

## Jennifer Benda Interviewed by Bloomberg Regarding Marijuana Tax Issues

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<https://news.bloombergtax.com/daily-tax-report-state/states-approving-legal-marijuana-must-avoid-tax-revenue-potholes>

November 2018 - Michigan and Missouri are the latest states that will collect tax on marijuana sales, but legalization may not be a sure-fire path to revenue.

Legal pot can be a big boost for state finances—Colorado collected nearly \$250 million in marijuana-related taxes and fees in 2017. But observers told Bloomberg Tax that some states have left tax revenue on the table because of overly ambitious rollout plans, lengthy application processes, and unclear implementing legislation.

Michigan voters Nov. 6 approved legal recreational marijuana, while a Missouri ballot measure legalizing medical marijuana sales also passed, the Associated Press projected. Utah also approved medical marijuana, but it will be exempt from state and local taxes. A measure that would have legalized recreational marijuana fell short in North Dakota.

The state-by-state approval of marijuana is more difficult than legalizing marijuana at the federal level, according to Kenneth Shea, a senior equity analyst with Bloomberg Intelligence. Canada's centralized system for marijuana allows for standardization of laws, labeling, dosages, and inspections.

"It's better than a bunch of states setting their own standards," Shea said. "State by state laws can very inefficient. It leaves a lot of questions."

States that legalize marijuana should line up taxation policy and legislation as soon as possible, Jennifer Benda, a partner at Fox Rothschild LLP in Denver, said. Benda's practice includes cannabis law.

"Uncertainty is a real problem," she said.

The more clarity states can provide early in the process, the fewer problems they'll face in getting their programs up and running, she said.

## Revenue Potholes

Many states faced problems as they tried to cash in on marijuana, ranging from excessive fees to a shortage of approved sellers.

Washington state had a shortage upon launching legal marijuana in 2014 because it didn't have the regulatory structure in place to approve enough licensed suppliers, according to a recent report released by the Pew Charitable Trusts and Rockefeller Institute of Government.

Ohio in 2015 estimated that legal marijuana would bring in hundreds of millions in additional tax revenue per year, but the state has yet to fully roll out its program.

A number of issues arose there, related to caps on growers and dispensaries, a lengthy applications process, and high prices for medical marijuana cards and other fees. Of the 26 farms selected to grow marijuana, only four passed an initial inspection. The state also faced lawsuits from individuals that didn't receive a growing permit.

Ohio's major issue was making the application process too long and cumbersome, Chris Lindsey, a legislative analyst at the Marijuana Policy Project, said.

States should instead have a tiered application process to narrow the field of applicants—ramping up the criteria with each round, Lindsey said.

"Ultimately, Ohio bit off more than it could chew," Lindsey said.

## Hitting the Right Balance

Michigan is optimistic about legal marijuana: The state estimates it will generate \$737.9 million in additional tax revenue in the first four years. The state will tax recreational marijuana at 10 percent.

Marijuana tax revenue isn't easy to forecast because supply and demand hasn't stabilized in most states, according to the Pew-Rockefeller Institute report.

Settling on the right tax rate can be difficult.

States need to balance their desire for tax revenue with the need to keep people away from the black market, said Lucy Dadayan, senior research associate with the Urban-Brookings Tax Policy Center.

"Legalization of marijuana requires states to design a tax structure that would help generate revenues to cover social costs," Dadayan said. "However, if states tax recreational marijuana too heavily, that can result in tax evasion and black market sales just like in the case of tobacco."

Missouri voters Nov. 6 rejected a ballot measure that would have imposed a 15 percent tax on medical marijuana. The state instead adopted competing Amendment 2, which will tax marijuana sales at 4 percent.

That comes with a loss in expected revenue: the 15 percent tax was projected to raise \$66 million in additional revenue, compared to \$24 million in additional state and local taxes under the winning measure.

## Bright Spots for Michigan

One positive for Michigan is the state already has an established medical marijuana program. That should make it easier for the state to move ahead with recreational marijuana sales because officials won't have to start a program from scratch, Lindsey said.

"Medical marijuana programs don't look very different than recreational marijuana programs," Lindsey said.

Gretchen Whitmer (D), projected by the Associated Press to win the Michigan governor's race, pledged on the campaign trail that she would ensure an effective rollout of recreational marijuana.

"When it passes, I will take it very seriously and push forward to make sure we do it right," Whitmer said during an interview with Detroit Public Television in July. "It's our duty to respect people when they vote, and carry out their wishes."

## Attorneys

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- Jennifer E. Benda

## Practices

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- Cannabis Law
- State & Local Tax Practice