



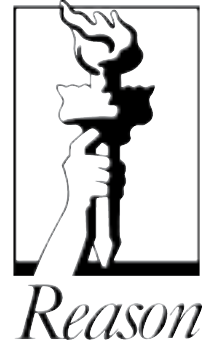
February 2007

TAXING ILLEGAL DRUGS: HOW STATES DABBLE IN DRUGS AND WHY THEY SHOULDN'T

By Paul Messino
Project Director: Adrian T. Moore



POLICY
STUDY
357



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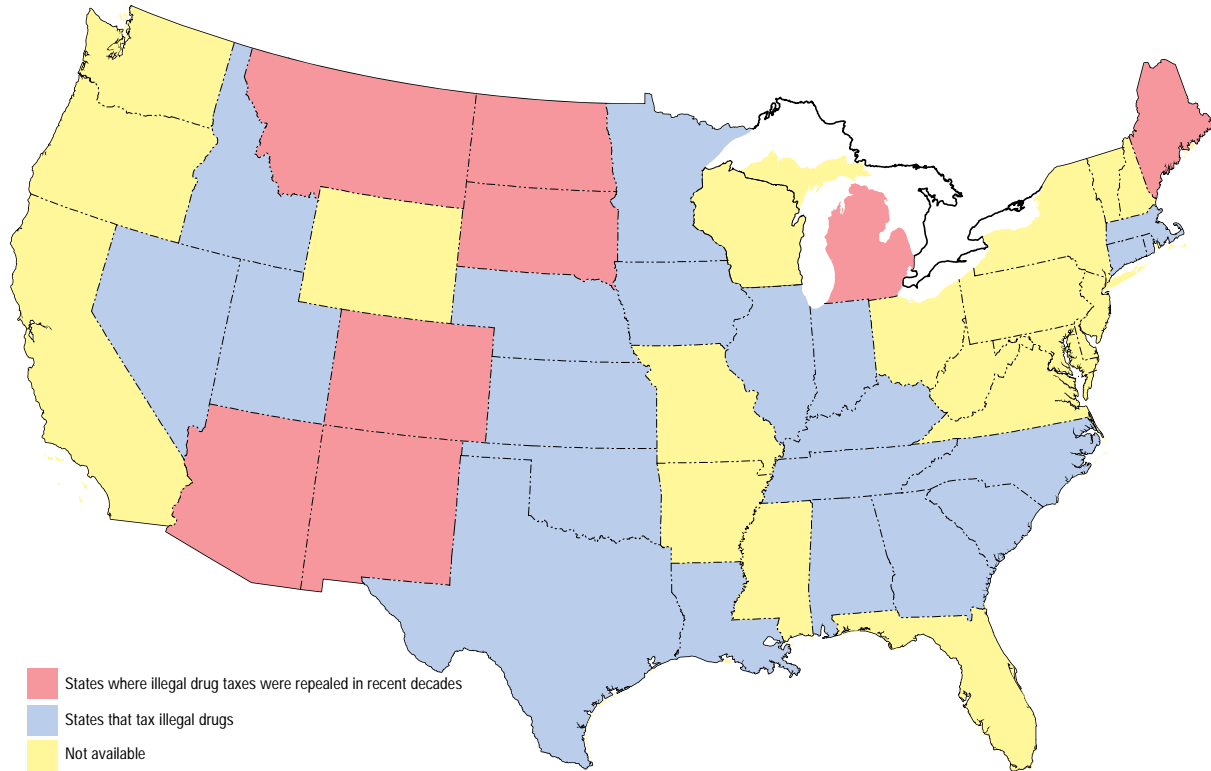
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Figure 1: Is Your State in the Business?

What follows is a history of the taxation of illegal drugs, starting first with the federal government's attempt to tax drugs made illegal by many of the states in the union. Following a constitutional challenge under the Fifth Amendment, the federal government gave up its right to tax illegal drugs by making them illegal across the nation. But, where the federal government left off, the states picked up. Trying their hand at taxing illegal drugs, states ran aground on the same constitutional problem as the federal government. The constitutional questions that continue to arise from state drug tax legislation render the whole procedure circumspect.

Part 2

Federal Drug Tax Legislation

The Harrison Narcotics Act of 1914, the nation's first drug tax legislation, implemented a special federal tax on opium and coca dealers and required them to register their name and place of drug-related business with the Internal Revenue Service. Failure to pay the tax (a criminal offense), upon conviction, resulted in a fine of “not more than \$2,000 or be imprisoned not more than five years, or both.” The Act did not make either drug illegal; it merely created an organizational and revenue-generating structure for the federal government. In 1937, the Marihuana Tax Act became law, placing marijuana in the same category as opium and coca.

