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Tax Implications of Recreational Marijuana

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Tax Implications of Recreational Marijuana

In the United States

By
Sofia LeVernois

An Honors Thesis Submitted in Partial Fulfillment of the
Requirements for Graduation from the
Western Oregon University Honors Program

Professor Anna Mahony,
Thesis Advisor

Dr. Gavin Keulks,
Honor Program Director

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Abstract

The recent legalization of recreational marijuana in eight states has raised the question on what will occur when tax season arrives. The federal government has figured out ways for distributors of medical marijuana to legally claim the income on their taxes, but what about in states that have legalized recreational marijuana? This thesis project will be focusing on what is being done to prevent distributors in states that have legalized the drug for recreational use from being arrested for selling marijuana. States have put laws into place to hopefully protect their distributors, but even if a state has created protection laws, distributors are not safe against the federal laws.

This paper focuses on marijuana's history and the various uses the drug had before being placed on the Schedule I Drug List. The paper continues to discuss the long standing political platform, known as the War on Drugs, and how it has impacted the usage and distribution of marijuana. Break downs of federal policies show that banks and credit unions can have bank accounts for recreational distributors through the Cole Memo and the FinCEN. These documents can help those states that have legalized the drug recreationally to create a stepping stone in taxation of marijuana sales. With the idea of recreational marijuana being so new, government officials and the public are waiting to see what happens.

The History of Marijuana

Just like any other product with a long history, the United States government in the 1600s encouraged the domestic production of hemp. The reason why hemp was in high production during the 1600s is because it was a valuable for creating rope, sails, and clothing. “In 1619 the Virginia Assembly passed legislation requiring every farmer to grow hemp,” (Marijuana Timeline). The production of hemp became so popular within the United States that various states began to use hemp as a legal tender. The growth of hemp in America was strong and was continuing to grow at a constant. At the end of the Civil War, hemp was replaced by other materials. Toward the end of the nineteenth century marijuana began showing up as a main ingredient in the various medicines. Marijuana was originally sold publically in pharmacies throughout the 1800s.

In 1906 the Pure Food and Drugs Act was implemented into U.S. law. This was the very first act to put control on what was in food and drugs that were being distributed to consumers. In the paper *The Determinants of Progressive Era Reform: The Pure Food and Drugs Act of 1906*, the authors Marc T. Law and Gary D. Libecap the authors not only focus on the Pure Food and Drugs Act of 1906, but they also focus on the other acts that helped create the Pure Food and Drugs Act of 1906. An example is, “One was the publication in 1906 of Upton Sinclair’s *The Jungle*, which exposed unsanitary conditions in Chicago meat packing plants and generated public outrage over the quality of meat,” (Law). Sinclair’s goal with the novel *The Jungle* was to bring public awareness to the

meat packing industry. Sinclair focused on how poorly the meat was treated ranging from telling the public about the contamination of the meat from it falling on the floor of the slaughterhouse to selling expired sausage to American consumers. “The direct result of Upton Sinclair’s muckraking was the 1906 Meat Inspection Act, which significantly expanded USDA’s inspection of the slaughtering, packing, and canning of meats,” (Law).

The focus on the meat industry quickly caused citizens in the United States to switch their focus on to what was in other products that Americans were consuming. The 1906 Pure Food and Drug Act eventually led to labeling of any over-the-counter products that contained marijuana (cannabis). Before this law passed, manufacturers were not required to give detail to what was in over-the-counter products. The public’s realization of the ingredients for the products they were consuming lead to more products printing ingredients on the packaging. This Act remains active in the law today.

According to PBS, during the 1920s Mexican immigrants introduced recreational marijuana to the United States after the Mexican Revolution of 1910. In an article written by Matt Thompson for National Public Radio (NPR), “The ‘pot was outlawed because MEXICANS’ argument is complicated by the fact that Mexico was also cracking down on the drug around the same time,” (Thompson). Seventeen years before the United States passed the Marihuana Tax Act of 1937, Mexico illegalized marijuana. The idea behind illegalizing the drug was because people were unsure of what the hallucinogen within the drug could do.

The American press began to write articles on the recreational marijuana. The papers blamed the Mexican people for the reactions that individuals were having after smoking the recreational marijuana. Articles such as “Delirium or Death: Terrible Effects Produced by Certain Plants and Weeds Grown in Mexico” (from a *Los Angeles Times* article in 1905) pushed the American public into believing that the effects of recreational marijuana had on individuals was because the drug was imported from Mexico. This caused an overall scare and fear of marijuana as a whole. In the 1930s, the concern of the effects of marijuana on people began to escalate and “...instigated a flurry of research which linked the use of marijuana with violence, crime, and other socially deviant behaviors,” (Marijuana Timeline). A lot of these behaviors were also driven by the racism towards Hispanics and other minorities at the time as well as the classism towards the lower classes. With all of the instances of violence and crime, twenty-nine states banned all types of marijuana by the year 1931.

The creation of the Federal Bureau of Narcotics (FBN) occurred in the year 1930. With the usage of marijuana increasing and more research being done on the effects of marijuana, the FBN adopted the Uniform State Narcotic Act in 1932. The Uniform State Narcotic Act, “Encouraged states to pass uniform state laws matching the federal Narcotic Drug Import and Export Act,” (National Alliance). This act introduced the idea of prohibiting the usage of cannabis at the state level. Four years after the passing of the Uniform State Narcotic Act, a film named “Reefer Madness” was created as propaganda. After the release of the film, the

Motion Pictures Association of America banned the use of narcotics in films. This ultimately led to the Marihuana Tax Act of 1937.

