



Marijuana industry eager to pay taxes – and cash in on deductions

By Rob Hotakainen
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As Congress wrestles with big budget cuts, one budding industry wants to help out the federal government with a novel message: Tax us, please.

Marijuana businesses and their backers say legalizing the drug and taxing it like alcohol would add billions to the federal treasury.

Some analysts dismiss a pot tax bonanza as far-fetched, neither likely nor lucrative. But the idea is stirring newly serious debate on Capitol Hill.

The Senate Finance Committee, for instance, included marijuana taxes in an “options paper” listing fresh possible sources of revenue.

In the House of Representatives, legislation is pending on two tracks. The first would legalize marijuana, tax it and regulate it on a national scale. Even advocates don’t expect that to pass anytime soon. A less ambitious bill called the Small Business Tax Equity Act would allow the Internal Revenue Service to provide immediate breaks on federal income taxes for marijuana businesses.

As Congress sorts through the proposals, members must confront a central irony: As pot is growing in popularity – and is given a legal OK in some states – that puts marijuana businesses in a stronger position to argue for tax breaks for selling a drug that’s still outlawed nationally.

Some warn that if Congress doesn’t treat pot sellers like other businesses, state plans to tax and regulate marijuana for recreational use in Washington state and Colorado are doomed to fail when they start next year.

“How can you run a business if you’re not receiving the same tax breaks?” asked Democratic Rep. Adam Smith of Washington state, one of 13 House members who are promoting the bill that would authorize the deductions for marijuana businesses.

There are plenty of skeptics.

“There’s just so much utter nonsense about this issue,” said Jeffrey Miron, the director of undergraduate studies in the department of economics at Harvard University and a senior fellow at the libertarian Cato Institute in Washington, D.C. He specializes in the economics of illegal drugs.

“If they don’t like the fact that they can’t take certain tax deductions because they’re in an illegal business,” he said, “then they should go in some other business where they can take tax deductions.”

Under the legalization bill, introduced by Democratic Reps. Earl Blumenauer of Oregon and Jared Polis of Colorado, marijuana would be taxed to help pay for substance abuse treatment and law enforcement and to reduce the federal debt.

They estimate that a \$50-per-ounce tax could raise up to \$20 billion a year. By comparison, the alcoholic beverage industry pays \$7.9 billion in federal excise taxes each year, while excise taxes on tobacco totaled \$15 billion last year, according to the federal Alcohol and Tobacco Tax and Trade Bureau. Those totals don’t include state and local taxes.

“We’re just waiting for that door to open and we’ll happily come walking in with lots of tax revenue,” said Steve DeAngelo, who runs a medical marijuana dispensary in Oakland, Calif., and helped the city pass a 5 percent tax on cannabis-related sales in 2010.

Rob Kampia, the executive director of the pro-legalization Marijuana Policy Project, called it “a man-bites-dog story.”

“Very rarely in D.C. will you see an instance where someone is saying they want to be taxed,” he said.

The narrower bill would make it legal for marijuana-related businesses to deduct rent and other business expenses from federal taxes.

Rep. Smith called it an effort “to respect the law” that Washington state voters passed approving recreational sales. While he favors the tax breaks, Smith said he was opposed to the broader national legalization bill.

“Let’s walk before we run here,” he said. “Let’s see how it works in the states.”

Rob Mikos is a professor at Vanderbilt University Law School in Nashville, Tenn., who teaches courses in federalism, criminal law, and drug law and policy. He said the state legalization plans might backfire on pot sellers because marijuana remained illegal at the federal level.

Attorney General Eric Holder has yet to announce how the federal government will respond to the state legalization plans. So, Mikos said, marijuana sellers still could face prison terms or have their assets seized. And he said sellers could provide federal authorities with “the smoking gun” just by reporting their sales.

“If you’re somebody who’s reporting monthly to the Colorado Department of Revenue or the Washington Department of Revenue exactly how much marijuana you’re selling,” Mikos said, “that’s very incriminating evidence.”

He said states would be unable to block the federal government from gaining access to those records.

Last month, federal Drug Enforcement Administration agents raided four medical marijuana dispensaries in Washington, one of 20 states that have approved the use of medical marijuana.

Some experts say that doesn’t portend good news for Washington state or Colorado pot sellers.

“It would be hard to imagine (federal authorities) not taking some action against recreational providers if they’re going after medical marijuana providers,” said Marvin Kirsner, a tax attorney in Boca Raton, Fla., who works with Greenberg Traurig, an international law firm.

As the states proceed with their plans, they’re eyeing big money from sales.

In Washington state, officials predicted that legalization could produce \$1.9 billion in revenue over five years. Backers sold the plan by promising to impose taxes of 25 percent at three levels: on producers, processors and retailers.

Opponents say any revenue from marijuana would constitute just a trickle, with the government facing a debt of \$17 trillion.

“Even if it is going to be billions of dollars, that’s still nothing – a billion is one-thousandth of a trillion,” Harvard’s Miron said.

But Kampia, the legalization advocate, said he was confident that marijuana taxes could make a difference.

“I would never say that marijuana is going to solve the budget problem, because that would be an absurd statement,” he said. “But we’re talking about a few billion dollars at the federal level. . . . That’s real money.”

DeAngelo, the executive director of the Harborside Health Center marijuana dispensary, said he was the No. 2 retail taxpayer in Oakland. He forked over \$1.5 million to the city last year. But he’s at odds with the federal government, and he said he had “an immediate stake” in the battle as he challenged a \$2.5 million tax bill from the IRS. Even though the drug is illegal at the federal level, medical dispensaries must pay federal taxes.

“We were denied all of our deductions on the grounds that we’re a drug-trafficking organization,” DeAngelo said.

DeAngelo said Congress should move quickly to legalize marijuana for medical and recreational purposes, saying it was “the perfect moment” as the nation faced its fiscal crisis.

“There’s not really any other industry in the country – let alone one that can bring in tens of billions of dollars in tax revenue – that’s standing up and raising its hand and saying we’re ready to step up to the plate and help the country solve its problems, but we are,” he said. “We hope that Congress will hear us.”