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### Medical Marijuana Tax Woes

If you pay tax in California, you know that the state's taxing authorities often adopt a take no prisoners attitude. See [Notes From California's Tax Trenches](#). Compared to the IRS, the Golden State's tax collectors are more rough-and-tumble like 49ers. And with a sagging economy and big budget deficits, new sources of tax revenue are needed.

Take the Amazon tax. [Should you register for California's Amazon tax?](#) Most would say no, and Amazon is already fighting back. See [Amazon Fights Back Against Online Sales Tax Law](#). Of course, there are big questions: [Is Internet Tax Constitutional?](#)

Meanwhile, California needs revenue. California's sales tax is administered by the [California State Board of Equalization](#) ("SBE"), which has taken the position that [medical marijuana dispensaries](#) are subject to sales tax and must pay. The Golden State says sellers of marijuana are required to hold a seller's permit and to file and pay sales tax. Sellers who sell without a permit face a frightening eight year statute of limitations on back taxes, penalties and interest. See [Even The IRS Has Time Limits](#).

Of course, sales tax isn't the only issue. As I noted [here](#), the IRS also has issues with medical marijuana. Under federal tax law, Internal Revenue Code [Section 280E](#) precludes deductions for any business trafficking in controlled substances. For that reason, some dispensaries have been stuck paying tax on their gross income, not on their net after expenses!

See [Californians Helping to Alleviate Medical Problems Inc. v. Commissioner.](#)

Fortunately, while this case disallowed the expenses of selling marijuana, it ruled the dispensary was **also** engaged in care-giving. The expenses for **that** business were OK. It turned out only about 10% of the premises in [Californians Helping to Alleviate Medical Problems Inc. v. Commissioner](#) were used to dispense marijuana, making most of the rent deductible.

**What License?** Although medical marijuana businesses are regulated, some dispensaries don't bother with a sales tax permit. In one recent case, [Appeal of Berkeley Patients' Group, Inc.](#), the question was whether marijuana dispensaries qualified as exempt health facilities. California's SBE focused on the line between dispensaries and licensed pharmacies.

Sales of medicines are exempt from California sales tax if prescribed by a licensed physician and dispensed by a licensed pharmacist, or furnished by a health facility pursuant to the order of a licensed physician ([Revenue & Tax Code Section 6369](#)). In [Appeal of Berkeley Patients' Group, Inc.](#), everyone agreed the marijuana was a "medicine." They even agreed that a doctor's recommendation for medical marijuana is a "prescription."

But the SBE argued the dispensary did not qualify as a clinic for purposes of the health facility exemption. The state Health and Safety Code required the clinic to be licensed as a clinic while the dispensary was not, said the SBE. That meant the clinic owned a whopping \$6.5 million in taxes.

Inside or outside the realm of medical marijuana, sales tax often turns on hypertechnical rules many businesspeople find difficult to understand. If you're in business, get some professional advice to be sure you're sales tax compliant. Eight years of back taxes, penalties and interest can be a crushing burden.

For more, see:

[CA SBE Information On Medical Marijuana](#)

[State To Collect Sales Tax On Medical Marijuana](#)

[Sweetening The Pot: Taxing Medical Marijuana Reaps Benefits In San Jose](#)

[Obama Administration Backs Off Pledge Not To Interfere With State Medical Marijuana Laws](#)

[Sales Tax On Medical Marijuana: Dispensary or Clinic?](#)

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