



When Every Word Counts . . .

Audio Transcription

STATE BOARD OF EQUALIZATION HEARING
PETITIONER: DAVID ARMSTRONG
ON BEHALF OF: MEDI-MARTS
December 12, 2017

Woman Owned Business

Court Reporter Owned Business

California Deposition Reporters

800-242-1996

1 Petitioner: ... years, I've dedicated all my time and energy to
2 understanding and following the medical marijuana laws of the
3 state of California, but I'm sure most of you have looked at this
4 case and looked at the information. Because as the case earlier
5 today, this all stems from a phone call that I made to the San
6 Jose State Board of Equalization Office back in June of 2012.
7 Some five and a half years ago.

8 Petitioner: What I was questioning, and it's a question that maybe you can
9 all answer here for me today. Not necessarily just for me, but
10 for the other 20,000 plus members of the Medimarts
11 Collective and the four million plus cannabis consumers in the
12 state of California. That I've been waiting to hear some
13 clarification for all this time now, as I've always heard it was
14 better to ask for permission rather than forgiveness, but I'm
15 finding out when it involves millions if not billions of dollars,
16 there's not much forgiveness for the whistleblower or the
17 person asking the question.

18 Petitioner: As the Madame Chairwoman state earlier, the core of this case
19 turned from me asking a question and for a review of
20 Medimarts to become a sales tax-exempt entity, in order to
21 abide by current California law, turned into an audit, which of
22 course I freely supplied information and point of contribution
23 information to the board for their review. Now, it's turned into
24 a constitutional and civil rights issue of how anyone or any
25 organization can pay quote unquote a "sales tax" on a

1 transaction that involves U.S. currency in exchange for the
2 controlled substance cannabis. Without thereby admitting that
3 they're violating higher federal law, because higher federal law
4 expressly prohibits the sale of the controlled substance
5 cannabis.

6 Petitioner: As I sit here before you, I'm definitely a citizen who believes in
7 abiding by the law. Paying taxes, contributing to the overall
8 welfare and whatnot of the state and the city and the county
9 that I may live in, but at the same time, I live with the fact that,
10 well, if I follow state law on one hand, I'm violating federal law
11 on the other. I don't know if this is the forum, and if you folks
12 can tell me how it would be possible for me or any other
13 individual in the state of California that exchanges U.S.
14 currency for the controlled substance cannabis isn't violating
15 higher federal law, and thereby just as I said, I'm glad to be
16 here for my First and Fourteenth Amendment right, but this
17 concerns our Fifth Amendment right, which is self-
18 incrimination in implicating oneself that a sale occurred when
19 that transaction happens, and that I'm not violating a higher
20 federal law that stems with the consequences of 10 years to
21 life in prison.

22 Petitioner: Whether it's me as the managing member making the decision
23 for thousands and thousands of other individuals, or the
24 individuals making that decision themselves unknowing and
25 unwillingly. I could sit here and talk for hours, and I hope you

1 have many questions for me, because I'll freely answer them. I
2 have nothing to hide. I have no animosity towards the state of
3 California or anyone in this room.

4 Petitioner: I just simply sit here before you representing millions of other
5 consumers that either aren't aware of this question or the
6 grave dangers and the risk involved of admitting to a sale
7 occurring when we exchange U.S. currency for the controlled
8 substance cannabis. That's about all I've got to say right now.

9 Chairwoman Hark...: Thank you. Thank you. [inaudible 00:04:51] have the
10 department please introduce yourself? You have 10 minutes.

11 Bradley Heller: Thank you. Good afternoon, Chairwoman Harkey and
12 members of the board. I'm Bradley Heller from the California
13 Department of Tax and Fee Administrations Legal Division. To
14 my right are Steve Smith, also from the Department's Legal
15 Division, and Kevin Hanks from the Department's Business Tax
16 and Fee Division. The department agrees with the appeal's
17 bureau's conclusions and recommendations as set for in
18 Petitioner's decision and recommendation. The department
19 respectfully requests that the board vote to deny the petition
20 [inaudible 00:05:20].