In the late 1930s, the United States passed the Marihuana Tax Act of 1937. Marijuana was spelled as Marihuana in the Act to use the then-modern spelling. This was also the spelling used in most Federal documents and they wanted to remain consistent with all other Federal documents. The point of this act was to tax all sales of cannabis within the United States. This act created a transfer tax on all marijuana dealings. A transfer tax, also known as an excise tax, is “Any kind of tax that is levied on the transfer of official documents or other property. Transfer tax is paid by the seller of the property,” (Transfer Tax). Individuals were not allowed to possess marijuana under the Marihuana Tax Act of 1937 unless they paid the transfer tax, but only if the marijuana was being used for medical or industrial uses (i.e. hemp for clothing or other uses).

By 1944 the New York Academy of Medicine produced a research report that proved marijuana did not stimulate violence, crime, addiction, or other socially deviant behaviors. However by the time World War II began, the importation of hemp decreased significantly and affected the United States’ ability to create parachutes and other necessities. A program called “Hemp for Victory” was created by the U.S. Department of Agriculture to help push farmers to plant the hemp. The government provided seeds for the draft deferments or those who remained in the United States to grow hemp during wartime. Multiple American farmers jumped on the opportunity to grow hemp in order to assist the United

States in the war. With the draft deferments being offered to farmers who participated in “Hemp for Victory,” multiple farming families wanted to earn the draft deferment to keep their families together. By the time the year 1943 rolled around, “...American farmers registered in the program harvested 375,000 acres of hemp,” (Marijuana Timeline).

Both the Boggs Act of 1952 and the Narcotics Control Act of 1956 created federal laws that created sentences for any crime involving drugs. These federal enforcements also included marijuana on the list of illegal drugs. A minimum first-offence sentence for someone who was in possession of marijuana would be two to ten years in prison, with a fine of \$20,000 or less. As the years passed after the Narcotics Control Act, marijuana became part of the “hippie culture” in the 1960s. Throughout the 1960s and 1970s, drug usage as a whole was very prevalent, especially with youth. Not only was marijuana highly used by hippies throughout the 1960s, heroin was also widely used. While it is believed that the 1960s held high levels of drug abuse, it was not. The current general public believes this because multiple highly known and respected professors and doctors told the world to try various drugs, such as LSD.

Changes in the political and cultural environment also persuaded the Presidents Kennedy and Johnson to reevaluate marijuana as an illegal drug. The re-consideration of marijuana was brought forward by the studies on marijuana, stating that marijuana was not a gateway drug and it did not create violent tendencies in the user. While the drug was not decriminalized, the two Presidents

did reconsider. By 1969, “48% of Americans told Gallup that drug use was a serious problem in their community,” (Robinson). But according to the poll the numbers of adults who had tried marijuana was less than five percent. While there were many educational promotions to end illegal drug usage, only thirty-four percent of Americans did not know about the side effects of marijuana.

1956 brought along the Narcotics Control Act. This act focused on increasing the penalties that were put forth by the Boggs Act of 1952. The penalties increased the minimum prison sentence and minimum fines that came with the possession of illegal drugs. The year 1968 brought the beginning of the Bureau of Narcotics and Dangerous Drugs. The purpose of the Bureau is to reduce the usage and supply of illegal drugs within the United States. Now known as the Narcotic and Dangerous Drug Section (NDDS), the NDDS continues to work on preventing illegal drugs from being sold in the United States. The merger of the FBN, FDA, and the Bureau of Dangerous Drugs created the Bureau of Narcotics and Dangerous Drugs.

After the reexamination of the Narcotics Control Act, Congress discovered that regardless of the punishments for drug-related felonies it had not influenced citizens to stop using drugs. Congress went back and repealed the penalties given throughout the 1950s and 60s because, “It was widely acknowledge that the mandatory minimum sentences of the 1950s had done nothing to eliminate the drug culture that embraced marijuana,” (Marijuana Timeline). The punishments were also viewed as ridiculously cruel. The Comprehensive Drug Abuse

Prevention and Control Act of 1970 is what pushed the National Organization for the Reform of Marijuana Laws (NORML) to be founded the same year.

In 1972, the then President Nixon had to make the decision on if to adopt the Shafer Commission or to reject it (See Richard Nixon: War on Drugs). Nixon was not in favor of the Shafer Commission and eventually decided to reject it because of his political platform of the War on Drugs. Throughout the 1970s, eleven states decided to decriminalize the drugs while many others focused on reducing the penalties for marijuana. According to the NORML website, “U.S. taxpayers have spent well over \$20 billion dollars enforcing criminal marijuana laws, yet marijuana availability and use amount the public remains virtually unchanged,” (Armentano). This shows if President Nixon had not rejected the Shafer Commission, there’s a possibility that U.S. taxpayers would have been able to save over 20 billion dollars. The question is raised if the penalty for possession of marijuana is wasting money for U.S. citizens.

