90204-6

NO. 70396-0-I

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

CANNABIS ACTION COALITION, ET AL,

Appellants

v.

THE CITY OF KENT ET AL,

Respondents

REPLY TO ACLU AMICUS CURIAE

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JAN 27 AM 10: 33

John Worthington
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ORIGINAL

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COMES NOW Appellant John Worthington pursuant to RAP 10.1 (e) to reply to the amicus curiae brief filed by the ACLU ,and states as follows:

I. ARGUMENT

A. The court will not "impede" the *Cole guidelines* because they are already impeded by conflicting state and federal policies

The ACLU Amicus contains some useful arguments to guide the court, and Worthington does not object to the amicus curiae in part. However, insofar as precluding the court from "impeding" the federal government's efforts outlined in the Guidance Regarding Marijuana Enforcement, put forth by Deputy Attorney General James Cole on August 29,2013, Worthington argues those guidelines are already impeded for the following reasons argued below.

First, the memo itself is not official policy and is not a uniform and across the Board policy by any means, as evidenced by multiple federal grants offered to states by the Office of National Drug Control Policy (ONDCP), to eradicate marijuana/cannabis.

If the *Cole guidelines* were in fact the policy of the federal government, multiple federal agencies did not get that memo and are still actively pursuing the goal of eradicating marijuana/cannabis or enforcing tax codes on illegal activity.

Currently, ONDCP has offered Washington State three federal grants to eradicate marijuana/cannabis and Washington State has signed all three. Washington State has signed HIDTA grants, the Washington State Patrol marijuana eradication program grant, and the Governor's National Guard counter

ONDCP and HIDTA task forces to implement these policies.[2]

Of those agencies, the most troubling is the IRS Financial Crimes Task Force which remains poised to enforce federal tax codes on I-502 participants. This situation is outlined in a March 25, 2011 letter from the U.S. Department of Treasury letter to six members of Congress shown below:

> "Section 280E of the Code disallows deductions incurred in the trade or business of trafficking in controlled substances that federal law or the law of any state in which the taxpayer conducts the business prohibits. For this purpose, the term "controlled substances" has the meaning provided in the Controlled Substances Act. Marijuana falls within the Controlled Substances Act. *See Californians Helping to Alleviate Medical Problems, Inc. v. C.I.R.*, 128 T.C. No. 14 (2007). The United States Supreme Court has concluded that no exception in the Controlled Substances Act exists for marijuana that is medically necessary. *U.S. v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483 (2001)."
>
> "Because neither section 280E nor the Controlled Substances Act makes exception for medically necessary marijuana, we lack the authority to publish the guidance that you request. <u>The result you seek would require the Congress to amend either the Internal Revenue Code or the Controlled Substances Act."</u>[3]

As shown above without official congressional action amending the Internal Revenue Code or the Controlled Substances Act, I-502 participants will run afoul of IRS tax codes if they rely on the *Cole guidelines* to conduct illegal activity.

Since there is no way for Congress to carve out a two state exemption to tax code 280 E, that tax code will continue to be the biggest disruption to the *Cole*

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[2] http://www.irstaxattorney.com/criminal-investigation/part9-criminal-investigation/tax_fraud_criminal_investigation.html

[3] APPENDIX B

drug program.[1] All are in effect for 2014, the same year I-502 sells "legal" pot.

Furthermore, counties and cities of Washington State have signed on to HIDTA grants which effectively leverage Justice Assistance Grant (JAG) created Washington State multi-jurisdictional drug task forces, and require a statement of assurances to enforce the federal drug control policies of the ONDCP.

It is important to understand that these ONDCP grant monies cannot be used to regulate a "legal" marijuana/cannabis distribution system because the language of these grants have one clear policy and that is to eradicate all marijuana/cannabis "legal" or not. This fact is proven by the mission statements and policy goals embodied in these grants, and the actions of these task forces across America..

It is true that the record does not contain these facts completely, but Worthington has cited HIDTA grants in his reply brief and has correctly argued and illustrated the conflict of interest the City of Kent has on this issue since they signed the ONDCP statement of assurances. These documents entered into the court record on appeal in Appendix D in Worthington's reply brief ,confirms that the ONDCP has already "impeded' the *Cole guidelines* by influencing the City of Kent to adopt an ordinance that is in line with ONDCP policies and in conflict with the *Cole guidelines*. This likely extends to Kent's ban on I-502 stores as well.

In addition, the IRS, FBI, and U.S. Department of Treasury have money laundering enforcement policies that still target the sales of marijuana/cannabis, because that activity remains illegal. In fact, the IRS works in conjunction with the

[1] APPENDIX A

guidelines. Because of that fact, there is nothing for this court to impede because I-502 is already dead on arrival without congressional action. The *Cole guidelines* only offer false representations of official U.S. policy. Even the new promises for friendly bank regulations will not help the situation and further mislead the public.

It is possible that a new President could switch the current *Cole Guidelines* and revert back to the old federal policy. This is another reason why official congressional approval and an official law is imperative in order to protect I-502 participants. Without this official law and official congressional policy there simply is nothing for this court to "impede", given the conflicts in federal policies noted above. If anything, the court would be protecting the innocent I-502 participants from the possible entrapment by ONDCP funded marijuana/cannabis eradication grant programs, and eventual IRS federal tax code violations.

It is more than likely, given the timing of the *Cole guidelines,* that they were hastily brought forward to gain the trust of the Washington State legislature to enact medical marijuana legislation. When the guidelines came out in August of 2014, there was much angst in the Washington State legislature about a federal response to I-502. That angst was preventing the desired momentum for medical cannabis laws to reduce the medical marijuana activity back to a limited use provision for a select few and end medical cannabis for profit distribution.

If the record were allowed to be properly developed, the public records trail would show that the medical cannabis legislation introduced prior to the *Cole guidelines* was strictly financially motivated. PRA documents show that SB 5887,

was actually written and negotiated by Ezra Eickmeyer and Phil Dawdy[4], activists with I-502 interests, who then lobbied state and local agencies to "de-incentivize" medical cannabis in order to create wealth and taxes for themselves and the State of Washington. That public records trail is growing and should be developed for a another court to review.

Although an argument can be made that the trial court record was not properly developed as far as federal policies are concerned, the argument that this court would "impede" the *Cole guidelines* is not accurate since the guidelines are already contradicted and "impeded" by other state and federal policies.

As shown above the federal policy in the *Cole guidelines* have already been impeded and the court would not be interfering with what is already a conflict of state and federal policies, that should be sorted out by a separate legal action.

