and then the next slide number 30, is here's what he says and, and this is, this is a this is part of the reason we have taxes. That marijuana makes people nervous and there are enough of those voters like that that are still out there, and maybe this will fade away with as people learn about the plant more, who knows, but that's where we are today, thanks. I yeild the floor.

**Shaleen Title:** Thank you, you told me to cut you off. I didn't even have to all that was great okay I'm gonna invite everybody to turn your videos back on and we'll we'll come back as a panel. I pray for the day we'll all be in the same room and I can actually look at you all in the eyes, but here we are. So thank you so much for that insight I definitely wanted to take a minute to talk about federal reforms. It's so often feels like when we have these discussions, you know we spend all the time on States where the information is and then it turns into this really quick like, oh yeah, what about federal reform and we try and rush it. I would love to just spend a minute with each one of you. With all of the expertise and insight that you have now from looking at the state's, what do you think of the federal reforms on the table and what do you think would improve them? And let's go in the same order, starting with Ulrik.

**Ulrik Boesen:** That is a very good question. Um let's start with the text portion of it. I think between the three or four so proposals, we have right now, a few of them would add a tax burden that that I worry would make certain businesses unsustainable. Now, obviously, at the same time, they would lower some costs, you know by fixing a 280E discrepancy by introducing access to capital. But, especially the Senate bill which, if I remember correct would end at a rate of 28% of the price is fairly high when you add that, on top of state level taxes that can be over 40%. I think between effective rates of that magnitude, additional regulatory costs at the federal level, and not necessarily any fix to some of the local issues that Hilary touched on, I think that's that's a big risk to certain cannabis businesses. Then the question is also, will they all of a sudden, I did have to compete in state, but what they have to compete nationwide. So not only will be more expensive they'll also be more competitors that might have more capital. That can be you know that's a revolution for the current market and that's not even touching on medicinal cannabis that today we call it medicinal but the FDA is not involved. What happens the day that FDA is involved and says, if you want to call this medicinal we have this three phase application process that you have to go through. One, by the way, costs \$10 million. I'm not sure you know your standalone shops can deliver on that.

So what does that mean for the medicinal market? In terms of the tax proposals, the ones I liked the most was the latest one that we got from Representative Mace I think late last year, which really attempted to come up with some categories for taxation now. They, like everyone else, were a little bit uncertain about what would the right level be, what kind of burden can be born by the marketplace. So they did rely on price. But the same time, they came up with six different categories, so the tax for all flower would be similar, for all pre rolls would be similar, for extracts, weight, cartridges, edibles and topicals. I think this is a good way to get going, because all of a sudden, you have defined categories of taxation, this is something that we know from tobacco, for instance, or for alcohol we tax liquor one way or another way wine another way cigarettes one way cigars one way. This is how we've always done it and I suspect the TTB, the agency that currently or is in charge of tobacco and alcohol taxation will also be in charge of cannabis taxation at the federal level. So designing a tax that they can understand is probably a good way to go about it. Those are a few things about the tax, but really federal legalization where we are today, I think, raises more questions than it answers because we don't know who will regulate. Will it be TTB, or will it be FDA? FDA is in charge of tobacco, TTB is in charge of alcohol. What kind of model are we moving towards? And then there's such a thing as agricultural policy. Will cannabis cultivators get

access to crop insurance, just like any other farmer? I don't know I'm not an expert on Ag policy but it's a big question that needs to be answered so.

Currently, I feel that the proposals that are out there are pretty good, a good conversation starter, but they answer, maybe 10 to 15% of the questions that need to be answered, to actually have a solution. And maybe the solution is to pass something and then have lawmakers that are willing and able to finish the work as we go and as we learn. I know Congress has not been particularly good at that, as of late, but that might be the requirement for getting this right because it'd be hard to answer all these questions, until we get going, but not getting back to looking at this one two years into the process might also be detrimental. Yeah it's um it's a big question, I think the tax component is relatively simple compared to some of these other issues that I raised. I think we can design a federal tax that won't crush the market. I agree with my fellow speakers that taxes are just one component, but again if they're too high, if they're too expensive to comply with, that could be a problem. Avoid that at the federal level and then turn your focus to something else. I think that's that's, the key for federal lawmakers.

**Shaleen Title:** Alright real quick you just clarify when you said you think it would be detrimental to revisit a year or two in?