In 1973, the Creation of the U.S. Drug Enforcement Agency (DEA) was created through combining the Bureau of Narcotics and Dangerous Drugs (BNND) and the Office of Drug Abuse Law Enforcement (ODALE). The definition of the DEA is on the DEA website stating, “. . .is the lead federal agency in the country’s war on drugs,” (Information on the DEA). The DEA focuses on any manufacturing or distribution of narcotics such as marijuana, heroin, amphetamines, cocaine, etc. illegally. Three years after the DEA was created, the Parents’ Movement Against Marijuana began in 1976. During 1976, the

Presidential election was in full swing and, "...both Jimmy Carter and Gerald Ford addressed the potential of federal decriminalization," (Dufton). With the talk of decriminalizing during the elections, NORML was continuing to lobby for the legalization of the drug. The government's openness to allowing the drug again sparked controversy with parents. This is what sparked the Parents' Movement Against Marijuana. The movement consisted of predominantly white, suburban parents who were scared for their children's future if marijuana was legalized. The author of *Parents, Peers, and Pot: The Rise of the Drug Culture and the Birth of the Parent Movement, 1976-1980*, Emily Dufton, states, "These grassroots groups of committed activists became so powerful and influential in just four years that they were able to change the direction of the national drug debate," (Dufton). This sudden change on the road to legalizing marijuana created a stricter regulation on marijuana and focused on teenage drug usage.

President Reagan signed the Anti-Drug Abuse Act into law in 1986. The purpose of this law was to create mandatory sentences for any crime that was committed in relation to drugs. This law was written and brought forth with the Comprehensive Crime Control Act of 1984. In an article written by the *New York Times* in 1986, "The sweeping legislation, the Anti-Drug Abuse Act of 1986, increases Federal financing for law enforcement and drug treatment and education programs," (Boyd). This Act focuses on creating harsher penalties for Federal drug cases, but excludes the Death Penalty. It means that if a murder case involves drugs, the Death Penalty would not be an option for the murderer. The

Act came immediately after two drug-related deaths of a couple all-star athletes. President Reagan also, "...instructed Cabinet officers and department heads to begin mandatory drug testing programs for those of the 2.8 million Federal civilian employees who worked in sensitive jobs," (Boyd). Reagan's whole plan behind this Act was that it would allow citizens to support eradicating drugs from the United States. The punishments for possession of marijuana were equivalent to that of heroin. One plant of marijuana was equal to one gram of heroin. There was an amendment to the Anti-Drug Abuse Act that, "...required life sentences for repeat drug offenders, and providing for the death penalty for 'drug kingpins,'" (Marijuana Timeline).

President George Bush declared a War on Drugs in 1989. This War on Drugs had one goal, which was to end recreational drug use. Both President Bush and William J. Bennett, the head of the Office of National Drug Control, worked together to bring a policy into place that would completely end recreational drug usage. President Bush's administration understood the importance of fully eradicating recreational drugs, but recognized that complete eradication would not be possible. The administration set goals of, "...working towards a 10% decrease in casual drug use over the next two years, and a 50% reduction over the next 10 years," (Check). While this War on Drugs was successful with a decrease in cocaine usage among the general public, drug use among the poor increased significantly. During the War on Drugs the crime rate considerably increased due to the expansion of drug laws. The original hope of the War on Drugs was that it

would decrease the usage of drugs as well as the crime and homicide rate.

Unfortunately, “drug use did not decline, and the homicide rate remained steady,” (Check). Bush decided that the War on Drugs needed more research and put \$500 million towards drug research. After reviewing the budget, researchers did not believe that it was a valuable use of taxpayers’ money since there was not enough research on addiction and therefore it would not be possible to create helpful addiction programs.

While President Bush’s War on Drugs was a failure with the poor population, it was successful with the middle and upper classes. The middle and upper classes negative attitude toward the drug was, “not all clear, however, that the war on drugs was responsible for this shift,” (Check). In 1996 the War on Drugs was still evident, but medical marijuana was legalized in California. The purpose behind allowing citizens to purchase medical marijuana was for it to be used by patients who had painful diseases such as cancer, Lou Gehrig’s Disease, HIV/AIDS, and many more. California voting to pass a medical marijuana law, “...stands in tension with federal laws prohibiting possession of marijuana,” (Marijuana Timeline). In October of 1998, a statement was released by the former Presidents Bush, Ford, and Carter that told the general public to not approve medical marijuana at the state level. The logic behind this was because the Food and Drug Administration (FDA) had not done enough testing on marijuana to constitute it as a reliable source for healing. Then in November of 1998 Alaska,

Oregon, and Washington followed suit and became the second, third, and fourth states to legalize medical marijuana.

Throughout 1997 and 1999, the Institute of Medicine (IOM) focused on if marijuana had any medical properties. The IOM report was released in March of 1999 and titled *Marijuana and Medicine: Assessing the Science Base*. The Institute of Medicine Report stated, “in general, the report emphasized need for well-formulated, scientific research into the therapeutic effects of marijuana and its cannabinoid components on patients with specific disease conditions,” (Medical Marijuana Timeline). Marinol Capsules (marijuana capsules) were approved by the DEA to be moved to Schedule III, which means that the drug will have a decrease in regulatory controls. Individuals who use the Marinol Capsules will also be relieved of harsh criminal sanctions. By moving the Marinol Capsules to Schedule III, the DEA was opening the possibility of using marijuana within healthcare.

In November of 1999 Maine was the fifth state to legalize medical marijuana. In June of 2000 Hawaii was the sixth state to legalize medical marijuana. Nevada and Colorado also legalized medical marijuana later in the year of 2000. In response to the states legalizing medical marijuana, the Supreme Court passed the “There is No Medical Necessity Exception to the Controlled Substances Act” on May 14th, 2001. This act put restrictions on the manufacturing and distribution of marijuana.

