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Medical Marijuana Dispensaries Keep On Truckin' Despite IRS

If you live in a state with legal medical marijuana dispensaries you probably know that the feds do what they can to stamp them out. It's that old federal versus state law tension. In the case of pot dispensaries, the tension is palpable.

And while the feds are doing everything they can to put out the pot fires, there are already around 2,300 legal dispensaries in the U.S. with more opening all the time. The nationwide crackdown involves a multi-pronged approach, and that's not easy for the dispensaries or for the people who rely on them. Although taxes aren't at the top of most people's list, it surprises even some tax lawyers that obscure tax rules are having such a big impact.

Our tax code is now so massive that even experienced tax lawyers don't know about every provision. The obscure provision in question is [Section 280E](#). It precludes deductions for any business trafficking in controlled substances. It's meant to stop drug dealers from claiming tax deductions.

Its current (and surely unintended) effect? Even if state law **allows** marijuana for medical use, federal law **still** classifies it as a controlled



substance. Many legitimate businesses are being denied tax deductions. The IRS may even be powerless to fix it—Congress enacts the tax code, not the IRS.



In the meantime, the dispensaries remain in the crosshairs. Notable cases include California's massive [Harborside Health Center](#). On the surface, the IRS seems to have an open and shut case since the language of [Section 280E](#) is clear. But the U.S. Tax Court has ruled that marijuana dispensaries can legally deduct expenses associated with all activities **except** dispensing marijuana, and that's providing some relief. See [Californians Helping to Alleviate Medical Problems Inc. v. Commissioner](#).

The court disallowed expenses of selling **marijuana**, but ruled the dispensary was **also** engaged in the **separate** business of care-giving. All **those** expenses were OK. It turned out only about 10% of the premises were used to dispense marijuana, making most of the rent deductible.

If a dispensary **only** sells marijuana, all deductions could be verboten. But if much of the work goes beyond the sale, such as counseling patients, education and advocacy, all expenses associated with **those** activities can still be deducted. That makes good record-keeping essential, perhaps even more important than with other businesses. See [Medical Marijuana Dispensaries Persist Despite Tax Obstacles](#).

A large expense for a dispensary is normally inventory costs—buying product for resale. Despite the prohibition on deductions, it appears that the cost of goods sold—even marijuana—can be claimed. Again, good records are key.

For more, see:

[Feds Send California's Legal Pot Dispensaries Up In Smoke](#)

[Stirring the Pot: Could Legalizing Marijuana Save the Economy?](#)

[High Roller: How Billionaire Peter Lewis Is Bankrolling Marijuana Legalization](#)

[Medical Marijuana Tax Woes](#)

[Medical Marijuana Tax Problems?](#)

[Toking And Taxes Don't Mix, Says IRS](#)

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