



Lessons from Other States from Colorado & Washington

NCSL Executive Committee Task Force
on State & Local Taxation
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TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

1.

2.

3.

4.

5. Corporate Tax Issues

TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

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TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

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TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

1.

2. Sales Taxes

3. State Tax Trends

4. Property Taxes

5. Corporate Tax Issues

TOP TOPIC INQUIRIES TO THE TAX FOUNDATION BY STATE LEGISLATORS

1. Marijuana Taxes

2. Sales Taxes

3. State Tax Trends

4. Property Taxes

5. Corporate Tax Issues

MARIJUANA LEGALIZATION & TAXES

OUTLINE

- Structuring marijuana taxes
- Tax projections and results in Colorado & Washington
- Lessons learned
 - Recreational vs. Medical
 - State vs. Local
 - Health
 - Zoning
 - Criminal Penalty

MARIJUANA LEGALIZATION & TAXES

TAX HISTORY

- **1906:** Federal labeling law
- **1907-14:** CA, ME, MA, NY pass laws restricting purchase of habit-forming drugs, some specifying cannabis
- **1914:** Harrison Narcotics Tax Act: modest tax but hefty penalties for providing drugs to addicts (marijuana not included)
- **1915-29:** WY, TX, IA, NV, OR, WA, AR, NE, LA, CO pass laws restricting legal marijuana purchases
- **1925:** International Opium Convention bans international trade in hashish and derived products
- **1925:** Uniform Law Commission develops Uniform State Narcotic Act; all states adopt in some form by mid-1930s
- **1930:** Federal Bureau of Narcotics set up; cannabis a priority
- **1937:** Marihuana Tax Act imposes punitive tax on cannabis
- **1969:** Marihuana Tax Act ruled unconstitutional in *Leary v. U.S.*

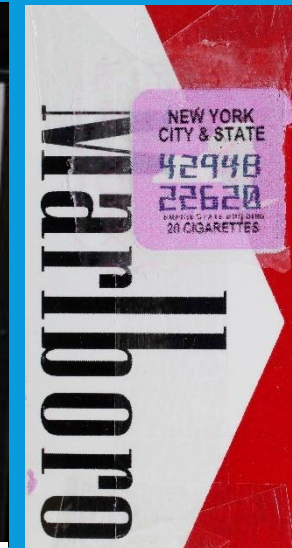
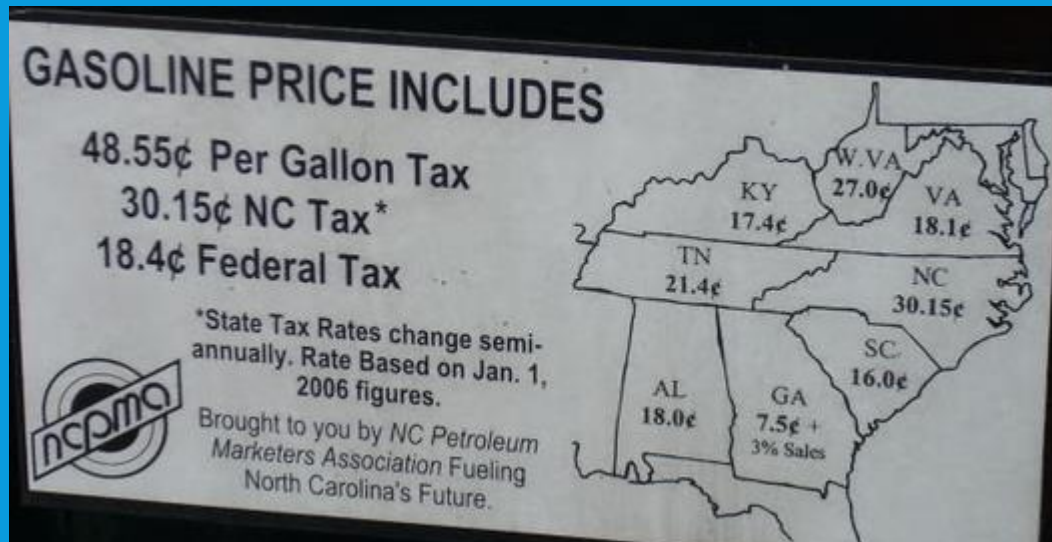
MARIJUANA LEGALIZATION & TAXES