B. The court would not disrupt the implementation of I-502

The implementation of I-502 would not be disrupted by this court because the collective gardens, especially residential collective gardens, do not have licensing requirements. Furthermore, I-502 "legalizes" nothing and only provides an exemption to a crime of violating the Washington State Controlled Substances Act.

If the legislature were contemplating removing the 3 pages of earmarks and the dedicated marijuana fund in I-502[5], or reducing the tax rates imposed by I-502, then perhaps the outcome of I-502 implementation would be in question. Or if the legislature were contemplating removing cannabis from Schedule I of the

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[4] APPENDIX C

[5] Earmarks in Initiatives are supposed to be illegal in Washington State because it buys votes.

Washington State Controlled Substances Act, to enable I-502 participants to at least be legal on a state level, then that would disrupt a financially viable I-502.

However, since to date most of the legislative efforts have been to reign in medical cannabis by including language that eliminates collective gardens, and making medical cannabis authorizations harder to acquire, the court cannot possibly alter the I-502 implementation by the legislature. Of the 25 marijuana/ cannabis bills introduced to date, few deal with I-502 taxation or implementation and instead deal with medical cannabis, tax stamps or Industrial hemp. Most likely, the legislature will have officially eliminated collective gardens by the time oral argument for this case is conducted.

In addition, the ACLU, and Botec, the highly paid consultant for I-502 have predicted the current tax structure in I-502 to be unworkable. Yet to date there has been no legislative efforts to reduce the tax structure in I-502 It is apparent that the legislature has mostly been concerned about eliminating, or, as the Washington State Department of Health put it, de-incentizing[6] medical cannabis and has not at all concerned about fixing the actual workability of I-502, therefore, there is nothing meaningful for this court to disrupt I-502 wise and there may never be.

Given the legislative effort currently under way, the court would only be disrupting a certain increase in criminal justice funding,[7] as the law enforcement agencies enforce a new limited use medical cannabis provision and an I-502 business model that prices out participation and any would be savings on criminal

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[6] APPENDIX D

[7] (An increase that the ACLU and others alleged would not happen with I-502),

justice funding. The court would also be disrupting petty squabbling over the (allegedly illegal) earmarks intended for the Washington basic health plan which has now been eliminated , leaving those earmarks up for grabs.

It would actually in the best interests of the citizens of Washington State for this court to "disrupt" the use of a self-serving federal guideline and press conference, to offer false representations to conduct legal activity, when in fact that conduct remains illegal. This court would be saving Washington State citizens from entrapment by their own law enforcement agencies and National Guard, after the State of Washington signed ONDCP agreements to eradicate marijuana/cannabis. This court would also "disrupt" certain federal tax code violations that could wipe out the credit and seize the assets of anyone who fell into the I-502 trap hoping to conduct "legal" commerce that remains illegal.

Finally, this court would be saving the people from dirty back room deals by lobbyists and the ACLU to monetize medical cannabis with an ill-conceived plan to replace the street drug dealer with the state dealer, until the plan succumbs to federal policies and forces patients and recreational users back to the black market.

C. Worthington did brief how the federal government is endeavoring to accomplish the (unbriefed) objectives of the CSA,

Worthington clearly briefed that the federal government did not want to interfere with state drug laws directly by commandeering state and local law enforcement. Worthington showed how the federal governments choose to get the state and local law enforcement to engage in cooperative federalism by offering ONDCP HIDTA grants. Worthington clearly articulated the purpose of the HIDTA

grants and the fact that the City of Kent has accepted a HIDTA grant. Worthington has also shown how the city is now leveraged to enforce an ONDCP policy which does not include marijuana /cannabis distribution systems or collective gardens.

The manner in which the federal government is endeavoring to accomplish the goals of the CSA, is to bribe states into enforcing a federal drug control policy with ONDCP grant monies. Even the states with marijuana/cannabis legalization laws like Washington and Colorado have accepted these grants and are now poised to both sell and eradicate marijuana/cannabis at the same time.

Worthington does acknowledge that the record does not properly explain all the aspects of a collective gardens effect on the goals of the CSA. For instance, a collective garden that is set up to assist and enable "ultimate users"[8] of medical cannabis, which charges a prorated share of those expenses to grow for the collective, and enable ultimate users, would not conflict with the *Ogden memo* or the CSA. But, a collective garden using vendor agreements to purchase medical cannabis to sell to collective members would be a distribution model not an ultimate user enabling model and would most definitely conflict with the CSA and the *Odgen memo*.

The relevance of this issue is over stated because that particular argument is a question of enforcement and is not relevant in a question of whether an ordinance is constitutional or whether the State of Washington has chosen to regulate the entire field of medical cannabis as far as collective gardens are concerned. Those

[8] Ultimate user language is found in both the federal and Washington State CSA. (21 U.S.C. 822(2) (C) (3) and the Revised Code of Washington at RCW 69.50.302(c) (3).)

issued were properly framed for the court and should be decided.

Any chances of briefing on this issue ended when the City of Kent decided to drop its criminal charges against Appellant Tsang and offer a plea agreement, perhaps because Mr. Tsang was found to be growing medical cannabis in his collective garden. Ultimately, the City of Kent's arguments that Tsang was a for profit dispensary were abandoned in the proper criminal forum and incorrectly asserted in a civil action as justification for a ban on medical cannabis collectives. Appellant Tsang's Counsel David Mann effectively framed that argument to the Court and it should be ruled on.

II. CONCLUSION

The ACLU amicus curiae can be used to support arguments of law and for some additional guidance. However, the court would not be impeding a federal policy or disrupting the I-502 implementation process.

The balance of the ACLU amicus curiae is important, but is better served being articulated and hashed out in a political forum, in either a blue ribbon panel , legislative work group or work session. However, this court proceeding is not the appropriate venue for these political arguments and discussions.

Respectfully submitted this 27th day of January, 2014.

BY

John Worthington
4500 SE 2ND PL.
Renton WA.98059

DECLARATION OF SERVICE

I declare that on the date and time indicated below, I caused to be served via email and U.S. Mail, a copy of the documents and pleadings listed below upon the attorneys of record for the Respondent, and Appellants, as well as the other parties herein listed and indicated below.

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I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

Executed this 27th day of January 2014.