**Ulrik Boesen:** No, not not to do it. So, if you were to pass something half-baked and then just leave it go that could be a huge problem, because it might create some you know path dependencies that wouldn't be good down the road.

**Shaleen Title:** Absolutely, yeah, thank you. Hilary?

**Hilary Bricken:** I am not a good policy wonk. I'm a very like boots and suspenders kind of lawyer, right, in the field and we rarely get excited over any federal legislation. I think it's just PTSD from so much being dropped and ignored and the puns don't stop. But the one that really has yanked my chain is the State's Reform Act and yesterday pretty much confirmed that. I'm pretty active on Twitter I think it's fun albeit probably a social death spiral, but Amazon publicly endorsing the States Reform Act, I mean knock me over with a feather because that wouldn't have happened a decade ago, and even though they're also openly claiming they have no interest in vending any kind of cannabis, I really don't think I can take that at face value as maybe the number one national and international distributor, of all things, goods and inanimate objects. But that endorsement alone tells me a ton. This is not just lip service. That bill probably has the most momentum out of everything that we've seen drop, I think, in the past five years, for better or worse. The other kicker is that it's from a junior congresswoman from South Carolina. I mean what world are we living in. I don't I don't know. And I looked at the tax piece. Not going to opine on that, Ulrik did a great job on that, but essentially if that billboard past TTB would be in control of the adult use side with ATF doing the enforcement right. And FDA and USDA would also play roles USDA would handle cultivators FDA would handle legitimate medical applications. What that looks like in the wake of the State's Reform Act, I cannot say because in most of these states medical has become irrelevant in the adult use markets and, notably, I think, also yesterday New York has decided that any condition whatsoever as long as you can get a physician's recommendation will qualify you to access medical cannabis. That's on the heels of the adult use program coming to fruition in a year, two years, that's not unusual. So legitimate medical applications? Couldn't say what that is in the future. But it's very clear with the adult use states that medical becomes obsolete once legalization hits. And I think people are fearful of having the FDA participate, for a number of reasons, given the established tracks to get drugs to market, dealing with the food drug and cosmetic act is so painful and cost prohibitive for tiny companies. I'm not sure that's the best way to essentially handle that I don't know if the FDA brings legitimacy or just more red tape to what otherwise would be some pretty good entrepreneurial ideas.

But I would say states reform act probably has the best shot, the most realistic shot, especially with the 2022 midterms coming up for obvious reasons. And because of the people backing it and the private interest groups that are now really sniffing around it. From investment banks to Amazon, we know the Koch brothers are involved and again I'm not conspiratorial but once those really loud well established political voices start to get behind something we likely will see some change and the biggest surprise to me honestly is that it will be broad sweeping. I used to think that legalization would happen in little chips away at the establishment, like with safe banking. Give us banking but don't legalize, right, and other types of reform. I'm starting to think differently now, though, in the face of this bill, and I would say that my clients, most of them, and this is going to be ironic, they are not super jazzed about it because they know that once interstate commerce is introduced which this bill entirely contemplates and even this summer tight, the people behind the NIST handbook are gonna consider putting in these uniform standards for weights and measures that contemplate interstate commerce for cannabis, for the first time ever.

**Shaleen Title:** That's, could you explain for people what the NIST handbook is?

**Hilary Bricken:** I don't know what the acronym is off the top of my head, but it basically is a universal standard for weights and measures to keep products uniform as they move through commerce. It includes packaging and labeling testing levels and that tells you that the Federal Government at least that part of it, is probably contemplating some future universe of interstate movement of product and they want it to be consistent, for consumer safety but also for logistical business purposes right, you know what you're getting regardless if it passes through whatever jurisdiction. So that's pretty indicative of what's on the horizon. My clients are not super happy about it, even the multi state operators because again to my previous point we're going to have a lot of failures here. We're going to have some big exits, that's undeniable. But we do have some powerful operators, we even probably have some craft brands that are going to survive somehow through acquisition. But that's inevitable that there will be consolidation and the way my clients think about it is that if legalization hit tomorrow the standalone brick and mortar dispensary would no longer be this exotic tourist destination, because then you're competing with Walmart, Costco, CVS, Walgreens, if they choose to go down that path and they've already got these established supply chains nailed down, so it makes them a little bit queasy, even though they know that it's right and that the majority of Americans support it.

