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Feds Move To Snuff Out Medical Marijuana

It must look like a funny lobbying group. Imagine the [marijuana industry lobbying Congress on taxes](#)? But more than most industries these days, marijuana needs a bailout. Remember the 2008 auto industry and financial services deals? Remember 'too big to fail?'

How about too legal to fail? Unlike bailouts, there's no preferential deal being sought here. The marijuana industry just wants to be treated fairly, to be put on the same footing as every other legal business. Now that we have legalized medical marijuana in [18 states and the District of Columbia](#) can these businesses be run like businesses?

You might think the taxes to be collected would be significant at both state and federal levels. But the tax law discriminates so badly that the industry has had to virtually go underground. And when you add the banking law, banks are reluctant to allow even legal marijuana businesses to open accounts in their institutions.



In fact, some banks can face prosecution, and who wants that? Although more and more states have legalized medical marijuana, including the most recent entrant, [Massachusetts](#), “legal” has become an ambiguous term. The state’s marijuana businesses, like those in all the other states, face legal and tax problems.

Colorado and Washington have even legalized **recreational** use. There are tax problems there too. Why? Because even legal dispensaries are drug traffickers to the feds. [Section 280E](#) of the tax code denies them tax deductions, even for legitimate business costs.

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.

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 was presented April 24 at Harvard by Professor [Benjamin Leff](#) of American University’s Law School. Professor Leff’s paper carried an unvarnished title: [Tax Planning for Marijuana Dealers](#). It was part of Harvard’s Tax Policy Seminar hosted by Harvard Prof. [Stephen Shay](#). Mr. Leff correctly pointed out the Section 280E Catch 22 and came up with another end run. Marijuana sellers could operate as nonprofit social welfare organizations, he suggested. 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.

Congressmen Jared Polis (D-CO) and Earl Blumenauer (D-OR) have 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](#). Whatever happens, it's good that someone is paying attention to this mess.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.