

Federal Lawsuit: Can Washington Tax Marijuana?

SEATTLE (AP) — A federal lawsuit is challenging Washington state’s authority to tax marijuana as long as marijuana remains illegal under federal law.

The case arises from the state’s attempt to collect sales taxes from a medical marijuana dispensary in Bellingham. But lawyer Douglas Hiatt, who filed it late Thursday, said it could throw a wrench in Washington’s plans for collecting taxes on recreational marijuana, too.

The author of Washington’s recreational pot law, Alison Holcomb, disagreed. She doesn’t expect the lawsuit to get very far.

Hiatt is representing the dispensary’s operator, Martin Nickerson, who is simultaneously being prosecuted criminally for marijuana distribution and

his bank account. Hiatt said it’s important to get an answer from a federal court about whether the state took that money legally.

Hiatt opposed Washington’s recreational marijuana law and argues any meaningful drug law reform must come at the federal level. Nevertheless, he said he doesn’t want to “look like the guy spoiling the party.”

“I’ve got a client, he’s got a problem, and we’ve got to fix it,” Hiatt said. “It’s a way to get some clarity on what’s allowed.”

The U.S. Supreme Court has held the unlawfulness of an activity does not prevent its taxation. However, Hiatt argued Washington state law explicitly allows the licensing, zoning and taxing of medical marijuana businesses. That, he said, is contrary to the federal Con-

‘Weed Fairy’



Yeni Sleidi, known as the “weed fairy,” right, buys marijuana from a dealer, who declined to be identified, in Seattle’s Capitol Hill neighborhood Wednesday, May 28, 2014, where this past weekend Sleidi posted 50 fliers with nuggets of marijuana taped to them. Sleidi, a 23-year-old who works in social media, has been visiting Seattle from New York where last year she did a similar posting, albeit anonymously.

The lawsuit asks the U.S. District Court in Seattle whether Washington’s decision to tax marijuana sales is in conflict with marijuana’s prohibition under federal law

targeted by the state Department of Revenue for not collecting and remitting taxes on the pot he was allegedly distributing. Nickerson can’t pay the tax without incriminating himself in the criminal case, in violation of his constitutional rights, Hiatt argued.

Furthermore, the state, which says Nickerson owes more than \$62,000, has seized more than \$800 from

trolled Substances Act.

Revenue Department spokeswoman Kim Schmanke said in an email that the department is confident the courts will uphold its authority to tax marijuana.

“Washington state law does not provide a retail sales tax exemption for marijuana or related products,” she said.

The lawsuit asks the U.S.

District Court in Seattle whether Washington’s decision to tax marijuana sales is in conflict with marijuana’s prohibition under federal law. If it is, the court could bar the state from collecting such taxes.

But Holcomb said there’s little danger of that. The state isn’t specifically taxing the marijuana at issue in Nickerson’s case — it’s applying a general sales tax to marijuana-related transactions, she argued.

That’s an important differ-

ence, she said: If the state had imposed a specific tax on medical marijuana, then Nickerson might be implicating himself by paying it. Instead, when collecting

sales taxes on marijuana transactions and turning that money over to the Revenue Department, dispensaries don’t have to identify for revenue officials what they

sold — they just have to turn over the money owed on the value of the transactions they conducted, Holcomb said.

“The bottom line is he should have been paying his sales taxes along the way,” she said.

Hiatt dismissed that analysis. He said that the Revenue Department has sent letters to Nickerson saying that he was selling marijuana and that he owed taxes on the pot he sold.

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