21 Bradley Heller: The medical marijuana program, as interpreted by the
22 California Attorney General and the California Court of Appeal
23 in People V Baniani provides for the collective and cooperative
24 cultivation of medical marijuana and the operation of
25 collectives and cooperatives that distribute marijuana to their

1 members or dispensaries. Sales tax applies to retailers' gross
2 receipts from retail sales of medical marijuana in California.
3 This is because medical marijuana is tangible personal
4 property, and sales tax applies to retailers' gross receipts from
5 retail sales of tangible personal property in California, unless
6 an exemption or exclusion applies.

7 Bradley Heller: Also, medical marijuana furnished to a person in accordance
8 with the Compassionate Use Act of 1996 is medicine. This is
9 because the Compassionate Use Act only provides for person
10 to obtain and use marijuana for medical purposes. Were that
11 medical use as deemed appropriate and has been
12 recommended by a physician who has determined that the
13 person's health would benefit from the use of marijuana. The
14 Compassionate Use Act does not condone the diversion of
15 marijuana for any non-medical purposes.

16 Bradley Heller: In addition ... medical marijuana is not currently sold or
17 furnished in a manner that qualifies for the medicine
18 exemption provided by revenue on taxation code section 6369.
19 No medicine can qualify as an exempt food product under the
20 express provisions of revenue and taxation code section 6359,
21 subdivision C. Neither the Compassionate Use Act nor the
22 Medical Marijuana Program exempt retail sales of medical
23 marijuana from sales tax.

24 Bradley Heller: The Petitioner operated a medical marijuana dispensary in San
25 Jose and filed returns reporting tax on its sales for 2010 and

1 2011. However, Petitioner started reporting that it was making
2 zero sales or no sales on its return for the first quarter of 2012.
3 Then, at the end of June 2012, as the Petitioner just pointed
4 out ... the Petitioner contacted the board and asked for a
5 review to confirm its exempt status and stated that the
6 Petitioner was no longer collecting sales tax because it was no
7 longer making sales as defined by law.

8 Bradley Heller: Based on Petitioner's request and the fact that Petitioner
9 reported zero sales for 2012, Petitioner was audited for the
10 period January 1, 2010 through December 31, 2012. During the
11 audit, Petitioner provided its electronic sales summaries for its
12 point of sales system for June 1, 2012 through December 17,
13 2012. Petitioner allowed staff to perform a side observation
14 test from outside Petitioner's San Jose location on December
15 18, 2012. Petitioner provided its electronic sales summary for
16 that day, and Petitioner also provided copies of receipts from
17 December 14th.

18 Bradley Heller: Audit staff accepted Petitioner's total reported sales of
19 \$2,550,158 for 2010 and 2011. However, staff disallowed
20 \$1,296,483 of exemptions and deductions that Petitioner
21 claimed on its returns for both years. Staff disallowed
22 exemptions for food products because the products contained
23 medical marijuana; exemptions for non-taxable labor because
24 there was no evidence Petitioner charged for non-taxable
25 labor; deductions for tax paid purchases resold, because there

1 was no receipt showing tax was paid; deductions for cash
2 discounts, because there was no evidence of cash discounts;
3 and exemptions that were marked Other because they were
4 just unsupported.

5 Bradley Heller: In addition, staff established that Petitioner made \$1,170,486
6 in taxable sales for the period June 1, 2012 through December
7 17, 2012 on an actual basis. Staff used Petitioner's audited
8 average monthly taxable sales for June through September
9 2012 to establish that Petitioner made \$394,970 in taxable
10 sales during April and May of 2012.

11 Bradley Heller: Staff used Petitioner's audited average daily taxable sales for
12 October 1, 2012 through December 17, 2012 to establish that
13 Petitioner made another \$75,380 in taxable sales for the
14 period December 18, 2012 through December 31, 2012. Staff
15 also used Petitioner's audited average quarterly taxable sales
16 for 2011 to establish that Petitioner made \$541,414 in taxable
17 sales during the first quarter of 2012. This amounted to total
18 unreported taxable sales of \$2,182,252 for 2012.