BY John Worthington

John Worthington
4500 SE 2ND PL.
Renton WA.98059

APPENDIX A

Office of National Drug Control Policy

Marijuana Resource Center

- Marijuana FAQ
- State Laws Related to Marijuana
- The Public Health Consequences of Marijuana Legalization

Marijuana is a topic of significant public discourse in the United States, and while many are familiar with the discussions, it is not always easy to find the latest, research-based information on marijuana to answer to the common questions about its health effects, or the differences between Federal and state laws concerning the drug. Confusing messages being presented by popular culture, media, proponents of "medical" marijuana, and political campaigns to legalize all marijuana use perpetuate the false notion that marijuana is harmless. This significantly diminishes efforts to keep our young people drug free and hampers the struggle of those recovering from addiction.

The Administration steadfastly opposes legalization of marijuana and other drugs because legalization would increase the availability and use of illicit drugs, and pose significant health and safety risks to all Americans, particularly young people.

This Web-based resource center provides the general public, community leaders, and other interested people with the facts, knowledge, and tools to better understand and address marijuana in their communities. This resource center will be regularly updated and expanded to address emerging issues, research, and prevention tools, and highlight successful local efforts to reduce marijuana use.

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C130254FED

STATE AND LOCAL HIDTA TASK FORCE AGREEMENT

This agreement is made this 1st day of October 2012, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Washington State Patrol (hereinafter "WSP"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

Whereas there is evidence that trafficking in narcotics and dangerous drugs exists in the Seattle Metropolitan area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the Seattle Metropolitan area, the parties hereto agree to the following:

1. The Seattle HIDTA Task Force Group D-21 will perform the activities and duties described below:

a. disrupt the illicit drug traffic in the Seattle Metropolitan area by immobilizing targeted violators and trafficking organizations;

b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and

c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the task force's activities will result in effective prosecution before the courts of the United States and the State of Washington.

2. To accomplish the objectives of the Seattle HIDTA Task Force Group D-21, the WSP agrees to detail one (1) experienced officer(s) to the Seattle HIDTA Task Force Group D-21 for a period of not less than two years. During this period of assignment, the WSP officer(s) will be under the direct supervision and control of DEA supervisory personnel assigned to the task force.

3. The WSP officer(s) assigned to the task force shall adhere to all DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the task force.

4. The WSP officer(s) assigned to the task force shall be deputized as task force officers of DEA pursuant to 21 USC 878.

5. To accomplish the objectives of the Seattle HIDTA Task Force Group D-21, DEA will assign five (5) Special Agents to the task force. HIDTA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and WSP officer(s) assigned to the task force. This support will include: office space, office supplies travel funds, funds for the purchase of evidence and information, investigative equipment, training and other support items.

6. During the period of assignment to the Seattle HIDTA Task Force Group D-21, the WSP will remain responsible for establishing the salaries and benefits, including overtime, of the WSP

shall apply to accidents involving the leased vehicles furnished to the WSP personnel, in addition to whatever accident reporting requirements the WSP may have.

14. While on duty and acting on task force business, the WSP officer(s) assigned to the HIDTA task force shall be subject to all DEA and federal government rules, regulations and procedures governing the use of OGV's for home to work transportation and for personal business. The HIDTA Executive Committee acknowledges that the United States is liable for the actions of task force officer, while on duty and acting within the scope of their federal employment, to the extent permitted by the Federal Torts Claim Act.

15. The police agencies participating in the Seattle HIDTA Task Force Group D-21 agree that all assets seized by the Seattle HIDTA Task Force Group D-21, and forfeited, shall be distributed as follows:

Each participating police agency shall receive an equal share of the proceeds, in compliance with the Equitable Sharing guidelines set forth by the Department of Justice (DOJ), Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS).

Washington State Patrol- 26%
King County Sheriff's Office- 26%
Seattle Police Department- 26%
US DOJ Asset Forfeiture Fund- 22%

16. If a non-signatory police agency made a significant contribution to the investigation that led to the asset seizure, that agency may receive a share of proceeds in proportion to its investigative contribution, as determined by quantitative and qualitative measures. The remaining proceeds shall be distributed in equal share among the Seattle HIDTA Task Force Group D-21 participating agencies.

17. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2013. This agreement may be terminated by either party on 30 days advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. HIDTA will be responsible only for obligations incurred by WSP during the term of this agreement.

For the Drug Enforcement Administration:

_____ Date:_____
Matthew G. Barnes

_____
SAC

For the Washington State Patrol

_____ Date: _____

David J. Karnitz

_____

Title

APPROVED AS TO FORM

_____

ASSISTANT ATTORNEY GENERAL

Sunday, January 26, 2014

Washington State Patrol

Crime & Safety · Marijuana Eradication

The Marijuana Eradication Program (MEP) is sponsored by the Drug Enforcement Administration and managed by the Washington State Patrol.

The emphasis of this program is to consolidate the efforts of federal, state, and local enforcement agencies to eradicate marijuana-growing operations within the state of Washington.

This program needs your assistance to be successful.

The MEP Hotline receives and monitors anonymous information from concerned citizens regarding marijuana-growing operations. This information is sent to an enforcement agency in the jurisdiction of the reported marijuana grow for action.

1-800-388-GROW (4769)

Look for These Signs

The following signs may indicate the illegal growing of marijuana.

INDOOR:

- Covered or blackened windows
- Loud humming sound from fans or ballasts
- Strong musty order
- Large amounts of potting soil, containers, fertilizers, hoses, halide light systems, ballasts.
- Use of guard dogs
- Posted property
- Security Systems

OUTDOOR:

- Large purchases of fertilizer, garden hoses, PVC pipe, camouflage netting
- "No Trespassing" or "Keep Out" signs
- Guard Dogs
- Unusual structure or items in remote forested areas; buckets, garden tools, fertilizer bags, etc.

Safety Do's and Don'ts

Marijuana growers can be DANGEROUS, so please leave investigations to Law Enforcement Officers.

DO . . .

- Your best to know exact locations, address, or landmarks.
- Make note of all vehicles (license plates) or persons in the area.
- Do make note of any guard dogs or alarm systems.

Crime & Safety · Marijuana Eradication

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1-800-388-GROW (4769)

Look for These Signs

State Drug Interdiction and Counterdrug Activities Plan Fiscal Year 2014
State of Washington
Office of the Governor

The state of Washington submits its Fiscal Year 2014 National Guard Counterdrug Activities Plan. All operations and activities contained herein are based upon a verified threat and valid requests from law enforcement agencies and/or community based organizations supported by law enforcement agencies. The state of Washington will maintain a baseline program throughout the entire fiscal year and will maintain mission output in accordance with the projected funding levels for each mission annotated in Annex A of this plan.

The Washington Governor hereby certifies and has determined that any activities included in the plan that are carried out in conjunction with federal law enforcement agencies serves a law enforcement purpose for the state.