Regulations No. 1, a sixty-plus page document detailing compliance, allowed for police inspections of dealers the Federal Treasury Department suspected of violating the law. Specifically, it provided “details as to tax computation, procedure, the forms of records and returns, and similar matters.” By making the purchase of drugs more cumbersome, the federal government hoped to eventually do away with the sale of drugs completely. Data gathered by the Federal Bureau of Narcotics, a division of the Treasury Department that received all drug stamp registrations, was made available to local police.⁵ Registration requirements remained the same as under the Harrison Act, except that those in the medical field paid \$1.00 per year, while other dealers paid \$3.00. Importers, manufacturers, and compounders paid \$24.⁶

Without the help of Federal Bureau of Narcotics Director Harry J. Anslinger, the Marihuana Tax Act might not have become law. Anslinger took a strong moral stance against marijuana, citing its increased use throughout the nation by jazz musicians and Mexican laborers. Before the passage of the Tax Act, states had dealt with the use of marijuana by these groups and others through individual legislation that made the sale or use of the drug illegal. But the mystique developing around the drug, Anslinger claimed, would lead to its spread among ordinary Americans, thus necessitating the need for a federal solution.

Federal inspections of suspected drug dealers continued until Timothy Leary—of 1960s psychedelic fame—challenged the federal law in 1969, claiming it violated the Fifth Amendment.

Leary of the Fifth Amendment

In part, the Fifth Amendment to the Constitution states,

No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself ...

The first clause is known as the double jeopardy clause, and the second, the self-incrimination clause. In plain-speak, no person can be tried for the same offense twice, nor can he be forced to testify to his guilt in a criminal case. The Fifth Amendment played a significant role in the evolution of drug tax legislation, essentially opening the door to states to try taxing the drugs themselves.

In 1969, the U.S. Supreme Court heard the case, *Timothy Francis Leary v. United States* (395 U.S. 6), the first federal challenge to the Marihuana Tax Act. After being denied entrance to Mexico by car, Timothy Leary was stopped at the border, searched, and found in possession of marijuana. Caught while in the act of crossing the border, Leary was a 'transferee of marijuana'. As a transferee, Leary should have registered with the appropriate authorities and paid his transfer tax. He had done neither, thereby placing him in violation of the Act. After conviction in a lower court, Leary held in the Supreme Court that compliance violated his privilege against self-incrimination.

The Court held that the Act placed Leary in a precarious position. By allowing a particular group of people (*i.e.* medical suppliers of marijuana) access to dealing drugs at a lower tax rate, and not subject to many state anti-drug laws, the Act inadvertently created a group of “unsanctioned dealers” who had to release identifying information to federal authorities who could then pass it to local police.

The group of “unsanctioned dealers,” whose activities fell outside of the medical field, had released information that compromised state law. Most state laws at the time made marijuana illegal, except for specified conditions, most of which were outlined in the Marihuana Tax Act.⁷ Thus, supplying one's name and address to federal authorities exposed the defendant to a “real and appreciable” risk of self-incrimination.⁸ The Court declared the Act unconstitutional.

In response, Congress passed the Controlled Substance Act of 1970, outlawing drugs in all states. This Act explicitly named and scheduled all illegal drugs and provided for a system of penalties and enforcement that still stands today. Although the federal government surrendered its power to tax drugs, states seized the opportunity—with help from judicial precedent—beginning first with Arizona in 1982.⁹



Leary arrested in 1972.

Part 3

State Drug Tax Legislation, an Evolution in Diction

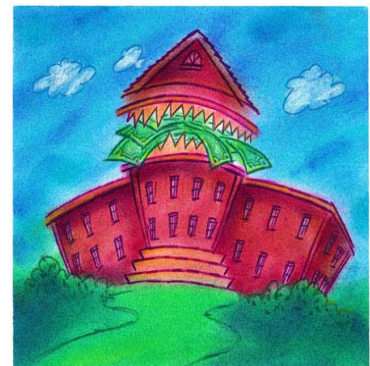
After registering with the state of Arizona (for \$100) and paying a tax of \$10 per ounce, a dealer, if caught for possession, could avoid civil but not criminal punishment.¹⁰

In possessing the state-sanctioned drug license and stamp, a dealer would be doing his fiduciary state duty. If he were found in possession of marijuana by state or local authorities, the dealer would be in line with civil code. But he would still be violating the federal anti-drug code (a criminal offense) established by the Controlled Substance Act. The state of Arizona wanted a two-for-one. First the state encourages a marijuana dealer to register with the state and pay a tax. Then, if the state happened to find the same dealer in possession of a drug, the dealer could then be prosecuted for violating the federal anti-drug code. Arizona statutes at the time created a similar environment as was experienced by Leary in 1969. But instead of the federal government trying to generate revenue from an act deemed illegal by most states, here a state was trying to get revenue from an act declared illegal by both federal and state law.

In November of 1995, the Arizona state police arrested Peter Wilson, president of the Arizona Chapter of the National Organization for the Reform of Marijuana Laws (NORML), for selling marijuana after he had paid his tax. The Northwest Phoenix Justice Court (of the State Superior Court of Arizona) threw out the case, claiming it violated double jeopardy. In response, Arizona repealed its tax stamp legislation (The Luxury Privilege Tax, Rev. Stat. Ann. 42-1201 to -1218) finding no way to tax the sale of a substance that is illegal to sell.

