Legalizing Marijuana: Money Over Minds

BY IKE BRANNON

With the sudden lurch toward public acceptance of gay marriage, it would only be natural for the liberal/libertarian crowd to turn its eyes toward legalizing marijuana. While it doesn't quite have the human rights cachet of gay marriage, legalization still resonates with people beyond the stoner crowd who see marijuana as a largely harmless substance (less so than tobacco, anyway) whose prohibition has put millions of people in jail and cost taxpayers billions of dollars to enforce its prohibition.

The presumption that a groundswell of support for legalization will eventually develop and that it will provide a sufficient impetus for Congress to act is misplaced, however. Unlike gay marriage, there's no sense that a politician might see his political career get prematurely cut short by failing to be on "the right side of history." And any public relations push will find it difficult to come up with stoners as empathetic as gay couples with young children.

But supporters of legalization don't need to change any more hearts and minds; they already have a majority of the population with them and adding another 10 percent isn't going to improve their political lot. Rather than worry about the masses, they should concentrate their attention and effort on precisely *two* people. Those people aren't senators or congressmen, and don't include the current occupant of the Oval Office, but instead are the two staffers for the Congressional Joint Committee on Taxation (JCT) who will be tasked with estimating the amount of revenue that legalization would generate for the government. The bigger that number, the more likely it is that the federal government will legalize marijuana—and tax the stuffing out of it.

Path to tax reform | The most likely way for this to transpire would be as part of comprehensive tax reform, something Congress will take its best shot at accomplishing before the next election. At the moment, the odds of reform actually passing are slight. The problem is that the Republican goals for tax reform (lower rates and a code more conducive to economic growth) don't have much overlap with Democrats' goals (reduce the deficit and increase progressivity) and are seemingly impossible to concomitantly achieve.

Eliminating a wide swath of tax deductions promises to be a tough slog and will require a degree of bipartisan comity that hasn't been exhibited in some time. Balancing the revenue gained from that exercise between lowering tax rates and paying down the debt (let alone financing new stimulus) will be even more contentious, and it's difficult to see how Congress can achieve reform without ancillary revenues greasing the skids.

That's where legalizing marijuana comes in. If Congress can create a new revenue stream from legalization, then it may become possible to lower tax rates while also reducing the deficit.

Black box | Ascribing revenue to a change in the tax code is the job of the economists and lawyers on the JCT staff. Congress has no ability to influence their determinations—the recent provision, attached to the doomed Senate budget proposal, directing JCT staffers to provide a dynamic score of major tax bills along with their "standard" revenue estimation would not change things one whit even if it were to become law (which it won't).

The JCT is a black box. Congress asks it how much revenue would result from a particular law change and the JCT provides a number and nothing else—no explanation as to how staffers arrived at their conclusion, any underlying assumptions, or whether they accounted for any larger macroeconomic impacts.

The rule that the JCT staff must score any legislative tax proposal imbues the committee with an awesome power. A senator or congressman disliked by the committee who asks the JCT to score a pet piece of legislation might have his request ignored for months at a time or else returned with a score suggesting that his legislation will cost the Treasury billions of dollars. Even if that estimate exceeds what common sense or reality would dictate, it would effectively kill the bill.

If this were a bad 1990s comedy, the pro-marijuana lobby would maneuver to ensure that the head of the JCT gives the estimation assignment to a couple of stoner staffers. But if the marijuana lobby decides to eschew perfidy, it could help the cause of legalization by funding studies for the JCT staff to reference that forecast significant revenue gains for the federal government. For a good deal of legislation, the JCT staff does not use some large, detailed economic model that it can crank up to provide an estimate; instead, staffers look to the existing academic literature, or failing that they turn to other professional studies or data that are relevant to the question at hand.

There are a few existing papers that attempt to do this. Harvard economist and Cato Institute senior fellow Jeffrey Miron wrote a rigorous one estimating that legalization could generate nearly $10 billion in tax revenue a year—not chump change, but insufficient to sway the debate. There are plenty of reputable economists with sterling reputations who would deliver sufficiently big revenue estimates for legalization; throwing money at them would be a good investment for the National Organization for the Reform of Marijuana Laws.

There are not that many members of Congress who want to legalize marijuana at this point. But if legalization would help them to do other things that they earnestly want to accomplish, then it could happen. The billions of dollars that legalization could generate for the Treasury's coffers should be the sole focus of the marijuana lobby. R

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