

Medical Marijuana: Big Pharma's Campaign to Eliminate State-Sanctioned Cannabis Competitors?

Can a New Loophole Help Medical Marijuana Sellers Avoid High Taxes?

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As Colorado, California and Washington including 16 other states enjoy freedom under state law to operate legal medical marijuana-cannabis businesses the owners are often faced with arrests and constant harrasment by Drug Enforcement Administration (DEA).

Though some states have legalized the sale of marijuana for medical purposes, the practice remains a felony crime under federal law.

Even if marijuana operators avoid arrests the almighty Feds inflict more damage by imposing astronomical "high taxes" on a state-sanctioned marijuana-cannabis, taxes as high as 75-80 percent. Some dealers, unable to pay employees and overhead, combined with the burden of extra high taxes, must shut down, thus preventing sick patients, preferring cannabis treatment, from getting the care they desperately need.

Cannabis dealers argue that "high taxes" imposed upon their businesses is the Feds political goal: to run them out of business and the bigger picture is to eliminate competition against the giant pharmaceutical industry which makes billions selling drugs to treat illnesses at a higher cost.

But evidence has proved that a person can purchase cannabis from a state legalized operator and receive effective treatment at a much lower cost.

With billions of dollars in the bank, the pharmaceutical companies pay millions for anti-marijuana lobbying efforts to sway Congress not to legalize marijuana under federal law. The smoking gun in this drama has raised the curtain on the pharmaceutical industry now marketing an FDA approved cannabis medicine to undercut the growing market dominated by the states.

As the battle over taxation take center stage, a tax expert insists there is a loophole under 501(c)(4), that if used properly, the technique may eliminate excessive tax burdens, threatening to ruin the medical cannabis businesses.

"If these state-legal businesses were treated as any other legal business, these industries could realize its' full potential to create many, many more living wages, like retail, manufacturing and agriculture jobs that cannot be outsourced," says Betty Aldworth, a deputy director with National Cannabis Industry Association. "An industry that can provide thousands of jobs is being held back by these crazy tax rates."

How is this number game legally possible? Thanks to a 1982 provisional tax code known as

280E, a federal law created as result of a drug dealer's successful attempt to reclaim his yacht, weapons and even the illegal bribes he paid off as business expenses. 280E prohibit individuals involved with selling narcotics from deducting expenses if federal income taxes are filed. Legal marijuana sellers have vigorously tried to avoid the draconian 280E law by arguing their businesses were charities promoting health benefits and should be exempt from income tax under section 501(c)(3).

IRS lawyers bullishly oppose 501(c)(3) status given to state sanctioned marijuana sellers by issuing a counter-point argument that because of a rule called the "public policy doctrine". This doctrine disqualify dispensaries as a charity because the Feds say these kind of businesses exist for illegal purposes under federal law.

Professor Benjamin Leff, a tax law expert at American University Washington College of Law, thinks he has a clever solution to free legit marijuana dealers from the Feds insane tax laws.

"I don't know if anyone has applied or not but marijuana sellers should run their business as a social welfare organization under 501(c)(4)."

To qualify under this statute, Leff said, "A social welfare organization must have as its primary purpose the promotion of the common good and general welfare of the people in neighborhoods or communities."

Leff wrote a compelling report on the practice that was hosted at a Harvard University seminar titled: Tax Planning For Marijuana Dealers.

In a email sent to this Chronicle contributor, Professor Leff said, "It occurred to me the primary obstacle to tax-exempt status for marijuana sellers under 501(c)(3) called "public policy doctrine" is that it just doesn't apply to social welfare organizations and the basic reasoning is this: "Because of a provision that applies only to people trafficking in controlled substances under 280E. Marijuana dispensaries are required to pay taxes not on their profits(like other businesses) but pay IRS based on gross revenue after substracting the cost of marijuana they sell."

Leff further said under this theory,

"legal marijuana dealers have to pay more taxes than they would have if they were selling other products. And it is possible, the professor adds, a dealer would have to pay more taxes than they earn!"

"So when taxes get too high, it's possible to drive compliant dispensaries out of business."