**Shaleen Title:** That is super interesting. I just wanted to note because we might lose people at one we are going to 1:30 but in case we lose people if you guys want to put in the chat any work that you want to link to or your Twitter profiles, that would be great and then that way people will have them in case say they have to leave and want to continue the discussion. That was so interesting. Okay, let's move on to Ben.

**Benjamin Leff:** So I actually want to kind of almost repeating and go back a little bit in the last thing that Hilary said because she said it very powerfully, but I just want to make sure that everybody is on board with this so, when we're you know, and Ulrik said this also, when we're talking about federal tax policy, it like it doesn't make sense to even think about even state tax policy once you have a legalization that permits interstate competition and the Constitution guarantees that states cannot discriminate against producers from other states or under most circumstances, and so, once the there's federal legalization then that opens the door presumably to interstate competition. So if I was a producer, unless I knew that I was the biggest gorilla in the country, I would think that federal prohibition is likely to do more harm than good to me, no matter what the tax rate is it kind of doesn't matter because currently there's no one who argues that section 280E of the current federal tax regime makes sense in any kind of way but it's a thing and it actually is, you can comply with it, and still survive as a as a cannabis producer in the world, so so um so interstate commerce is going to kind of blow everything away. One of the things that it should do, or what one would predict it would do is that it would create state tax competition and

normally the word that we use for that is a race to the bottom, in other words States start reducing their tax rates or at least trying to reduce their tax rates on production because they are now competing with and trying to kind of foster their in-state production for over for transition so so anyway.

Federal legalization, no matter which bill it is the most important thing is whether it changes the situation with respect to interstate competition, and that should then put in shape all sorts of other moves, so what Ulrik said, which was like whatever the whatever the federal government does they need to check back in about it, you know a little ways in, I think, is, I mean I don't know how you think about all of those changes, other than that. I mean you know, and obviously this question of how high the federal burden is, if you ignore all of the changes at the state level like overall burden is kind of the same question the federal government is then competing with states for the portion of the revenue that they can take in taxes, there should be an additional bonus from federal legalization, in other words, the cost of production should go down. If there's interstate commerce it'll go way way down for the massive biggest producers, there are the most efficient producers or whatever I don't know anything about how you know economics work so who knows what will happen there but you know someone's gonna win and then the question is, can the Federal Government take their little share of those winnings. Thanks.

**Shaleen Title:** Thank you and Pat?

**Pat Oglesby:** Thanks. Can I get slide 18 please? The the notion of how much tax this market will bear, let me the the Mace bill has a 3% excise tax. It's going to be a tax cut when 280E, when 280E adds selling expense tax is repealed and I you know, getting federal legalization and a tax cut seems like a lot to ask for, and I think it may happen, I mean sure Amazon likes it what happens to the mom and pop retail when when Amazon steps and that's another issue. But when you look at this 3% rate on that the Mace bill hands and look at what Europe taxes cigarettes at Europe taxes cigarettes basic if you do it in an ad valorem equivalent, it's 400% ad valorem. That is Europe taxes cigarettes, it takes 80 cents out of every euro that the consumer pays, so the government gets 80% and the whole private sector from farmer to retailer gets 20%. Now cannabis can't bear that kind of burden, but I think 3% is is kind of low now but here's the Mace act of... Taxing edibles by weight just strikes me as weird. I mean there's a lot of sugar in there. There is some flour. There's a you know how at what point is it is or people just going to stuff these thing flower is hard enough and I was talking about how part of the problem with with a weight based taxes that people are breeding flower to get high THC so if you're just taxing each gram of flower, the same as the next one, and this one has 30% THC and the other one has 16 well that's kind of weird. Really weird to tax a brownie by weight. That and then the next slide and the Mace bill kind of tickles me. That this is kind of the anti-tax dream come true. The Mace bill has this deal that says Congress cannot increase this tax in this bill except by three quarter vote. I mean that's that's pretty new. Ben have you, I mean there's nothing in the code like that is there? Whoa I mean this is just. This this there's there's a huge anti tax element in this country. I don't know if y'all are watching Succession and Connor Roi for President. But the next the next slide then and then this is just this is just a joke it's just a flag that you can't count, you can have a constitutional amendment that says, you need a three quarter vote to change your mind. But Congress can't bind itself. It can overrule this rule in the in the Mace bill by a simple majority, so this is just nothing, this is just theatre. So I think we're we're I think the Mace bill in many ways it's just a a message I hate taxes we're going to eliminate the 280E selling expense tax which really keeps advertising down. I've got a can we have another session Doug and how we can have a whole session on 280E and people hate it but and Ben don't like it either, but it does it keeps it keeps the noise down. When you can't deduct your advertising and your branding and your celebrity endorsements, ah there's maybe something to say for that. I'm I'll yield the floor.