One study conducted in January of 2002 discovered that medical marijuana improves the quality of life with IND patients. Within this study, “clinical cannabis provides an improved quality of life in these patients,” (Medical Marijuana Timeline). The authors of this study suggested that the national government amend laws to allow clinical marijuana to be used. In September of 2002 the Washington, DC courts blocked the initiative for medical marijuana to be legalized. The courts did not have a viable reason to block the initiative, but in October of 2002 in the case of *Conant v. Walters*, physicians were protected against having their licenses revoked if they recommend medical marijuana to their patients.

In May of 2004, Vermont became the ninth state to legalize medical marijuana. The DEA reevaluated marijuana for rescheduling in August of 2004. Then in November of 2004, Montana legalizes medical marijuana with a sixty-two percent of voters approving the law. In December of 2004 the AARP ran a poll with seniors regarding their support for medical marijuana. The results show that, “over all, 72 percent of respondents agreed ‘adults should be allowed to legally use marijuana for medical purposes if a physician recommends it,’” (Medical Marijuana Timeline). June of 2005 the U.S. Supreme Court rules that there is a possibility of Congress banning marijuana use. In December of 2005 California experienced federal agents coming to medical marijuana dispensaries and taking a large amount of the cannabis. After the raids, marijuana suppliers and patients in California sued the federal government claiming that the Obama administration

failed to comply with their statement of leaving marijuana suppliers and patients alone. Since states reside under federal law, the suit was dismissed by a federal judge and soon after, Rhode Island legalized medical marijuana in January of 2006.

Throughout 2006 a variety of federal government discoveries occurred. In March of 2006 the DEA discovered marijuana-laced candy manufacturers. These candy bars were based off of well-known candy bars. The company produced names like Stoney Ranchers, Munchy Way, Rasta Reece's, Buddafingers, and Pot Tarts (Medical Marijuana Timeline). Twelve people were arrested by the DEA with connection to the marijuana-laced candy bars. April of 2006 lead the FDA to make a statement regarding using marijuana for medical reasons. The FDA's statement was titled *Inter-Agency Advisory Regarding Claims that Smoked Marijuana Is a Medicine* and stated that no evidence has been shown that medical marijuana assisted patients with their diseases (Medical Marijuana Timeline). In February of 2007, the DEA Administrative Law Judge named Mary Ellen Bittner stated that the application from Dr. Lyle E. Craker to grow marijuana to be used for medical research should be approved. Judge Bittner's logic behind approving this application was that there is not enough research on marijuana. In January of 2009, the DEA rejects Judge Bittner's decision to allow Dr. Craker to grow marijuana for his research.

New Mexico legalized medical marijuana in March of 2007 and was the twelfth state to pass the bill. In February of 2008, the United States second largest

physician group makes a public request for marijuana to be reclassified. This physician group showed strong support for other non-smoking forms of medical marijuana. This group was called the American College of Physicians (ACP) and it was pushing for marijuana to be moved to a Schedule I drug. In November later that same year, Michigan became the thirteenth state to legalize medical marijuana.

In January of 2010, New Jersey became the fourteenth state to legalize medical marijuana. Then in July of 2010 Washington D.C. legalizes medical marijuana for chronically ill individuals. In November of 2010, South Dakota's measure to allow medical marijuana in the state was voted down while Arizona legalized medical marijuana and became the fifteenth state to do so. Between March and May of 2011, the United States Department of Justice sent letters to states that have legalized marijuana. These letters, "...threaten[ed] to prosecute those who implemented cultivation and distribution programs," (Medical Marijuana Timeline).

The DEA denied the 2002 request to reschedule marijuana out of the Schedule I sector. The consistency of the DEA was apparent when they remained with their statement that marijuana does not have any medical usage and that it should continue to be federally illegal in the United States. In August of 2011, Dr. Craker requested that the DEA reconsider his application to grow marijuana for research purposes. The DEA denied Dr. Craker's application due to, "respondent has failed to demonstrate that the Final Order contains any erroneous material

findings of fact or conclusions of law,” (Medical Marijuana Timeline). However in May of 2012 the U.S. Court of Appeals heard oral arguments for the case of *Lyle E. Craker v. Drug Enforcement Administration*. Dr. Craker’s attorney from Washington D.C. made arguments with eleven years of legal proof that the DEA had denied Dr. Craker a license to grow marijuana for medical research.

In December 2011, Washington and Rhode Island governors made a request to the DEA to reclassify medical marijuana from Schedule I to Schedule II. By moving medical marijuana to a Schedule II drug, pharmacies would be able to distribute medical marijuana to people who have a prescription. This also changed the way people could be prosecuted if arrested with the drug on their person. In May of 2012, Connecticut legalized medical marijuana and became the seventeenth state to do so. Just two months later in July of 2012, the Los Angeles City Council held a vote to ban medical marijuana dispensaries. The vote was unanimous. It passed with the final count being fourteen to zero.

In October of 2012 the United States Court of Appeals reassessed the DEA’s decision to deny the petition to reclassify marijuana from a Schedule I drug to a Schedule III, IV, or V in order to lower the punishments for having the drug. The main question during this process was if the U.S. Court of Appeals was able to change the original decision of the DEA. The marijuana advocacy group Americans for Safe Access said, “...the DEA demonstrated a ‘bias’ against pot by downplaying its medicinal efficacy,” (Medical Marijuana Timeline). In January of

2013, the court decides that medical marijuana will not be reclassified and will remain a Schedule I drug.

