

The Business of Tax: Cannabis Tax Advising Growing Like Weeds

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By Zoe Sagalow

A growing number of lawyers nationwide are advising a state-legal cannabis industry that it needs help on tax issues like any other business.

In the past, lawyers who represent criminals advised cannabis businesses. However, other lawyers are now realizing that advising in the area has evolved from a “compliance and regulatory role” to a more comprehensive need, counseling on intellectual property, corporate issues, contracts, transactions, tax matters, and employment issues, Rachel K. Gillette of Greenspoon Marder LLP said.

Gillette began advising the industry in 2010, when Colorado first licensed cannabis businesses. Fewer than five lawyers outside criminal tax were involved with the businesses then, and big firms didn’t want to represent them and have them as clients, Gillette said.

Over the last two years, several large law firms have developed cannabis business advising as a subspecialty, and some midsize firms may be joining in soon, according to Jordan S. Zoot of Abizinabox Inc., which provides tax advice to the California cannabis industry. Zoot also recommended that a cannabis business “go looking for a firm that has a good commercial practice” because a criminal lawyer would not be helpful with completing a business deal.

Professional associations of lawyers focusing on the legal marijuana industry are also seeing an increase in their ranks.

The National Cannabis Bar Association, founded in 2015 in San Francisco with about 10 attorneys, now has 350 members with “a large number that are at least peripherally aware of tax issues,” Executive Director Christopher J. Davis told Tax Analysts. He added that basic knowledge of [section 280E](#) “is pretty much a prerequisite to being an attorney in this industry.”

The Colorado Bar Association’s Cannabis Law Committee has seen its membership rise to 134 lawyers since its formation in early 2015.

And although the State Bar of California doesn’t have a similar group, it is considering and [seeking public comment](#) on rules of professional conduct for cannabis advising.

“The proposed rules would address circumstances where state law might conflict with federal law,” a spokesperson for the bar told Tax Analysts. “For example, part of the proposal serves as guidance to lawyers who advise cannabis dispensaries because California state law permits certain lawful sales and uses of cannabis while federal law still categorizes marijuana as a Schedule I drug.” The bar’s board of directors will review the proposal in July and decide

whether to submit it for approval to the California Supreme Court.

Where There's Smoke, There's Clients

William E. Taggart Jr., who has a law practice in Oakland, California, said has been trying to retire for a long time and hasn't yet because he can have as many clients as he wants in the cannabis industry.

Zoot said he expects that by the end of 2018, the industry will make up 60 to 65 percent of his practice.

A former tax partner for Arthur Andersen, Zoot said advising the cannabis industry is “as challenging as anything I ever did” with his former firm, which included helping with the purchase of Rockefeller Center in New York.

Zoot's work with cannabis businesses now involves dealing with complex regulations and statutes even though business accounting, he said, is usually simple, except for transactions.

According to Zoot, the regs and statutes affecting cannabis businesses are “so interlattice” that he must use all of his tax expertise along with whatever knowledge he has of regulatory compliance. Zoot said that at age 57, he doesn't need to be doing this work anymore, but he continues because he enjoys the challenge.

Zoot maintains a separate website for his cannabis-based practice because of concerns regarding Attorney General Jeff Sessions's rescission of the [2003 Cole Memorandum](#), which described a policy in which the federal government generally did not prioritize pursuing marijuana crimes, with exceptions for some of the “most significant threats.” Zoot said he doesn't want his entire CPA business, which advises other industries, to get shut down because of his work with marijuana.

Gillette is also keenly aware of federal law and said her cannabis business clients are compliant. She also said she has other clients that are ancillary businesses to the marijuana industry, such as those that hold IP for a cannabis business's brand name, sell packaging to a business, or offer cannabis-based tourism services.

Zoot also works with businesses that are trying to become compliant. He said calculating state cultivation, excise, and gross receipts taxes is complicated, and that the penalty for nonpayment is high and could lead to revocation of a license. Given all that, it may be difficult to convince a noncompliant cultivator, who thinks of the IRS as law enforcement, that “it's worth getting into a legal business,” he said.

“I haven't taken a day off since Thanksgiving, and I've been averaging 90 hours a week,” Zoot said. “I love what I'm doing, but there's moderation, please.”

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