TAX HISTORY

- **1970:** Congress passes Controlled Substances Act and sets up Drug Enforcement Agency (DEA)
- **1980s:** States pass drug stamp tax laws with real purpose to levy tax-related interest and penalties on those arrested. Most have been overturned unless there is a “firewall” between revenue and drug enforcement personnel
- **1994 & 2001:** DEA declines to reschedule cannabis from Sch. I
- **1996:** California legalizes medical marijuana in Proposition 215
- **1998-2012:** AK, OR, WA, ME, CO, HI, NV, MT, VT, RI, NM, MI, AZ, DC, NJ, DE, CT, MA legalize medical marijuana
- **2012:** Colorado voters pass Amendment 64 (55 to 45) and Washington passes Initiative 502 (56 to 44) to legalize marijuana
- **2016:** Five more states will vote on marijuana legalization ballot measures (Arizona, California, Maine, Massachusetts, Nevada)

MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES



Tax & Fees

3	Federal Subscriber Line Charge	\$6.00
4	Federal Universal Service Fee	.58
5	Local Number Portability Charge	.23
6	911 State/County Charges	.42
7	New Hampshire State & Local Tax	1.70
8	Federal Excise Tax	1.08
Total Tax & Fees		\$10.01

CITY OF CHICAGO
DEPARTMENT OF FINANCE
FOUNTAIN SOFT DRINK TAX - 7590

ACCOUNT NUMBER

DUE DATE

CHECK IF RETURN IS:

Mail Payment

☐ Amended

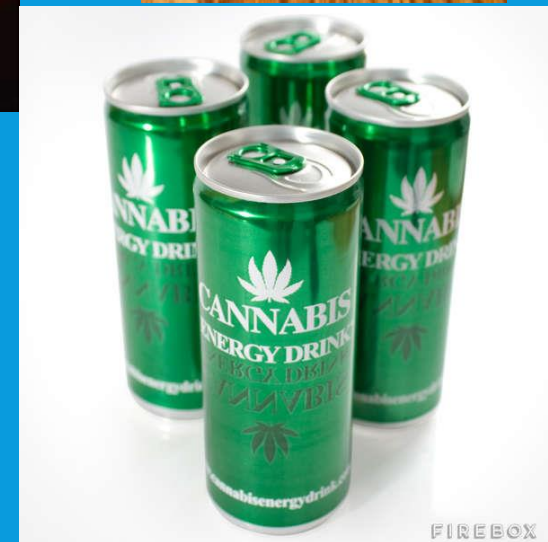
MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES



MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES



MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES

- **Who Collects?** Grower vs. Processor vs. Retailer.
- **How Imposed?** Per Item vs. Per THC content vs. Percentage of Price
- **How High?** Raising Revenue vs. Discouraging Black Market

MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES

- **Who Collects?** Grower vs. Processor vs. Retailer.
- Colorado taxes at retail sale (15% wholesale and 10% retail).
- Washington started by taxing all three levels (25% at each level) but in 2015 changed to just tax at retail level. (Vertical integration of some sellers led to inequity.)
- Oregon will tax at retail sale, while Alaska is still figuring it out. All pending ballot measures are percentage of the price.

MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES

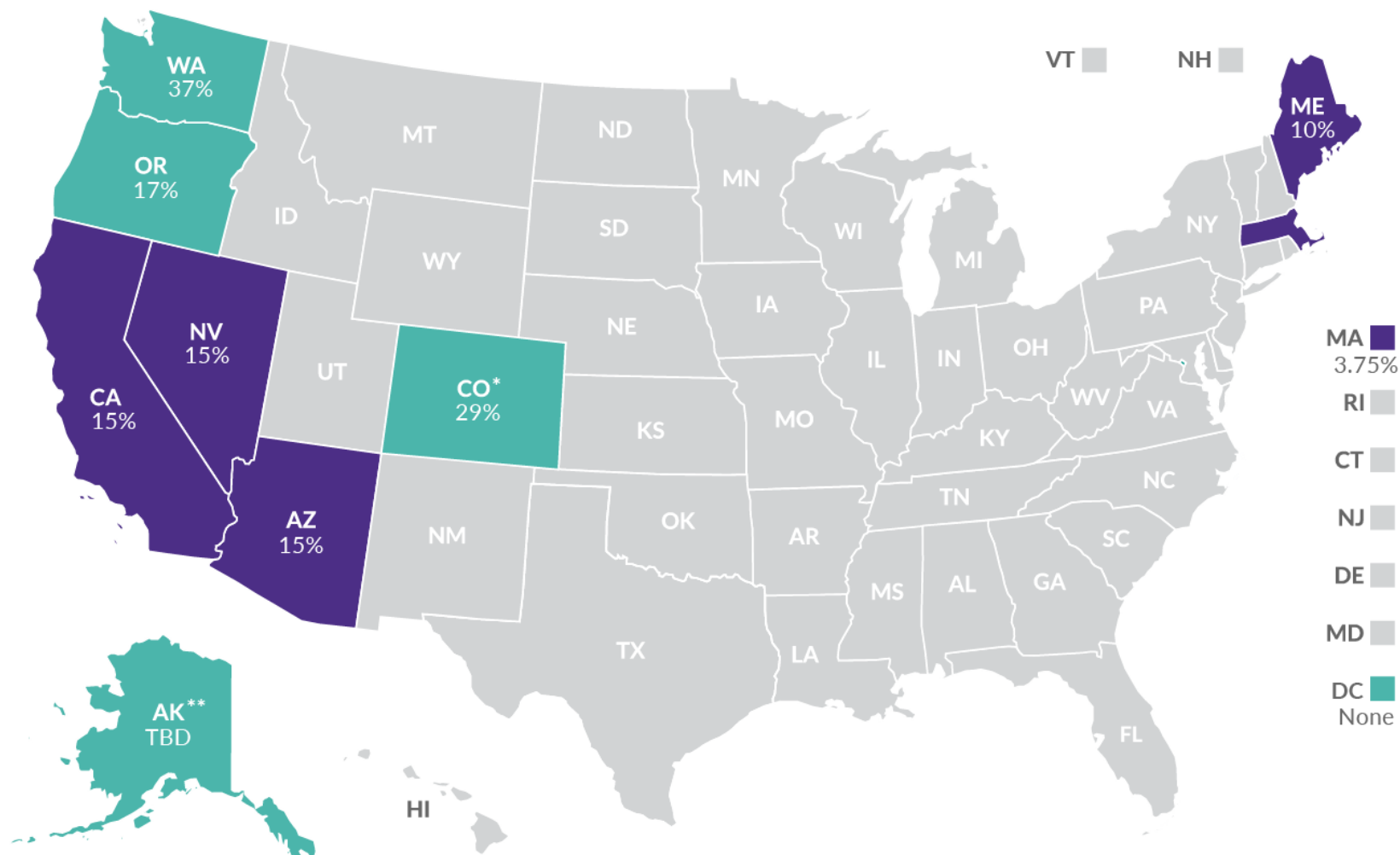
- **How Imposed?** Per Item vs. Per THC content vs. Percentage of Price
- All states have settled on percentage of the price. (Alaska still debating.) Oregon was going to tax per flower, per leaf, per plant but dropped that.
- Per Item untenable due to variety of forms.
- Per THC content untenable because it would require frequent testing, and results can vary somewhat.