**Shaleen Title:** Yeah actually I don't think we've talked about that enough, if 280E is separable right when it comes to like those advertising expenses versus everything else. Okay, I would like to do one more round with one more question before we move to audience questions, which is the question of earmarking revenue into different areas versus just putting it into the general fund. Maybe we can go backwards order, starting with you, Pat.

**Pat Oglesby:** Yeah I don't care deeply about that. I mean I'm in general principle ear marketing is bad as a political matter, you may need states may need to do that, clearly, you started out in Washington and Colorado with the initiatives that they they they boosted themselves and it's for initiatives it's it happens all the time. In the legislatures, yeah, they want to do social equity, they want to you know I'd say yeah spend the money on casualties of war on drugs. I mean there are a lot of good things to do with it, but it has it clearly slowed down legalization and New York and New Jersey, that these fights about who's going to get the money. I mean I think people were clearer on the structure of the whole legalization system than who got the money. So I don't I don't I'm not particularly interested in that question so I'll I'll sign off here.

**Benjamin Leff:** Am I next? Oh great, so yeah I mean earmarking it's funny thinking about your marketing so in taxes generally we don't have a lot of earmarking at the federal level. And you know the general kind of conventional wisdom about earmarking is it's largely fake like government has huge amounts of revenue and they and they can move it around, but you know, the biggest earmark in the federal system is, we have a trust fund for social security even that's kind of fake, if we want it to be, because Congress can change their mind you know so. But as a political matter earmarking there's a lot of earmarking at the State level and some of it is you know, depending on how you design it, some if it is more fake than others of it, you can have kind of effective earmarking for good or ill so because you kind of the legislature ties its hands.

I think that the at the heart of all anti-tax rhetoric in America is anxiety over government spending and earmarking is a way to communicate that we're not just giving money to the government to do what the government thinks is best with that money because the government is full of idiots. That's kind of what we're saying when we're anti-tax. So we're going to tell the government what to do with the money and earmarking is just a way to say that that's what we're doing whether it's it's real or it's not and and politically, you know I'm a big fan of when you talk about raising revenue through tax also talking about the benefits of the money that you raise. Like I think that as a communicative thing as a political thing that's really important, because otherwise it just seems like the government is taking money away from people when really what taxation is is the government, giving money to people. That's that's the that's what taxation is. That's the definition of taxation. Like you extract it from a market and give it to people. So so you know that's what I think about earmarking.

**Hilary Bricken:** Sorry, I forgot the order, I was just cracking up over here because I didn't know tax people could be this funny. Oh my God. Loving it. Instead of talking about earmarking, because I know nothing about it, I don't pretend to. I do want to mention a little bit about the general fund and its ties with local control and incentives to open up jurisdictional borders to allow operators in local control states, because this is a huge point of contention when it comes to the success to these democratic experiments. That if cities are freely able to really exercise their police powers which, of course, they can, they're going to create all kinds of standards and barriers to entry they're basically de facto bans. Or they're going to ban it outright anyway and defeat access which undermines the experiment super important if you want to get rid of the legal market. One of the best ways to do it is to create access. So when I was in Washington, one of the things that they did was essentially if localities chose to ban as they were free to do under their police powers they would not get any portion of the general fund that was sourced by cannabis revenue. And that was persuasive to some of them, especially as the experiment grew and I think that it's a decent point of discussion, especially from a policy perspective, over how to get those localities to play ball because they're killing the experiment in some of these states. And I'm again in California and

overwhelmingly the majority of cities and counties still prohibit licensed commercial cannabis activity and maybe they always will, but if it hits them in the wallet enough they may reconsider at least some portions of the supply chain. So that's my two cents on that one.

**Shaleen Title:** I think that did address the question and we rarely hear that things worked out the way that they were supposed to in states. So I just want to underscore it sounds like in California it did work to incentivize cities to not ban, somewhat.