November of 2012 lead to the eighteenth state, Massachusetts, legalizing medical marijuana. New Hampshire was soon to follow as the nineteenth state to legalize medical marijuana in July 2013. In August 2013 Illinois legalizes medical marijuana as the twentieth state to do so. Later in August of 2013, the United States Department of Justice announces that the Federal Government will not challenge the marijuana laws of individual states, but that the federal government is relying on individual states to keep marijuana and other drugs under control. Since almost half of the states had legalized medical marijuana, the Federal Government saw the challenge to revert all the states back to a no marijuana stance. This change was evident. On February 14th, 2014, the Federal Government decided to allow banks to have accounts for legal medical marijuana businesses. This way marijuana distributors would be able to have their earnings protected by the federal government and allows the funds to be federally taxed. While this does allow marijuana businesses to safely store their earnings, it does not allow illegal marijuana distributors to store their funds for fear of leaving banks susceptible to drug lords.

Maryland legalized medical marijuana in April 2014 and became the twenty-first state to legalize the drug. In May of 2014 Minnesota is the twenty-second state to legalize medical marijuana. New York is the twenty-third state to legalize medical marijuana in July of 2014. In October of 2014 the United States

Justice Department reviews marijuana sales on Native American reservations. They come to the decision that the U.S. government could not determine what occurred on Native American lands. This also means that states that have banned the drug will not have jurisdiction over what occurs on Native American land. A new law was put forward to protect states that have legalized cannabis from the U.S. Justice Department allocating funds to fighting medical marijuana. In May of 2015 the Governor legalizes medical marijuana in Puerto Rico, a U.S. territory.

On January 1st 2014 Colorado became the first state to pass a law to legalize recreational marijuana. This law allows anyone who is of twenty-one years of age or older to purchase cannabis. On July 8th, 2014 Washington state began selling recreational marijuana to the public. Washington followed the same policies as Colorado, making it a requirement for individuals who wished to purchase the drug be twenty-one years of age or older. Oregon quickly followed suit and on July 1st, 2015 recreational marijuana was available for individuals twenty-one years and older. In November of 2014, Alaska voters approved recreational marijuana for adults over the age of twenty-one. This will become a reality for the state toward the end of 2016. By November 8th, 2016 an additional four states legalized recreational marijuana.

On April 4th, 2016, the DEA decides to reconsider moving marijuana from Schedule I to a less-restrictive classification. The hopes of putting marijuana on a less restrictive schedule will be to encourage research on the drug.

Richard Nixon: War on Drugs

The infamous presidency of Richard Nixon not only brought history Watergate, but also the beginning of the War on Drugs. Theories behind why Nixon made marijuana a schedule one drug range from possible racism to a push to get rid of the hippies and hippie culture. President Nixon's push to get rid of these drugs was not an uncommon occurrence. Throughout history specific anti-drug laws were created to target certain immigrants, races, religious beliefs, etc. to make those groups feel ostracized and unwelcome in the United States. Creating laws against certain drugs was also used as a political spring board for some politicians. Nixon's public reasoning for creating the legislation for the War on Drugs was to help prevent the increasing addiction to marijuana and heroin, but it is theorized that Nixon was trying to push hippie culture out of the United States. During Nixon's presidency, Nixon focused on the "Silent Majority," also known as the white voters, in order to keep his numbers up in the polls. He was hoping that by eradicating marijuana he would be able to gain more voters.

Drugs became very popular throughout the 1960s and in June of 1971 President Richard Nixon officially declared the first War on Drugs. To make his War on Drugs work in the public eye, "[Nixon] dramatically increased the size and presence of federal drug control agencies, and pushed through measures such as mandatory sentencing and no-knock warrants," (A Brief History). He placed

marijuana on the Schedule One drug list in 1971. Nixon appointed a man named Ray Shafer to sit as chairman of the National Commission on Marijuana and Drug Abuse, also known as the Shafer Commission. The commission was required to take a survey of the American population over the age of twelve to gain an idea of drug usage within the country. After the Shafer Commission's report was released, states began to decriminalize marijuana. President Jimmy Carter planned to decriminalize the drug, but parents began to cause an uproar due to the rising of marijuana usage in teenagers. This panic was stemming from Nixon's War on Drugs.

John Erlichman, who was a Nixon domestic policy advisor and a co-conspirator of Watergate, was interviewed by Dan Baum of *Harper's Magazine* regarding Nixon's War on Drugs. Erlichman said, "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people," (Baum). The Nixon campaign needed to find a way for the public to negatively view the antiwar left (also known as hippies) and the black population. They decided to connect these two groups with drugs. Erlichman revealed that, "We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and the blacks with heroin, and then criminalizing both heavily, we could disrupt those communities," (Baum). This is what began the political drug movement. After

Nixon, various presidents have used the idea of the War on Drugs to gain political power.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 created the minimum sentences for drug possession, drug consumption, and various other drug violations. This Act also legalized rehabilitation services and other drug addiction treatment services. The Act came hand in hand with The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, and the Controlled Substances Act (CSA) of 1970. These two Acts together helped form what we know in regards to Drug and Alcohol laws today. The Acts were put into place during the Nixon Administration and in 1970, Dr. Jerome Jaffe created an ad hoc committee that focused on addiction treatment. This committee was required to report any findings to President Nixon. However, "Among the findings of the (never released) report were that federal drug abuse policy lacked planning and cohesion, and a plethora of agencies were involved in funding treatment, prevention and research, without a mechanism for inter-agency communication," (Lee).

