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Dude, Can Marijuana Beat The Tax Man?

Aren't marijuana growers, dealers and dispensaries just trying to pay their taxes and make a profit like everybody else? In the staid world of tax law, it can seem downright strange to be worried whether someone has "trafficking" tax problems. Such is the odd symbiosis between conflicting federal and state laws.

Federal law still outlaws marijuana even in states that legalize it. Reminiscent of Al Capone, that makes taxes a big problem. [18 states and the District of Columbia](#) allow medical marijuana. [Massachusetts](#) was most recent. See [Medical marijuana law passes in Massachusetts](#). Colorado and Washington legalized even recreational use. See [Colorado, Washington First States to Legalize Recreational Pot](#).

But **legal** dispensaries are still drug traffickers to the feds, so [Section 280E](#) of the tax code denies their tax deductions. Intended to prevent tax deductions by drug dealers, it covers medical marijuana too. The IRS says it must enforce [Section 280E](#) no matter what state law says.



A budtender rolls a marijuana cigarette for a patient at Perennial Holistic Wellness Center medical marijuana dispensary, which opened in 2006, on July 25, 2012 in Los Angeles, CA. (Image credit: Getty Images via @daylife)

Indeed, of all the federal enforcement efforts, taxes hurt most. “The federal tax situation is the biggest threat to businesses and could push the entire industry underground,” the [leading trade publication for the marijuana industry reports](#). One answer is for dispensaries to deduct **other** expenses distinct from dispensing marijuana. See [Californians Helping to Alleviate Medical Problems Inc. v. Commissioner](#).

If a dispensary sells marijuana and is in the **separate** business of care-giving, the care-giving expenses are deductible. If only 10% of the premises are used to dispense marijuana, most of the rent is deductible. Good record-keeping is essential. See [Medical Marijuana Dispensaries Persist Despite Tax Obstacles](#).

Another idea is that Marijuana sellers might operate as nonprofit social welfare organizations. See [Growing the Business: How Legal Marijuana Sellers Can Beat a Draconian Tax](#). That way [Section 280E](#) shouldn't apply. A social welfare organization must promote the common good and general welfare of people in its neighborhood or community. Operating businesses in distressed neighborhoods to provide jobs and job-training for residents? That could fit a dispensary nicely.

Meanwhile, Congressmen Jared Polis (D-CO) and Earl Blumenauer (D-OR) introduced a bill to end the federal prohibition on marijuana and allow it to be taxed. This legislation would remove marijuana from the Controlled Substances Act. That way growers, sellers and users could no longer fear violating federal law. Their [Marijuana Tax Equity Act](#) would also impose an excise tax on cannabis sales and an annual occupational tax on workers dealing in the [growing field of legal marijuana](#).

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