The Washington Attorney General hereby certifies that the use of the National Guard of Washington for the activities proposed under the plan is authorized by, and is consistent with state law.

The Adjutant General hereby certifies that all counterdrug operations included in the plan will be conducted when personnel are not in Federal service. The Adjutant General also certifies that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard. The Adjutant General further certifies that participation by National Guard personnel in those operations is service in addition to training required under section 502 of Title 32 U.S. Code.

The Washington Counterdrug Coordinator is committed to providing professional and cost-effective counterdrug and civil operations support to requesting local state and federal law enforcement agencies and community based organizations with a counterdrug nexus. The Washington National Guard provides the full range of support services, as permitted by law and regulation, and its activities are restricted to support services and civil operations programs only. The Washington Counterdrug Coordinator is committed to providing this support in consonance with White House and Department of Defense Guidance, and to deriving the maximum benefit to the state of Washington, the Department of Defense, and the nation through its support to law enforcement and community based organizations within the state of Washington.

JAY INSLEE
Governor of Washington

BOB FERGUSON
Attorney General, Washington

BRET D. DAUGHERTY, MG
Adjutant General, Washington

DAVID S. HAMILTON, LTC
Counterdrug Coordinator, Washington National Guard

JW2-00001
PRR-2013-00431

1. STATE OF WASHINGTON PRIMARY DRUG THREATS.

a. Methamphetamine.

b. Marijuana.

c. Heroin.

d. Prescription Drugs.

e. Cocaine.

2. STATE OF WASHINGTON VULNERABILITIES.

a. **Production.** Chinese Drug Trafficking Organizations (DTOs) are linked to precursor chemical smuggling and methamphetamine and MDMA (street name ecstasy) manufacturing along the Northern Border. Precursors have been seized at seaports and from commercial parcel shipping companies.[i] Although final production may not occur in Washington, involvement in any portion of the supply chain introduces vulnerability from the criminal elements involved in smuggling and provides opportunity to interdict regional production

Mexican and Asian DTOs are increasing their marijuana grows in Washington, due to recent changes in marijuana laws[ii]. Transnational Criminal Organization (TCO)s take advantage of unclear jurisdictional boundaries, remote locations, and limited law enforcement on Washington State's 29 tribal reservations to facilitate clandestine drug production. Washington is the third largest US exporter of food, which brings with it a large population of migrant agriculture workers. This use of illegal labor is preferred by Mexican cartels to provide cultivation labor, local distribution, and security .The large population of Hispanic agricultural workers working in state allows marijuana cultivators to 'hide in plain sight', while Cartels have coerced workers with family in Mexico so they can "use them as leverage to keep the farmers working and quiet"[iii].

b. **Distribution.** Most of the Mexican meth, distributed in the Western United states, is distributed outward from the Northwest. Meth enters the U.S. from California, is moved up the I5 corridor to the Northwest and is distributed North, South, and Eastward.[iv] Multi-generational Mexican TCOs are the principal wholesale distributors of methamphetamine. Caucasian DTOs, Outlaw Motorcycle Gangs (OMG)[v], and local independent dealers assist with sales to end level users in Washington State.[vi]

Washington grown cannabis is distributed eastward to in drug markets in Illinois, New York, and Pennsylvania.[vii] Marijuana from Canada Oregon is and California is shipped via the same networks through distribution hubs located throughout Washington State

Mexican, South American, and Central American TCOs are the leading wholesale and retail traffickers of Mexican black tar heroin in Washington State.

Prescription drugs are diverted to nefarious purposes through: illegal dispensing, illegal prescriptions; illegal distribution by pharmacists; prescription forgery; doctor shopping; employee pilferage, and internet purchases.[viii] California criminal street gangs have developed elaborate schemes to traffic large quantities of prescription drugs, weapons, and currency in Washington State. The return of payment from the street level purchaser to the top of the distribution chain is

critical to a functioning distribution cycle. Without the distribution of currency, weapons, and many other means of value transaction, there would be no profit in drug distribution.

Mexican and Hispanic (Honduran, Salvadoran) poly-drug organizations provide wholesale distribution of cocaine HCl.[ix] Street gangs provide retail sales to users.

c. **Transportation.** Washington State's terrain and water/sea/land shipping routes make it an ideal transportation node. Washington shares a 427 mile land and 157 mile maritime border with Canada, which includes: 13 official ports of entry (land border crossings), 5 rail crossings, 64 Federal Aviation Administration (FAA) classified airports, hundreds of unregulated airfields, airstrips and seaplane bases. Washington is listed as having 18 major commercial maritime ports, 11 deep ports, 5 non-commercial maritime ports, 3026 miles of mostly unregulated tidal shoreline, is the largest locally controlled port system in the world, and houses the second largest load center in the nation (Seattle /Tacoma ports). The Columbia/Snake river system, on Washington's southern border with Oregon, contains 3 deep draft ports and continues 365 miles inland. Major overland routes include: 2523 railroad miles (which include 3 Amtrak routes), 764 miles of interstate roadways, and tens of thousands of miles of state, local, and rural roads.

The Department of Homeland Security (DHS) assessed Washington State's maritime border as the second highest risk area on the entire US-Canadian border due to short crossing distances, numerous islands, and the large amounts of legitimate maritime traffic.[x] Traffickers also utilize the remote, rugged, and sparsely populated land along the international border to import/export illicit goods and proceeds via a variety of means, inlcuding all-terrain vehicles, recreational vehicles, cold drops, package delivery, postal service, horses, kayaks, backpacks, ultra-light aircraft, and snowmobiles.[xi]

Washington State is a major trafficking corridor for Mexican Consolidated Priority Organization Targets (CPOT) TOCs. Multi-pound quantities of crystal methamphetamine and heroin, distributed in the Pacific Northwest, is smuggled into Washington from Mexico, California, Arizona, and other Southwest Border states via rail and through passenger and commercial vehicles. Traffickers utilize the interstate and highway system. I-5 runs from the US-Mexican border through California, Oregon, and Washington State to the US- Canadian border. Illicit trafficking fans outward on I-90, which runs from Seattle to Boston, MA, and connects to numerous other interstate and state routes along the way. Multi-pound quantities of crystal meth have been tracked from Alaska, Montana, Utah, Wyoming, and Midwest states using these interstate highways.[xii]

Traffickers use Washington's three international airports to illegally transport currency and goods.