On June 17th, 1971 President Nixon signed the Special Action Office for Drug Abuse Prevention (SAODAP) into action. The SAODAP was within the Executive Office of the President. This office focuses on drug abuse prevention programs and assists other Federal agencies with creating their own drug

prevention policies. This program would create a plan that would completely eradicate drug usage and problems within the United States. After evaluating the various programs that the SAODAP put into action, "Agencies would receive money based on performance and their retention of funding and program authority would depend upon periodic appraisal of their performance," (Nixon).

Nixon asked Congress for \$105 million on top of the 1972 budget to assist the SAODAP with their treatment and rehabilitation facilities for drug abuse. The SAODAP collected data from various emergency departments as well as other medical locations throughout the United States. Working with the SAODAP, "The Veterans Administration also began heroin detoxification and rehabilitation programs in the early 1970s, treating more than 8,500 veterans per year by 1975," (Lee). Nixon's administration was the first administration to use federal funds to help fight drug abuse and addiction. Numerous other programs were also launched such as the National Institute on Drug Abuse (NIDA), the Drug Abuse Office and Treatment Act of 1972, and the Client Oriented Data Acquisition Process (CODAP) throughout the early 1970s.

With all the drug abuse and prevention programs that had been put into play, the Schafer Commission began to do research on marijuana use. The Shafer Commission put together various surveys on marijuana usage and discovered that there was very minimal abuse in the population over twelve years of age.

The Schafer Commission recommended that the United States decriminalize marijuana because, “The actual and potential harm of the use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes with the greatest reluctance,” (Lee). Nixon decided to avoid the advice given to him by the Shafer Commission on marijuana and continue with his own political agenda by pushing the War on Drugs. Supporters of Nixon were huge followers of the War on Drugs, making it a very appealing move for Nixon’s political standing, but continuing the War did increase federal expenses between the time Nixon was elected and the year 1972.

Nixon created the Drug Enforcement Administration (DEA) in July of 1973. The point of the DEA was to support the Controlled Substances Act (CSA), but after the DEA was officially created, “...the Senate Committee on Government Operations issued its reorganization plan regarding the establishment of the DEA in DOJ [the Department of Justice],” (Sacco). Nixon was working with the committee to help push the DEA to success by stating how important the DEA will be when working with the Federal Bureau of Investigation and the DOJ to help prevent drug usage, trafficking, and disbursement. In *Drug Enforcement in the United States: History, Policy, and Trends* by Lisa N. Sacco, Sacco says, “In 1973, the newly formed DEA began its work with 1,470 special agents and an annual budget of \$74.9 million,” (Sacco). The numbers continued to grow and grow each

year after the establishment of the DEA. During the Fiscal Year (FY) of 2014, “In FY2014, the DEA had over 9,000 full time employees and its budget was approximately \$2.0 billion,” (Sacco). This financial increase was caused by Nixon’s War on Drugs and has continued to be backed by money from the taxpayers of the United States since the original declaration in 1971.

In 1984, under the presidency of Ronald Reagan, the Comprehensive Crime Control Act of 1984 was signed into legislation. This Act was placed into law to support the CSA and create higher penalties for any defilements of the drug laws. Reagan also used the war on drugs by saying that drugs were a threat to national security. The Comprehensive Crime Control Act of 1984 allowed, “The Attorney General to transfer drug-related forfeited property to federal, state, and local law enforcement agencies and retain forfeited property for official use,” (Sacco). The Attorney General had temporary access to all information regarding forfeited drug property as well as all statistics regarding drug usage in the United States. The information gained by the Attorney General allowed the government to learn about synthetic drugs and create an action plan before they got out of control.

Two Anti-Drug Abuse Acts were created in 1986 and 1988. The 1986 Act is known for creating minimum penalties for drug trafficking. This Act created definitions for specific drugs to differentiate the type of prison sentencing. The

1988 Act allowed the federal government to reduce drug supply (i.e. amphetamines that have been used to create methamphetamine). With the 1988 Act, the Office of National Drug Control Policy (ONDCP) was created. The ONDCP with the 1988 Act created more minimum penalties for any drug violations that happened on federal property.

Today, marijuana is still a Schedule One controlled substance. The CSA now, "...officially prohibits the unauthorized manufacture, distribution, dispensation, and possession of marijuana," (Sacco). Ignoring the federal laws, states have begun to overturn the laws. This began with medical marijuana being legalized throughout the United States and eventually at the federal level. States have been changing laws to make penalties for possession of the drug minimal compared to the federal penalties. The states have also pushed against the federal ban on marijuana through creating state laws that allow medical marijuana. Recreational marijuana is slowly beginning to become legal at the state level. This has created issues with some law enforcement and other federally funded organizations because recreational marijuana has remained illegal at the federal level.

With the state level legalization of recreational marijuana comes questions regarding the taxation of the drug. Since recreational marijuana is federally illegal, states who have legalized the drug are trying to figure out how they can

tax it. The legalization is also so new that states have reinvented the marijuana tax laws to try and perfect them. Banks in these states are also running into issues because they are federally insured and legally cannot accept finances earned from the sale of illegal drugs or paraphernalia. This has caused a widespread issue for the business owners of the marijuana dispensaries as well as the states. State governments are trying to find a way where they can keep track of the sales of recreational marijuana to properly tax the dispensary owners.

