

CONGRESSMAN PETE STARK

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FACT SHEET: H.R. 1985 The Small Business Tax Equity Act

The **Small Business Tax Equity Act**, was introduced by Rep. Pete Stark (D-CA) and Rep. Dana Rohrabacher (R-CA) on May 25, 2011. The legislation would create an exception to Internal Revenue Code section 280E to allow businesses operating in accordance with state law to take tax deductions associated with the sale of marijuana to patients for medical purposes.

Background:

Under the IRS' current interpretation of Section 280E of the Internal Revenue Code, medical marijuana dispensaries are not permitted to take federal tax deductions associated with the sale of medical marijuana even though the businesses are operating legally under state law.

- **Internal Revenue Code Section 280E**
 - Section 280E of the Internal Revenue Code prohibits businesses from taking deductions and credits on their tax return that are attributed to the sale of a drug listed in Schedule I or II of the Controlled Substances Act.
 - Section 280E was added to the tax code through the Tax Equity and Fiscal Responsibility Act in 1982. The legislative intent was to deny the benefit of tax deductions and credits to those who traffic in illegal drugs.
 - Marijuana is a Schedule I drug under the Controlled Substances Act so all sales fall under Section 280E.

- **IRS Interpretation of Section 280E**
 - In a November 16, 2010 letter to Commissioner Douglas Shulman, Congressman Stark and five other Members of Congress asked the IRS to issue a revenue ruling to narrow the application of Section 280E so that deductions and credits would be allowed for medicinal marijuana dispensaries in states where they are legal.
 - The IRS responded December 16, 2010 contending that they lacked the authority to publish such guidelines.
 - Stark and other Members still hold that the IRS could issue guidelines that would exempt legal sales of medical marijuana for patients in

states that have legalized this business from Section 280E of the Internal Revenue Code.

- Because the Administration has refused to issue such guidance, we call on the President to endorse HR 1985 and help us enact this modest modification to the law to ensure that states with legalized medical marijuana laws can operate effectively.

- **Fairness to Legal Businesses**

- Colorado and California represent 92 percent of the national wholesale and retail sales of medical marijuana and each are home to over 1,000 dispensaries.
- These small businesses operate legally and pay federal and state taxes.
- California collected over \$100 million in state sales taxes on the \$700 million to \$1.3 billion in annual retail sales of medical marijuana.
- In San Jose, CA, medical marijuana dispensaries paid \$290,000 to the city in just one month after the city created a 7-percent tax on dispensaries.
- The Harborside Health Center in Oakland, CA handles \$22 million in annual medical marijuana sales and serves 70,000 patients. The business pays more than \$3.2 million annually in state and local taxes.

- **Legalization of Medical Marijuana**

- California was the first state to legalize medical marijuana in 1996.
- Seventeen states plus the District of Columbia have legalized medical marijuana. (Alaska, Arizona, California, Colorado, D.C., Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington)
- In states like California and Colorado, medical marijuana is sold through dispensaries.
- The dispensaries provide safe, legal facilities for patients who hold a recommendation from a physician.