

113TH CONGRESS
1ST SESSION

H. R. 501

To amend the Internal Revenue Code of 1986 to provide for the taxation of marijuana, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2013

Mr. BLUMENAUER (for himself, Mr. POLIS, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for the taxation of marijuana, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marijuana Tax Equity
5 Act of 2013”.

6 **SEC. 2. TAXATION RELATING TO MARIJUANA.**

7 (a) IN GENERAL.—Subtitle E of title I of the Inter-
8 nal Revenue Code of 1986 is amended by adding at the
9 end the following new chapter:

1 **“CHAPTER 56—MARIJUANA**

“SUBCHAPTER A. PRODUCER TAX.

“SUBCHAPTER B. SPECIAL PROVISIONS RELATING TO MARIJUANA
ENTERPRISES.

“SUBCHAPTER C. PENALTIES.

2 **“Subchapter A—Producer Tax**

“Sec. 5901. Imposition of tax.

“Sec. 5902. Exemption from tax.

“Sec. 5903. Special rules.

“Sec. 5904. Definitions.

3 **“SEC. 5901. IMPOSITION OF TAX.**

4 “(a) IMPOSITION OF TAX.—There is hereby imposed
5 a tax on the sale of marijuana by the producer or importer
6 thereof.

7 “(b) AMOUNT OF TAX.—The amount of the tax im-
8 posed by subsection (a) shall be 50 percent of the price
9 for which so sold.

10 **“SEC. 5902. EXEMPTION FROM TAX.**

11 “(a) GENERAL RULE.—Under regulations prescribed
12 by the Secretary, no tax shall be imposed under this sub-
13 chapter on the sale by the producer or importer of an arti-
14 cle—

15 “(1) for use by the purchaser for further pro-
16 duction, or for resale by the purchaser to a second
17 purchaser for use by such second purchaser in fur-
18 ther production, or

19 “(2) for export, or for resale by the purchaser
20 to a second purchaser for export.

1 “(b) PROOF OF RESALE FOR FURTHER PRODUC-
2 TION; PROOF OF EXPORT.—Where an article has been
3 sold free of tax under subsection (a)—

4 “(1) for resale by the purchaser to a second
5 purchaser for use by such second purchaser in fur-
6 ther production, or

7 “(2) for export, or for resale by the purchaser
8 to a second purchaser for export,
9 subsection (a) shall cease to apply in respect of such sale
10 of such article unless, within the 6-month period which
11 begins on the date of the sale by the producer or importer
12 (or, if earlier, on the date of shipment by the producer
13 or importer), the producer or importer receives proof that
14 the article has been exported or resold for use in further
15 production.

16 “(c) PRODUCER OR IMPORTER RELIEVED FROM LI-
17 ABILITY IN CERTAIN CASES.—In the case of any article
18 sold free of tax under this section (other than a sale to
19 which subsection (b) applies), if the producer or importer
20 in good faith accepts a certification by the purchaser that
21 the article will be used in accordance with the applicable
22 provisions of law, no tax shall thereafter be imposed under
23 this chapter in respect of such sale by such producer or
24 importer.

1 “(d) EXPORT.—For purposes of this section, the
 2 term ‘export’ includes shipment to a possession of the
 3 United States; and the term ‘exported’ includes shipped
 4 to a possession of the United States.

5 “(e) USE IN FURTHER PRODUCTION.—An article
 6 shall be treated as sold for use in further production if
 7 such article is sold for use by the purchaser for further
 8 planting, cultivating, or harvesting.

9 “(f) FURTHER PRODUCER LIABLE FOR TAX.—For
 10 purposes of this chapter, a producer to whom an article
 11 is sold or resold free of tax under subsection (a)(1) for
 12 use by him in further production shall be treated as the
 13 producer of such article.

