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Despite Legal Marijuana Rules In 20 States Feds Won't Play Ball

Washington State has set rules for retail production and sale of marijuana. The State Liquor Control Board sealed the deal in less than an hour, unanimously approving regulations covering production, processing and retailing. Land is allocated, 40 metric tons of production is allowed annually, and even marijuana-infused products are monitored in solid, extract and liquid form. See [Washington State Sets Pot-Sales Rules](#).



(Photo credit: warrantedarrest)

Sounds pretty organized compared with our nation's capital. Not every government is gridlocked and unable to inch toward progress. It was only last November in [Initiative 502](#) that Washington voters legalized the possession, consumption and purchase of marijuana. Although Internet sales and home delivery are verboten, 334 retailers are to open next year.

But even Washington State wasn't always a well-oiled machine. Over the last year, there were raucous public hearings. The State's Liquor Control Board hired [Prof. Mark Kleiman of UCLA](#) to research Washington's existing marijuana market. He estimated Washington's medical and illicit consumption generates approximately \$1.2 billion in sales annually.

The new regulations spell out many details. For one, the time to apply for a license in retailing, growing or processing will be open for 30 days starting Nov. 18. And while some will complain, it seems deftly handled for now, especially when contrasted with so much at the federal level. It's been only a year since voters in Colorado and Washington [voted to legalize marijuana](#).

For much longer than that, we have had legalized medical marijuana. The tally is now [20 legal medical marijuana states and D.C.](#) Yet in the Fed's view, regardless of state legality, marijuana is a controlled substance and illegal under federal law. Recently, though, the Department of Justice [issued a response](#) suggesting that it will lay off the raids and prosecutions.

But the feds will lay off only if the states create "a tightly regulated market" with rules that address federal "enforcement priorities" such as preventing interstate smuggling, diversion to minors, and "adverse public health consequences." Those phrases seem imbued with discretion. This [memo](#) to U.S. attorneys makes clear that the DOJ can still prosecute growers and sellers.

On top of this, the tax problems of the industry are one of the major impediments facing the industry. And the main culprit is Congress, not the IRS. [Section 280E](#) of the tax code denies even legal dispensaries tax deductions. In the past the IRS has said it has no choice but to enforce the tax code passed by Congress. "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 has been for dispensaries to 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.

Good record-keeping is essential. See [Medical Marijuana Dispensaries Persist Despite Tax Obstacles](#). And even if one is aggressive in allocating expenses between business, there is only so far one can go. Another idea is for marijuana sellers to operate as nonprofit social welfare organizations. That way [Section 280E](#) shouldn't apply.

The industry needs to operate more like other businesses. See [Medical Marijuana Goes Even More Corporate](#). Sometimes such matters involve

structural questions. To avoid trouble with the IRS, some claim that dispensaries should be organized as cooperatives or collectives.

Legislation proposed by Congressmen Jared Polis (D-CO) and Earl Blumenauer (D-OR), the [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 be in fear of violating federal law. The bill would also impose an excise tax on cannabis sales and an annual occupational tax on workers in the [growing field of legal marijuana](#).

There are bigger problems in Washington DC, of course. But on these issues, DC could surely learn something from the State of Washington.

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