After Arizona tested the drug stamp waters, other states followed, some with more success than others, but all with the same goal: to find a way to nab a dealer, whether with a criminal or civil charge, or even better, both.¹¹ With each state's attempt, qualms with the U.S. Constitution arose. States with successful drug taxes parried charges of unconstitutionality with artful legislative diction.

Maine, Montana, and Oklahoma are good examples of these convoluted policies.



A. Double Jeopardy in Maine and Montana

Maine

Both Maine and Montana typify the effects of the double jeopardy clause on drug tax legislation and the maneuvers necessary to avoid violating it. When assessing the constitutionality of the legislation in light of the double jeopardy clause, the type and degree of punishment are determining factors. Maine¹² offers a case study in type, Montana¹³ one in degree.

Maine's drug tax was enacted in 1987, and repealed in 1995. According to the original statute, an “excise tax is imposed ... on any dealer convicted under state or federal law based on the amount of marijuana ... identified in the conviction.” The tax is stiff—\$3.50 per gram (more than 40 percent of the average sale price). As the statute makes clear, the tax occurs after the conviction of a dealer for possession. Upon conviction, possession of an illegal drug would earn you a tax by state law as well as a federal punishment for possession of the taxed good. A dealer appears to be prosecuted twice for the same offense. But is he?

The constant tweaking required to keep the law constitutional begs for citizens to be circumspect.

The question begged in Maine's law is: Are tax assessments prosecutions? If they are, then a dealer found guilty of marijuana possession who was then assessed a tax would be found guilty of, and prosecuted for, the same offense twice. The case has been made that drug taxes are not prosecutions, but are merely punishments, essentially fines levied on an undesirable behavior. The double jeopardy clause does not explicitly protect against multiple punishments, but cases have been argued to show that it may in certain circumstances.¹⁴

One way to decide whether or not a tax is a punishment, prosecution, or both is to revisit the intent behind the statute—to ask, what was the law's intended purpose?

In *Halper v. United States* it was decided that since opining on intent is a speculative process (and not to mention nearly impossible after-the-fact), it is best to consider a tax in light of whether it successfully “compensate[s] the Government for its loss,” since the purpose of an excise tax (as Maine's drug tax was) is to generate revenue for the government, as well as to discourage further disobedience. If it does not, then it may be an exceptionally high tax and thus a second punishment.¹⁵ Case in point, Montana.

Montana

The precedent-setting U.S. Supreme Court case, *Department of Revenue v. Kurth Ranch* (1994), showed that drug tax laws can be so punitive as to violate the double jeopardy clause, regardless of legislative intent. Under Montana state law, the rate of taxation for marijuana was the greater of \$100 per ounce or 10 percent of assessed market value, plus 5 percent of the tax imposed for administrative costs.¹⁶ The state, after convicting the Kurth family for possession, assessed a tax of \$900,000 following conviction. The issue before the court: Was the penalty given to the Kurth family for tax evasion as strong as that for possession?

The court held that the “presence of an obvious deterrent purpose [in the drug tax law] trumps legislative intent.”¹⁷ Thus, although revenue may have been the intent, the general purpose was to deter illegal conduct, the main justification for federal anti-drug laws.¹⁸ The punishment, high enough to function as a deterrent rather than simply a revenue generator, made it a criminal and not a civil punishment. Thus, upon being convicted of either possession or tax evasion, one couldn't be tried for the other.

The punishment for the civil crime of drug tax evasion can be high enough to be considered a criminal punishment. Initial attempts to punish drug tax evaders suggest that drug tax legislation acted as another way for states to ensure punishment for possession. To avoid double jeopardy, state legislators needed to craft legislation that lined up with the penalty limits outlined in *Kurth Ranch*. Oklahoma shows us how.

States, in creating and enacting drug tax laws, are following the hypocritical path of the federal government nearly a century ago.

B. Oklahoma Pleads the Fifth

Oklahoma's drug tax legislation, which utilizes a stamp to designate payment, avoids charges of double jeopardy by showing that tax legislation can be a civil punishment as long as the penalty price is low enough to be considered a civil punishment. Unfortunately, the *Kurth Ranch* decision did not provide an acceptable drug tax table. What it did was set a ceiling. As states attempted to find the proper monetary penalty for illegal drugs, many settled on the same rate as Oklahoma. Not only does Oklahoma's drug tax legislation clear the double jeopardy hurdle, it also survives challenges based on self-incrimination, although for different reasons than *Leary*.



In Oklahoma, the rate of taxation for marijuana is \$3.50 per gram at or above 42.5 grams.¹⁹ Noncompliance results in a penalty of 200 percent of the tax assessed, plus the possibility of up to

five years imprisonment, \$10,000, or both.²⁰ In the case *Hill v. State of Oklahoma* (1995), the court noted that a tax that “regulates, discourages, or even definitely deters the activity taxed,” does not make the tax invalid as a civil penalty.²¹ This decision seems to contradict *Kurth Ranch*, but it doesn't.

