

Feds unlikely to pursue Michigan medical marijuana, but treasury will

There is good news and bad news for the fledgling marijuana industry in Michigan.

The good news first: The federal budget passed by Congress and signed by President Donald Trump on Friday includes language that continues the policy that the federal government shouldn't use resources to enforce federal drug laws in states that have legalized medical marijuana.

The bad news: The state Department of Treasury sent out a bulletin earlier this year that it expects medical marijuana card holders to pay a 6% tax whether they purchase the product from a dispensary operating with a state-issued license or from a caregiver operating under the old law that was approved by voters in 2008.

This is a departure for patients who will continue to use a caregiver — a person certified to grow 12 plants for each of five patients, say medical marijuana cardholders. They haven't paid taxes on the products they've purchased since the old medical marijuana law was passed.

But it will be an honor system for those patients because they'll have to claim what they've purchased on their annual state tax returns as a use tax. Cardholders who use dispensaries will pay a 6% sales tax — along with a 3% excise tax — when they purchase the product at a dispensary.

Marijuana advocates are calling it the "patient tax."

"Until earlier this year, the Treasury Department didn't want anything to do with patient-to-caregiver transactions," said Rick Thompson, a board member of the Michigan chapter of the National Organization for the Reform of Marijuana Laws or NORML. "Any change of this magnitude should be initiated by an act of the Legislature. It shouldn't be up to the purview of a state department or department head."

If you or someone you know is facing charges as a result of Medical Marijuana recommended to you as a medical marijuana patient under the Michigan Medical Marijuana Act, contact Komorn Law and ensure your rights are protected. Michael Komorn is recognized as a leading expert on the Michigan Medical Marijuana Act. He is the President of the Michigan Medical Marijuana Association (MMA), a nonprofit patient advocacy group which advocates for the rights of medical marijuana patients and their caregivers.

Contact us for a free no-obligation case evaluation at 800-656-3557.

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On the enforcement front, the federal government considers marijuana an illegal controlled substance, but 30 states have legalized cannabis for medical use, including eight states and the District of Columbia that also have legalized marijuana for recreational use. The federal budget language clarifies that states with medical marijuana laws shouldn't be a target for federal prosecution.

"It's great news because it takes the teeth out of (Attorney General Jeff Sessions' decision to rescind the Cole memo," said Alex Leonowicz, an attorney with the Howard & Howard law firm in Royal Oak.

That memo, signed in 2013 during the administration of President Barack Obama, discouraged the Department of Justice from using federal resources to prosecute marijuana crimes in states that had legalized marijuana for recreational or medical use. And while that policy has been reversed, the recently passed federal budget doesn't contain any money for medical marijuana enforcement.

"And nobody works for free," Leonowicz said.

Left a bit in limbo, though, is the recreational market, which isn't included in the language of the federal budget. Michigan voters may get to weigh in on the subject if a proposal to legalize marijuana for adult recreational use gets on the ballot in November.

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"It's important for any new industry to have continuity of regulations," Thompson said. "It's important for people who want to engage in industry as well as the financiers and bankers who are going to go out on a limb to support the industry."

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Josh Hovey, spokesman for the coalition that is pushing the legalization ballot proposal said they're not too concerned about the lack of recognition from the federal government for the recreational marijuana market.

"Based on recent polls, people in Michigan believe prohibition is a failed experiment and they're ready for something different," he said, citing a poll done earlier this month by the Lansing-based polling firm EPIC/MRA, which showed 61% support for legalization.

The poll was paid for by Michigan NORML.

As for the 6% tax, the state Treasury Department issued the bulletin earlier this year that it expects medical marijuana cardholders to pay the 6% tax on the products they purchase no matter where the product is sold.

"A qualifying patient that receives marijuana from a primary caregiver is liable for use tax at a rate of 6% of the purchase price of the marijuana," the bulletin states. "Use tax should be remitted and reported annually on the qualifying patient's Michigan Individual Income Tax Return."

Angie Roullier, 43, of West Bloomfield was one of the first medical marijuana cardholders after the 2008 ballot proposal passed and the cannabis has provided tremendous relief from her symptoms of muscular dystrophy.

"The state's getting their money whether you walk into a dispensary or not and it's the only medication that is taxed," she said. "And that's BS."

While there haven't been similar bulletins sent out by the Treasury Department in recent years, spokesman Ron Leix said the tax on medical marijuana is not new and similar to the 6% use tax people are supposed to pay for online purchases in which the business doesn't charge sales tax.

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“It’s an honor system,” said Treasury Department spokesman Ron Leix, and not particularly easy to enforce.

The 6% use tax is consolidated into one line on state tax returns, so it’s impossible to tell if or how much medical marijuana cardholders have paid over the years.

“If they have, it’s been minimal,” Leix said.

As for further individual notifications to medical marijuana cardholders, who decide to continue to use caregivers rather than dispensaries, Leix said, that task would be impossible because of medical privacy laws that prohibit the disclosure of the names of cardholders.

“What I like to call this tax is the pass and pretend laws,” Thompson said. “They pass the laws and we pretend that people are going to comply.”

But Leonowicz said the Treasury Department bulletin is an attempt to level the playing field for medical marijuana customers.

“It’s a loophole that needs to be closed. If you don’t put everyone on the same plane, you can have caregivers who can charge less than dispensaries,” he said. “It’s consistent and it’s fair across the board.”

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[Kathleen Gray](#), Detroit Free Press Lansing Bureau Published 6:00 a.m. ET March 27, 2018

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