Large volumes of cocaine are moved through Washington by East Indian commercial cargo truckers driving from Southern California to British Columbia, Canada.[xiii]

d. **Drug Abuse.** Initiative 502 licenses and regulates marijuana production, distribution and possession for persons over 21 years of age. Marijuana is the most abused drug in Washington State and is the most cited drug treatment admission for youth and the fourth for adults.[xiv] Hospital Emergency Department admissions for marijuana-related incidents were cited as third among illegal drug admissions.[xv]

Prescription drug abusers are switching to heroin because it is cheaper and easier to obtain.[xvi] Detoxification facilities are seeing an unprecedented number of 18 to 29 year olds entering treatment for heroin. Raw adult treatment admission numbers for heroin for July through October 2010 were 1,282 and in 2011 the number was 1,704 a dramatic increase.[xvii]

e. **Illicit Finance.** According to the Financial Crimes Enforcement Network (FinCEN), Washington State is among the top five states for filing of Suspicious Activity Reports (SAR)s. Money laundering (threat finance) is a critical component of the drug transaction and represents a large

vulnerability to TCO and DTOs. The identification and targeting of illicit finance in the banking system has forced proceeds from drug sales into multiple, alternative means of value transfer as a hedge against seizures.

Washington has 28 Tribal casinos and 62 card rooms, which are attractive venues for money laundering schemes. They offer the same financial services as banks, regularly process large volumes of cash, and enable money launderers to legitimize illicit proceeds by claiming them as gambling earnings[xviii].

Bulk cash is smuggled from Washington through California towards Mexico and through Washington to Canada.[xix]

Money wire services, such as Western Union, the growing availability of pre-paid debit cards also provide a means of transferring illicit finances within and without Washington State and the United States.

3. **STATE STRATEGY**. The Washington State Counterdrug Program (WA CDP) reduces the operational capabilities of Transnational Organized Crime and Drug Trafficking Organizations through targeted application of unique National Guard capabilities to local, state and federal law enforcement organizations. The application of resources is prioritized toward programs that mitigate national threats to the safety and security of the nation, the region and Washington State. For FY14, the WA CDP strategic success will be accomplished through the expert execution of three core competencies: 1) criminal analysis, 2) illicit finance, and 3) ground reconnaissance. In addition to the core competencies, WA CDP members also facilitate enhanced information sharing between LEAs, enable state marijuana eradication efforts, and provide support to community based organizations.

Strategic Goals:

a. Enable authorized government and civilian organizations that can best leverage National Guard resources to address local threats through satisfaction of DASD strategic guidance

b. Refine WA CDP capabilities to best counter current and emerging trends in illegal drug production, trafficking and use

4. MILITARY UNIQUE RESOURCES APPLIED TO DRUG THREATS AND VULNERABILITIES, BY MISSION.

a. **Mission 1 (Program Management).** Washington Counterdrug will provide four personnel to plan and coordinate unique military CD support including ground reconnaissance missions and analytical support; as well establish liaison with supported LEAs and other community organizations. The program will also provide resources and manage personnel and equipment requirements for CD support operations, and prepare operational/financial reports and briefings as required. This core element writes the State Plan and all Memorandums of Agreement (MOAs) and Memorandums of Understanding (MOUs). The program's activities address all threats and vulnerabilities.

b. **Mission 2 (Technical Support).**

1) **Linguist Support.**
Washington State is home to a Military Intelligence (Linguist) battalion, an Air Guard Intelligence squadron, and several Special Operations teams. These soldiers provide a unique pool of qualified linguists in diverse languages and cultures, with high level security clearances, to local, regional, and international stabilization efforts through: transcription, DOCEX, information

include equipment assisted aerial visual techniques, including infrared/thermal imagery, photographic reconnaissance/film processing, airborne command and control with down link capabilities and direct communications capability to civilian law enforcement.

f. Mission 6 (Civil Operations and Coalition Development). . In FY14, the WA CDP will provide, as available, training for local law enforcement facilitators of the Kaizen coaching process, military planners to CADCA and similar coalition conferences as subject matter experts available, and direct support to coalition planning efforts. This strategy recognizes that an involved local population is a strong deterrent to the local demand that is the engine of global trafficking and that Washington population centers are coalition savvy. These activities specifically addresses primary drug threats (a, b, c, d, and e) and provides an immediate response to vulnerabilities (a, b, and d). This activities support and compliment DASD/CN&GT Strategic Goal 2, Objective 4, and ONDCP NDCP Goal 1, 4 and 7.

1) **Civil Operations Support to Coalitions** – WA will maintain Civil Operations trained personnel in an additional duty status that, when feasible, may provide meaningful support to coalitions, such as coordination of local and regional CADCA training events and limited direct support of coalitions. . However, the preferred method is to train local law enforcement community outreach personnel with skills required to facilitate essential coalition operations This mission counters drug threats (a, b, c, d, and e) and vulnerabilities (a, b, and d).

5. GENERAL: The purpose of this plan is to set forth specific guidance for the operation of the FY14 Washington National Guard Counterdrug Program. This plan supports the Office of National Drug Control Policy (ONDCP) as outlined by the Office of the Secretary of Defense (OSD) Counterdrug Support Planning Guidance and the National Guard Bureau (NGB).

a. The Washington National Guard role is to provide counterdrug and civil operations support as requested by local, state, and federal law enforcement agencies (LEAs) and community based organizations (CBOs).

b. Guidance: Washington National Guard personnel are authorized to conduct counterdrug support in accordance with (IAW) federal law, regulations, National Guard Regulation (NGR) 500-2/Air National Guard Instruction (ANGI) 10-801, dated 29 August 2008, state law, approved plans and applicable policy.

c. Participation status.

(1) All Washington National Guard personnel participating in federally funded counterdrug duty as outlined in this plan will be in a Title 32 status.

(2) Washington National Guard personnel volunteers participating in Civil Operations activities in a non-paid status may be on orders without pay or may participate in a traditional volunteer status.

