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Asset Forfeiture Through Illegal Drug Trafficking Taxes

Dual Benefit of Illegal Drug Trafficking Taxes

Placing a tax on illegal drugs can serve a dual purpose for States. Taxation of illegal drug possession, manufacture, and sale through excise taxes, controlled substance stamps, or income taxes allows governments to benefit from the multibillion dollar drug trade while creating revenue that may be used for drug abuse prevention and treatment programs, law enforcement efforts, and the criminal justice system. The measure also attacks the trafficker's profitability.

Taxation allows a government to collect money and use it for the public benefit. Some taxes, often referred to as "sin taxes," are assigned to lucrative businesses that produce socially distasteful products to collect funds for discouraging unhealthy or destructive activities. Basic economic principles show that one of the best ways to decrease the supply of and demand for a product is to increase the cost of production and distribution and the price of the good.

A total of 22 States now have some form of drug tax in place (see chart 7). The taxes do not affect legal drug activity such as the legal manufacture and distribution of controlled substances for medical purposes and under prescription, but solely target the illegal drug trade. The money raised by the penalties for tax violation may be diverted to drug programs. At least four States have allocated funds collected to drug abuse education and treatment. North Carolina allocates funds to law enforcement agencies, Oklahoma to drug abuse education, Louisiana to treatment programs, and Montana to rehabilitation. Other States earmark the funds collected by these measures for law enforcement and criminal justice.

Although States may not expect payment of the taxes, penalties against violators may be collected through civil proceedings. In addition to the tax itself, penalties for nonpayment for as much as 100 percent of the tax may be collected. The tax may attach at harvesting or production and lapse after a statutory period, for instance, 3 months in Kansas. The State may collect interest from the time the tax was affixed and require a separate tax payment from traffickers at each stage in the distribution chain (i.e., manufacture, distribution, and sale). Robert Ebel of the Advisory Commission on Intergovernmental Relations called the drug tax "one of the best pieces of anti-narcotics legislation to have come along in years."[43]

State Legislation and the Collection Process

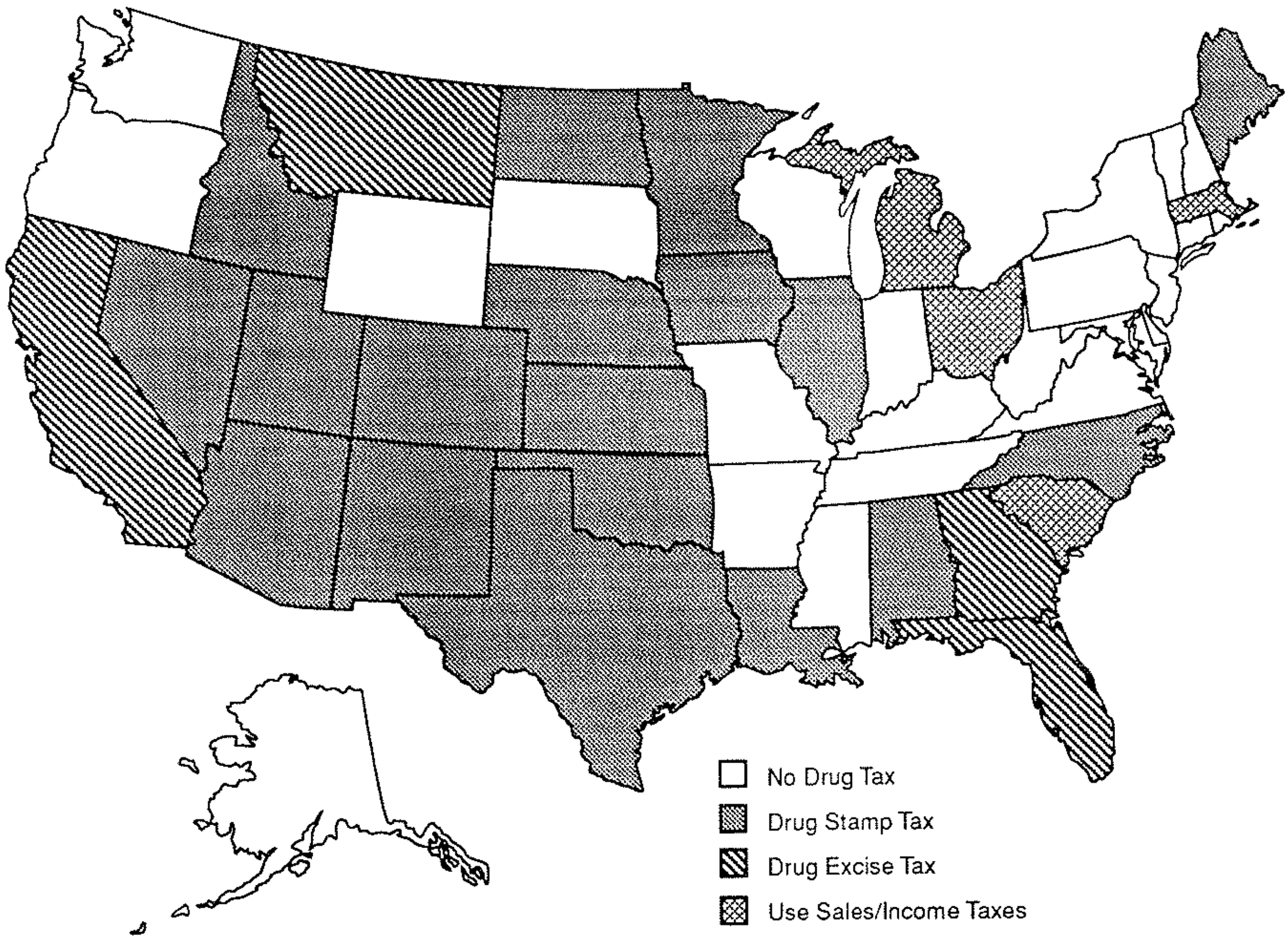
The Minnesota statute, a stamp requirement, is often cited as a model for other States.[44] The revenue mechanism is set in motion by imposing a penalty for tax violations on an arrestee for a drug crime if the drugs in question failed to carry a valid stamp. The State Department of Revenue issues a jeopardy assessment against the offender's assets and demands immediate payment. If the payment is not made immediately, the tax and penalty may be collected by asset forfeiture methods without awaiting the expiration of normal statutory time periods. Thus, the stamp requirement is a swift method of collecting revenue.