14 **“SEC. 5903. SPECIAL RULES.**

15 “(a) DEFINITION OF PRICE.—For purposes of this
 16 chapter—

17 “(1) CONTAINERS, PACKING AND TRANSPOR-
 18 TATION CHARGES.—In determining, for the purposes
 19 of this chapter, the price for which an article is sold,
 20 there shall be included any charge for coverings and
 21 containers of whatever nature, and any charge inci-
 22 dent to placing the article in condition packed ready
 23 for shipment, but there shall be excluded the amount
 24 of tax imposed by this chapter, whether or not stat-
 25 ed as a separate charge. A transportation, delivery,

1 insurance, installation, or other charge (not required
2 by the foregoing sentence to be included) shall be ex-
3 cluded from the price only if the amount thereof is
4 established to the satisfaction of the Secretary in ac-
5 cordance with regulations.

6 “(2) CONSTRUCTIVE SALE PRICE.—

7 “(A) IN GENERAL.—If an article is sold at
8 retail, sold on consignment, or sold (otherwise
9 than through an arm’s length transaction) at
10 less than the fair market price, the tax under
11 section 5901 shall be computed on the price for
12 which such articles are sold, in the ordinary
13 course of trade, by producers thereof, as deter-
14 mined by the Secretary. In the case of an arti-
15 cle sold at retail, the computation under the
16 preceding sentence shall be on whichever of the
17 following prices is the lower:

18 “(i) the price for which such article is
19 sold, or

20 “(ii) the highest price for which such
21 articles are sold to manufacturers, in the
22 ordinary course of trade, by producers
23 thereof, as determined by the Secretary.
24 This paragraph shall not apply if subpara-
25 graph (B) applies.

1 “(B) SPECIAL RULE.—If an article is sold
2 at retail or to a retailer, and if—

3 “(i) the producer or importer of such
4 article regularly sells such articles at retail
5 or to retailers, as the case may be,

6 “(ii) the producer or importer of such
7 article regularly sells such articles to one
8 or more manufacturers in arm’s length
9 transactions and he establishes that his
10 prices in such cases are determined with-
11 out regard to any tax benefit under this
12 paragraph, and

13 “(iii) the transaction is an arm’s
14 length transaction,

15 the tax under this chapter shall (if based on the
16 price for which the article is sold) be computed
17 under subparagraph (C).

18 “(C) PRICE FOR PURPOSES OF SPECIAL
19 RULE.—The price computed under this sub-
20 paragraph is whichever of the following prices is
21 the lower:

22 “(i) the price for which such article is
23 sold, or

1 “(ii) the highest price for which such
2 articles are sold by such producer, or im-
3 porter to manufacturers.

4 “(D) DEFINITION OF LOWEST PRICE.—
5 For purposes of subparagraphs (A) and (C),
6 the lowest price shall be determined—

7 “(i) without requiring that any given
8 percentage of sales be made at that price,
9 and

10 “(ii) without including any fixed
11 amount to which the purchaser has a right
12 as a result of contractual arrangements ex-
13 isting at the time of the sale.

14 “(E) ARM’S LENGTH.—

15 “(i) IN GENERAL.—For purposes of
16 this section, a sale is considered to be
17 made under circumstances otherwise than
18 at arm’s length if—

19 “(I) the parties are members of
20 the same controlled group, whether or
21 not such control is actually exercised
22 to influence the sale price, or

23 “(II) the sale is made pursuant
24 to special arrangements between a
25 manufacturer and a purchaser.

1 “(ii) CONTROLLED GROUPS.—

2 “(I) IN GENERAL.—The term
3 ‘controlled group’ has the meaning
4 given to such term by subsection (a)
5 of section 1563, except that ‘more
6 than 50 percent’ shall be substituted
7 for ‘at least 80 percent’ each place it
8 appears in such subsection.

9 “(II) CONTROLLED GROUPS
10 WHICH INCLUDE NONINCORPORATED
11 PERSONS.—Under regulations pre-
12 scribed by the Secretary, principles
13 similar to the principles of subclause
14 (I) shall apply to a group of persons
15 under common control where 1 or
16 more of such persons is not a corpora-
17 tion.

