

Nevada Cannabis Advisory Commission

Federal Rescheduling/Descheduling Subcommittee

Meeting Minutes December 1, 2023

The Nevada Cannabis Advisory Commission's Subcommittee on Federal Rescheduling/Descheduling held a meeting via Zoom December 1, 2023, at 10:00 a.m.

Members Present:

Ashley Balducci, Chair
Emily Berthelot

Mitchell Britten
Shellie Hughes

Chair Balducci called the meeting to order at 10:04 a.m. and took roll. All members were present via Zoom. Member Kline was absent.

Instructions to join the meeting via Zoom for public comment were read into the record.

I. Public Comment

Katree Saunders is a long-time patient and advocate in the state of Nevada. She has been affected by the War on Drugs on a State and federal level, who feels the laws from this past legislative session were systematically made to exclude her and she is still waiting for her agent card. MJ Biz Con has been happening, which is a cruel reminder that during Covid drive-thrus were mandated before there was any real social justice and equity. After making millions of dollars for local businesses owners, she still has to advocate for social justice at a State and federal level. She had federal charges for helping patients in Nevada and helping businesses build revenue. She demands justice, so she can start to build generational wealth and put her family back together. She feels descheduling/rescheduling should be more mainstream and people should not have to give up their gun rights because they are medical cannabis patients. She stated that there are over 40,000 people incarcerated while there's a thriving industry and this is a disconnect between social justice and compassion. She says she hears the group discuss taxes but does not speak about social justice, which should be at the forefront of the discussion. Since she's been affected by the War on Drugs at a State and federal level, her mind is on people's freedom. The money will come because the plant can provide for everyone. She would like to be more involved.

Abad Piza believes there is overregulation, and that cannabis should be descheduled because it is less dangerous than alcohol and cigarettes, available at every corner store. He stated driving under the influence of cannabis is less dangerous than alcohol because studies show accidents did not rise in states that had legalized cannabis. He also stated that studies on tobacco found that radiating tobacco is what causes cancer, so if weed is being irradiated and given to patients who are trying to fight cancer they are basically being murdered. He believes the plant isn't being allowed to be grown correctly. When he came into the industry, he was one of the few people able to grow cannabis

without pesticides that came out with clean test rates and 27% THC. He believes current growers don't know the correct steps. He thinks if more people were able to get into the industry it would allow it to be seen on a broader scale. He closed by summarizing his statements: deschedule and stop overregulating.

Timothy Eli Ado called to show support for complete decriminalization of cannabis and creating a culture where skills and talent are at the forefront. Cultivation facilities that use radiation are cutting corners and creating a culture that brings people without skills to the forefront. He believes cultivation facilities failing microbial testing, heavy metals, pesticides, etc. have underlying issues within the facility and a lack of SOPs (standard operating procedures). They need skilled individuals to elevate techniques to achieve maximum efficiency. He stated that bad actors are enabled to produce cannabis that is not wanted on the market and lacks diversity. He states this is the reason for the declining number of medical cannabis card holders and return customers.

II. Presentation by Subject Matter Expert.

Chair Balducci introduced subject matter expert Rachel Gillette, a partner at Holland and Hart, who works with clients nationwide to plan and implement strategies to capitalize on strategic business opportunities. At the vanguard of the marijuana industry, Mr. Gillette leverages more than a decade of experience guiding clients to establish, expand, and protect profitable businesses in a rapidly evolving legal, regulatory, and financial environment. From years of interacting with regulators and tax authorities, she knows how state and local provision will be applied in practice and what clients can anticipate at every step of the licensing process. She protects clients' interest in tax audits, deficiency statements, and IRS 280E adjustments. Ms. Gillette serves as an expert witness on legal and regulatory issues involving hemp, marijuana, CBD, and other cannabinoids.

Rachel Gillette introduced herself and stated that she was at the meeting to discuss the potential implications from a tax standpoint of descheduling or rescheduling cannabis. She has over 17 years of experience interacting with local, state, and federal tax authorities. She also represents cannabis businesses in tax audits as well as US Tax Court. She stated that generally there is a recommendation from the HHS to reschedule cannabis to Schedule III. She stated that this change will have some benefits for the industry because the federal tax code IRC 280E will no longer apply to cannabis businesses. She thinks it will also impact the illicit market since cannabis businesses will be able to compete in price when they're not subject to punitive federal taxation.

Executive Director Hughes named some of the deductions cannabis businesses could claim if IRC 280E did not apply to them. She asked Ms. Gillette whether she sees the federal government honoring those expense deductions retroactively. Ms. Gillette responded that that it would only be retroactive if a court outcome ruled the tax code unconstitutional, and there are currently cases working through Tax Court with those claims, so she feels there is a possibility, but it's more unlikely than not. Congress could pass some legislation that would allow the code to apply

retroactively, but she does not envision that happening either. If it is rescheduled or descheduled in the middle of a tax year, it's still unclear how 280E would apply.