19 Bradley Heller: As a result, the auditors established that Petitioner made more
20 than \$14.6 in taxable sales during the audit period and did not
21 report or pay tax on \$3,478,735 of those sales.

22 Bradley Heller: ... \$735 of those sales. Petitioner has previously argued that it
23 cannot make sales of medical marijuana under the medical
24 marijuana program. And in People V. [inaudible 00:10:12], the
25 court of appeal expressly held at the medical marijuana

1 program allows qualified patients to make monetary
2 contributions that are contemporaneous with an exchange of
3 marijuana, and that this does allow a qualified patient to
4 simply pay money to his or her collective in exchange for the
5 recommended medicine. The court also held that health and
6 safety code section 11362.768 in the medical marijuana
7 program implicitly recognizes the legality of storefront
8 dispensaries. Petitioner has also argued that it didn't make
9 sales of medical marijuana because it operated as a cultivating
10 collective in accordance with an October 18th, 2010 opinion
11 written by the board's legal department regarding a group of
12 people who collectively cultivate medical marijuana in a
13 communal garden and own the actual medical marijuana they
14 harvest.

15 Bradley Heller: However, the Department and the Appeals Bureau agree that
16 petitioner sold harvested medical marijuana to its members,
17 and that petitioner has not met its burden to establish that it
18 operated as a cultivating collective as describing the October
19 18th, 2010 opinion, with regard to any of the transactions that
20 were included in the audit. The reason is that in every one of
21 the medical marijuana transactions at issue, the petitioner
22 exchange possession of medical marijuana, or a product made
23 from harvested medical marijuana, for money as
24 consideration. And petitioner has not shown that each person
25 who received medical marijuana from petitioner in the

1 transactions at issue had participated in collectively cultivating
2 that marijuana and actually acquired beneficial ownership of
3 that marijuana while it was being cultivated and prior to its
4 harvest.

5 Bradley Heller: The board and the department have consistently advised
6 retailers, including the petitioner, that sales and use tax applies
7 to sales of medical marijuana, and consistently advised the
8 public that sales and use tax is not applied to the collective
9 cultivation of marijuana if it does not involve sales of harvested
10 marijuana. Therefore, the department's not trying to unfairly
11 change position after the petitioner relied on the October
12 18th, 2010 opinion. The department's simply requiring
13 petitioner to demonstrate that none of the medical marijuana
14 transactions at issue involve the sale of harvested marijuana.
15 Also, the department notes that the petitioner provided copies
16 of its membership agreement, its rules, regulations, and
17 policies, and a document titled acknowledgement of lien of
18 ownership, and also copies of its receipts from December 14th,
19 which I previously mentioned. And the membership
20 agreement permits members to contribute monetary funds in
21 exchange for medical marijuana that was previously possessed
22 by the petitioner, the rules, regulations, and policies provides
23 that all transactions are final and all contributions are
24 nonrefundable. And the receipts show that members paid cash

1 denoted as membership contributions to petitioner for
2 medical marijuana during the audit period.

3 Bradley Heller: Therefore, these documents support the department's
4 conclusion that petitioner was making sales of medical
5 marijuana to its members during the audit period. In addition,
6 the department acknowledges that the membership
7 agreement requires petitioner's members to agree that any
8 medical marijuana possessed by petitioner at any time is
9 deemed to be the collective property of all members and
10 requires petitioner's members to agree that their contributions
11 to petitioner to acquire medical marijuana are not sales, since
12 no transfers of ownership occurs. And the rules of regulations
13 and policies provide that all transactions with petitioner do not
14 in any way constitute a sale of any kind, because there's no
15 transfer of ownership. Also, the acknowledgement of lien of
16 ownership requires the members to also acknowledge that
17 they have ownership rights to the medical marijuana they
18 receive from petitioner while they are members. And the
19 receipts include the statement that no transfer of ownership
20 occurs in this transaction.

