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Otten Johnson Alert -

Marijuana continues to be a factor in Colorado

Just over a year has passed since the start of legal retail sales of recreational marijuana in Colorado. The new retail marijuana industry, along with the medical marijuana industry, continues to have an impact on Colorado’s legal and economic landscape. Indeed, a recent study found the legal marijuana industry to be the fastest growing industry in the country. Colorado is ground zero for that growth.

During the first nine months of recreational marijuana sales, only previously-licensed medical marijuana businesses could obtain recreational marijuana business licenses. That changed last fall when new businesses began to receive licenses. The state also no longer requires “vertical integration” whereby retail marijuana stores were required to grow at least 70% of the marijuana that they sold. These changes have opened up the recreational marijuana market to new players, some of whom are choosing to specialize only in cultivation or in retail sales.

As marijuana business activity continues to expand, the economic impact of the industry continues to grow. In Denver, which has the highest concentration of marijuana businesses in the state, the demand for properties suitable for marijuana cultivation has put upward

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pressure on prices of a variety of industrial properties. The marijuana industry in Pueblo County has also recently received attention for giving a boost to county tax collections, and also to the local economy. County policies are generally welcoming to marijuana businesses, particularly cultivation operations, creating well-paying employment opportunities in the industry itself, and also for fields that can serve the industry, such as construction, electrical, plumbing and similar positions.

Though a number of local jurisdictions have recently passed bans on marijuana businesses, others have begun allowing new marijuana business activity. Perhaps most notably, the City of Aurora began allowing recreational marijuana sales last fall.

Currently, the most significant regulatory issue at the state level relates to renewal of the Colorado Medical Marijuana Code. Passed in 2010, Colorado's statutory framework for the regulation of medical marijuana expires on July 1, 2015. The legislature is working on bills to renew and extend the statutory framework, but there are likely to be departures from the existing regulations. Generally speaking, the legislature hopes to make the medical marijuana regulatory scheme more consistent with the recreational marijuana regulatory scheme. While renewal of the Medical Code is perhaps the most significant legislation under consideration, a number of other bills relating to marijuana regulations have been introduced this session. Thus far, none have cleared both houses of the General Assembly.

Later in this legislative session, lawmakers are also expected to grapple with the fact that the state may be required to refund marijuana tax revenue under TABOR. Though marijuana tax revenues came in under the projected numbers, general economic growth and tax collections have been strong, which will likely result in a mandated TABOR refund. However, it appears that a solid majority of both Democratic and Republican lawmakers will support asking the voters to approve the exclusion of marijuana taxes from any TABOR refunds. This issue will play out later in the legislative session, after updated tax figures become available.

The activity in Colorado is taking place against a very complex national backdrop. Though marijuana remains

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illegal under federal law, federal authorities have generally continued to take a hands-off approach to the industry in Colorado. This is likely due in large part to the fact that Colorado's regulatory regime is generally considered to be the strongest in the country, and an effective regulatory system is one significant factor that federal authorities take into account in implementing a policy of accommodation toward state marijuana regulation. Two more states, Alaska and Oregon, as well as Washington, D.C., legalized recreational marijuana in November, and several more states will likely have the issue on the ballot in 2016. This suggests a growing national trend toward liberalization of marijuana laws. However, the marijuana industry continues to face challenges as a result of federal prohibition. It is difficult for marijuana businesses to establish banking relationships and obtain loans, and many landlords are reluctant to lease space to marijuana tenants. These problems stem from federal prohibition and cannot be resolved without congressional action, which seems unlikely in the near future. The 2016 presidential election also creates significant uncertainty for the future of the industry. The current accommodative federal enforcement policy could change at any time, but, in particular, a future presidential administration could choose to change course and begin to aggressively enforce federal marijuana laws in Colorado and other states.

This continued uncertainty makes it difficult to predict the future of the marijuana industry in Colorado and other states. However, industry players continue to invest and develop, and regulators at the state and local level continue their efforts to adapt to new realities on the ground. This situation is likely to persist for at least the next year or two. In the meantime, this new and fast-growing industry is having a real economic effect on real estate, jobs and taxes.

Otten Johnson's attorneys have substantial experience with helping clients to navigate business and real estate issues. For more information on this Client Alert or for help evaluating your current situation, contact any of the attorneys in the firm.

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