MARIJUANA LEGALIZATION & TAXES

STRUCTURING MARIJUANA TAXES

- **How High?** Raising Revenue vs. Discouraging Black Market
- Colorado had ~29% plus sales tax (15% wholesale + 10% retail). 10% tax drops to 8% in July 2017
 - Denver also imposes local 3.5% excise tax
 - Compares to 31% on cigarettes and 8% on beer
- Washington had ~37% (25% at all three levels). Replaced with flat 37% retail tax in July 2015.
 - Compares to 104% on cigarettes and 11% on beer
- Oregon currently 25% but dropping to 17%.
- Ballot initiatives this year all under 15%.

Excise Taxes on Recreational Marijuana



Note: *Effective tax rate for the 10% retail tax and 15% wholesale tax. Retail tax drops to 8% in mid-2017.

**Alaska's ballot initiative imposes a \$50 per ounce of flower or bud, and \$15 per ounce. However, officials are considering replacing that tax with a percentage retail tax.

MARIJUANA LEGALIZATION & TAXES

TAX PROJECTIONS & RESULTS

- **Colorado** initiative supporters projected \$70m per year; first \$40m dedicated to school construction. Sales began January 1, 2014.
 - 2014: \$56m tax on sales of \$304m
 - 2015: \$113m tax on sales of \$568m
 - 2016: ~\$160m tax on sales of ~\$880m
- Some TABOR implementation headaches
- July 2017: Tax reduction after July 2014 state study of effects on gray and black market (Demand of 130 metric tons vs. legal supply of 77 tons.) Visitors are 44% of market.

MARIJUANA LEGALIZATION & TAXES

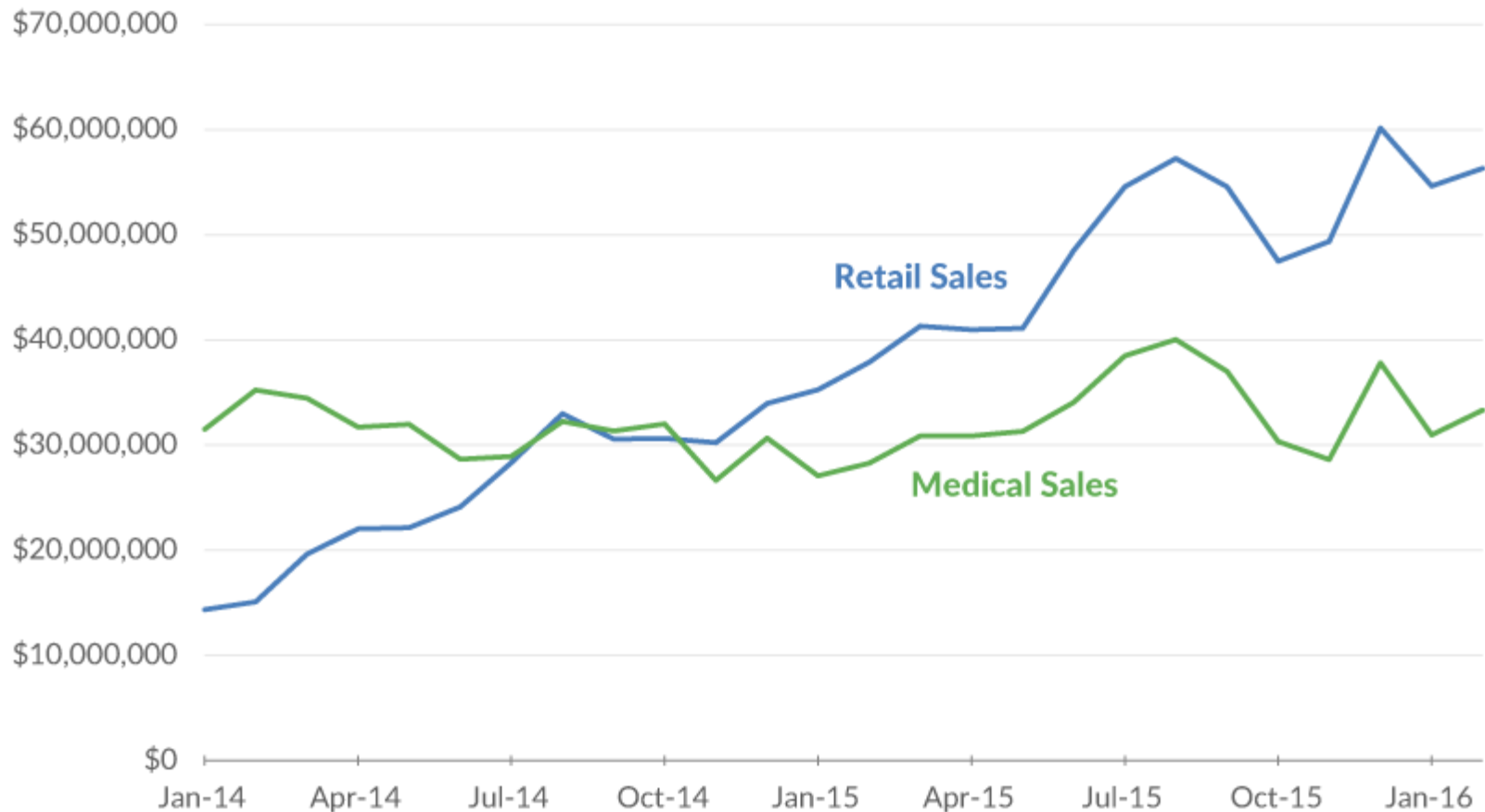
Colorado Retail Marijuana Tax Revenue by Month