21 Bradley Heller: However, all of these provisions do not establish that any of
22 petitioner's members had any beneficial ownership interests in
23 any specific medical marijuana prior to its harvest, or the right
24 to possession of any medical marijuana held by petitioner
25 before payment was made. So those provisions do not

1 establish that petitioner operated in accordance with the
2 October 18th, 2010 opinion in substance, not just inform, with
3 regard to any of the transactions at issue. And those provisions
4 are directly contradicted by petitioner's receipts, which show
5 that the petitioner transferred harvested marijuana to its
6 members for consideration. Furthermore, the department
7 does not take a position as to whether petitioner's activities
8 violated any state or federal criminal laws, but notes that
9 under Asher V. Johnson, an unlawful business may be taxed
10 just like a lawful business.

11 Bradley Heller:

12 Finally, the department notes that the court of appeal in City
13 of San Jose V. Medi-Marts refuse to enjoin the imposition of
14 the city of San Jose's marijuana business tax on petitioner's
15 gross receipts from sales of medical marijuana. The court
16 rejected petitioner's arguments that the marijuana business
17 tax violated petitioner's constitutional rights to due process,
18 right to equal protection, and privilege against self-
19 incrimination. The court also held that as a legal entity,
20 petitioner has no fifth amendment privilege against self-
21 incrimination, and the petitioner's representatives may not
22 rely on the fifth amendment as a basis to refuse to produce
23 petitioner's records. So imposing California's general sales tax
24 on the same gross receipts does not violate petitioner's rights.
25 Therefore, the department respectfully requests that the
board deny petitioner's petition.

1 Speaker 1: Thank you. You have five minutes on rebuttal.

2 Petitioner: Let me start with the appellate court ruling, because it's very
3 interesting. I'm not a lawyer and I'm not practicing law, but I
4 believe that the appellate court's first sentence was that Mr.
5 Armstrong as an individual is not responsible for the marijuana
6 business tax, because it would self incriminate him in violating
7 a higher federal law. Then, it went into Medi-Marts, the
8 incorporation, is. And as counsel said just a minute ago, Medi-
9 Marts, the nonprofit, mutual, beneficial corporation that is
10 suggested in the attorney general guidelines, written by our
11 now Governor Brown, put in the word, you may need to form
12 a nonprofit mutual beneficial corporation in order to help run
13 the day-to-day business of the collective or cooperative. It's my
14 belief that the only reason, according to the current California
15 law today, that a collective or a cooperative can be in the
16 medical marijuana businesses for two very important reasons.

17 Petitioner: One is that every member is an equal owner. Everybody has
18 equal membership, equal ownership, so that when the US
19 currency and the medical marijuana exchange hands, there is
20 no sale because there's no transfer of ownership. It's no
21 different than a bunch of people getting together and deciding
22 to grow oranges and produce orange juice, and then share the
23 orange juice at the end of the harvest. There has been case law
24 since the letter that the SPOE wrote about where it believes
25 every individual would need to be part of the cultivation itself.

1 And it's not only in the Banini case, but also in the Jackson
2 case, where the judge said that the members don't have to do
3 anything but offer an equitable contribution in exchange for
4 the medicine that they all agreed to grow and provide one
5 another.

6 Petitioner: Secondly, we can talk about the hierarchy of law, or its federal,
7 state, county, city, at least to my best understanding. As I said
8 earlier, I'm not a lawyer and I'm not practicing law, but I
9 believe that the reason current California law only allows
10 collectives or cooperatives is so that there is no transfer of
11 ownership, hence, no sale. Because the sale, even as the
12 appellate court said, an individual like myself or the other
13 20,000 other individuals don't want to self incriminate or
14 implicate ourselves in violating a higher federal law and
15 admitting that a sale occurred. That's why we don't call them
16 sales. We call them equitable contributions. And specifically,
17 California law right now says that you cannot profit from the
18 controlled substance cannabis. Yes, it doesn't specifically say
19 you can sell it or can't sell it, but I think that was a gray area
20 that was put into place so that individuals like myself that
21 came here to get into this industry and look to the government
22 and the SPOE, how do I run this business lawfully and legally?