There are a few important distinctions to note between *Kurth Ranch* and *Hill*. In *Kurth Ranch*, the majority opinion stated that the deterrent nature of Montana's law helped to show that the purpose of the law was the same as that of the federal anti-drug laws. Here in the *Hill* decision, the court found that despite the deterrent nature of the Oklahoma law, this alone would not be enough to ensure that the law's penalty was a criminal punishment. What Oklahoma had done was to assess the tax before conviction for possession. The state's taxation rate (\$3.50 per gram at or above 42.5 grams) seemed to hold below the threshold of excessive taxation, which could be interpreted as a punishment. What Oklahoma's law shows us is that a state can get away with instigating a large penalty for dealing in illegal drugs only if it can try to convict the defendant under tax evasion. The higher the rate, the more likely it will be perceived to be a criminal punishment.

In terms of constitutionality, Oklahoma's drug stamp tax survived the charge of self-incrimination.²² According to the Oklahoma statute, “Dealers are not required to give their name, address, social security number, or other identifying information” when they apply for a drug stamp with the state Department of Revenue.²³ Nor can the Department release this information (outside of statistical reports) or use it against a defendant in any criminal proceeding. By restricting the use of the information to only the civil tax evasion case, an information wall is built between it and the federal criminal charges of drug possession.

Although this law withstood a constitutional challenge on the grounds of self-incrimination—revealing the evolution of legislative linguistics following the *Leary* case—other states have gone further, adding punitive provisions for Revenue employees who divulge protected information, adding that extra layer of protection for would-be drug taxpayers.

Yet, drug dealers must still divulge specific information. In order to receive drug stamps, the typical method used by states to signify payment, a dealer must either appear before the Department of Revenue, or submit a mailing address where the stamps can be sent. Even if a supplied mailing address isn't in a dealer's front yard, an interested party could still track down a dealer by following the stamps until they reach their final destination. With literally nowhere to hide, dealers will always have a case for self-incrimination.



Part 4

Monetary Concerns

Nationwide, the revenue generated from drug taxes is small, but with an increase of 82 percent in drug arrests for marijuana (79 percent of which are for possession alone), how could you blame states for trying to get a share of the revenue generated from the drug trade, or at least using the lure of revenue for justification?²⁴

In evaluating the cost/benefit of implementing a drug stamp tax act, North Dakota legislators learned that most states fell far short of collecting drug tax revenues. For example, in 1988, Arizona had assessed \$5 million in taxes and penalties, but only collected \$230,000. Montana, before its Act was found unconstitutional, assessed \$6.9 million, but collected only \$51,198.²⁵ Tennessee, the most recent state to start up drug tax legislation, isn't faring well. According to the Tennessee Center for Policy Research, the state's Unauthorized Substance Tax “costs taxpayers nearly \$1.5 million,” because the state collects very little of the assessed taxes.²⁶ In Minnesota, revenue collections have been dropping since revenue statistics on the law have been published. Starting in FY 1993, the Department of Revenue brought in \$206,000. By 2004 that number was cut to \$11,000.²⁷ And then there are states like North Carolina that, according to fiscal records for 2003–2004, made more than \$8 million (\$5 million-plus went to local law enforcement, and \$2 million-plus went into the general fund). But North Carolina's success appears to merely be an exceptional case in the sordid story of drug legislation.

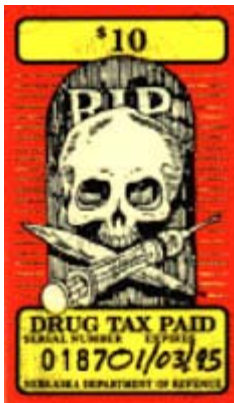
And while legislators may boast that drug taxes will help raise the revenue to fight the drug trade, the most recent figures from the Office of National Drug Control Policy (ONDCP) report that in 1999 “combined expenditures by federal, state, and local governments exceeded \$30 billion.”²⁸ And, over the years, these numbers have only increased.

Drug tax legislation appears deficient in its ability to raise revenue in a justifiable way. If it fails in this—perhaps the last, and maybe only, justification for its civil nature—then the only reason it exists is to deter activity simply by punishing, the main justification for federal anti-drug laws. And although the case for taxing illegal activities still stands,²⁹ judicial history shows a trend away from the deterrence purpose for civil penalties by its continued reduction in penalty taxes, leaving no justification whatsoever.

As the Appendix shows, there is a definite pattern to the life and death of drug tax legislation. Those that have survived are living on the edge of constitutionality. In most cases, legislation is challenged based on the Fifth Amendment, either double jeopardy or self-incrimination.

A tax law that ambiguously defines the legal stance of a state toward an issue, has no place as a deterrent, and fails to gain promised revenue is a worthless law that should be dropped.