(3) Washington National Guard personnel attending Inactive Duty Training/Inactive Duty (IDT/IAD) or Annual Training (AT) may perform counterdrug duties incidental to this training if such activities are synonymous with the training originally planned for these periods. Operational and funding requirements for IDT-IAD or AT training will be handled IAW section 112 and 502 of Title 32 U.S. Code.

d. All personnel on counterdrug support duty in the state of Washington will be employed IAW NGR-500-2/ANGI 10-801. All support operations carried out IAW this plan will be conducted when personnel are not in federal service.

e. All engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard.

f. Participation by Washington National Guard personnel in the counterdrug activities outlined in this plan is service in addition to training required under section 502 of Title 32 U.S. Code.

g. Operations conducted outside of Washington will be pursuant to a memorandum of understanding with the applicable second state or territory if required by state law. Washington law currently does require a Memorandum of Understanding (MOU) to operate outside of the state boundaries.

h. Equipment purchase requirements over $5K per item should be identified in Annex E for approval and purchase authorization (Annex C). The Deputy Assistant Secretary of Defense for Counternarcotics & Global Threats (DASD/CN&GT) has delegated the authority to approve purchases up to $100K to Chief, National Guard Bureau (CNGB) or his designated representative.

i. The state of Washington acknowledges that funding of the NG CD program is based on ONDCP and OSD priorities, which include Regional Counterdrug Training Centers and training initiatives, SIPRNet information sharing efforts at High Intensity Drug Trafficking Areas (HIDTA) intelligence centers and the NIPRNet based network at state and local law enforcement agencies that do not have SIPRNet access, continued responsiveness to and effort to requests for support from the National Park Services (NPS), the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) to address the growing use of public lands by illegal drug producers, and the continued support the marijuana eradication efforts as part of the ONDCP M-7 initiative.

j. The state of Washington supports the development of standardized training programs and equipment for National Guard personnel conducting surface reconnaissance operations to ensure continued department approval for the National Guard to conduct these operations in support of counter-narcotics activities.

k. The state of Washington currently does have the Adjutant General's authorization to carry weapons during the conduct of approved counterdrug missions and state law permits carriage of issued weapons by qualified National Guard personnel in support of approved counterdrug missions.

l. The Washington National Guard acknowledges the funding and assignment of appropriate Title 10 National Guard personnel to Joint Interagency Task Force-West (JIATF-W) and Joint Interagency Task Force-South (JIATF-S) to assist in intelligence analysis. NGB-J32 will support Joint Task Force-North (JTF-N) by assisting in mission planning, and the deconfliction of domestic Title 10/Title 32 CONUS counter-narcotics support activities.

m. The state of Washington endorses a nationally recognized scientifically based Civil Operations program that enhances national prevention capacity for America's youth by bringing a standardized and measurable drug prevention program to Washington.

6. ANNEXES

ANNEX A: State Projected Funding Summary (Project Code 7403)

ANNEX B: State Civil Operations Support Organizations

ANNEX C: State CD Request for Equipment Procurement in Excess of $5K/$100K

JW2-00009
PRR-2013-00431

3. Grantees are required to submit Federal Financial Reports (FFR) to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). Other reporting requirements are specified in the HIDTA Program Policy and Budget Guidance.

4. The recipient gives the awarding agency or the Government Accountability Office, through any authorized representative, access to, and the right to examine, all paper or electronic records related to the grant.

5. Recipients of HIDTA funds are not agents of ONDCP. Accordingly, the HIDTA, its fiscal agent(s), HIDTA employees, HIDTA contractors, as well as state, local, and federal HDTA participants, either on a collective basis or on a personal level, shall not hold themselves out as being part of, or representing, the Executive Office of the President or ONDCP.

B. Special Conditions HIDTA Grants

The following special conditions are incorporated into each award document.

1. This grant is awarded for the initiative(s) named above. Variation from the description of activities approved by ONDCP and/or from the budget attached to this letter must comply with the reprogramming requirements as set forth in ONDCP's HIDTA Program Policy and Budget Guidance.

2. This award is subject to the requirements in ONDCP's HIDTA Program Policy and Budget Guidance.

3. No HIDTA funds shall be used to supplant state or local funds that would otherwise be made available for the same purposes.

4. The requirements of 28 CFR Part 23, which pertain to information collection and management of criminal intelligence systems, shall apply to any such systems supported by this award.

5. Special accounting and control procedures must govern the use and handling of HIDTA Program funds for confidential expenditures; i.e. the purchase of information, evidence, and services for undercover operations. Those procedures are described in Section 6-12 of the HIDTA Program Policy and Budget Guidance.

6. The grant recipient agrees to account for and use program income in accordance with the "Common Rule" and the HIDTA Program Policy and Budget Guidance. Asset forfeiture proceeds generated by the HIDTA-funded initiatives shall not be considered as program income earned by HIDTA grantees.

C130493FED

Executive Office of the President Office of National Drug Control Policy	AWARD Grant	Page 1 of 1
1. Recipient Name and Address Chief John Batiste Washington State Patrol 210 11th Ave SW Olympia, WA 98501	4. Award Number: G13NW0002A 5. Grant Period: From 01/01/2013 to 12/31/2014	
1A. Subrecipient IRS/Vendor No. Subrecipient Name and Address	6. Date: 5/31/2013 8. Supplement Number 1	7. Action Initial [X] Supplemental
2A. Subrecipient IRS/Vendor No.:	9. Previous Award Amount:	$627,516.00
3. Project Title	10. Amount of This Award:	$583,118.00
	11. Total Award:	$1,210,634.00

12.
- The above grant is approved subject to such conditions or limitation as are set forth in the original Grant.
- Consistent with P.L. 113-6, the Full-Year Continuing Appropriations Act, 2013, this Grant Award document provides additional funding in the amount indicated in Block 10. This amount, together with the amount equivalent to 48% of the fiscal year 2012 funding level previously made available, as indicated in Block 9, represent the total FY 2013 budget and spending ceiling for this grant, as indicated in Block 11.

13. Statutory Authority for Grant: Public Law 113-6

AUTHORIZATION	ACCEPTANCE
14. Typed Name and Title of Approving Official Michael K. Gottlieb National HIDTA Director	15. Typed Name and Title of Authorized Official John Batiste G. Curt Hatfell, Deputy Chief Washington State Patrol
16. Signature of Approving ONDCP Official Michael K. Gottlieb	17. Signature of Authorized Recipient/Date [signature] 6-24-13

ACCOUNTING	
18. Accounting Classification Code DUNS: 808883854 EIN: 1916001127A2	19. HIDTA AWARD OND1070DB1314XX OND6113 OND2000000000 OC 410001

C130493FED

Executive Office of the President **Office of National Drug Control Policy**	AWARD Grant	Page 1 of 1
1. Recipient Name and Address Chief John Batiste Washington State Patrol 210 11th Ave SW Olympia, WA 98501	4. Award Number: G13NW0002A 5. Grant Period: From 01/01/2013 to 12/31/2014	
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AGENCY APPROVAL	ACCEPTANCE
14. Typed Name and Title of Approving Official Michael K. Gottlieb National HIDTA Director	15. Typed Name and Title of Authorized Official John Batiste G. Curt Hatlell, Deputy Chief Washington State Patrol
16. Signature of Approving ONDCP Official Michael K. Gottlieb	17. Signature of Authorized Recipient/Date 6-24-13

AGENCY USE ONLY	
18. Accounting Classification Code DUNS: 808883854 EIN: 1916001127A2	19. HIDTA AWARD OND1070DB1314XX OND6113 OND2000000000 OC 410001

4. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative purposes.