23 Petitioner: And you read the attorney General's guidelines, and yes, it says
24 you may need to form a nonprofit, mutual, beneficial
25 corporation to help run the day-to-day business. I had no idea

1 at the time that that was an illegal entity. It's not a collective or
2 a cooperative. And as a collective, which isn't defined by
3 California law, so it's a non-statutory entity, it was impossible
4 to get a certificate from the SOS, the secretary of state, looking
5 at the collective as an actual, lawful business. So the only way
6 to get a bank account to pay employees to pay the bills, was to
7 use the nonprofit, mutual, beneficial corporation to get a bank
8 account in order to do normal day-to-day business. And I was
9 under the impression that I was doing everything by the book-
10 And I was under the impression that I was doing everything by
11 the book, by the law. When I got my hands on these two
12 letters written by two legal people at the SBOE that had been
13 questioned about a sale occurring in these transactions with
14 US currency and the controlled substance cannabis. And how a
15 collective or cooperative is supposed to be formed and
16 organized so that you're not blatantly violating federal law,
17 number one. And number two, because SB420 didn't
18 specifically state that you can or cannot sell marijuana, what's
19 going on here? Well, I was in shock to be honest with you,
20 when I found out that, hey, wait a minute, I've basically been
21 misled and misguided into forming an entity that is an illegal
22 entity, just so that they can charge sales taxes and say that it is
23 legal because you're an illegal entity.

Petitioner:

Petitioner:

When as a business person, like thousands of others, you
would figure that the state would say, well, wait a minute.

1 According to the law, you can only be a collective or a
2 cooperative. Nothing else, nothing more. And the reason why
3 is so that you are not making sales, when that exchange of
4 currency in cannabis, it happens. So at that point is when I
5 picked up the phone and called the SBOE office and said, hey, I
6 need a review because the way I'm looking at and reading this,
7 I'm not a lawyer, but it looks like we're doing illegal things. And
8 we're an illegal entity. And I don't want to go to federal prison
9 for 10 years to life. And I definitely don't want to be the one
10 guy, the managing member of 20,000 other people, individuals
11 that's making this decision that implicates every one of them,
12 that they violated a federal law, higher federal law.

13 Petitioner: So as I said earlier, I simply asked for a review and it turned
14 into an audit. And I said, okay, fine. Here's all of our
15 information. As the counselor over there just said, at the
16 bottom of our receipts, it says, there's no transfer of
17 ownership. This is an equitable contribution towards the
18 overall cost to produce the product and distribute it to the
19 members, because we cannot admit to a sale. I mean, I can go
20 into the Controlled Substance Act, which is a higher federal law
21 that says you cannot sell and or profit and expressly prohibits
22 that.

23 Petitioner: And like I said, it's a 10 year to life sentence. I could explain the
24 supremacy clause, which I believe in the 10th Amendment that
25 states have the right to make their own laws. But if the law

1 directly conflicts with higher federal law, then there's a
2 problem. And that's why the supremacy clause is put into the
3 constitution that says, if there's a direct conflict between
4 higher federal law and state law, then federal law preempts
5 the state law and the states have to follow higher federal law.
6 So as much as I'd like to contribute and continue on in this
7 industry, it's pretty much down to where I cannot do it. I
8 cannot appease California on one hand and admit to selling a
9 controlled substance. And now with the new laws coming up,
10 also profit from it, that directly blatantly violate higher federal
11 law.

12 Speaker 2: Time's expired.

13 Speaker 3: Thank you very much. Okay. Members, does anyone have any
14 questions? No questions.

15 Fiona Ma: I do.

16 Speaker 3: Do you have something, Member [inaudible 00:23:56]?

17 Fiona Ma: Well, I mean, I think to the taxpayers argument, this is the first
18 time I've actually seen the attorney general's guidelines or the
19 memo he issued, which is very interesting, but it is a
20 conundrum I think that it is a schedule one drug at the federal
21 level, but then we have passed Prop 215 and Prop 64 here that
22 as of January 1st, it will be legal in the state. And according to
23 the attorney general memo, business licenses, sales tax, and
24 seller's permit on page nine of his memo basically says the
25 State Board of Equalization has determined that medical

1 marijuana transactions are subject to sales tax, regardless of
2 whether the individual or group makes a profit. And those
3 engaging in transactions involving medical marijuana must
4 obtain a seller's permit. Some cities and counties also require
5 dispensing collectives and cooperatives to obtain business
6 licenses.