18 “(3) PARTIAL PAYMENTS.—In the case of—

19 “(A) a contract for the sale of an article
20 wherein it is provided that the price shall be
21 paid by installments and title to the article sold
22 does not pass until a future date notwith-
23 standing partial payment by installments,

24 “(B) a conditional sale, or

1 “(C) a chattel mortgage arrangement
2 wherein it is provided that the sales price shall
3 be paid in installments,
4 there shall be paid upon each payment with respect
5 to the article a percentage of such payment equal to
6 the rate of tax in effect on the date such payment
7 is due.

8 “(4) SALES OF INSTALLMENT ACCOUNTS.—If
9 installment accounts, with respect to payments on
10 which tax is being computed as provided in para-
11 graph (3), are sold or otherwise disposed of, then
12 paragraph (3) shall not apply with respect to any
13 subsequent payments on such accounts (other than
14 subsequent payments on returned accounts with re-
15 spect to which credit or refund is allowable by rea-
16 son of section 6416(b)(5)), but instead—

17 “(A) there shall be paid an amount equal
18 to the difference between—

19 “(i) the tax previously paid on the
20 payments on such installment accounts,
21 and

22 “(ii) the total tax which would be pay-
23 able if such installment accounts had not
24 been sold or otherwise disposed of (com-

1 puted as provided in paragraph (3)); ex-
2 cept that

3 “(B) if any such sale is pursuant to the
4 order of, or subject to the approval of, a court
5 of competent jurisdiction in a bankruptcy or in-
6 solveny proceeding, the amount computed
7 under subparagraph (A) shall not exceed the
8 sum of the amounts computed by multiplying—

9 “(i) the proportionate share of the
10 amount for which such accounts are sold
11 which is allocable to each unpaid install-
12 ment payment by

13 “(ii) the rate of tax under this chap-
14 ter in effect on the date such unpaid in-
15 stallment payment is or was due.

16 The sum of the amounts payable under this
17 subsection and subsection (c) in respect of the
18 sale of any article shall not exceed the total tax.

19 “(b) CERTAIN USES TREATED AS SALES.—Any pro-
20 ducer of marijuana which uses such marijuana before it
21 is sold shall be liable for the tax imposed by section 5901
22 in the same manner as if such marijuana were sold by
23 such producer.

24 “(c) APPLICATION OF TAX IN CASE OF SALES BY
25 OTHER THAN PRODUCER.—In case any person acquires

1 from the producer of marijuana, by operation of law or
2 as a result of any transaction not taxable under section
3 5901, the right to sell such marijuana, the sale of such
4 marijuana by such person shall be taxable under this
5 chapter as if made by the producer, and such person shall
6 be liable for the tax.

7 **“SEC. 5904. DEFINITIONS.**

8 “For purposes of this chapter—

9 “(1) MARIJUANA.—The term ‘marijuana’ has
10 the meaning given such term by section 102(16) of
11 the Controlled Substances Act (21 U.S.C. 802).

12 “(2) MARIJUANA PRODUCT.—The term ‘mari-
13 juana product’ means any article which contains
14 marijuana, including an article which is a con-
15 centrate, an edible, a tincture, a marijuana-infused
16 product, or a topical.

17 “(3) PRODUCER.—The term ‘producer’ means
18 any person who plants, cultivates, harvests, or in
19 any way facilitates the natural growth of, marijuana.

20 “(4) MANUFACTURER.—The term ‘manufac-
21 turer’ means a person who manufactures, com-
22 pounds, converts, processes, prepares, or packages
23 marijuana or marijuana products.

24 “(5) IMPORTER.—The term ‘importer’ means—

1 “(A) any person in the United States to
 2 whom nontaxpaid marijuana products, or any
 3 processed marijuana, manufactured in a foreign
 4 country, Puerto Rico, the Virgin Islands, or a
 5 possession of the United States are shipped or
 6 consigned; and

7 “(B) any person who smuggles or other-
 8 wise unlawfully brings marijuana or marijuana
 9 products into the United States.

10 “(6) DISTRIBUTOR.—The term ‘distributor’
 11 means a person who distributes marijuana or mari-
 12 juana products.