RECIPIENT ACCEPTANCE OF GRANT CONDITIONS

Signature: G C Hattell For Date: 2-25-13

Name: John Batiste G. Curt Hattell, Deputy Chief

Organization: Washington State Patrol

ASSURANCES – NON-CONTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program, if you have questions, please contact the awarding agency. Further, certain Federal-awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the project describe in this application.
2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all record, books, paper, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U. U. C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C. F. R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U. S. C. 1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U. S. C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U. S. C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U. S. C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U S C. 3601 et seq), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assistance programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U. S.C. 1501-1508 and 7324-7328) which limit the political activities are funded in whole or in part with Federal Funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U. S. C. 276a to 276a – 7), the Copeland Act (40 U. S. C. 276c and 18 U. S. C. 874), and the Contract Work Hours and Safety Standards Act (40 U. S. C. 327-333), regarding labor standards for federally assisted construction sub agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et esq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176 (c) if the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et esq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L..93-205).

12. Will comply with the Wild and Scenic: Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	Title
John Batiste	Chief
APPLICANT ORGANIZATION	Date Submitted
Washington State Patrol	1/23/13

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Grantee Name and Address:	**Washington State Patrol** **210 11th Ave SW** **Olympia, WA 98501**
Application Number and/or Project Name:	**G13NW0002A**
Grantee IRS/Vendor Number:	**1916001127A2**
Type Name and Title of Authorized Representative:	**John Batiste** **Chief**

5. Signature: _____ 6. Date: 1/23/13

APPENDIX B

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

Number: **2011-0005**
Release Date: 3/25/2011

CONEX-149328-10
UIL: 280E.00-00

The Honorable Fortney Pete Stark
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Stark:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

Section 280E of the Code disallows deductions incurred in the trade or business of trafficking in controlled substances that federal law or the law of any state in which the taxpayer conducts the business prohibits. For this purpose, the term "controlled substances" has the meaning provided in the Controlled Substances Act. Marijuana falls within the Controlled Substances Act. *See Californians Helping to Alleviate Medical Problems, Inc. v. C.I.R.*, 128 T.C. No. 14 (2007). The United States Supreme Court has concluded that no exception in the Controlled Substances Act exists for marijuana that is medically necessary. *U.S. v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483 (2001).

Because neither section 280E nor the Controlled Substances Act makes exception for medically necessary marijuana, we lack the authority to publish the guidance that you request. The result you seek would require the Congress to amend either the Internal Revenue Code or the Controlled Substances Act.

I am sending a similar letter to your colleagues. I hope this information is helpful. If you have any questions, please contact me at .

Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Barney Frank
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Mr. Frank:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

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Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Jared Polis
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Mr. Polis:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

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Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Linda Sánchez
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Ms. Sánchez:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

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Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Raúl Grijalva
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Mr. Grijalva:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

Section 280E of the Code disallows deductions incurred in the trade or business of trafficking in controlled substances that federal law or the law of any state in which the taxpayer conducts the business prohibits. For this purpose, the term "controlled substances" has the meaning provided in the Controlled Substances Act. Marijuana falls within the Controlled Substances Act. *See Californians Helping to Alleviate Medical Problems, Inc. v. C.I.R.*, 128 T.C. No. 14 (2007). The United States Supreme Court has concluded that no exception in the Controlled Substances Act exists for marijuana that is medically necessary. *U.S. v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483 (2001).

Because neither section 280E nor the Controlled Substances Act makes exception for medically necessary marijuana, we lack the authority to publish the guidance that you request. The result you seek would require the Congress to amend either the Internal Revenue Code or the Controlled Substances Act.

I am sending a similar letter to your colleagues. I hope this information is helpful. If you have any questions, please contact me at .

Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Sam Farr
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Mr. Farr:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

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Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

APPENDIX C

JOB Room 402
2:00pm

Contact: Ezra Eickmeyer, 360-301-1842, ezra@olypen.com

Effects of our proposed medical cannabis legislation

Quick overview of problems with medical cannabis

Under current law, there is no regulation or taxation of medical cannabis operators and the medical cannabis authorization process needs tightening, as practically anyone can obtain an authorization over the internet. This is bad for legitimate patients and it is bad for state tax revenue. if medical marijuana patients can save money by going to medical cannabis access points that are un-regulated or taxed, and it is too easy for someone without real medical need to obtain an authorization, 502 shops will receive less customers which will cost Washington State significant revenues that had been projected in the fiscal note for the initiative.

The goal of this language is to add industry taxes to medical cannabis so that the state receives some revenues from sales, to license and regulate the industry and tighten requirements for becoming a medical cannabis patient all while also helping to secure access to safe, tested medicine regulated by the state for legitimate patients. it is a win for all on public policy while also contributing significant tax revenues to assist with education or other programs as the Legislature sees fit.

We anticipate (with much difficulty finding solid numbers upon which to base assumptions) that this bill would provide between $10 million and $50 million directly in new annual tax revenues, while also stopping recreational users from using medical dispensaries by funneling them back to I-501 shops where they pay higher taxes and provide more revenue.

Main points in bill:

- 30% producer excise tax on medical cannabis industry
- Creates definition and regulations for medical cannabis producers, processors and retailers
  - Allows for vertical integration, mechanism in place to still collect equitable excise taxes to operators who are vertically integrated
  - Rule-making, implementation and enforcement under Liquor Control Board
  - No cannabis visible from street for retailers
  - Must be 1000 ft from schools
  - No cannabis images on buildings, low profile in communities
  - Local jurisdiction may adjust zoning
  - Requires testing of cannabis
  - increased penalties for selling to an under-age person who is not a qualified patient
  - Advertising restrictions on content
  - Licensing fees to cover cost of program for Liquor Control Board
- Tightens rules on medical cannabis authorizations
  - Under 18 must have parent involvement and authorization can only last 3 months so that doctors and parents can monitor for addiction or over-use
  - Doctor visits must be in-person, not over computer
  - Clinics may not exist solely for medical cannabis authorizations, doctors must provide other non-retail medical services as well
- No sales tax, all new taxes are applied to wholesale transactions within the industry.