7 Fiona Ma: So I understand what your argument is at the federal level,
8 right? Not supposed to be engaging, not supposed to be
9 selling, not making profit, right? Not keeping books and
10 records to self incriminate, but then we have these state laws
11 that kind of say the opposite, right? You're supposed to keep
12 books and records. You're supposed to get a seller's permit.
13 You're supposed to report. And that I think is been the
14 conundrum for the board. And I don't think the board started
15 collecting or requiring seller's permits until this memo came
16 out about 2008.

17 Petitioner: 2007.

18 Fiona Ma: Or 2007. Yeah, I think when it... Jerry Brown, August 2008. And
19 so, I think it's been very confusing to everybody. And even
20 when I got elected to this board, we did a lot of education and
21 outreach and we made sure there's more information put on
22 the websites. We printed up flyers. We went and did seminars
23 up in the Emerald triangle, just trying to let people know, well,
24 people still have to get a seller's permit if they're selling
25 tangible personal property, regardless of whether they're a

1 collective or cooperative. And I think everything is a little bit
2 conflicting all over. And I understand, and I sympathize with
3 you and others who have either come before us or didn't know
4 that they were supposed to be collecting or having a seller's
5 permit collecting sales tax. And I think that's kind of how we've
6 been ruling up here is that regardless we still are following our
7 state guidelines when it comes to sales tax here at this board,
8 at least.

9 Petitioner: Can I add to that?

10 Fiona Ma: Sure.

11 Petitioner: I agree with you wholeheartedly. As I said, I'm not against
12 contributing to governmental entities that can help regulate,
13 educate, and help run the industry. But just as you've honored
14 my 1st Amendment right to speak freely here today and my
15 14th amendment to due process, to give me the opportunity
16 to come before you, you need to seriously look at the fact of
17 not only my 5th amendment rights, but every medical
18 marijuana patient, and every California cannabis consumer
19 that you've got to give some kind of disclaimer. You've got to
20 be honest. You've got to tell them, look, if you opt into this
21 medical marijuana business or marketplace, here are the risk.
22 You are going to be considered blatantly violating higher
23 federal controlled substance law. You do risk 10 years to life in
24 prison.

1 Petitioner: You do risk the Internal Revenue Service applying rule 280E to
2 you at any given time. I went before the secretary of state just
3 before Prop 64 came out because I didn't like the wording of
4 64 because it makes it sound, and everyone believes that as of
5 January 1st marijuana is legal. I said, well, only at a state level.
6 While it might be legal here in California and it's not legal
7 federally, and it's still taxation without protection or
8 representation issue here.

9 Petitioner: If I pay the sales tax and I've asked the city of San Jose this, if I
10 pay you this marijuana business tax, are you going to protect
11 me or prevent higher federal authorities from enforcing and
12 prosecuting me for blatantly violating higher federal law? And
13 they said, "Well, no." I said, "Well, then how can we have it
14 both ways?" And I think that at least as government officials
15 here at the State Board of Equalization, you owe it to the
16 citizens of California to tell them upfront and honestly. Look, if
17 you opt into doing this and you pay sales tax, here's what
18 could happen to you so that they're aware of it. There's people
19 think that marijuana is going to be legal 100% come January 1.
20 I'm like, "No, no, no, no." Even the possession of marijuana at
21 federal level will get you one year. So as you respect other
22 constitutional and civil rights, we need to respect every-

23 Petitioner: Civil rights. We need to respect everyone's, in the state of
24 California, fifth amendment right, and tell them upfront, "Hey,
25 if you do this, here are the risks. Here are the dangers." We've

