



Robert W. Wood

THE TAX LAWYER

TAXES 12/10/2014

Feds Propose Taxing Marijuana, True Cash Crop

With all the upheaval in Washington, it isn't likely that federal proposals to tax marijuana will pass anytime soon. Yet as Professor [Paul Caron catalogs](#), economists are looking anew at the proposed [Marijuana Tax Equity Act](#) (H.R. 501). It would end the federal prohibition on marijuana and allow it to be taxed. Growers, sellers and users would not to fear violating federal law. But dealing with taxes would be another story.

The bill would impose an excise tax of 50% on cannabis sales and an annual occupational tax on workers in the [growing field of legal marijuana](#). Is that a good trade-off? [Federal Proposals to Tax Marijuana: An Economic Analysis](#) by Jane G. Gravelle and Sean Lowry focuses on potential federal marijuana taxes. The authors present justifications for taxes and they estimate levels of tax. They consider possible marijuana tax designs, as well as tax administration and enforcement issues such as labeling and tracking.

Of course, statistics can be deceptive. When Colorado legalized recreational use, it trumpeted the tax revenue it *knew* would be piling in. There's 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. If you add them up, it's 27.9%.



But it turned out that the \$33.5 million Colorado *projected* to collect in the first six months of 2014 was a little too optimistic. When the smoke cleared, [Colorado was missing \\$21.5 million in pot taxes!](#) One explanation is that all those taxes meant many smokers still buy on the black market. Getting numbers on that can be tough.

The Marijuana Policy Group has suggested that perhaps only [60% of purchases](#) in Colorado are made through legal channels. One reason is price, since legal marijuana is more expensive. And the taxes are still being contested. So far, the Colorado tax on marijuana has been upheld despite claims that paying it amounts to self-incrimination violating the Fifth Amendment.

Plaintiffs wanted the taxes on recreational pot outlawed, reasoning that they require businesses and consumers to implicate themselves in federal crimes. The plaintiffs lost on getting an injunction, but [challenges to the taxes](#) continue. The 2.9% medical marijuana tax compared with 27% on the recreational variety is a big spread.

Some patients could be reselling their 2.9% medical stock to the public. A medical marijuana card costs \$15. About 23% of the estimated marijuana users in Colorado have medical cards, according to the Marijuana Policy Group.

Colorado law requires a [refund to taxpayers](#) if the government collects more than expected. Some say fear of refunds made for big estimates by the government. Colorado authorities might be

chagrined to know that [legal pot in Washington is bringing in even more tax revenue than predicted](#). On the other hand, they might be mollified to know that taxes aren't all that clear even on the federal side.

Under federal law, marijuana is still illegal, classified as a controlled substance, even for medical use. Thus, even legal medical marijuana businesses have federal income tax problems. [Section 280E](#) of the tax code denies even legal dispensaries tax deductions, and the IRS says it must enforce the tax code. Dispensaries can deduct expenses from other businesses 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. In allocating expenses between businesses, good record-keeping is essential. But there is only so far one can go. Some marijuana sellers operate as nonprofit social welfare organizations or as cooperatives or collectives.

This isn't the only context raising the [conflicting federal and state laws over marijuana](#). Yet as medical marijuana has gained widespread acceptance and now recreational marijuana is taking hold, the federal vs. state conflict grows deeper.

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.