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Marijuana Tax Millions? Hallucinations Up In Smoke, Yet Feds Propose 50% Federal Tax Too

Excited Coloradans thought legalizing marijuana would mean huge tax revenues. They were hardly alone. Nationwide, with medical marijuana, and especially with recreational, the drum beat has been about money, jobs, real estate upticks, and spillover effects into many fields. The loudest cries of all have been about needed tax revenues that could achieve so much.

The counterpart to legalization efforts has been naysayers worried about public health risks and children. But even some naysayers are influenced by the allure of copious tax revenues. In Colorado, less than a year ago, the governor's office estimated a \$100 million tax haul from recreational marijuana taxes in the first fiscal year. But that was then. In reality, legit sales are slower than expected.

Colorado economists were more conservative than the governor, estimating \$67 million in taxes for the year. But recently they revised even that figure downward with a more tepid forecast that calls for \$58.7 million in tax revenue from recreational marijuana. One of the culprits has surely been the higher taxes that give medical marijuana a far lower price point, even when you factor in the modicum of hassle to buy it. And then there are illegal sales from suppliers who are still in business.



Tax disappointments are not the only impact of legalization that has been different than predicted. [In Colorado, legalization has surprised both supporters and critics](#), in some positive and some negative ways. 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 became the second legal recreational state. Oregon and Alaska approved legalization measures in November. With four recreational victories, activists are pushing legalization in other states, including California. A ballot measure there is expected in 2016. The tax tally is likely to keep growing, just 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 in a metaphorical next morning, tax collections are lower than anticipated. One explanation is that with all of those [taxes](#), many smokers still buy on the black market. In fact, an estimated 40% of purchases in Colorado are not through legal channels.

In addition, there's a growing relationship between the 2.9% medical marijuana tax and the 27% recreational variety. This spread suggests that some patients could be reselling their 2.9% medical stock. For medical use, you visit a doctor, but the hurdle isn't high, nor is the cost. A medical marijuana card costs \$15. About 23% of estimated marijuana users in Colorado have medical cards.

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. The IRS says it has no choice but to enforce the tax code, but the tax problem is huge. 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. The proposed [Marijuana Tax Equity Act](#) would end the federal prohibition on marijuana and allow it to be taxed. That way growers, sellers and users would not fear violating federal law. But much of this bill could follow the same path as Colorado, setting high expectations for revenues.

The bill would impose an excise tax of 50% 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.

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