Source: Colorado Department of Revenue.

MARIJUANA LEGALIZATION & TAXES

Colorado Retail Marijuana and Medical Marijuana Sales by Month



Source: Colorado Department of Revenue.

MARIJUANA LEGALIZATION & TAXES

TAX PROJECTIONS & RESULTS

- **Washington** initiative supporters said *as much as* \$1.9 billion, with 40% going to state general fund and 60% for substance abuse prevention, research, education, and health care. 30% of revenue after first \$25 million goes to local governments.
- Slow start due to license approach (334 initially).



Washington State
Liquor and Cannabis Board

MARIJUANA LEGALIZATION & TAXES

TAX PROJECTIONS & RESULTS

- **Washington** sales began July 8, 2014.
 - FY 2016: \$62m in excise taxes, \$10m in sales taxes, \$1.3m in business taxes, \$3.6m in local sales taxes, all on \$157m in sales
 - FY 2017: ~\$270m in excise tax revenue
- “Seed to sale” inventory tracking & standards
- Challenge bringing unregulated medical into system
- Easing state zoning restrictions
- Tribal compact

MARIJUANA LEGALIZATION & TAXES

TAX PROJECTIONS & RESULTS

- **Oregon** sales began October 1, 2015.
 - Recreational sales to begin later this year, but existing medical marijuana facilities now able to sell to all adults, in hopes of stamping out black market. 25% tax
 - 17% tax to take effect with Oregon Liquor Control Commission sets up regulatory regime this year.
 - Dispensaries keep 2% of collections for compensation
 - First estimates are ~\$60m/year
- **DC** cannot collect tax due to federal law. Was thinking 15%.
- **Alaska** set as \$50 per ounce at cultivation level. Considering a retail tax instead, perhaps 25%. Sales begin late 2016.