Of the surviving state drug tax legislation, many have established a tax rate at \$3.50/g above a threshold amount, usually 42.5g. Illinois, Iowa, Nebraska, and Nevada are exceptions. Illinois has no threshold amount and requires a payment of \$10/g. Iowa charges \$5/g at the usual threshold amount of 42.5g. Nebraska's threshold amount is about 170g and charges a slightly higher amount of \$3.53/g. Nevada has a particularly interesting approach in its drug tax, requiring an annual registration fee of \$250 plus a tax of \$100/g. This approach, while the only current law that uses a registration fee and has a high tax with no threshold amount, stands as amended following a successful challenge of a violation of double jeopardy *circa* 1989.



In terms of self-incrimination, it is harder to see why some states were found in violation of the self-incrimination clause than it was to see why some states were in violation of the double jeopardy clause. Some states survived because they either had or added anonymity provisions that utilize punishments for disclosing information (Connecticut, Georgia, Idaho, Iowa, Massachusetts, Minnesota, Rhode Island, Texas, and Utah). Some states with no anonymity provisions, have withstood constitutional challenges: Alabama, Nebraska, and Oklahoma. Wisconsin's drug tax legislation was ruled unconstitutional for self-incrimination in 1997, was retooled, and then failed again in 2004.

Part 5

Conclusion

Drug tax legislation across the nation has changed over the years. State legislation continues to skirt unconstitutionality as it attempts to curb drug use and gain a little revenue in the process. But in taking the necessary steps to avoid unconstitutionality, the prospective revenue-generating power of drug tax legislation languished. As Milwaukee County Assistant District Attorney Steven Licata said in May of 2004 of Wisconsin's failed, but never repealed, drug stamp tax, "It was relatively rare when we used it, and it will be even rarer that we will feel an impact from not being able to use it."³⁰

States, in creating and enacting drug tax laws, are following the hypocritical path of the federal government nearly a century ago. Furthermore, the constant tweaking required to keep the law constitutional begs for citizens to be circumspect. A tax law that ambiguously defines the legal stance of a state toward an issue, has no place as a deterrent, and fails to gain promised revenue is a worthless law that should be dropped.



About the Author

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Appendix

State	Code	Name	Tax Rate	Penalty	Of Interest	History and Notes
Alabama	Title 40, §17A.3-11	Drugs And Controlled Substance Excise Tax	\$3.50/g (>42.5g)	100% penalty plus tax assessed; Class C felony	Affixation of stamp to occur "immediately" upon receipt of substance	Withstood constitutional challenges of self-incrimination (<i>Briney v. State Department of Rev.</i> , 1991) and double jeopardy in <i>Milner v. State</i> , 1994); an argument against time to affix stamp to drugs was found unsupported and spurious (<i>Hyatt v. State Dept. of Revenue</i> , 1992).
Alaska	N/A	N/A	N/A	N/A	N/A	N/A
Arizona	Rev. Stat. Ann. 42-1201 to – 1218	Luxury Privilege Tax	\$100 license fee; \$10/ounce; \$500/plant	max. additional penalty of 25% of tax due; class 6 felony	Distribution scheme for revenue; class felony for counterfeiting	<i>State v. Wilson</i> , No. 95-02094 (1995) ruled against the law; it was later repealed , presumably because of legal questions.
Arkansas	N/A	N/A	N/A	N/A	N/A	N/A
California	N/A	N/A	N/A	N/A	N/A	N/A
Colorado	Title 39, Art. 28.7-101 to –109	Controlled Substance Tax	\$100/ounce	300% penalty plus tax assessed	Law enforcement must notify the department of revenue if they seize 16+ oz.	<i>State v. Paul Vince Maurello</i> ; court upheld double jeopardy ruling in lower court; this statute was later repealed .
Connecticut	Ch. 228d, §12-650-660	Marijuana and Controlled Substances Tax Act	\$3.50/g (>42.5g)	100% penalty for noncompliance; if dealer has paid, but was incorrect in record keeping, penalty of either 10% or 25% of tax imposed	Stamps must be purchased in multiples of \$10; Dealers are expected to keep records and make available to DOR, though their information is protected	Aside from the tax penalty, a dealer may also be fined up to 10k or 6 yrs in prison
Delaware	N/A	N/A	N/A	N/A	N/A	N/A
District of Columbia	N/A	N/A	N/A	N/A	N/A	N/A
Florida	N/A	N/A	N/A	N/A	N/A	N/A
Georgia	Title 48, Ch. 15, §1-11	N/A	\$3.50/g	Not defined	12 day 'grace period' given to dealer to pay tax	excise tax; strength of illegal substance does not play a part in assessing tax; it is a misdemeanor if one releases information pursuant to tax filing
Guam	N/A	N/A	N/A	N/A	N/A	N/A
Hawaii	N/A	N/A	N/A	N/A	N/A	N/A
Idaho	Title 63, Ch. 42.01-11	Illegal Drug Stamp Tax Act	\$3.50/g (>42.5g); \$775/plant	100% plus tax assessed, also libel for criminal penalty; tax commission, after notification of tax payment, may move immediately to gain tax funds	If confidential information divulged, a felony results, job is lost, and a fine imposed; Elaborate schema for affixing stamp to growing plant; portion of funds collected goes to substance abuse treatment	Violated self-incrimination clause in <i>State of Idaho v. Smith</i> . Information provided for stamps now confidential (provided by §63-4206) .
Illinois	Ch. 35 ILCS 520/26	Cannabis and Controlled Substance Tax Act	\$10/g	50% penalty plus tax; Class 4 felony (1994); ammended (95) 200% penalty plus tax; Class 4 felony	Stamps purchased in multiples of \$5; 30% of revenue garnered goes to county in which arrest made	N/A