Mungia, Ingrid G

From:	Garza, Rick J
Sent:	Thursday, March 28, 2013 2:39 PM
To:	Marr, Chris J
Cc:	Kurose, Ruthann; Foster, Sharon; Kohler, Pat A; Simmons, Randy L; Henley, Mary E; Mungia, Ingrid G
Subject:	Re: SB 5877 Discussion w/ Sen. Rivers

Thanks for the update. I think you make good points and I think it makes sense for us to provide a one to two page document regarding point #1. I'll speak with Randy regarding Botec and #2. And regading point #3, I think we should reach out to DOH, with a little help from the Gov's Office, to see what authority they have to assist in providing more clarity and/or regulation to our medical marijuana market.

Also, just got off the phone with Rep. Hurst. Your point is well taken that it makes sense to keep us in the discussion regarding medical marijuana legislative changes and not necessarily putting up a wall that we'd prefer to not be the regulator.

I'd like to get together soon to understand the Board's position and strategy on this matter. Appreciate your assistance with Sen. Rivers.

Sent from my iPad

On Mar 28, 2013, at 10:47 AM, "Marr, Chris J" <CJM@liq.wa.gov> wrote:

> As I indicated last night, I met with Sen. Rivers this morning, and had a rather lengthy and constructive discussion. I've known Ann for several years and consider her to be thoughtful, rational and willing to work her bills aggressively. Off the record, she also has some personal involvement with this issue, as her brother is an MM patient. She is very informed and clear about the need to bring MM under control, but is not one to demagogue all users and players in the med. Mar. marketplace. In short I think she has the ability to be the "adult in the room" as this regulatory discussion moves ahead. The fact that Senators Tom & Litzow are co-sponsors, indicates her ability to work her case with MCC leadership.
>
> http://washingtonstatewire.com/wacannabiswire/senator-rivers-and-majority-leader-tom-sponsor-mmj-fix-sb-5887/
>
> A reading confirms the underlying bill is clearly coming from Ezra Eickmeyer. She is very realistic about the chances of the bill moving ahead. However, she is committed to being part of the ongoing discussion. I told her we had not vetted the bill inside the Board, but to expect you to express discomfort, because given the current state, we have no guarantee about what would emerge. I did tell her we had discussed internally the need to lay out what a prospective bill granting regulatory authority might look like, as well as the other legislative pieces that would need to move. I told her you would contact her and arrange for a one-on-one meeting next week. She is looking forward to it.
>
> Afterward, I had a long talk with Kathy Bucchli. She agrees with my analysis that Sen. Rivers could be a good point person to advance this issue. As you know, Kathy gets the policy and politics around this issue as well as anyone. As far as next steps, here is an idea I ran by her that she agrees would be helpful. I mentioned some of this to you yesterday. Let's talk more about your thoughts on it.
>
> As a starting point, I suggest the following next steps:

Winkler, Jennifer

From: Philip Dawdy <philip.dawdy@gmail.com>
Sent: Wednesday, September 11, 2013 12:56 PM
To: Licata, Nick; Clark, Sally; Aldrich, Newell; Gilliam, Jesse
Subject: Medical cannabis moving forward

Sally and Nick:

I hear you are both to meet with Sen. Kohl-Welles soon to discuss prospects for medical cannabis in the Legislature.

While I know the ACLU prefers to see a bill that would cut distances of retail stores to 500 feet, thereby bringing most MMJ operators under the LCB system, I'm less than certain that the Legislature can agree upon something requiring a two-thirds vote, especially with the Majority Coalition in charge of the Senate.

There is an MMJ bill from this year's session sitting in the Senate Ways and Means Committee. Its prime sponsor is Sen. Ann Rivers, a Republican. A link to it is below. The bill would likely require some amendments to scope out regulations more thoroughly, but overall I think it has provisions that most anyone who wants to see MMJ sorted out would favor—and it has the decided advantage of having already cleared its policy committee and is ready to go to the floor quickly, something that could be quite helpful in short session next year.

If you have any questions, please let me know.

Thanks to both of you for your tireless work on this ordinance.

http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Senate%20Bills/5887.pdf

Philip

—
Philip Dawdy

Winkler, Jennifer

From: Philip Dawdy <philip.dawdy@gmail.com>
Sent: Tuesday, September 03, 2013 4:38 PM
To: Licata, Nick; Aldrich, Newell
Subject: 2014 mmj bill

Nick,

I just spoke with Newell and and he told me you might be speaking with Senator Kohl-Welles soon. As much as far as I understand she has been promising to do a medical bill for next year and conveniently enough there is already a medical bill with regulations sitting in the Senate Ways and Means Committee I am so anything she wants to do could get substituted in for that one and we could avoid probably 3 weeks of hearings and whatnot at the beginning of session. It's also important to remember that any medical bill that's going to move next year is going to have to have Republican support in the Senate and I think that ezra and I have already gotten something there.

APPENDIX D

Benefits of Medical Authorization of Medical Marijuana
Compared to Recreational Use

Goal 1: De-incentivize medical marijuana to ensure recreational users are appropriately funneled into the I502 model rather than the medical market.

Goal 2: Create a properly regulated medical market to ensure patients have access to an adequate, safe, consistent and secure source of mmj.

Issue 1: MMJ patients are allowed to possess 24 ounces as a 60 day supply.

Strategy: Reduce possession amounts. The 60 day supply was enacted due to the lack of an "adequate, safe, consistent, and secure" source of mmj (SB 6032 (2007)). See DOH's 2008 legislatively mandated report on patient access at: http://www.doh.wa.gov/portals/1/Documents/2000/PatientAccess.pdf. Implementation of the retail market and regulation of mmj sales will result in this no longer being an issue.

Issue 2: Mmj patients have an affirmative defense of medical necessity for possession above the legal limit.

Strategy: Eliminate this defense based on creation of an adequate, safe, consistent and secure source of mmj.

Issue 3: Mmj patients are allowed to grow their own (up to 15 plants).

Strategy: Eliminate or reduce home grows. This was enacted as part of the 60 day supply which is no longer a critical issue.

Issue 4: There are no age restrictions for mmj.

Strategy: Place restrictions on mmj for minors such as parental permission, more frequent follow-up and coordination with primary care provider, and possession by the minor of more than a single dose (to prevent sharing). Eliminating use for minors would align better with federal goals but would likely not be successful.

Issue 5: Provision for collective gardens is a gateway to illicit sales.

Strategy: Eliminate collective gardens. Again, this was enacted due to the lack of an adequate, safe, consistent and secure source of mmj. This is no longer an issue. If collective gardens are retained, language is needed to ensure they are conducted as intended.

DISCUSSION DRAFT 9/9/13