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## Medical cannabis producer sues state over gross receipts taxes

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Alejandra Avila, right, lets Adele Baca of Santa Fe sniff a sample of Cataract Kush medical cannabis at Ultra Health on St. Michael's Drive last year. Luis Sánchez Saturno/New Mexican file photo

New Mexico's largest medical cannabis producer is suing the state Taxation and Revenue Department in an effort to recover more than \$1.5 million in gross receipts taxes the company shouldn't have had to pay because its products are medicine.

State law exempts prescription drugs from gross receipts taxes. The lawsuit, filed last week in state District Court in Santa Fe by Sandoval County-based nonprofit Ultra Health, argues medical cannabis should be treated the same.

Duke Rodriguez, CEO and president of Ultra Health, says that if the suit is successful, it will help patients in the state's Medical Cannabis Program because gross receipts taxes are passed on to consumers.

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“Affordability is an issue for all New Mexicans, and even a more significant burden to the severe qualifying conditions suffered by medical cannabis patients,” Rodriguez said in a statement provided by his lawyer, Kate Ferlic.

“Patients already pay 100 percent out of pocket for medical cannabis,” Rodriguez said. “If the average cost of medicine for patients is \$2300 a quarter, the average [gross receipts tax] burden on medical cannabis is nearly \$1,000 per year. This is a huge undue burden on patients with debilitating medical conditions. ... It is time that we recognize the tax fairness due medical cannabis patients who are making a healthier and fiscally responsible choice for their well being.”

Ferlic said most other states with medical cannabis programs do not charge a gross receipts or sales tax.

Last year, the lawsuit says, Ultra Health requested a refund from the state for the \$1,541,088 that it paid in gross receipts taxes between Jan. 1, 2015, and May 31, 2018. But the Taxation and Revenue Department denied the request in November.

The suit asks for a refund of the \$1.54 million, plus interest and attorney's fees.

This isn't the first time a medical marijuana producer has sued the state over gross receipts taxes. Sacred Garden, a Santa Fe-based producer, requested a refund last year for gross receipts taxes it had paid, but the request was denied in an administrative hearing in February 2018. The dispensary appealed that decision to the state Court of Appeals, where the case is pending.

The state law that established the Medical Cannabis Program says patients can only be certified to use the medication if a physician gives them a recommendation. Both Ultra Health and Sacred Garden argue there is no real difference between a doctor's "recommendation" and a "prescription."

Ultra Health — which operates several dispensaries in the state, including one in Santa Fe — has sued the state several times over various aspects of the Medical Cannabis Program. Late last year, the company sued the Department of Health over the way the state regulates makers of cannabis products such as edibles, salves, lotions and other items for sale in dispensaries.

In November, Ultra Health successfully sued over the restriction on the number of plants licensed producers can grow. State District Judge David Thomson of Santa Fe ruled that a department regulation limiting producers to 450 plants is arbitrary and gave the Department of Health four months to study the issue and establish a new plant limit.

In another suit, state District Judge Louis McDonald of Bernalillo ruled the state couldn't block Ultra Health from opening two dispensaries in Española and Los Lunas that already had been built.

State Sen. Jerry Ortiz y Pino, D-Albuquerque, said Tuesday that he plans to introduce a bill that would exempt medical marijuana from gross receipts taxes.

As of Dec. 31, there were 67,574 active patients in New Mexico's Medical Cannabis Program, including more than 7,800 in Santa Fe County.

*Reporter Phaedra Haywood contributed to this report.*

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