1 got a new administration in Washington now. No one knows
2 what's going to happen here in the next few years. With the
3 statute of limitations, they can go back and use exactly what
4 you're asking for, sales taxes, as the evidence against anyone
5 to put them in prison, federal prison, for 10 years to life. It's as
6 I call it, and as board member Miss May said, it's the cannabis
7 conundrum. And as much as I'd like to play this, excuse my
8 terminology, ganja game and collect sales taxes for you, as
9 long as federal law says what it says and the hierarchy of law
10 puts the constitution and the federal laws in front of our laws,
11 we simply can't have it both ways. But I think at the very least
12 what California can do is tell these people what's going on.

13 Petitioner:

14 The gist of my lawsuit with the secretary of state, that cost me
15 \$20,000 of lawyer fees, was they added two words, "in
16 California". The judge said, "Well, Mr. Armstrong's got a point
17 here. This makes it sound like marijuana's going to be legal
18 everywhere. So I want you to add 'in California' right there at
19 the bottom." And so they did, but as we all know, voters don't
20 read everything. Prop 64 was 62 pages long, where prop 215
21 was two. I'm not a criminal, I'm not a bad guy. I am just simply
22 someone who saw an issue, asked a question. And as I said,
23 I've been asking for permission rather than waiting for
24 someone to criminally charge me for something and ask for
forgiveness later. But because this is a tax revenue question of

1 a billion dollars or more, as we all are aware of, the victim is
2 now the villain.

3 Petitioner: And I've been a victim of bureaucratic bullying to the point of
4 this is the first time in five and a half years that I've been able
5 to on an official record talk to any lawmakers or anybody with
6 power in the system to explain this conundrum. And
7 something needs to be done about it. I mean, I would ask this
8 board to do the right thing and respect my fifth amendment
9 rights, as well as every other member of the collective that I
10 managed, and every other cannabis consumer in California,
11 and give [Medimarks 00:33:00] what it asked for five and a half
12 years ago, which is sales tax exemption, exonerate this
13 supposed sales tax that they say we owe. I mean, if we
14 collected it and didn't turn it over, that'd be one thing. But I've
15 been looking for permission that we can collect it and not be
16 self-incriminating ourself at the same time. So five and a half
17 years later, here we are.

18 Petitioner: But the fifth amendment, as we all know, is very clear and says
19 individuals are protected from being forced to incriminate
20 themselves. Incriminating oneself is defined as exposing
21 oneself to an accusation or a charge or a crime. Asking
22 Californians to pay a sales tax blatantly violates the Controlled
23 Substance Act on a higher federal level and incriminates
24 anyone and everyone. And as I said earlier in my case with the
25 city of San Jose versus Medimarks, the very first sentence that

1 the appellate court said was, "Mr. Armstrong as an individual is
2 not responsible for the marijuana business tax, because it
3 would self-incriminate him." The collective is 20,000 other
4 individuals just like myself. So, if I'm not responsible, neither
5 are the other 20,000 other members.

6 Petitioner: Now, yes, we had a nonprofit mutual beneficial corporation
7 form, because the Attorney General's guidelines, and of course
8 it said "may", didn't say "will". Said "you may need to do this".
9 But because a collective is non-statutorily in California, not
10 recognized by California, it was the only option we had to go
11 get banking. And as we went through three or four banks and
12 lost our bank accounts, because we're dealing with a
13 controlled substance and federal law and banking law, the
14 nonprofit mutual beneficial corporation has been dissolved
15 and insolvent because it no longer served a purpose. I could no
16 longer pay electronically. I could no longer pay payroll with
17 checks. So this is a conundrum that we may not solve it or
18 resolve it here today, but it needs to be resolved and solved
19 sometime soon because I'm just one of thousands and
20 thousands of business people trying to abide by the law, follow
21 the law, from the top down, from federal to state to county to
22 city.