State	Code	Name	Tax Rate	Penalty	Of Interest	History and Notes
Indiana	Title 6, Art. 7, Ch. 3	Controlled Substance Excise Tax	\$3.50/g	100% penalty plus tax assessed	Dealer receives a statement notifying him that his purchase does not legalize the possession of the illegal substance; special fund established with powers to distribute	This tax is under the Tobacco Taxes section of the general statutes. In <i>Fassinger v. State</i> , the tax was found in violation of double jeopardy, all cases related to tax evasion are to be processed separately and not in criminal court. (IC 6-7-3-20; 1998)
Iowa	Title X, Subtitle 4, Ch. 453B.1-16	Excise Tax on Unlawful Dealing in Certain Substances	\$5/g (>42.5g)	100% penalty plus tax assessed plus tax; class "D" felony	Violation of confidentiality is a misdemeanor	N/A
Kansas	Ch. 79, Art. 52.01-12	Marijuana and Controlled Substances	\$3.50/g (>28g); different amounts for wet/dry plant	100% penalty plus tax assessed and guilty of level 10 felony	Stamps purchased in at least multiples of \$10; burden of proof of incorrect tax assessment on dealer; general fund collects monies, 75% distributed	Withstood constitutional challenge of double jeopardy in <i>Kansas v. Gullede</i> .
Kentucky	Title XI, Ch. 138.870-889	Marijuana and Controlled Substances	\$3.50/g (>28g); \$1000 plant (>5 plants)	100% penalty plus tax assessed plus interest and Class C felony	Expiration of stamp after one year; not required to give information upon application for stamp; constitutional provision barring self-incrimination for criminal felony	Withstood double jeopardy challenge, <i>Kentucky v. Gullede</i> .
Louisiana	RS 47, Ch. 3, §2601-2609	Marijuana and Controlled Dangerous Substances Tax	\$3.50/g (>42.5g)	100% penalty plus tax assessed, may be fined up to \$10k, five years imprisonment or both.	Funds deposited in the General Fund	N/A
Maine	Title 36, Part 7, Ch. 704-A, §4433-36	Special Taxes, Illegal Drugs	\$3.50/g	no penalty	This excise tax was enacted in 1987 and applies to convicted drug dealers	Ruled unconstitutional by Maine Superior Court; repealed
Maryland	N/A	N/A	N/A	N/A	N/A	N/A
Massachusetts	Pt.1, Title IX, Ch. 64K	Controlled Substance Tax	\$3.50/g	100% penalty plus tax assessed, may be fined up to \$10k, five years imprisonment or both.	anonymity for application; penalty of misdemeanor for anyone who releases protected information	Found unconstitutional, double jeopardy, <i>Commissioner of Revenue v. Robert Mullings</i> ; currently amended to comply.
Michigan	335.301-335.367	Controlled Substance Act of 1971	N/A	N/A	Not a tax and stamp related act	Repealed and replaced by Public Health Code, Act 368 of 1978. Stamps were removed as revenue generating device.
Minnesota	Ch. 297D. 01- to -.14	Marijuana and Controlled Substance Taxation	\$3.50/g (>42.5g)	100% penalty plus tax assessed; may be sentenced to 7yrs or \$14k fine, or both	Credit given for taxes paid by dealer in another state or via local government; misdemeanor charged to individual revealing confidential information	Withstood challenge of self-incrimination in <i>Sisson v. Triplett</i> (Aug. 26, 1988)
Mississippi	N/A	N/A	N/A	N/A	N/A	N/A
Missouri	N/A	N/A	N/A	N/A	N/A	N/A
Montana	Title 15, Ch. 25	Dangerous Drug Tax	\$100/ounce, or 10% of assessed market value, plus 5% of tax imposed for administration fees	N/A	Listed as a "property tax", such a move was contentious since tax assessment occurred after conviction of a criminal offense when the accused does not possess the drug.	Found unconstitutional by a precedent-setting U.S. Supreme Court Case, <i>Department of Revenue v. Kurth Ranch</i> ; repealed