Executive Director Hughes followed up by asking if a cannabis business had a net operating loss from prior years, does Ms. Gillette see them being able to carry that forward. Ms. Gillette responded that the businesses would because they would be subject to the same tax rules as any other business and accounting standards. She said they should be able to take all their ordinary and necessary business deductions when filing a tax return the same as any other business. This will allow for business to be more profitable. She stated that cannabis business owners are careful about their expenditures in light of 280E because some expenses may be considered income and may cost them an extra 35%. It would also be beneficial when it comes to employee benefits because some of the expenses involved may be disallowed under 280E, so it disincentivizes businesses from offering certain benefits to their employees. She feels that cannabis businesses will be able to make decisions in a more normalized environment.

Executive Director Hughes asked Ms. Gillette if she foresees cannabis being subject to federal cannabis excise tax whether it's descheduled or rescheduled and how it would impact the Nevada industry. Ms. Gillette responded that this is still unknown and past bills have made different proposals about which department would federally regulate cannabis and whether it will be like alcohol or tobacco or if the FDA would have some authority in the regulation. She expects there will be more federal regulation in comparison to what currently exists. Right now, the FDA does not want to deal with a Schedule I drug (cannabis), let alone hemp. She envisions there will be some kind of federal tax, but it is unclear what level of taxation would impact the industry. She knows there will be an impact on the illicit market because current elevated taxes from the legal market are passed on to the consumer, which make it less competitive with the illicit market. She feels the illicit market still exists due to taxes more than regulation. She feels the federal government acknowledging that there isn't going to be criminal enforcement will help with the diminishment of these issues, including the illicit market. She believes that businesses will be better once they don't have to deal with as many costs of running a legal cannabis business.

Executive Director Hughes asked Ms. Gillette how deschedulization would affect taxes if it allowed for interstate commerce of cannabis. Ms. Gillette replied that states, regulatory authorities, or legislators may have to review how cannabis is taxed and if it is appropriate to consider different taxes for interstate or intrastate sales. From a taxation standpoint it may be important to consider the impact of when licensed businesses in different states do business with each other. Rescheduling to Schedule III does not automatically allow the interstate sale of cannabis. All state and federal laws that are currently in conflict will remain in conflict unless the federal government issues a proclamation or Congress passes laws which allow for interstate sales of cannabis.

Chair Balducci asked Ms. Gillette if tax credits or deductions are offered in states where cannabis is legal, and if so, which states offer this. Ms. Gillette responded that she understood that Nevada

businesses are not subject to the equivalent of IRC 280E, and many states use the amount on the federal tax return as the amount subject to income tax on the state return, however most states passed legislation allowing those businesses that are operating legally under state law to not be subject to taxation on the disallowed expenses reported on the federal tax return at the state level. Colorado calls this the “marijuana business tax credit”; anything that is a disallowed expense that is reported as income on the federal income tax return is adjusted out of the income on the state tax return. There are additional tax credit programs that cannabis businesses have been excluded from that they could now be included in, which will incentivize businesses to get set up in a state.

Chair Balducci asked if there is a state that operates as a state tax model for other states. Ms. Gillette responded that some states, such as California, have an overly complicated cannabis tax plan, and this often results in the need to change the rules that were established. Missouri, she believes, has a flat tax. Tax should not be so complicated that the average business owner cannot understand how to comply. A simplified tax regime is beneficial to the state and the taxpayer. The goal is to eliminate the illicit market and the unregulated sale of cannabis. If taxes are too high, the state will not be able to collect the tax dollars.

Chair Balducci asked for Ms. Gillette’s opinion on a potency tax, and cited New York as an example. Ms. Gillette opined that the goal of the potency tax is based on consumer safety and does not believe potency tax will work and is complicated. The idea that the higher the potency, the higher the tax will incentivize inflation of THC or growth of less potent cannabis is not necessary. It will likely not prevent a business from growing the best cannabis possible. There should not be a restriction on potency and although she does not have a lot of experience with potency tax, she does not recommend it. Ms. Gillette stated that she believes in 2019 Washington State Liquor and Cannabis Board did a feasibility study on potency tax called “Cannabis Potency Tax Feasibility Study.” There was not enough data on a potency-based taxation system to recommend its implementation. It was found that change in the tax structure would require embracing large additional unknown costs for unknown benefits. Also, in 2019, California analyzed four different taxation models: percentage of price, weight-based, potency-based, or tiered ad valorem taxes. The California report suggested that prioritizing the reduction of the illicit market could impose a tax rate closer to the lower end of its range. Ms. Gillette stated she will send the studies over for review.

Chair Balducci confirmed that no other members had questions for Ms. Gillette and thanked Ms. Gillette for her time and thanked Member Britten for coordinating the subject matter expert.

III. Meeting Minutes

The September 29, 2023, meeting minutes were passed unanimously with the recommended changes to pages 1, 2, and 4.

IV. Future Meetings

Chair Balducci asked to confirm member attendance for January and February meetings. Discussion of the draft report is scheduled for the January meeting and February is intended to be the final meeting to vote and discuss recommendations. All members confirmed.

V. Public Comment

Katree Saunders stated RAD source technology is being used and this needs to be at the forefront of discussion to ensure that patients are not being poisoned because cannabis is not being grown properly. She expressed appreciation for the subcommittee.

Abad Piza stated that hopelessness takes on many forms and that there is more violence between kids. Allowing people to do business allows people to dream, and that there is a concern about favoritism and not having the right attorney will prohibit a person from getting a license. He stated that cannabis should be like any other business: apply, pay fees, and start the business.

Adjournment at 11:47 a.m.