13 “(7) RETAILER.—The term ‘retailer’ means a
 14 person who sells marijuana or marijuana products to
 15 consumers.

16 “(8) MARIJUANA ENTERPRISE.—The term
 17 ‘marijuana enterprise’ means a producer, importer,
 18 manufacturer, distributor, retailer or any person
 19 who transports, stores, displays, or otherwise partici-
 20 pates in any business activity that handles mari-
 21 juana or marijuana products.

22 **“Subchapter B—Special Provisions Relating**
 23 **to Marijuana Enterprises**

“Sec. 5911. Occupational tax.

“Sec. 5912. Application for permit.

“Sec. 5913. Permit.

“Sec. 5914. Inspection of books.

1 **“SEC. 5911. OCCUPATIONAL TAX.**

2 “(a) IMPOSITION OF TAX.—There is hereby imposed
3 a special tax to be paid by each person who is engaged
4 in a marijuana enterprise.

5 “(b) AMOUNT OF TAX.—The amount of the tax im-
6 posed under subsection (a) shall be—

7 “(1) \$1,000 per year in the case of a producer,
8 importer, or manufacturer, and

9 “(2) \$500 per year in the case of any person
10 engaged in a marijuana enterprise who is not de-
11 scribed in paragraph (1).

12 **“SEC. 5912. APPLICATION FOR PERMIT.**

13 “Every person, before commencing business as a
14 marijuana enterprise, and at such other time as the Sec-
15 retary shall by regulation prescribe, shall make application
16 for the permit provided for in section 5913. The applica-
17 tion shall be in such form as the Secretary shall prescribe
18 and shall set forth, truthfully and accurately, the informa-
19 tion called for on the form. Such application may be re-
20 jected and the permit denied if the Secretary, after notice
21 and opportunity for hearing, finds that—

22 “(1) the premises on which it is proposed to
23 conduct the business are not adequate to protect the
24 revenue,

25 “(2) the activity proposed to be carried out at
26 such premises does not meet such minimum capacity

1 or activity requirements as the Secretary may pre-
2 scribe, or

3 “(3) such person (including, in the case of a
4 corporation, any officer, director, or principal stock-
5 holder and, in the case of a partnership, a part-
6 ner)—

7 “(A) is, by reason of his business experi-
8 ence, financial standing, or trade connections or
9 by reason of previous or current legal pro-
10 ceedings involving a felony violation of any
11 other provision of Federal criminal law relating
12 to marijuana or marijuana products, not likely
13 to maintain operations in compliance with this
14 chapter,

15 “(B) has been convicted of a felony viola-
16 tion of any provision of Federal or State crimi-
17 nal law relating to marijuana or marijuana
18 products, or

19 “(C) has failed to disclose any material in-
20 formation required or made any material false
21 statement in the application therefor.

22 **“SEC. 5913. PERMIT.**

23 “(a) ISSUANCE.—A person shall not engage in busi-
24 ness as a marijuana enterprise without a permit to engage
25 in such business. Such permit, conditioned upon compli-

1 ance with this chapter and regulations issued thereunder,
2 shall be issued in such form and in such manner as the
3 Secretary shall by regulation prescribe. A new permit may
4 be required at such other time as the Secretary shall by
5 regulation prescribe.

6 “(b) SUSPENSION OR REVOCATION.—

7 “(1) SHOW CAUSE HEARING.—If the Secretary
8 has reason to believe that any person holding a per-
9 mit—

10 “(A) has not in good faith complied with
11 this chapter, or with any other provision of this
12 title involving intent to defraud,

13 “(B) has violated the conditions of such
14 permit,

15 “(C) has failed to disclose any material in-
16 formation required or made any material false
17 statement in the application for such permit,

18 “(D) has failed to maintain his premises in
19 such manner as to protect the revenue,

20 “(E) is, by reason of previous or current
21 legal proceedings involving a felony violation of
22 any other provision of Federal criminal law re-
23 lating to marijuana, not likely to maintain oper-
24 ations in compliance with this chapter, or

1 “(F) has been convicted of a felony viola-
2 tion of any provision of Federal or State crimi-
3 nal law relating to marijuana or marijuana
4 products,

5 the Secretary shall issue an order, stating the facts
6 charged, citing such person to show cause why his
7 permit should not be suspended or revoked.