**Hilary Bricken:** I don't I actually don't know if California has that piece in the law, yet.

**Pat Oglesby:** Washington State.

**Hilary Bricken:** Yeah that was Washington State.

**Shaleen Title:** Yeah OK OK OK, but in Washington, it did work? Okay good good.

**Hilary Bricken:** Yeah to a certain extent, and you know Mark Kleiman was essentially the LCB's right hand man, and establishing that program I'm sure he may have had some input on something like that, because relatively conservative thing to do. It was never challenged I don't think, to the best of my knowledge regarding its constitutionality but yeah that was Washington. I don't think California has anything like that yet.

**Shaleen Title:** Got it got it. Okay, Ulrik?

**Ulrik Boesen:** Yeah I mean my feeling towards appropriating the revenue to certain spending priorities really has to do with my sense of why we tax these products and why there's the legitimacy in doing additional taxes. If we were to just say let's tax it because it exists in the stuffing in the general fund to mean that's a little bit of an arbitrary taxation policy. Might as well say let's tax people who drink milk a lot, you know because they do that, and then we get some revenue and stuff it in the general fund. The reason that consumers accept these taxes, the reason that businesses except these taxes, because they agree with the spending priorities. It's kind of like a user fee system where we say I consume this product, there are certain costs associated with it, whether that's to do with prohibition or current consumption that's an accepted fact. So dedicating that revenue to offset that helps increase the legitimacy of the tax and transparency of the tax that people know where their money is going. That's my reason for liking, this sort of dedicated appropriation and I know money is fungible so whether we put it in a fund or not is a little bit less important, because they can move around that money. But being transparent about what we're going to do with the revenue is really important, I think otherwise it's very arbitrary taxation just taxing because the people are going to buy this, so why not tax it.

**Shaleen Title:** Terrific. Terrific. And before we move on to audience Q&A we'll do some polls some closing polls. To see if anyone maybe has changed their mind let's see. There's three here I'll give you a minute to go through them.

**Pat Oglesby:** We really didn't get to number 2 much at all, but that's okay. We need another session. I'm just lobbying here.

**Shaleen Title:** We need like five more sessions. Oh, by the way...

**Benjamin Leff:** I was gonna say I didn't get to make my case in favor of ad valorem taxation, I think we only had people speaking against it, but if there's time I'm happy to make my my case.

**Shaleen Title:** Yeah, why don't you do that now.

**Benjamin Leff:** Okay so and it's not a very robust case in favor of taxation, I'll start with that, because everything that Pat said and Ulrik have said are true, as well, in other words, especially Pat made reference to price collapse, I just want to make sure that everybody is aware that that's just this prediction that, as you legalize price should go down, and so, if you're taxing based on price, then as price goes down you collect less tax and like I said at the beginning, the ideal thing that you would be doing with a tax is actually soaking up that bonus, so if prices collapse your taxes should go up. But the primary argument in favor of ad valorem taxation is actually it's a response to what Ulrik just said, a minute ago about there's kind of no justification... should I pause so we can look at these?

**Shaleen Title:** Sure, yes, right. Okay so we've got ad valorem is a tie for winner with THC content and then weight is last. Interesting. At what point should cannabis excise tax be collected? It's almost half and half. Interesting. And then, how should policymakers determine taxation levels for potentially harmful substances? Mostly everyone says negative externalities. Interesting. Okay, please continue Ben.

**Benjamin Leff:** Okay, I mean maybe I don't have to it seems like ad valorem 40% even though no one said anything in favor of it and that seems about right to me like aah 40% in favor of it that seems like a very good a pretty good estimate. But so the argument in favor of ad valorem taxation, I think, is a) the case for negative externalities in cannabis is just kind of weak. You know, we could wring our hands about well, is it related to THC, it's more related to THC than to weight. But there's a pretty good argument that we don't even know if there are negative externalities associated with cannabis. We know that there's negative externalities associated with illegal with with a prohibition on cannabis like that seems you know totally clear that you know decades of prohibition on cannabis, have created huge negative externalities. But we really don't know a lot about the actual negative externalities created by cannabis and remember there's you know we can argue about what's an externality what's an internality. There's an argument that harm to the consumer from smoking marijuana we shouldn't be counting anyway because they're the best person that's able to make that decision. You know, unless you have like you know super anyway it doesn't matter so if there's not a strong argument in favor of externality based taxation then ad valorem taxation actually starts to look a little better, and the main reason is if you're raising money for public goods, that's why we have an income tax, this is why some people are arguing for a wealth tax, this is why we have a consumption based taxes, like ad valorem other wealth taxes, like property taxes, if you're making an argument for raising money from people for public goods. You should take into account their ability to pay or their the burden of the tax on them and burden is higher the poorer you are.