In 2009, the global pharmaceutical market was worth an estimated \$837 billions and by 2014, the amount expected to rise at least \$1 trillion dollars. What helps to keep state-sanctioned cannabis dealers in business so far is the fact the Big Pharma cannot legally patent the plant that makes marijuana. Medical marijuana is often referred as the world's wonder drug, a simple substance which provides effective treatment for pain, cancer, nausea, PMS, Lyme disease, ADD and other major ailments.

In a study conducted by Reiman, 66 percent of patients used cannabis as a substitute for prescription drugs while 68 percent used cannabis as a substitute for prescription drugs to treat chronic illness. And 85 percent of patients reported that cannabis had fewer side effects than other prescribed medicine.

Just how many other drugs are more effective?

“There’s nothing in our current pharmacopodia that comes close,” says Michael Backes, owner of the Cornerstone Research Collective, an L.A. California-based medical marijuana dispensary.

Political Battles: Pharmaceutical Industry Competes With Marijuana Dispensaries By Marketing Prescription-based Cannabinoid Medicine?

Medical marijuana activists pinpoint the giant pharmaceutical industry as a driving force in helping the Feds overthrow their businesses. This theory may seem more of an overreacted imagination but there is substantial evidence that pharmaceutical companies are aggressively marketing cannabis products which is the backbone for marijuana dispensaries. Activists cite the fact that the cannabis they sell much cheaper to ailing patients as the reason the pharmacies are concerned this could easily cut into their high profits of selling similar conventional cures.

As mentioned earlier pharmaceutical companies has already marketed FDA-approved prescription-based cannabinoid medicines. Therefore it doesn’t take a Harvard genius to realize that state-sanctioned marijuana dispensaries are competitive.

For instance, according to opensecrets.org, major pharmaceutical companies contributed millions of dollars during presidential and senate races. In 2004, pharmaceutical companies contributed \$16 million into federal elections amongst Democrats and Republicans. In 2011, the industry spent \$150 million on lobbying in Washington D.C. President Barack Obama received \$1.2 million dollars from the pharmaceutical industry in 2008, a triple amount when compared to funds given to John McCain.

Research shows that since Obama took office, federal agents conducted more than 200 raids of medical marijuana operations nationwide. Around October 2012, the Feds sent over 300 letters to landlord’s that dispensaries rented from, threatening property owners with criminal charges if they did not evict their tenants. Research shows that the top five special interest groups lobbying to keep marijuana illegal are police unions, private prison corporations, alcohol and beer companies, prison guard unions and of course the pharmaceutical industry.

Professor Leff outlines his strategy for marijuana sellers to possibly avoid the Feds “public policy” draconian tax law:

- (1) Leff suggests the dispensaries employ persons who may be hard to employ (like former marijuana sellers) and provide career training and mentorship for those people.
- (2) Marijuana stores should operate to improve the business conditions of a distressed neighborhood. That means both are trying to bring business into a neighborhood with less retail as well being a good neighbor to other businesses and residents. Ideally, Leff further says, marijuana sellers should partner with an existing organization that is already seeking to improve the neighborhood.

(3) The second restriction may also be a big one. A 501(c)(4) organization (social welfare) cannot be owned by anyone and cannot distribute its profits to anyone. So, if you have an existing financially invested dispensary, a person needs to get legal advice to determine how to transform that investment into a type allowable for non-profits.

When asked if expenses are deductible if a dispensary runs a business as a caregiver, Leff points out, "Even without doing any of the nonprofit stuff that I'm talking about, a court has held that the costs incurred by a dispensary in providing caregiving services is not subject to 280E (which denies deductions for cost incurred in selling marijuana)."

"But a dispensary that sells marijuana and also provides care giving services still must allocate its expenses between the two activities, and keep records sufficient to justify its allocation."

"So it's not the case that a dispensary providing care giving services can deduct all of its expenses."

Meanwhile, Congress Jared Polis (D-Colorado) and Earl Blumenauer (D-OR) introduced a bill to end the federal prohibition on marijuana and allow it to be taxed. This much needed legislation will remove marijuana from the Controlled Substance Act.

Bottom line: Until the tax code and the law governing federal controlled substances are firmly modified by lowering taxes and have dispensaries legally sanctioned under federal law, then the current marijuana businesses will continually face the onslaught of high taxes and possible arrests by the federal government, a tactic seemingly designed to undermine committed efforts of dealers selling legal weed to patients who use the substance to mitigate their pain and suffering.

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