- Tax revenue estimates for each state based on extrapolated results from Colorado & Washington
- Nationwide between \$5.3b to \$8.8b
- Federal law remains restraint, with Section 280E, federal prosecution, and banking restrictions

Potential Recreational Marijuana Tax Revenue by State, Based on Colorado and Washington Demand

State	15% tax	20% tax	25% tax
Alabama	\$80	\$107	\$134
Alaska	\$12	\$16	\$20
Arizona	\$113	\$150	\$188
Arkansas	\$49	\$66	\$82
California	\$646	\$861	\$1,076
Colorado	\$90	\$120	\$150
Connecticut	\$59	\$79	\$99
Delaware	\$16	\$21	\$26
District of Columbia	\$11	\$15	\$18
Florida	\$334	\$446	\$557
Georgia	\$169	\$225	\$281
Hawaii	\$24	\$31	\$39
Idaho	\$27	\$36	\$46
Illinois	\$212	\$283	\$354
Indiana	\$109	\$146	\$182
Iowa	\$52	\$69	\$86
Kansas	\$48	\$64	\$80
Kentucky	\$73	\$97	\$122
Louisiana	\$77	\$103	\$128
Maine	\$22	\$29	\$37
Maryland	\$99	\$132	\$165
Massachusetts	\$112	\$149	\$187
Michigan	\$164	\$218	\$273
Minnesota	\$91	\$121	\$151
Mississippi	\$49	\$66	\$82
Missouri	\$100	\$134	\$167
Montana	\$17	\$23	\$28
Nebraska	\$31	\$42	\$52
Nevada	\$48	\$64	\$79
New Hampshire	\$22	\$29	\$37
New Jersey	\$148	\$197	\$246
New Mexico	\$34	\$46	\$57
New York	\$327	\$436	\$544
North Carolina	\$166	\$221	\$276
North Dakota	\$12	\$17	\$21
Ohio	\$192	\$255	\$319
Oklahoma	\$65	\$86	\$108
Oregon	\$66	\$89	\$111
Pennsylvania	\$211	\$282	\$352
Rhode Island	\$17	\$23	\$29
South Carolina	\$81	\$108	\$135
South Dakota	\$14	\$19	\$24
Tennessee	\$109	\$145	\$182
Texas	\$453	\$604	\$755
Utah	\$49	\$66	\$82
Vermont	\$10	\$14	\$17
Virginia	\$138	\$184	\$231
Washington	\$118	\$158	\$197
West Virginia	\$30	\$41	\$51
Wisconsin	\$95	\$127	\$159
Wyoming	\$10	\$13	\$16
All States	\$5,304	\$7,071	\$8,839