8 “(2) ACTION FOLLOWING HEARING.—If, after
9 hearing, the Secretary finds that such person has
10 not shown cause why his permit should not be sus-
11 pended or revoked, such permit shall be suspended
12 for such period as the Secretary deems proper or
13 shall be revoked.

14 “(c) INFORMATION REPORTING.—The Secretary may
15 require—

16 “(1) information reporting by any person issued
17 a permit under this section, and

18 “(2) information reporting by such other per-
19 sons as the Secretary deems necessary to carry out
20 this chapter.

21 “(d) INSPECTION OR DISCLOSURE OF INFORMA-
22 TION.—For rules relating to inspection and disclosure of
23 returns and return information, see section 6103(o).

1 **“SEC. 5914. REGULATIONS.**

2 “The Secretary may issue such regulations or other
3 guidance as the Secretary determines necessary or appro-
4 priate to carry out this chapter, including the filing of re-
5 turns under this chapter in electronic format.

6 **“Subchapter C—Penalties**

“Sec. 5921. Civil penalties.

“Sec. 5922. Criminal penalties.

7 **“SEC. 5921. CIVIL PENALTIES.**

8 “(a) OMITTING THINGS REQUIRED OR DOING
9 THINGS FORBIDDEN.—Whoever omits, neglects, or re-
10 fuses to comply with any duty imposed upon him by this
11 chapter, or to do, or cause to be done, any of the things
12 required by this chapter, or does anything prohibited by
13 this chapter, shall in addition to any other penalty pro-
14 vided in this title, be liable to a penalty of \$1,000, to be
15 recovered, with costs of suit, in a civil action, except where
16 a penalty under subsection (b) or (c) or under section
17 6651 or 6653 or part II of subchapter A of chapter 68
18 may be collected from such person by assessment.

19 “(b) EXCEPTION.—No penalty shall be imposed
20 under subsection (a) if it is shown that there was a reason-
21 able cause and that the taxpayer acted in good faith.

22 “(c) FAILURE TO PAY TAX.—Whoever fails to pay
23 any tax imposed by this chapter at the time prescribed
24 by law or regulations, shall, in addition to any other pen-

1 alty provided in this title, be liable to a penalty of 5 per-
2 cent of the tax due but unpaid.

3 “(d) SALE OF MARIJUANA OR MARIJUANA PROD-
4 UCTS FOR EXPORT.—

5 “(1) Every person who sells, relands, or receives
6 within the jurisdiction of the United States any
7 marijuana or marijuana products which have been
8 labeled or shipped for exportation under this chap-
9 ter,

10 “(2) every person who sells or receives such re-
11 landed marijuana or marijuana products, and

12 “(3) every person who aids or abets in such
13 selling, relanding, or receiving,

14 shall, in addition to the tax and any other penalty provided
15 in this title, be liable for a penalty equal to the greater
16 of \$1,000 or 5 times the amount of the tax imposed by
17 this chapter. All marijuana and marijuana products re-
18 landed within the jurisdiction of the United States shall
19 be forfeited to the United States and destroyed. All ves-
20 sels, vehicles, and aircraft used in such relanding or in
21 removing such marijuana or marijuana products from the
22 place where relanded, shall be forfeited to the United
23 States.

24 “(e) APPLICABILITY OF SECTION 6665.—The pen-
25 alties imposed by subsections (b) and (c) shall be assessed,

1 collected, and paid in the same manner as taxes, as pro-
 2 vided in section 6665(a).

3 “(f) CROSS REFERENCES.—For penalty for failure to
 4 make deposits or for overstatement of deposits, see section
 5 6656.

