

Medical Marijuana: The Future of Canna-Business

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The new Medical Marijuana Regulation and Safety Act will legalize commercial medical marijuana sales in California beginning in 2016, but for existing businesses hoping to become compliant, demonstrating a history of established business practices or establishing a new legal business entity will be an important step in transitioning to the new regulations.

The first step in compliance with new laws is for businesses to ensure they have established the legal steps to operating as a commercial entity. The new laws create a system of dual state and local licenses, and require applicants to work with a variety of agencies depending on business type: cultivators will be regulated as agriculture under the Department of Food and Agriculture, the Department of Consumer Affairs will oversee the licensing system, and new standards for processing, product testing and labor regulations for employees will also become applicable over the next two years.

However, all businesses will need to declare tax revenue and register with the state tax agency, the Board of Equalization, as well as comply with county regulations.

State regulations

The Board of Equalization requires dispensaries and cultivators to register with the agency to declare income from cannabis activity, although currently federal regulations do not allow for electronic payments or bank accounts related to cannabis businesses.

The Board of Equalization has recently established a new website at boe.ca.gov/cannabis that outlines current regulations, which require a seller's permit and sales tax payment on cannabis products for retailers, and for cultivators selling wholesale, a resale certificate, declared income, and documented records needed for compliance.

Businesses can register for free online with the Board of Equalization right now, and are being encouraged to do so once they have established a business structure and organization.

Maintaining records of inventory and other transactions is considered an essential business practice for those considering applying for future licenses, and fines of up to \$30,000 can be incurred for not maintaining proper documentation required for licensure. Some type of marijuana tracking system "from seed to sale" will also be required with the new regulations.

Businesses are required to declare personal property and equipment located inside dispensaries but those who are registered as a sole proprietorship or individual business can only deduct the cost of goods sold from income taxes.

Henry Levy, tax attorney speaking at the September Golden Tarp Awards in Garberville, explained during a session on tax compliance that whether businesses were structured as sole proprietorships, non-profits, or otherwise, there are often requirements and liabilities for filing taxes on several years worth of undeclared back taxes once a business is formally registered as a cannabis business. He encouraged everyone to pick a simple business structure and consult with an attorney or accountant as to the best strategy for their specific business and back tax situation.

At a Laytonville meeting of the California Growers' Association held Nov. 15, Sacramento-based compliance lawyer Melissa Sanchez of the Harvest Group encouraged locals to explore the formation of a non-profit mutual benefit corporation as one business structure that could allow for compliance during the transition period and then be changed into a different kind of commercial structure.

Sanchez said such non-profit structures were safe until the full transition to commercial cannabis and that other types of consumer cooperatives or registration as an individual could present more complicated tax, structure and banking requirements or make a transition to another business structure difficult.

Currently, legislation is being considered that would allow an exemption on the existing 10 percent penalty for non-electronic payments so that cannabis businesses would not be penalized for cash transactions.

There are also proposals which would create a tax amnesty to allow businesses to declare past income and taxes and come into compliance without further penalties for cannabis businesses who have been operating in a gray area prior to the new MMRSA requirements. Assemblyman Mike Gibson said in a Nov. 6 tax forum that such initiatives were intended to "encourage you to pay your debt and not be penalized...to make this transition as easy as possible to help individuals and companies do it right."

The BOE offers free tax consultations to businesses and individuals to help clarify what regulations apply to what type of business. In addition, board members have been hosting events and forums around the state to answer questions concerning the increased regulations for cannabis businesses under new requirements.

One major concern was how federal regulations would impact local businesses in compliance with California law. The BOE encourages businesses to be as compliant with state law as possible to ensure protection with potentially changing federal regulations or policy, but marijuana businesses are not currently protected from federal investigations.

Currently those applying for licenses are required to face background and fingerprinting checks, and those with serious criminal history or certain violations related to medical marijuana commercial activity can be denied licenses. Some marijuana groups are lobbying to change this requirement to ensure a greater equality of access to the new market.

Businesses were being urged to comply with the appropriate state labor laws. Legal and tax professionals around the state have recommended those considering starting cannabis businesses familiarize themselves with current labor laws to determine which workers would be considered employees or independent contractors, as businesses will need to pay payroll taxes, workers comp, unemployment and comply with other standard labor practices.

The BOE is seeking ways to assist with banking and current electronic payment requirements. Some of the other agencies involved with the commercial regulations are the Franchise Tax Board, the Department of Consumer Affairs, the IRS, as well as local agencies regulating businesses.

Currently, North Coast Assemblyman Jim Wood is considering new proposed regulation that would add an excise tax to marijuana sales.

In addition, local authorities retain the ability to add local taxes under MMRSA legislation. RCRC legislative representative Paul Smith said during a special presentation to the Board of Supervisors Oct. 25 that local taxation and control, including the ability to ban certain commercial activity, was a key aspect of the new legislation that representatives from rural cultivator counties had requested and achieved during legislative negotiations.

One issue raised in the Nov. 6 forum was whether a wide range in local taxes would cause businesses to cluster in certain counties, and how varying local taxes might impact transportation routes, as MMRSA legislation prohibits counties from banning transportation through their county from one legal location to another. This particularly impacts mobile and delivery services that may be traveling through different localities.

On Friday at 10 a.m., North Coast Board Member Fiona Ma hosted a conference (available by telephone) in Sacramento concerning how new regulations will impact cannabis transportation. More information is available on her website and by calling 916-445-4081.

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