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Lawyers Debate Best Ways To Sell Marijuana--No Joke

No joke. At the recently concluded American Bar Association Annual Meeting in San Francisco—as at most other gatherings—lawyers like to talk. They may be contentious or cooperative, but they do like to talk. Especially about something controversial, and especially about outsmarting the government.



From that viewpoint, medical marijuana is a perfect storm. And the lawyers don't need munchies to talk about it. California is one of many states in which the medical marijuana industry—and the lawyers that represent its players—struggle for survival and legitimacy.

Prosecutors continue to take a hard line on marijuana infractions. And some lawyers in private practice are looking at the best way to make sales. Mind you, we're talking about **legal** sales of medical marijuana. See [Experts examine legal and ethical issues related to medical marijuana](#).

It's that old oil and water issue of federal vs. state law. Many states—21 of them now—have legalized marijuana for medical use. Several states—Washington and Colorado—have legalized it completely. Yet under federal law, marijuana is still a Schedule 1 controlled substance.

No matter how good a patient's medical needs may be or how many doctors line up on the patient's behalf, marijuana is still a no-no to the feds. And this is not merely academic. The enforcement of federal law is real, no matter what state law allows.

Given the prevalence of medical marijuana dispensaries in California and elsewhere, this issue is unlikely to go away entirely anytime soon. For one, the tax problems of the industry are notorious. See [Voters Say Yes To Marijuana, IRS Says No](#). Even legal dispensaries are drug traffickers to the feds.

As a result, [Section 280E](#) of the tax code denies even legal dispensaries tax deductions. 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 reported](#).

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 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.

Yet in some ways, the industry is going corporate—[Is Medical Marijuana Going Corporate?](#)—and that trend continues. See [Medical Marijuana Goes Even More Corporate](#). What should medical marijuana dispensaries do to avoid trouble with the IRS and the Department of Justice? One question is whether dispensaries should be structured as cooperatives or collectives.

A cooperative is owned and governed by members. A collective is much less structured. And as the revelation that even [Harvard Law School offers 'tax planning for marijuana dealers'](#), it's plain that in some sense, the industry has really arrived. In others—tax and banking and credit card processing for patients—the industry is still barely off the ground.

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.