23 Petitioner: I don't know how anybody thinks it could be from the bottom
24 up. If you follow city and county and state, and you're still
25 violating the higher federal law, then there's a problem. And

1 this is a problem, as I said, we may not be able to solve here
2 today. It takes Congress, in my mind, to either remove or
3 reschedule cannabis from a schedule one, it doesn't belong
4 there with heroin and LSD, and it's ridiculous and ludicrous, as
5 we would all agree, that methamphetamine and cocaine are
6 schedule two, supposedly lesser addictive and have more
7 medicinal value. So if the board has any questions for me
8 about anything, feel free and ask me. As I said, I've done
9 nothing for the last nine years but live and breathe this every
10 day for the last nine years. Started from the bottom, worked
11 my way to the top, and pretty much brought me here in front
12 of you today. And I appreciate the opportunity you've given
13 me to speak.

14 Chairwoman: Thank you very much. I just want to make a statement, not
15 necessarily for comment, but you may wish to watch in this
16 next budget bill, the Rohrabacher-Farr amendment that has to
17 be renewed annually with each budget, was approved in 2014,
18 that prohibited justice department from spending funds to
19 interfere with the implementation of state medical cannabis
20 laws. So that does have to have an annual renewal, but it
21 pretty much I think exempts Congress... Did exempt, because
22 there are, I think about 24 states or maybe more now that
23 have a medical marijuana component. So thank you. Are there
24 any more questions?

25 Petitioner: Can I comment on that, Madam Chairwoman, real quick?

1 Chairwoman: One minute.

2 Petitioner: The federal spending amendment, I call it the paper shield,
3 failed six years in a row.

4 Chairwoman: Right.

5 Petitioner: And has only passed the last three. And as we know, it's still
6 sitting on the burner. The key thing here is, and once again I'm
7 not a lawyer, but the key thing here is that it provides
8 protection for medical use, possession, distribution, and
9 cultivation, not recreational. It's my belief that medical
10 marijuana, as I said earlier, was never intended to allow sales
11 and or profit. So while I understand the state of California is
12 now turning prop 215 upside down, to where sales are
13 mandated and profit is allowed, the federal spending
14 amendment will not protect anyone in California that's doing
15 recreational. And as I said, it's use, possession, distribution,
16 and cultivation, nowhere in there does it say that it protects
17 someone from selling the controlled substance or profiting
18 from it.

19 Chairwoman: I understand, was just pointing that out, not for discussion, just
20 pointing it out that it seems to have been working relatively
21 well. I don't think necessarily that there's enough members of
22 Congress to do the complete legalization. I think that that's not
23 a key issue for many members, although it is in California. But I
24 do think that you have to be able to count the numbers to get
25 something passed. And so I think getting this amendment

1 passed by a Republican and a Democrat at least offers perhaps
2 some protection. So are there any other comments, members?

3 Speaker 5: No.

4 Chairwoman: If there's no comments, do we have a motion?

5 Speaker 5: Madam Chair, I move to adopt staff recommendation.

6 Chairwoman: Is there a second? I'll second. Is there any objection? Hearing
7 no objection, such will be the order. Thank you very much.

8 Petitioner: Thank you.

9 Chairwoman: Good luck. Thank you.

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I, REBECCA L SCHLOSSER, CSR 4253, a Certified Shorthand Reporter within and for the State of California, do hereby declare:

That pursuant to 2093(b) CCP, I administered the oath to the deponent;

That the foregoing deposition was taken before me at the time and place set forth and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing deposition is a full, true and correct transcript of my shorthand notes so taken.

I further declare that I am neither counsel for nor related to any of the parties to said action nor in any way interested in the outcome thereof.

I declare under penalty of perjury this day that the foregoing is true and correct.

Rebecca L Schlosser

REBECCA L SCHLOSSER
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA

Tuesday, December 12, 2017

The Board recessed at 11:38 a.m. and reconvened at 12:47 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Medimarts, Inc., 763614 (GH)

01/01/10 to 12/31/12, \$292,960.82 Tax, \$00.00 Negligence Penalty

For Petitioner: David Armstrong, Taxpayer

For Business Tax and Fee Department: Brad Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments to the measure of unreported taxable sales are warranted.

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Bureau.