



Robert W. Wood

THE TAX LAWYER

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Heroin Dealers Can Deduct Samples On Their Taxes, But Medical Marijuana Dispensaries Can't Deduct Rent?

A convicted heroin dealer has a tax problem. He's still in prison, mind you, but he also owes taxes. In fact, [he owes 80,000 euros](#), although the French authorities did ease up on how they computed the tax bill. After all, every business has expenses, including illegitimate ones.

The French tax authorities allowed the convicted businessman to deduct his costs for transporting the stuff—let's call them muling expenses. What's more, it was even OK for him to deduct the cost of the heroin he consumed **himself**, they said. See [Convicted heroin dealer told to pay 80,000 euros in tax on drugs](#). After all, business is business.

As a general matter, taxes apply to every business. Whether the products you sell are legal or contraband, profits are taxable. The tax bill in question involved revenue from dealing drugs, but the expense side of the ledger seemed especially strange.



Heroin (Photo credit: Wikipedia)

The French authorities said, “Your personal consumption has been evaluated at four grammes per day, which can be deducted from your sales.” Plus, since the tax bill acknowledged that the dealer’s primary supplier was in far off Belgium, there were allowable travel expenses, too. Despite such allowances, the dealer’s lawyers are challenging the taxes.

Indeed, some of the dealer’s assets and cash were confiscated. There’s even a claim that the French authorities are double dipping. In any case, French authorities are not as used to taxing criminals as their American counterparts. It was only in 2009 that a French law was enacted to tax crooks.

In contrast, the U.S. has a long and rich tradition of taxing the criminal element. The infamous [Al Capone](#) was convicted not of murder, graft or racketeering, but of income tax evasion. No matter how you make your living, the tax laws apply, and income is income.

Still, we generally pay tax on **net** not **gross** income. But for criminals, if you report your illegal income, it may be admitting to a crime. Claiming tax deductions can look even worse than reporting income in the first place.

Illegal payments like paying a hitman to get rid of a competitor are not deductible. Beyond such obvious rules, there are additional limitations on deductions that are much less understandable. Although French law and U.S. law are different, when you consider the French heroin dealer it makes it that much harder to understand the confounding problem of legal marijuana dispensaries that can’t claim tax deductions.

As the medical marijuana industry has learned the hard way, [Section 280E](#) of the tax code denies even plain vanilla tax deductions for those dealing in “controlled substances.” It’s the mismatch of federal and state law, but the issue could easily be fixed. It hasn’t been, so a legal industry is being pushed underground, as the [leading trade publication for the marijuana industry reports](#).

One interim answer has been for medical marijuana dispensaries to deduct expenses from **other** businesses that are 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.

Of course, good record-keeping is essential. See [Medical Marijuana Dispensaries Persist Despite Tax Obstacles](#). And that means transparency too. Still, one must be careful about exactly what one claims and how one describes it. After all, tax evasion—intentional conduct to defeat the income tax laws—is a felony.

It carries a prison term up to five years, and any sort of tax scheme to cheat the government can fall into this broad category. Even misdemeanor tax charges can be serious. Wesley Snipes beat the more serious charges and was [convicted of three misdemeanor counts](#) of failing to file tax returns in 2008.

Hopefully the tax laws applying to legal medical marijuana dispensaries will be reformed soon.

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.