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TAXES 2/16/2015

### Marijuana Tax Up In Smoke? Don't Worry, Feds Plot 50% Tax

Marijuana activists look to Colorado as a true leader, with legalized recreational use and tiered tax models. Coloradans and activists nationwide thought legalizing marijuana would mean huge tax revenues. Nationwide, there is a near intoxication promising money, jobs, appreciating real estate, and tax revenues that could achieve so much for so many.

Naysayers worry about public health risks, especially for young people. Yet even some naysayers find copious tax revenues alluring. In Colorado, the governor's office estimated it would collect \$100 million in taxes from the first year of recreational marijuana. The state's economists were more conservative, estimating \$67 million. They recently revised it downward to call for taxes of \$58.7 million from recreational marijuana.

Now, Colorado's first year tax haul for 2014 recreational marijuana is a disappointing \$44 million, causing some to say that [Colorado's marijuana money is going up in smoke](#). Yet perhaps that is premature. Colorado was first to regulate marijuana production and sale, so other governments are watching closely. Although disappointing, the \$44 million is nothing to sneeze at. Colorado also collected sales tax on medical marijuana and various fees, for a total of about \$76 million.



Residents of the state could get some of it back due to a quirk of Colorado law. It requires new voter-approved taxes, including these marijuana taxes, to be refunded if state tax collections rise faster than permitted. However, legislators may ask state voters to let the government keep and use the taxes, which the state arguably needs.

Colorado is still getting its bearings. The taxes are significant, but not all the sales are going through legal channels. Perhaps it was silly to think they would. Avenues for cheaper prices in the illegal and medical markets can trump legal recreational sales where tax revenues are highest. That makes perfect sense, and is calling for a re-examination of tax rates and enforcement.

[In Colorado, legalization has surprised both supporters and critics](#), with a mixture of good and bad. Approximately 16,000 people are licensed to work in Colorado's marijuana industry. A Marijuana Group study claims that tourists account for almost 90% of recreational sales in some mountain communities, and 50% in Denver and environs.

Washington state became the second to legalize recreational marijuana. Oregon and Alaska have followed. With four recreational victories, activists are pushing legalization in other states, including California where a ballot measure is expected in 2016. The tax tally is likely to keep growing, if not always as predicted.

In Colorado, there is a 2.9% sales tax and a 10% marijuana sales tax. Plus, there is a 15% excise tax on the average market rate of retail marijuana. It adds up to 27.9%. But with all those [taxes](#), many smokers buy illegally. An estimated 40% of purchases in Colorado are not through legal channels. There is also a growing relationship between the 2.9% medical marijuana tax and the 27% recreational variety.

Some patients may be reselling 2.9% medical stock. A medical marijuana card costs \$15. About 23% of estimated marijuana users in Colorado have medical cards. Meanwhile, the Colorado tax on marijuana has been upheld despite claims that paying it amounts to self-incrimination that violates the Fifth Amendment.

Since marijuana remains illegal under federal law, the argument is that filling out state tax forms admitting buying or selling implicates you in federal crimes. It's a clever argument, but the plaintiffs have lost so far. Yet [the lawsuit challenging the taxes](#) continues. Of course, taxes aren't clear on the federal side either. Federal law trumps state law, and [Section 280E](#) of the tax code denies even legal medical marijuana dispensaries tax deductions.

Some dispensaries go through elaborate gyrations to try to pay income taxes only on their real revenues net of expenses. But there is only so far one can go. Some marijuana sellers operate as nonprofit social welfare organizations or as cooperatives or collectives. And yet taxes could become major under federal law.

The proposed [Marijuana Tax Equity Act](#) would end the federal prohibition on marijuana and allow it to be taxed—at a whopping 50%. The bill would impose a 50% excise tax on cannabis sales, plus an annual occupational tax on workers in the [field of legal marijuana](#). Hopefully, anticipated tax revenues will be based on hard data and realistic projections.

Still, the times, they are a changin'.

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