So a THC-based tax is very regressive. An ad valorem tax is slightly less regressive. If we had an income tax on people who use marijuana products that would be even less regressive. That would be more progressive. And if we had a wealth tax on people who use cannabis products that would be the most progressive. So there's not an inherent argument against ad valorem taxation if externalities-based taxation argument is weak and then we're just saying what's the best way what's the fairest way what's the most efficient way to raise money for public goods, including exactly like Ulrik pointed out, the public good of regulating the cannabis market, so it doesn't cause additional harm. And if you have a slightly more progressive system like like an ad valorem taxation that's just better than a less progressive more regressive system like a THC based or weight based system. It's just it's just it takes into account the amount that people are spending, which is loosely related to the amount of money that they have. Richer people it's easier to to buy more expensive products and to be taxed higher. That's it. Thanks.

**Shaleen Title:** I suspect there are people in the audience that were applauding when you questioned whether there are in fact negative externality so that's really interesting. Sorry we didn't

get to that earlier, I appreciate that you put in that perspective. I also remember, because I don't think anybody has mentioned it, when we talk about the weight and Pat questioned why would we count the whole weight of an edible it doesn't make sense, I think that might be, correct me if I'm wrong, there might be vestigial from the drug war, when we used to charge people based on the entire edible including all of the ingredients, so that we could simply criminalized people more. It seems like that might be related because I can't imagine any other reason.

**Ulrik Boesen:** I might add to the Mace bill, the term it's it's defined in units, they haven't defined what a unit mean, my suspicion is it's going to be a THC kind of like tax so when you say 20 units of edibles it's going to be 20, 10 milligrams of THC units of edible more so than 20 brownies or 20 pieces of chocolate.

**Pat Oglesby:** Yeah that solves that solves my problem, then. That makes sense.

**Shaleen Title:** Who would like to take the question about at what point in the supply chain tax makes the most sense?

**Ulrik Boesen:** I can start. It really depends on what kind of tax you're going to do. So if you were to go with Ben's suggestion and have an ad valorem tax, I think the only way to do it, is at retail. Otherwise you run into issues with vertical integration, transfer pricing and all the things that Pat alluded to earlier just going to make it easier for big guys to get around taxation, harder for consumers understand what they're paying in taxes, and more expensive for tax collectors to actually collect the tax. So I think that will be a solution for ad valorem. Now if you're doing a excise tax, a quantity based tax I say do it early simply to limit the amount of taxpayers, it makes it cheaper for everyone involved. And, depending on what kind of category you do, you have to get at it at different points so in the Mace bill, you have to have a product actually at a certain point, in order to say is this going to be an edible or is it going to be a cartridge. That will be where you tax it. If you're going to do weight of the plant, you could maybe do it even earlier, but it really depends on how you're going to design that tax but generally with excise tax at the federal level we do it early want to have fewer taxpayers, makes it cheaper for everyone involved.

**Benjamin Leff:** I.. no you know way more than me about this.

**Pat Oglesby:** Well I'll take a stab at it, yeah. I agree with Ulrik, I think the for a THC tax it may be that you you want to be sure that the consumer is is learning the amount of THC that tax has been paid off, you want to have that conundrum between the the the seller wants a high THC content for the consumer, low THC content for the government tax. So as long as you don't collect the THC up early in the supply chain, and then it gets lost in the shuffle as the product reaches the consumer that's the only fine point, I would add.

**Shaleen Title:** Okay, so earlier, I think it was Hilary who mentioned that medical cannabis programs might be simply absorbed or you know disappear. I didn't want to brush that off like it wasn't a problem. Let's make sure we go back to that. Victoria Litman asked how can tex policy protect medical cannabis programs, even if there may be more tax to be gained from recreational cannabis. Does anybody want to take that?