Advantages of Employing an Illegal Drug Trafficking Tax

A State benefits in several ways by developing illegal substance tax programs. First, the civil nature of the revenue collection method for nonpayment of taxes does not require proof of criminal guilt. Thus, the State may collect unpaid taxes even when subsequent criminal prosecution for drug crimes fails. Further, criminal conviction and punishment will not necessarily bar tax penalties because the doctrine of double jeopardy may be inapplicable and, in any

Chart 7

State Drug Tax Programs



Source: Federation of Tax Administrators, May 1991.

case, does not bar separate punishments by separate sovereigns even if both cases arise out of the same activity.[45] Tax penalties may be broader than criminal penalties because tax law "permits a far broader range of property forfeiture than under criminal statutes where a direct link has to be shown between drugs and property."[46] Second, the burden of proof in a tax proceeding is on the tax violator and not the government. The violator must prove either that the tax has been paid or that the violation charges are unfounded. Third, the programs strike financially at dealers while providing funds for prevention and treatment, thereby attacking the drug problem from both sides.

Funds Collected Through Illegal Drug Tax Measures

The heavy burdens of illegal drug taxes have the potential to create a large fund for important prevention and treatment programs. The standard tax assessment is $3.50 per gram of marijuana (about $100 per ounce and $1,600 per pound) and $200 per gram of cocaine (about $5,670 per ounce and $90,700 per pound). Drugs sold in manufactured dosage units are taxed at about $50 per unit, but this figure varies for each State. The success of the measures rests on cooperation between law enforcement and tax authorities. In Minnesota, taxes on illegal drugs netted $1.7 million from the $33 million levied during 4 years. On the other hand, Arizona collected only $210,000 and assessed only $3.6 million during 7 years. It should be made clear that the tax department programs need not compete with other agencies' recovery of drug assets[47] or with criminal fines.[48]

Considerations in Establishing Taxation Programs

The most successful opposing argument to these programs is that they implicate the fifth amendment right against self-incrimination because the trafficker may be, in effect, confessing to his or her involvement in illegal drugs by paying the tax. This argument caused a South Dakota court to strike down an illegal drug taxation statute as unconstitutional. However, many legislatures, such as Minnesota's, allow dealers to pay the tax anonymously, eliminating self-incrimination challenges. Also, in many States, the use of information obtained from tax collection cannot be used as evidence in criminal prosecution unless there is an independent source for obtaining the information.

State tax administrators must be prepared to litigate tax matters as well as enforcement issues such as double jeopardy, due process, res judicata, and eighth amendment excessive penalty claims. However, none of these arguments has proven to present insurmountable obstacles to drug tax laws to date. According to the Supreme Court, there "has been widespread and settled administrative and judicial recognition of the taxability of unlawful gains of many kinds."[49]