State	Code	Name	Tax Rate	Penalty	Of Interest	History and Notes
Nebraska	Ch. 77, §4301 to -4312	Marijuana and Controlled Substances Tax Stamp Act	\$100/ounce (> 6oz)	100% penalty plus tax assessed; Class IV felony	Stamps expire 6 months after date of issuance; revenue distribution scheme	Withstood attacks on both double jeopardy (<i>State v. Garza</i>) and self-incrimination (<i>State v. Detweiler</i>)
Nevada	Title 32, Ch. 372A.010 to -.130	Tax on Controlled Substances	register with annual fee of \$250; \$100/g	100% penalty plus tax assessed	restricted to a "seller" not a "transporter" as most stamp laws are worded; serial numbers associated with a specific dealer's stamp	Amended to comply after being found unconstitutional under double jeopardy clause (<i>Desimone v. Nevada</i>)
New Hampshire	N/A	N/A	N/A	N/A	N/A	N/A
New Jersey	N/A	N/A	N/A	N/A	N/A	N/A
New Mexico	Ch. 7, Art. 18A-1 to -7	Controlled Substance Tax	\$50 (1 oz or less), \$100 (1oz to 8oz), \$200 (8oz +)	Dept. of Revenue sets penalty and interest	No stamp, just tax	Repealed by Ch. 101 as set forth in S.B. 12 in 2005
New York	N/A	N/A	N/A	N/A	N/A	N/A
North Carolina	Ch. 105, Art. 2D, §105-113.105 to -.113	Unauthorized Substance Taxes	\$3.50/g (> 42.5g)	40% penalty plus tax assessed and interest	Possession is all that is required to obligate payment of tax	Ruled unconstitutional in <i>Lynn v. West</i> (criminal penalty); currently amended. In <i>Nivens v. Gilchrist</i> (2003), appeals court ruled that the tax was a civil penalty and not criminal.
North Dakota	Ch. 57, §36.1	Controlled Substances Tax	\$3.50/g (> 42.5g)	100% penalty plus tax assessed plus interest plus class "C" felony	Information protected, violation results in a class A misdemeanor; provision states that illegally seized marijuana cannot be taxed	Repealed by S.L. Ch. 545, §2 in 1995
Ohio	N/A	N/A	N/A	N/A	N/A	N/A
Oklahoma	Title 68, Ch. 1, Art. 4B, §450.1 to -.9	N/A	\$3.50/g (> 42.5g)	100% penalty plus tax assessed; up to 5 years imprisonment, \$10k, or both	Stamps in denominations of \$10; penalty for attempting to or successfully accomplishing the reuse of a stamp: \$1k or 5 yrs, or both	Survived unconstitutional attack for self-incrimination (among other things) in <i>White v. State</i> , 1995; in <i>Hill v. State</i> , 1995, the court upheld that the OK stamp acts were a civil penalty and not criminal.
Oregon	N/A	N/A	N/A	N/A	N/A	N/A
Pennsylvania	N/A	N/A	N/A	N/A	N/A	N/A
Rhode Island	Ch. 44-49, §44-49-1 to -16	Taxation of Marijuana and Controlled Substances	\$3.50/g (> 42.5g)	100% penalty plus tax assessed, may be fined up to \$10k, five years imprisonment or both.	Penalty for disclosure of information: misdemeanor	N/A
South Carolina	Art. 25, § 12-21-5010 to -6040	The Marijuana and Controlled Substance Tax Act	\$3.50/g (> 42.5g)	100% penalty plus tax assessed, misdemeanor, and may be fined up to \$10k, five years imprisonment, or both	Penalty for disclosure of information: felony, may get 5 yrs., \$10k, or both	Double jeopardy challenge in <i>McMullin v. South Carolina Dept. of Revenue</i> failed.
South Dakota	Ch. 10-50A	Luxury Tax on Controlled Substances and Marijuana	\$50/oz	100% penalty plus tax assessed plus Class 5 felony	Dealers not only paid to stamp their drugs, but they also bought a one-year license to sell (\$500 for marijuana)	Repealed by S.L. Ch. 111, §1 to 15 in 1987. Legislative reasoning for this action cited <i>State v. Roberts</i> (1986) over issues of self-incrimination
Tennessee	Ch. 4, Part 28, §67-4-2801 to -2811	Taxation of Unauthorized Substances	\$3.50/g (> 42.5g); 40¢/g (stems)	100% penalty plus tax assessed plus interest	Special section to the bill to allow for non-drug related marijuana uses; funds deposited in a special account	Legislation modeled after North Carolina's drug stamp tax.