Federal Policies

On February 14th, 2014, the United States Department of Justice Deputy Attorney General, James M. Cole, released a Memorandum for all United States Attorneys. This memorandum outlines the requirements that states must follow to sell recreational marijuana. As long as states follow the following eight rules, the Controlled Substances Act will not push law enforcement or federal attorneys to persecute distributors:

1. Prevent distribution of marijuana to minors;
2. Prevent revenue from going to criminal enterprises, gangs, and cartels;
3. Preventing the trade of marijuana over state lines from states where the activity is legalized to those where it remains illegal;
4. Prevent the state legalized marijuana activity from being used as a cover or diversion in order to traffic other illegal drugs or to hid illegal activity;
5. Prevent violence within the distribution industry, specifically with firearms regarding the cultivation and distribution of marijuana;
6. Prevent driving under the influence of marijuana and provide the health consequences connected with marijuana usage;

7. Prevent the growth of marijuana on public lands and inform the public about the environmental dangers of growing marijuana on public land;
8. Preventing the possession or use on federal property.

If states follow these eight rules for marijuana distribution, they shall not be persecuted under the Cole Memo (Cole).

The Cole Memo also refers to the Bank Secrecy Act (BSA) under FinCEN, which was created to have all financial institutions in the United States report the possibility of money laundering to the U.S. Government. The BSA not only helps detect money laundering, but also helps with the prevention. Per the Cole Memo, the BSA will remain active in regards to marijuana distribution. If any bank suspects that those in the marijuana distribution business are breaking the above rules, they can list them as laundering money underneath the BSA. Individuals that decide to use dispensaries to launder money or any other specified unlawful activity, will be prosecuted.

FinCEN is a bureau under the Treasury Department. Their duties include the following:

- “Maintaining a government-wide data access service with a range of financial transactions information;

- “Analysis and dissemination of information in support of law enforcement investigatory professionals at the Federal, State, Local, and International levels;
- “Determine emerging trends and methods in money laundering and other financial crimes;
- “Serve as the Financial Intelligence Unit of the United States;
- “Carry out other delegated regulatory responsibilities,” (FinCEN)

The purpose of FinCEN is to ensure that the Bank Secrecy Act is being enforced at all times.

Oregon Marijuana Initiative

Since the legalization of recreational marijuana in Oregon on June 27th, 2015, banks in the state have been brainstorming what they can do to help dispensary owners. Banks are insured through the Federal Deposit Insurance Corporation (FDIC). The FDIC is financially backed by the federal government of the United States. This means that the banks insured by the FDIC cannot accept funds that were earned through federally illegal activity. Therefore, while recreational marijuana is legal in Oregon, it still remains illegal at the federal level. This is an issue that all states who have legalized recreational marijuana have been facing.

Maps Credit Union* in Salem, Oregon has made the decision to accept deposits from marijuana dispensaries. Once this was announced, the general public were waiting to hear back from the National Credit Union Association (NCUA). This came in the wake of, "Colorado officials [trying] last year to ease the banking burden by setting up a special credit union to safely handle pot-shops money, only to see the Federal Reserve Bank and federal courts block the effort," (CBS). The NCUA is the independent federal agency that financially insures all credit unions in the United States. Because of the Cole Memo and FinCEN, Maps is able to allow accounts for recreational marijuana dispensaries;

however, if the Cole Memo is revoked or changed Maps will re-evaluate the bank accounts.

Alan Hanson who is the head of the cannabis program at Maps Credit Union has done ample research on marijuana dispensaries. In March of 2014, Oregon began licensing dispensaries for medical marijuana. In October of 2015 licenses were being released for recreational marijuana distributors. When this began, Credit Unions wanted to help. To prevent individuals carrying around large amount of cash, Maps Board of Directors decided to move forward with allowing recreational marijuana accounts. Within four to five months the credit union had over thirty accounts. When Maps made this decision, another bank in Portland, Oregon was also accepting deposits from dispensaries, but quickly removed themselves due to the type of industry.

At Maps Credit Union, the qualifications to open an account are that the dispensary must be licensed or in the process of doing so. These licenses must be administered by the Oregon Health Authority (OHA). To attain an account a criminal background check and media search will be made by Maps (Alan Hanson). This is how Maps can see if the distributor has ever done anything to break the eight rules put into place by the Cole Memo. It takes approximately thirty days for a recreational dispensary to be approved for an account. These accounts are considered high risk and therefore have enhanced moderating.

The acceptance of the marijuana dispensary cash must follow the following rules:

1. The cash deposited could not smell like marijuana.
2. Any deposits over a set amount must be picked up by an armored truck.
3. Deposits over \$20,000 will be available the next business day (due to employees following the policy of double counting the cash).

If a dispensary routinely brings in large amounts of cash, they will be required to hire an armored car (Alan Hanson). This is to protect not only the credit union, but the owner of the dispensary as well. Since credit unions are consumer focused, they are not routinely set up for deposits with high amounts of cash. Maps Credit Union is adapting to work with dispensaries at this time. They are also the only credit union/bank who are opening accounts for recreational marijuana dispensaries.

*Maps Credit Union has no position on the issue regarding the legalization of recreational marijuana. They are willing to open accounts because it is a security issue for the community having dispensary owners carrying this much cash on them at one time.

Oregon and Other States' Tax Policies

In the state of Oregon, Measure 91 was one that would allow the state to tax sales on recreational marijuana. The main goal of Oregon was to create a marijuana market that would influence buyers to purchase from the legal market rather than the black market. Individual suburbs within the Portland area, as well as various communities all over Oregon, have created plans for how they will tax marijuana sales or if they will allow marijuana sales within their city limits. The problem with creating a tax on recreational marijuana is if the tax is too high it will push consumers to purchase from the black market.