Note: millions of dollars

MARIJUANA LEGALIZATION & TAXES

TAX PROJECTIONS & RESULTS

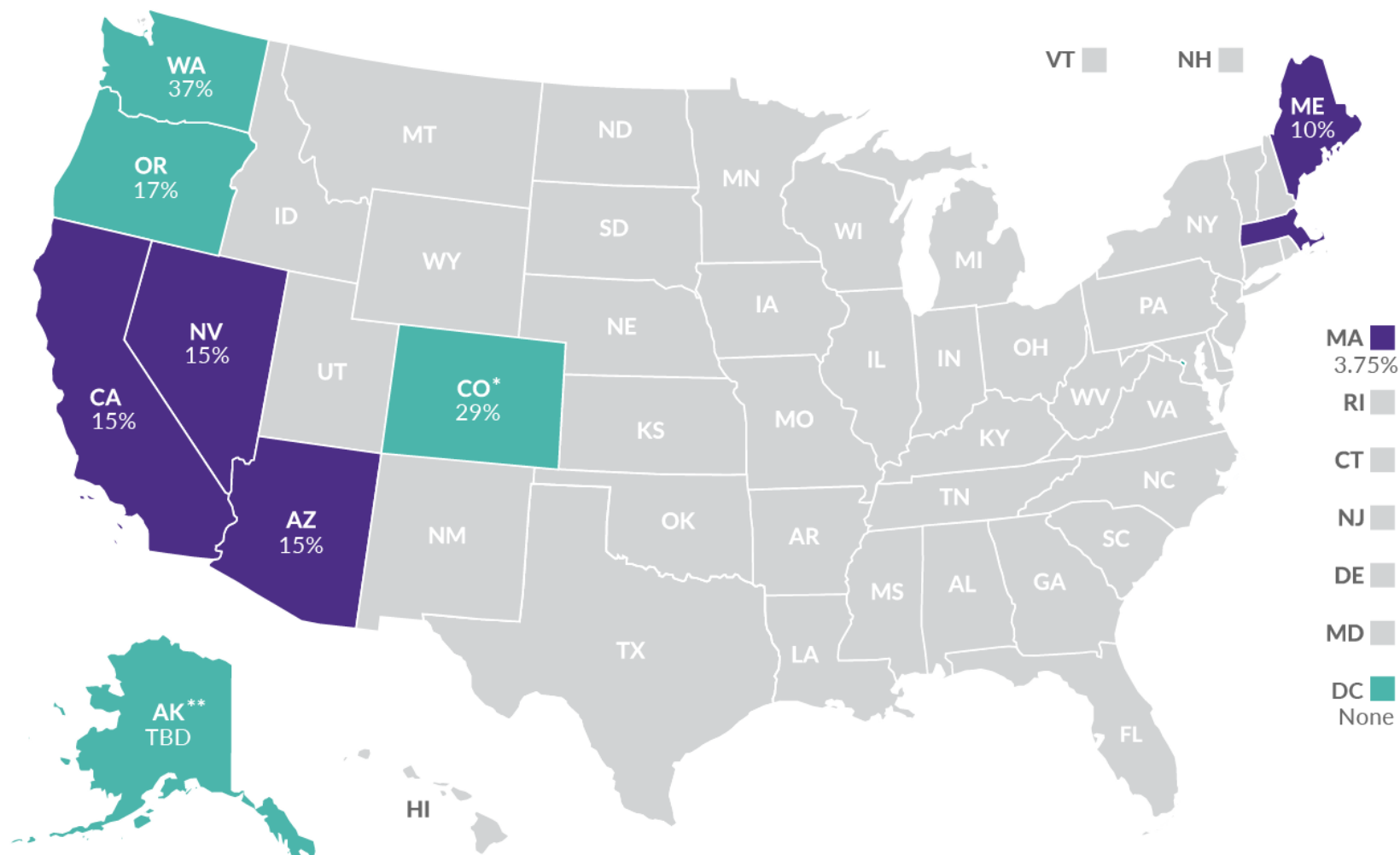
- All states mentioned have achieved legalization through ballot measures. Proponents are targeted that method.
 - Colorado and Washington legislators and officials had hands tied by ballot initiative and would have preferred legislative route.
- **Vermont** debated legislation this year but did not pass it.
- Five more ballot initiatives this November. Polling has proponents ahead in all but AZ (no poll yet).
 - Arizona (no proposition number yet) – 15% tax
 - California Proposition 64 – 15% tax
 - Maine Question 1 – 10% tax
 - Massachusetts Question 4 – 3.75% tax
 - Nevada Question 2 – 15% tax

MARIJUANA LEGALIZATION & TAXES

LESSONS FOR OTHER STATES

- Tax rate should not be so high as to prevent elimination of the black market.
- Taxes on final retail sales have proven the most workable form of taxation.
- Be conscious of the medical marijuana market.
- Be cautious with revenue estimates.
- Resolve health, agricultural, zoning, local enforcement, and criminal penalty issues.

Excise Taxes on Recreational Marijuana



Note: *Effective tax rate for the 10% retail tax and 15% wholesale tax. Retail tax drops to 8% in mid-2017.

**Alaska's ballot initiative imposes a \$50 per ounce of flower or bud, and \$15 per ounce. However, officials are considering replacing that tax with a percentage retail tax.

- Excise Taxes on Recreation Marijuana
- Proposed Excise Taxes on Recreational Marijuana
- No Recreational Marijuana