6 **“SEC. 5922. CRIMINAL PENALTIES.**

7 “(a) FRAUDULENT OFFENSES.—Whoever, with in-
 8 tent to defraud the United States—

9 “(1) ENGAGING IN BUSINESS UNLAWFULLY.—
 10 Engages in business as a marijuana enterprise with-
 11 out filing the application and obtaining the permit
 12 where required by this chapter or regulations there-
 13 under,

14 “(2) FAILING TO FURNISH INFORMATION OR
 15 FURNISHING FALSE INFORMATION.—Fails to keep or
 16 make any record, return, report, or inventory, or
 17 keeps or makes any false or fraudulent record, re-
 18 turn, report, or inventory, required by this chapter
 19 or regulations thereunder,

20 “(3) REFUSING TO PAY OR EVADING TAX.—Re-
 21 fuses to pay any tax imposed by this chapter, or at-
 22 tempts in any manner to evade or defeat the tax or
 23 the payment thereof,

24 “(4) SALES AND TRANSFERS OF MARIJUANA OR
 25 MARIJUANA PRODUCTS UNLAWFULLY.—Sells or oth-

1 erwise transfers, contrary to this chapter or regula-
 2 tions thereunder, any marijuana or marijuana prod-
 3 ucts subject to tax under this chapter, or

4 “(5) TAXABLE EVENT AFTER TAX EXEMP-
 5 TION.—With intent to defraud the United States,
 6 purchases, receives, possesses, offers for sale, or sells
 7 or otherwise disposes of, any marijuana or mari-
 8 juana product—

9 “(A) upon which the tax has not been paid
 10 or determined in the manner and at the time
 11 prescribed by this chapter or regulations there-
 12 under, or

13 “(B) which, without payment of tax pursu-
 14 ant to section 5902, have been diverted from
 15 the applicable purpose or use specified in that
 16 section,

17 shall, for each such offense, be fined not more than
 18 \$10,000, or imprisoned not more than 5 years, or both.

19 “(b) OTHER OFFENSES.—Whoever, otherwise than
 20 as provided in subsection (a), violates any provision of this
 21 chapter, or of regulations prescribed thereunder, shall, for
 22 each such offense, be fined not more than \$1,000, or im-
 23 prisoned not more than 1 year, or both.

24 “(c) LIABILITY TO TAX.—Any person who possesses
 25 marijuana or marijuana products in violation of subsection

1 (a) shall be liable for a tax equal to the tax on such arti-
 2 cles.”.

3 (b) STUDY.—Not later than two years after the date
 4 of the enactment of this Act, and every five years there-
 5 after, the Secretary of the Treasury shall—

6 (1) conduct a study concerning the characteris-
 7 tics of the marijuana industry, including the number
 8 of persons operating marijuana enterprises at each
 9 level (e.g., producers, distributors, manufacturers),
 10 the volume of sales, the amount of tax collected each
 11 year, the areas of evasion, and

12 (2) submit to Congress recommendations to im-
 13 prove the regulation of the industry and the admin-
 14 istration of the related tax.

15 (c) CONFORMING AMENDMENT.—Section
 16 6103(o)(1)(A) of such Code is amended by striking “and
 17 firearms” and inserting “firearms, and marijuana”.

18 (d) CLERICAL AMENDMENT.—The table of chapters
 19 for subtitle E of title I of such Code is amended by adding
 20 at the end the following new chapter:

“CHAPTER 56. MARIJUANA.”.

21 (e) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
 23 this section shall apply to—

24 (A) applications for permits under section
 25 5912 of the Internal Revenue Code of 1986 (as

1 added by subsection (a)) after the date of the
2 enactment of this Act, and

3 (B) sales after December 31, 2013.

4 (2) SPECIAL RULES FOR EXISTING BUSI-
5 NESSES.—In the case of any producer operating
6 under a permit issued on or before the date of the
7 enactment of this Act under State law, the require-
8 ments under section 5912 of such Code (as so
9 added) shall apply beginning on the date that is 6
10 months after the date of the enactment of this Act.

○