The taxes on recreational marijuana sales “will range from 17 to 20 percent. The legislature set the base tax rate at 17 percent, however they made provisions under certain circumstances for cities and counties to add up to an additional 3 percent tax,” (Oregon Marijuana Licensing). This is the tax rate that began on January 4th, 2016. The Oregon Liquor Control Commission (OLCC) is estimating that between the 2015 and 2016 the state will earn over \$10.7 million in revenue. The taxes in Oregon will go towards the Common School Fund (40%), Mental Health Alcoholism and Drug Services (20%), State Police (15%), Cities for Enforcement of the Measure (10%), Counties for Enforcement of the Measure (10%), and the Oregon Health Authority for Alcohol and Drug Abuse Prevention (5%) according to the OLCC website (Oregon Marijuana Licensing).

With the sale of recreational marijuana now legalized, Oregon has five different types of recreational marijuana licenses. These licenses are: “Producer, Processor, Wholesaler, Retail, Laboratory, and a Certificate for Research,” (Recreational Marijuana FAQs). If an individual chooses to pay the application fee of \$250 they have the option to choose between nine different license types. A licensee can hold multiple licenses at one time. If someone is interested in holding a recreational marijuana license they are required to be over the age of twenty-one and must follow the rules outlined by the OLCC. These are all factors that other states have been working with.

Washington and Colorado have had the similar concerns as Oregon since they each legalized recreational marijuana. To create the “perfect” tax on recreational marijuana, officials must find a price that will decrease the demand within the black market. Depending on the tax percentage chosen by each state, it is predicted that states could earn over \$300 million on sales taxes and license fees. Measure 91 in Oregon focuses on around a 17% tax rate. Alaska is looking at a 21% tax rate while Washington is around 44% and Colorado is at 30% (Elinson). According to the *Wall Street Journal*, “Measure 91 [in Oregon] proposes that 40% of tax proceeds to go a schools fund, 20% to mental-health and drug services, 15% to state police, and 20% to counties and cities, depending on the number of licensed marijuana businesses,” (Elinson).

The 2016 Presidential Election was one that had a lot on the line, but these ballots also had the opportunities for voters to vote yes or no on recreational marijuana sales within their state. With the legalization of recreational marijuana in the states of Nevada, California, Maine, and Massachusetts, the United States is seeing a slow change within the states' legal systems. The question of what will happen at the federal level is buzzing throughout the marijuana industry as well as among marijuana supporters. Even though states have taken the initiative to legalize recreational marijuana, the federal government may go in the opposite direction.

The state of Massachusetts voted 54% yes to 46% no on question four on their ballots. The passing of question four allows marijuana to be fully legal within the state by December 25th, 2016. In California proposition 64 passed with 56% yes and 44% no. Passing of proposition 64 allows "California residents can grow up to six plants in their homes, and recreational sales from shops will become legal on January 1, 2018," (Gilbert). Within the state of Nevada, the passing of question two on the ballot will allow the legalization of recreational marijuana to anyone over the age of twenty-one. Nevada passed question 2 with a 54% yes to a 46% no. Beginning January 1st, 2018 residents of the state will be allowed to possess a maximum of one ounce of marijuana. The state of Maine passed question 1 to legalize the recreational use, possession, growing, and sale

of marijuana to individuals over the age of twenty-one. The state barely passed the legalization of recreational marijuana and is still under debate whether to permit the passing of the drug.

With recreational marijuana now legal in eight states, many people are wondering how the drug will be controlled and taxed. Within the state of Nevada, the legalization of recreational marijuana will lead to taxes placed on all sales of the plant. A 15% excise tax will be placed on all sales of recreational marijuana. The revenue earned from the sales of marijuana within Nevada will “first go to the Department of Taxation and local municipalities for administration and regulation costs, and leftovers [will] go to the state’s general education fund,” (Rindels). It is estimated that the taxes on the recreational sale of marijuana in Nevada will bring in over \$464 million, compared to other states which are marked as lower.

Conclusion

While the states' polls are continuing to legalize recreational marijuana, it does not mean that the federal government is on board will allowing the legalization to continue. A change in the political atmosphere within the United States may or may not have a large impact on the marijuana industry. Though Americans are pushing for the change of law, the federal government is looking at other options. A repeat of marijuana's history could occur and another War on Drugs can be declared all to prevent the spread of the legalization.

What does this mean? If the federal government is looking at a quick and easy way to make states comply with the federal law, they have the ability to sue states. If they wanted to, "The Justice Department could file lawsuits on the grounds that state laws regulating pot are unconstitutional because they are pre-empted by federal law," (CBS). That raises the question regarding the Cole Memo. The Department of Justice wrote the Cole Memo, but they could easily revoke it. However, "twenty-eight states and Washington, D.C., allow marijuana for medical or recreational purposes. The government has yet to sue any of them," (CBS).

If the federal government chooses not to sue states, they could perform law-enforcement raids that have been become well-known within the state of California. The DEA still can persecute growers and distributors of medical and

recreational marijuana under federal law. This is the most expensive option that the federal government has if they choose to go after states that have legalized any form of the drug.

So, what comes next? Will the government go after states that have legalized the drug? Or will they try and regulate marijuana? The only way to see will be over time. States are still trying to figure out how to properly tax the sales of the drug and how to create licenses. The delays for licenses have become common throughout states that have approved sales of recreational marijuana. Only time will tell what the fate will be of recreational marijuana.

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