

New York Governor Pushes for Marijuana Legalization, Tax Cuts

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Marijuana legalization in New York, which Gov. Andrew Cuomo (D) again proposed during his State of the State address, is more likely to pass the second time around, practitioners say.

While it's hard to predict the passage of any legislation until the details are spelled out in the executive budget, marijuana legislation is more likely to pass this time, Timothy Noonan of Hodgson Russ LLP in New York told *Tax Notes* January 9.

During his January 8 speech, Cuomo again urged the legalization of recreational cannabis, which could bring in an estimated \$300 million in tax revenue. As part of this plan, he would work with neighboring states Connecticut, New Jersey, and Pennsylvania to create a system that would facilitate the legalization of marijuana. He also proposed creating a new Office of Cannabis Management that would specialize in cannabis regulation.

Cuomo made a [similar marijuana legalization proposal](#) in his fiscal 2020 budget, but the provisions were ultimately [removed](#), despite support from the Assembly, in order not to rush it.

Last session, the revised Marijuana Regulation and Taxation Act ([S. 1527-A/A. 1617-A](#)) did not pass but "the broad strokes of the bill were not heavily contested," Patrick Hines, also of Hodgson Russ, told *Tax Notes*. "There remains momentum toward legalizing cannabis in many states, including the four-state 'consortium' of New York, New Jersey, Connecticut, and Pennsylvania that Governor Cuomo is trying to bring together."

According to Noonan and Hines, New York currently has a significant budget deficit and the legalization and taxation of marijuana could help fill the hole.

"The national trend looks to be moving toward the taxation of marijuana, so I do anticipate that the tax will be passed. The question is when, and whether the updated proposal we will see will resolve enough issues that it will be ready to be passed this budget session," said Jennifer S. White of Reed Smith LLP.

Small Businesses

Under Cuomo's plan, small corporate taxpayers with fewer than 100 employees and less than \$390,000 in annual income would also see their corporation income tax reduced from 6.5 percent to 4 percent. This would benefit 36,000 taxpayers, according to the governor's [2020 State of the State book](#). He also called for repealing the tax underpayment penalty on S corporations.

The governor also proposed creating a refundable, discretionary green jobs tax credit totaling 7.5 percent of wages for each net new job created, and a green investment tax credit of up to 5 percent of qualifying new capital investments involved with green economy projects.

Around 4,000 New Yorkers would also benefit from the governor's proposal of tripling the current income exclusion for farmers and sole proprietors. Currently, farmers and sole proprietors who file under the personal income tax and have less than \$250,000 in net business or farm income are allowed to reduce their adjusted gross income by 5 percent.

New York Farm Bureau President David Fisher in a [statement](#) commended Cuomo's efforts to help the New York farm families that are trying to recover from years of “low commodity prices, extreme weather events, trade barriers, and mounting regulations.”

The governor also proposed promoting access to the state earned income tax credit and to the free file program for New Yorkers with income below \$69,000.

SALT Cap

During his address, Cuomo criticized the federal government's state and local tax deduction cap under the Tax Cuts and Jobs Act.

“We passed the first property tax cap in history and they, in one swoop, raised our taxes to send more money to their politically favored states. Our federal representatives must fight for us. The U.S. Senate must overturn the SALT assault this year,” Cuomo said.

Tobacco Products

Cuomo also proposed cracking down on New York retailers that are illegally selling untaxed cigarettes, including the possible closure of those establishments by the Department of Taxation and Finance. According to a [December 20 release](#), the department can issue fines to retailers selling untaxed cigarettes, but many of these retailers aren't deterred by the fines and consider them a cost of doing business.

“Cigarettes claim thousands of lives each year, and we will not turn a blind eye to retailers who deliberately flout the law just to make an extra buck at the expense of the health of New Yorkers. With this proposal, unscrupulous businesses will face steeper fines or closure instead of just a slap on the wrist,” Cuomo said in the release.

Cuomo's proposal is part of his greater effort to combat tobacco and nicotine products. In 2019 the legal age for purchasing tobacco and vaping products in the state was raised to 21, and vape product retailers were [required to register](#) with the Department of Taxation and Finance. Cuomo also proposed strengthening penalties and fines for retailers that sell tobacco products to people under the age of 21.

The governor said he will advance legislation to restrict the online, phone, and mail orders of vaping products that are being used to circumvent sales taxes. New York imposes a 20 percent

sales tax on e-liquids.

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