State	Code	Name	Tax Rate	Penalty	Of Interest	History and Notes
Texas	Title 2, Ch. 159, §159.001 to -.301	Controlled Substances Tax	\$3.50/g (> 4oz)	10% penalty plus tax assessed, plus interest, plus felony of third degree (a fine, plus a second fine equal to the amount of tax due)	Class A misdemeanor for revealing confidential information; penalty scheme for counterfeiting stamps	Revised after a 1996 Texas Supreme Court ruled against the tax because of double jeopardy (<i>Mark Stennett v. State of Texas</i>); the court relied upon the precedent set in <i>Kurth Ranch</i> .
Utah	Title 59, Ch. 19, §59-19-101 to -107	Illegal Drug Stamp Tax Act	\$3.50/g (> 42.5g)	100% penalty plus tax assessed, third degree felony	Class A misdemeanor for revealing confidential information; schema for distribution of funds collected	Survived constitutional attack on the grounds of self-incrimination (<i>State v. Davis</i>), though ruled unconstitutional in <i>Brunner v. Collection Division of Utah State Tax Commission</i> (double jeopardy). Later amended.
Vermont	N/A	N/A	N/A	N/A	N/A	N/A
Virginia	N/A	N/A	N/A	N/A	N/A	N/A
Washington	N/A	N/A	N/A	N/A	N/A	N/A
West Virginia	N/A	N/A	N/A	N/A	N/A	N/A
Wisconsin	Wis. Stat. 139.87-.95	Tax on Controlled Substances	\$3.50/g (> 42.5g); \$1,000 per plant (>5)	100% penalty plus tax assessed; class H penalty	Counterfeiting: Class F felony; distribution scheme.	Ruled unconstitutional under self-incrimination charges in state Supreme Court in 1997 (<i>Wisconsin v. Hall</i>). The statute was then retooled. Ruled unconstitutional in <i>Stephen Dye v. Frank</i> in 2004. No change has been made to the law.
Wyoming	N/A	N/A	N/A	N/A	N/A	N/A

NOTES:

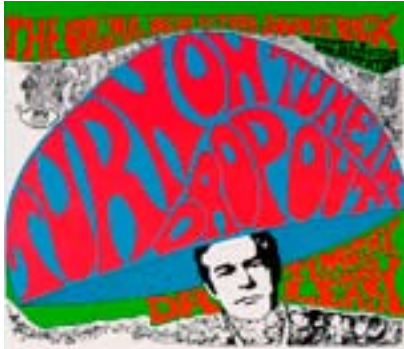
Shaded cells indicate states whose drug tax acts were repealed

N/A = Data not available

Endnotes

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- ¹ See <http://marijuanaprices.homestead.com/>
- ² See Appendix.
- ³ See License Tax Cases, 72 U.S. 462, 463 (1866).
- ⁴ See *Marchetti v. United States*, 390 U.S. 39 (1968).
- ⁵ Schaffer library of drug policy, “The Marihuana Tax Act of 1937”.
- ⁶ *Regulations No. 1*, § (2)(a), available at <http://druglibrary.org/schaffer/hemp/taxact/mjtaxact.htm>
- ⁷ See <http://www.druglibrary.org/schaffer/History/e1960/learyvus.htm>
- ⁸ See <http://caselaw.lp.findlaw.com>
- ⁹ Ariz. Rev. Stat. Ann. 42-1201 to-1218 (1991).
- ¹⁰ <http://flyingbuffalo.com/stamps.htm>.
- ¹¹ See Appendix.
- ¹² Maine Revised Statutes, Title 36 (Taxation), Part 7 (Special Taxes), Chapter 704-A (Illegal Drugs), Sections 4433 -4434.
- ¹³ Title 15, Ch. 25.
- ¹⁴ Christopher Paul Sorrow, “The New Al Capone Laws and the Double Jeopardy Implications of Taxing Illegal Drugs,” *Southern California Interdisciplinary Law Journal*, 1995.
- ¹⁵ 490 U.S. 435 (1989).
- ¹⁶ See Appendix.
- ¹⁷ Christian D. Stewart, “Double Jeopardy – State Drug Tax Statutes Go Up In Smoke: Department of Revenue v. Kurth Ranch,” *University of Nebraska Law Review*, 1995, v.74, p. 221ff.
- ¹⁸ Ibid.
- ¹⁹ See Appendix.
- ²⁰ Ibid.
- ²¹ See *United States v. Sanchez*, 340 U.S. 42, 71 S.Ct. 108, 95 L.Ed. 47 (1950) as quoted in *Hill v. State*, 1995 OK CR 28, 898 P.2d 155.
- ²² *White v. State* (1995). The case utilized a three-prong test for the taxation of illegal activity established in *Marchetti v. United States*, 390 U.S. 39 (1968).

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- ²³ Oklahoma State Statutes, Title 68 (Revenue and Taxation), Chapter 1, Article 4B, Section 450.1.
- ²⁴ Ryan S. King and Mark Mauer, “The War on Marijuana: The Transformation of the War on Drugs in the 1990s,” The Sentencing Project, May, 2005, available at <http://www.sentencingproject.org/Search.aspx?search=war%20on%20marijuana>
- ²⁵ 1989 House Standing Judiciary Committee Minutes, Judiciary: discussing SB 2236 on March 1.
- ²⁶ Ryan Burlison and Drew Johnson, “The Unauthorized Substance Tax: How Tennessee's Drug Policy Cracks the Constitution and Blows Tax Dollars,” Tennessee Center for Policy Research, 2005.
- ²⁷ See, Minnesota Tax Handbooks and the Minnesota Taxpayers Association, <http://www.mntax.org/>
- ²⁸ National Research Council, National Academy of Sciences, “Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us” (Washington, DC: National Academy Press, 2001), p.1
- ²⁹ *Supra* at fn 3.
- ³⁰ See <http://www.jsonline.com/news/state/may04/226849.asp>, “State anti-drug law requiring stamps fails in Federal court.”



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