NYS Senate Testimony
Author: Allan Gandelman
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My name is Allan Gandelman, I'm an organic vegetable grower based in Cortland and President of the New York Cannabis Growers & Processors Association. We are a 501c6 non-profit advocacy organization that represents farmers, processors, retailers, and ancillary businesses who are actively involved in, or are looking to enter New York's cannabis industries.

Our core mission is to ensure an economically vibrant, consumer conscious, and diverse cannabis industry. Our industry is strongest when New York small and midscale farms prosper. Through our advocacy and education efforts, we emphasize the importance of care and well-being for our communities, our environment, and our employees.

The organization has grown tremendously since our volunteer board started meeting weekly thre years ago to advocate for a robust piece of cannabinoid hemp legislation. We now have 275 members who hail from across the state from Brooklyn to Buffalo and everywhere in between. I am proud of our work to bring a diversity of voices and perspectives together under one banner.

The way we source these perspectives and develop our advocacy agendas is through our numerous committees. These committees include processing, retail, sustainability, veterans, social equity, and several regional committees. We then distill these recommendations into actionable regulatory and legislative suggestions.

I would like to thank our numerous legislative allies including those here today: Chairwoman Liz Krueger, Senator Savino, Senator Rivera, and Senator O'Mara along with those we have not yet had the pleasure of working with but are allies of our industry.

The reason I am here today is to bring to your attention a piece of the cannabis law that we have grave concerns over. We have heard consistently from our members the impact that the proposed THC potency tax would have on their business. This novel tax scheme, conceived by the previous administration, has never been implemented before and would inflict a range of issues across the supply chain while driving retail prices far beyond those of our neighboring states.

Levied at the wholesale level, the proposed tax would assign a per milligram rate that varies based on the product category – flower, edibles, and concentrates. After being compounded by the 13% retail tax, the net effect of cannabis taxes could be well over 50% - depending on the product category. This is compared to a 20% tax in Massachusetts, and 33% in New Jersey.

The first major issue with this new approach to taxing cannabis comes at the point of calculation. Cannabis matures from the top down – meaning the flower throughout a plant contains varying levels of THC at harvest. Across an entire batch, which could include dozens of plants, the variation would be highly significant potentially 5% or more. Because the THC tax is tied to milligram, a percentage to the hundredth decimal would have to be determined.

Establishing an exact milligram across an entire batch of cannabis would be essentially arbitrary and inaccurate. Further complicating this calculation is the fact analytical testing labs report a measure of uncertainty or margin of error normally between 5% and 10% of the result. Between the variation of THC within flower and the measure of uncertainty, we estimate a potential for more than $240 million in miscalculated taxes assuming 1 million pounds of cannabis sold.

These miscalculations also raise significant public safety risks. We fear that in an attempt to avoid higher tax rates, both cultivators and analytical labs may report lower levels of THC than are actually present. This could be potentially dangerous for customers conscious of over-consuming. From a public safety perspective – it is much safer to report a high number or range so that the customer would be inclined to under-consume. Further, edibles would be taxed at a much higher rate than flower – limiting access to what is considered a safer means of consumption.

I am also concerned that this tax scheme would create a market environment that would put our businesses at a disadvantage with stores in neighboring states or the unregulated market. It's important to note that New York's current unregulated cannabis market is robust and highly sophisticated. If our goal is to transition much of those sales to regulated dispensaries, maintaining some level of price parity is essential. According to Whitney Economics, a 1% decrease in price has been associated with a 2% increase in sales – doubling revenue for both the industry and the state.

The State also has a compelling financial interest in eliminating this complicated form of tax collection. Administrative costs and the potential for disputes would be high.

There's a simple solution here though. Remove the complicated and novel THC-based tax in favor of a percent-based tax either levied at both wholesale and retail or just at the point of sale.

I want to thank you for your time and happy to answer any questions at this time.