NYCGPA@gmail.com

TESTIMONY -- JOINT LEGISLATIVE BUDGET HEARING ON TAXES
FEBRUARY 23, 2021
PRESENTED BY: ALLAN GANDELMAN, PRESIDENT
NEW YORK STATE CANNABIS GROWERS & PROCESSORS ASSOCIATION, INC.

ABOUT NYCGPA

The New York State Cannabis Growers and Processors Association, Inc. ("NYCGPA" or "Association") represents New York businesses that produce hemp and cannabis products. We bring a passion for growing, processing, and providing consumers with the highest quality cannabis products. The Association advocates for environmentally sustainable practices throughout the industry and believes that all communities in New York State should benefit from the cannabis industry rather than only large multistate operators. We formed the Association to fill gaps in the industry around farming, processing and most importantly policy. The industry has been growing and changing so fast, creating difficulties for regulators to keep up.

The people and companies that we represent form the "breadbasket" of New York State, both from a food and small business perspective. Given the right balance of cannabis laws and regulations, farms will thrive throughout New York and ship products into urban areas. However, we currently see significant regulatory gaps and problems with the execution of the recently enacted Cannabinoid Hemp Program, including the destructive Hemp Flower Ban, and want to avoid these problems and learn lessons for the upcoming Adult Use Program.

New York has a real opportunity to build a thriving local adult use industry that can benefit producers and communities left behind across the state. We deeply appreciate the possibilities offered in the Marijuana Regulation and Taxation Act (the "MRTA" or "Bill"). As an Association, we see the transformative opportunities for New York State contained in the Bill.
In creating an economic impact for communities left behind in urban and rural areas, New York will need to balance issues involving taxes, licensing, and speed to market. The approach provided in the MRTA does an excellent job allowing for social consumption, cannabis home grow (especially for medical patients), cooperatives, microbusinesses, home delivery, and funding for social equity applicants. These policies should be without question integrated into any final legislation enacted by the state.

CREATING A ROBUST MARKETPLACE

The Legislatures developed a vision in the MRTA for a marketplace that supports a thriving and diverse cannabis industry across New York State. This vision creates opportunities through small business development in every part of the state, job creation in communities left behind, and bolstering funding to lower barriers of entry into the cannabis industry. In order to achieve legislative goals, any future cannabis program must address key components, such as fair and effective tax rates, distribution, number of licenses from cultivation to dispensaries, and commitments to issuing licenses within a reasonable timeframe.

In the past weeks, we have heard about the importance of revenue for the state that the cannabis industry will generate. Ideally, the programs and opportunities that this income will make possible will fuel community development efforts into the future. In deciding how best to tax cannabis, we urge government officials to consider how taxes will impact smaller businesses and entrepreneurs who hope to participate in this new industry.

We have done an extensive analysis of the MRTA and CRTA in understanding how tax rates might impact long term prospects for small businesses. The CRTA creates a fixed tax rate based on the THC content of products. Depending upon the product category, the effective tax rate ranges from a minimum of 30% to a maximum of 50%. Using these rates, we see a range of consequences that will not only crush small producers but also drive consumers to the illicit market or across state lines for lower cost products. We have seen repeatedly in other industries that fixed rates in a mature market benefit large companies that can operate at a significantly smaller profit margin. In order to compete, smaller companies that often have higher production costs must price at or close to those costs to survive. This process creates consolidation and homogenization of industries--ultimately landing control in the hands of the few. Moreover, our neighboring states will see an opportunity by lowering their taxes and enticing New Yorkers over the border. Massachusetts with a 20% effective tax rate will already beat the rates in the CRTA.

The MRTA provides a viable alternative with a flexible percent based tax on real market values. The 18% tax it creates will help develop a competitive landscape where smaller businesses can survive and thrive as the market matures. The diversity of ownership of small businesses will increase job opportunities across New York communities where they are needed most. Importantly, consumers will purchase products within the state from legal sources that will further drive state revenue for projects that legislators want to develop in the communities they represent.

DISTRIBUTION

In creating a model for cannabis, a required Distributor layer in the supply chain will have negative unintended consequences that will harm small entrepreneurs. Forcing cultivators or manufacturers to go through large distributors in getting their products to market will squeeze profits from small producers and prevent retailers from dealing directly with the source. This results in higher prices, less consumer choice, and inevitably favors large cannabis companies who do the most business with these distributors. The creation of direct sales between producer and retail operations will avoid anti-competitive behaviors, offering a viable alternative for getting products to market. Moreover, the opportunity for self-distribution by producers will increase diversity of products within categories and create a range of product pricing for consumers. The democratization of the industry will increase opportunities for small entrepreneurs to enter the industry and serve the communities they represent.

NUMBER OF LICENSES

While tax rates are important to a successful market, they do not operate in a vacuum and alone will not create an equitable system. Licensing--from cultivation through dispensaries--plays a key role in developing a robust and diverse marketplace. Timing of licensing and number of licenses issued will play directly into the success of small businesses against larger, more established companies and the illicit market. Allowing speed-to-market opportunities for small businesses will create a competitive landscape right out of the gate rather than increasing barriers to entry from an established industry.

In our analysis from other states, New York will need at least five million square feet of cultivation licenses, which translates to at least five hundred (500) growers and several hundred manufacturers to create enough supply to address the existing market. We will also need two thousand (2,000) dispensaries, calculated as one dispensary for every twenty thousand people. We see this estimate as modest, with states like Oregon and Colorado having double the amount of dispensaries per capita at one dispensary for every ten thousand people. For comparison New York currently has thirty three hundred (3,300) liquor stores, and over ten thousand (10,000) stores to purchase beer.

Speed to licensing will also play an extremely important role in creating opportunities for leveling the playing field. We have seen over and over again other states struggling with getting their licenses into the hands of small businesses. For example, in Massachusetts that legalized over three years ago, we see only a handful of operational companies in the microbusiness category. The first one took almost two years to get licensed, providing a broad opening for larger companies to establish market share. New York can easily create a shorter time frame and utilize homegrown talent in developing the industry quickly. New York possesses a vast network of small entrepreneurs, farms, and manufacturers ready to hit the ground running.

To address these issues we suggest legislatively mandated deadlines, putting a timeframe on licensing for all classes from cultivation to dispensaries. As we have seen in both the Medical Marijuana and Cannabinoid Hemp Programs, the slow rollout of regulations negatively impacted both patients and businesses. Any change in administration during the licensing process can potentially derail the intent of the New York Adult Use Program. We believe a legislative mandate on these issues will avoid problems that other states have experienced, especially related to small business and social equity applicants.

CONCLUSION

We fully support the creation of a safe and responsible cannabis industry for New York State. Our work brings us in contact with consumers everyday who tell us that they appreciate the level of dedication that we give to our products. Similarly, in creating the cannabis industry, we see a real opportunity to benefit communities across New York State. In structuring legislation to support local communities, New York residents will experience the benefits of increased tax revenues and job creation. The re-industrialization of communities left behind will create job opportunities, encourage the growth of related industries, and generate pride in this new industry. We truly hope that New York State seizes this moment as only New Yorkers can do. We recognize the challenges that cannabis presents but also see the vast possibilities. We will dedicate ourselves to helping build a viable, robust, and equitable industry for New York.