**Ulrik Boesen:** Well I'll do my piece when it comes to this. So I do believe that there are negative externalities associated with recreational consumption. And that's the main difference between that and medicinal use. So if you've been told by a doctor, legitimately, but you will be better off by consuming this product, then there are no negative externalities to talk about and that you know, should be reflected in the tax. So for me it's really a question of of that. What is the societal costs associated with this for recreational use that may be some cost that doesn't exist in the medicinal

use and tax should reflect that whether that's no tax on medicinal whatsoever, probably is, and then the low tax on recreational. That would be my my bet here.

**Pat Oglesby:** Can I get slide 42? And I'm all for that and medical marijuana is real. We're about to have in North Carolina we have no legal cannabis of any of any kind. Figuring out who's who's sick and who's not. I mean and Ulrik you may give you give a medical professional a lot of credit which so to Arthur Sackler in Empire of Pain. But there's some pot docs and some of them will will write a prescription or write a recommendation I should say that all comers and California you saw that during the medical only years when it was everybody knew cannabis was not that bad, but it was still illegal so people just winked and I think part of the culture of non enforcement in California, is that the laws have been so wrong for so long, but figuring out, I can tell who's a patient in this picture. But the jury, you know we, this is the law school you know every question, in fact, this question for the jury and we can we can end on a humorous note and you know let's have zoom juries and figure out who's really a patient and and who deserves a medical exemption. Because it's really hard to say, and if you let doctors do it all you need is one sleazy doctor and everybody is a patient. Look at Oklahoma. Oklahoma it's they've got 10% of the population is medical patients. New York I'm just wonder if any qualifying anything makes you a patient, this is, this is just this is gets to be a voluntary tax. And I'm very clear there are real patients in it, and it does good for them and I'm not I'm not saying that medical marijuana is not real yeah I'm I know it, but it's a it's a slippery slope, when you say you you pay this tax, Mr. but you don't have to. Okay that's that's what I got.

**Shaleen Title:** That is probably one of the most difficult questions that we're facing. Um.

**Benjamin Leff:** Yeah it's not it's not substantively different. It's both both of the things that just got said, are entirely true, but I just want to say kind of from like from an abstract policy perspective, you know the principle that you shouldn't be adding a tax to something that is medically necessary to someone is like good argument in favor of that. That being said, our tax system actually is wildly inconsistent in the way that the tax system provides subsidies for medical care or removes barriers to expenditures to medical care it's a total total mass. And so the point that Pat is making, which is you know, often you know if you take my tax class this is like the theme that gets made every other week. Often administrative concerns will drive actual tax rules. And it's not arbitrary to have a rule that actually kind of doesn't make sense in its own it's not actually fulfilling the right way from a justice or even from an efficiency point of view of a tax rule if their administrative rules that honoring that difference is going to mess everything up, and so I wouldn't be afraid again unless you're going to get a political hit that so hard that it throws everything off I wouldn't be afraid to have a taxation of medical marijuana regime, because of exactly the enforcement kinds of things that Pat we're talking about just because it's actually theoretically wrong to do that which it probably is.

**Shaleen Title:** So Sarah Siff asked can tax policy be used in pursuit of social equity? This is a question I get asked a lot too I don't know the answer to it, is why not just have licenses that are tax exempt for businesses that we're trying to encourage or be more inclusive of?

**Ulrik Boesen:** I've seen some proposal floating around that would do a tax system similar to how we tax craft beverages and basically it gives a deduction to cultivators or distributors or producers that produce under a certain level to acknowledge the fact that there are bigger corporations and smaller businesses. Outside of that I think most of it, in my opinion, would have to be done on the spending side, more so than on the collection side.

**Shaleen Title:** What do you mean by that?

**Ulrik Boesen:** Well, I think the spending is where you have to try and do some good social equity programs, more so than by designing a very complex tax that tries to mitigate you know historical

discrepancies. I think that that becomes too difficult. I'd rather spend my time figuring out how to spend the money in a good way, then how to collect it.

**Shaleen Title:** If anyone else can weigh in on this, if you're doing the work anyways to specify what businesses qualify for other social equity benefits, does that help with some of the concerns about how difficult it is to identify them?

