

Testimony by Hillary Peckham, COO, Etain LLC
Joint Public Hearing on Taxation
February 12th, 2019
Legislative Office Building
Albany, NY

Good afternoon Chairpersons Weinstein, Kreuger and members of the committees. Thank you for the opportunity to testify regarding the Cannabis Regulation and Taxation Act proposed in the Executive Budget.

My name is Hillary Peckham. I am a proud owner and founder of Etain, LLC which is New York's only women and family-owned medical marijuana company. I additionally have the honor of serving as Chief Operating Officer. I offer this speech in order to assist with the important considerations the Legislature must weigh as New York moves toward establishing a viable and expanded cannabis industry.

As one of the first five Registered Organizations in New York, I know first hand the difficulties involved in gaining access to capital to get up and running while continuing to stay a woman-owned business. Most major banks will not accept cannabis money and do not offer traditional lines of credit or debt financing. Those that do, do so at much higher interest rates and charge steep monthly compliance fees for maintaining bank accounts to keep up with additional FINCEN guidelines. With limited traditional startup financing, most cannabis companies are forced to turn to private investors or hedge funds that are generally headed by white male-owned corporate structures. Etain has consistently been put in positions making it immensely difficult to continue to support our business while staying true to our mission of being women-owned.

Based on statistics published by Marijuana Business Daily in 2017: Men account for 90% of the leadership in cannabis investing. The numbers indicate that they may favor management teams led by other men, whether consciously or unconsciously, and women executives, who are under-represented from the start, have a greater difficulty raising money. Only 14.6% of medical marijuana owners and founders are women. As the only Women Owned Cannabis Business in NYS Etain applauds the legislature and Governor for making it a priority to set forth a regulatory framework that will empower and encourage a diverse adult-use cannabis industry. Acknowledging this proposed support, we would also like to call attention to the existing barriers to funding as evidenced by the recent denial of our application for a Job Development Authority Direct Loan through the New York State Economic Development Authority for being a cannabis company and we hope that any new financing program takes in to account the complications that arise when accepting money from cannabis companies.

In line with our support for the state's initiative to include MWBE businesses in the adult use cannabis program, we also strongly disagree with the proposal for an auction to determine which of the existing Registered Organizations can participate in adult use sales. As the only women-owned medical marijuana company in New York, we do not have access to the resources required to participate in an auction competing against publicly-owned companies, and under that circumstance we would either cease to exist or have to sacrifice our ownership structure to gain access to the resources required to participate. A

program where only a few of the existing Registered Organizations are able to participate will also create shortages in supply to our patients and likely collapse for businesses that are not granted access to the adult use program.

Further, the proposed auction would be a significant break with legislation in other states, where it has never been the case that medical marijuana operators are prevented from participating in adult use sales. The proposed auction would have the combined effect of not only significantly increasing costs for companies that successfully buy a license, costs which would be passed into the price of products, but also reducing the number of licensed companies and significantly decreasing the variety and availability of products in the marketplace which should be a priority of any legislature that values patient access to medical marijuana.

Etain additionally requests that the legislature reconsider the proposed taxation rates and structure to ensure a viable industry that can compete and outperform the underground market. For example, the current proposal includes a tax of \$1 per gram of dry-weight cannabis, which is three times as expensive as California's program. And, in fact, California Legislators have already recognized the error in their tax structure by proposing California Assembly Bill 286 ("Temporary Cannabis Tax Reduction bill") which would give legal cannabis businesses a temporary tax break to help them compete with the underground market, which operates at significantly reduced costs. The proposed California amendment would reduce the state's excise tax from 15% to 11% for a period of three years and remove the cultivation tax on growers until 2022.

Additionally, New York's proposed program structures its taxation in such a way that it effectively means products must be designated for either the medical program or adult use program at the point of manufacture. It should be a priority of the legislature to ensure that high-quality products are available in both the medical and adult use programs, so we believe that medical and adult use products should only be differentiated at point of sale through differing sales tax rates.

Further, existing tax structures result in penalties that place an undue burden on medical and adult use marijuana operators. Section 280E of the federal tax code forbids tax deductions or credits related to Schedule 1 substances, including Cannabis. This law, adopted after a convicted cocaine trafficker litigated his right to deduct "ordinary business expenses," was created to deny illegal drug traffickers the tax rights of legal businesses. However, today this prevents legitimate, state-licensed cannabis businesses operating in New York from deducting significant portions of their operating expenses from their taxable income. Although Section 280E is a provision in the Federal Internal Revenue Code, many states conform to the provisions of the Internal Revenue Code for personal income taxes, corporate income taxes, or both. Consequently, Section 280E applies in determining state taxable income for cannabis businesses in New York. Other states (including Colorado and Oregon) have acknowledged this disparate impact on legitimate cannabis businesses and have eliminated the 280E Tax penalty at the state level. I hope that New York will consider following suit to allow cannabis businesses in the state to operate under normal tax assumptions, and improve our ability to reinvest in our employees, communities and reduce cost to patients.

Finally, we believe that the legislature could take more action than is currently proposed to strengthen the medical program to ensure patient access. Participation in the medical program should be at the physician's discretion, not dictated by a legislated list of qualifying conditions. Additionally, all physicians in New York should qualify to prescribe cannabis, without a mandatory course that has led to lack of access to patients and increased the lead times and cost of appointments.

In conclusion, as a native New Yorker I am excited for these proposed changes to state law, and I am hopeful that we will create a program that encourages and promotes a sustainable and diverse industry for New York's residents.

Thank you again for your time and consideration. I am happy to answer any questions you may have.