**Benjamin Leff:** In other words, I think what you're proposing is that you know, a state or the federal government would create a category of of cannabis businesses that are for profit, businesses, but that are exempt from tax because they meet some other criteria to have social equity thing. So I mean that's like the great gray area between spending and tax collection so when Ulrik says we'd be better off doing it on the spending side, creating an entity that is or a type of entity that's exempt from tax, but the tax is the tax actually is basically doing what he's saying. It's I think what he's saying is it's better not to try and mess with how to fine tune your tax or the very nature of the tax promote social equity, because you would have to you know the devil is going to be in the details and and I mean, in general, you know, like basically there's very little in the way of constraints of what governments can do on this, or what our government governments within the United States can do on the spending side or on the taxing side. And they can you know, seek to meet social equity objectives, they can advance anti-social equity objectives like that certainly not surprising that governments create their programs, in a way to do that all of licensing anyone will tell you is like a way for the government to create oligopoly profits and direct them to their political friends and those tend not to be social equity, you know advancing norms, so you know there's a lot of room to craft things, however, you want to craft things I guess is my point.

**Shaleen Title:** Thank you, thank you that's that's helpful. So we're down to our last minute or two here I'm starting with Hilary. You haven't talked in a while, but is there any closing statement that you'd like to give or anything you'd like to add?

**Hilary Bricken:** Cannabis taxes are here to stay. Licensees need to succumb to that reality. If they want to do anything about it, they need to lobby and engage in government relations as usual. I do think, maybe there's a more robust debate out there about those negative externalities and what they really truly are and even though we've had legalization effectively since 2013 we just still don't have a lot of useful data. For whatever reason, around these particular issues, it's probably going to take decades to acquire that type of intelligence so it's not something that's going to happen overnight, they need to prepare themselves politically and financially speaking, and just kind of a practitioner tip, when you're talking to investors do not paint a rosy tax picture. It is not reality and stop with the pie in the sky projections. Because it's just not going to come to fruition. You'd be much better off taking a more conservative approach when pitching investment and doing day to day business in the industry, which again it's that psychological adjustment of getting over the sexiness of beating prohibition and trying to become Jack Daniels because that's not going to happen for 90% of businesses.

**Shaleen Title:** Great tip. Great tip. Pat?

**Pat Oglesby:** Yeah if you could put up slide um

**Shaleen Title:** 33?

**Pat Oglesby:** Yeah. If you want social equity, 280E is basically a anti big business provision. If you look at mom and pop, if you look at the guy I mean look at the farm to market operator. Very few selling expenses. If I take the tomato model roadside stand up, the customer drives up to the roadside stand buys the tomatoes, their selling expenses are negligible and then contrast that with the glitzy cannabis store on Rodeo Drive where selling expenses are enormous and they're getting

Snoop Dogg to endorse it, and you know he's getting paid and all the all this stuff if you really want social equity and to help mom and pop 280E does it.

**Shaleen Title:** Hmm okay, I will take you up on a separate panel on that issue because I'm fascinated by it. Ulrik.

**Ulrik Boesen:** Well, I think, a good ending comment is just that with the tax component of tax or cannabis reform is this little tiny corner and I think it's one of the things that are going to be solved earlier rather than later, and really the bigger issues with cannabis reform is in the operating environment that these business have to deal with and so we can sit here and discuss taxes, and I think between the four of us, we could probably come up with a pretty decent system that would work. But we would only get you know so far in terms of solving the real issues for for these businesses and for the consumers that need to be solved, for this to work at a national level. So every every time I write about these topics or dive into these topics I come across all these other issues that need solving in order to proclaim that now we have a system that could work in which this tax would work right? And, which it's not there yet. Hopefully, as we learn more over the next five, six years I'm happy to announce that the Census Bureau is now going to start reporting tax revenue by state, so we don't have to dig through State websites which are notoriously difficult to navigate. So we will learn more and hopefully with the end of Federal prohibition, it also means that the Federal Government start collecting data will start research to help us understand how this all works, so that the tax gets a chance to shine in this new market but we're just not there yet.

**Shaleen Title:** Ben. Thank you so much, I don't actually have any really good last words, I just want to thank you, Ulrik and Pat and Hilary for all such good work that they're doing and that I'm like kind of free riding on here and putting up with me so and thank you to the Center for running this panel, it was really, really fun.

**Shaleen Title:** It was really fun for me too. Thank you all so much for sharing your expertise. If you're not familiar with the Drug Enforcement and Policy Center, make sure you visit the website, they are all about enriching the public dialogue around drug policy. Really appreciate all of your expertise and your insight today. The recording will be made available in a few days for everyone. Thanks again.

**Ulrik Boesen:** Thank you all.

**Pat Oglesby:** Thanks everybody.