

Proposed Legislation Hints at More Blunt News for the Cannabis Industry



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2025 has not started well for the cannabis industry and its efforts to wrangle itself out from under the financial burdens arising from Section 280E.^[i] The word out of Capitol Hill is that some lawmakers are pushing legislation that will keep the cannabis industry under the thumb of Section 280E even if the federal government eases the classification of the drug.

Background: Section 280E

Internal Revenue Codes section 280E disallows credits and deductions with respect to any trade or business expense incurred in “trafficking in controlled substances (within the meaning of Schedule I and II of the [federal] Controlled Substances Act [(CSA)])...” The CSA currently classifies marijuana as a Schedule I controlled substance. Thus, marijuana is a controlled substance within the meaning of section 280E.^[ii] Despite the legalization of cannabis for recreational or medicinal use in many states, the Internal Revenue Service (IRS) has successfully asserted that section 280E applies to cannabis businesses even when operating in states that have legalized

usage.^[iii]

Section 280E applies only to deductions attributable to a taxpayer's drug-related trade or business and does not generally disallow deductions attributable to a taxpayer's non-drug-related business.^[iv]

Proponents of the cannabis industry argue that as a result of section 280E, state-legal cannabis companies are severely hindered by the inability to avail themselves of otherwise proper tax deductions for ordinary and necessary expenses incurred in the course of business, thus unfairly subjecting them to significantly higher effective tax rates as compared to other businesses. Some businesses within the cannabis industry have indicated they are left with an effective tax rate exceeding 70%. As a comparison, for the tax year 2025, the top tax rate remains 37% for individual single taxpayers with incomes greater than \$626,350 (\$751,600 for married couples filing jointly) and 21% for corporations, not subject to the restrictions of section 280E.^[v]

2024: Momentum to legalize federal marijuana business deductions

In May 2024, the Drug Enforcement Administration (DEA) issued a notice of proposed rulemaking, which proposed to reschedule marijuana to schedule III, thereby removing it from the restrictions of section 280E.^[vi] Thousands of taxpayers submitted comments in support of the proposal.^[vii]

Despite this initial progress, the momentum for rescheduling seemed to stall in late 2024. A December 2024 hearing that was originally expected to feature testimony on the proposal was instead converted to a preliminary hearing for scheduling purposes only, with a hearing on the merits to be set by a subsequent order from the administrative law judge.^[viii] Then, hearings that were set to begin on January 21, 2025, were likewise postponed, creating even more uncertainty as to whether the early momentum would ever be recovered.

It remains unclear whether the Trump administration will support the rescheduling efforts. For example, in a September 8, 2024, post on the social media site Truth Social, the then-Republican presidential nominee indicated support for rescheduling marijuana under the CSA.^[ix] However, new Attorney General Pamela Bondi recently declined to commit to rescheduling in response to questions for the record from two Democrats on the Senate Judiciary Committee.^[x]

New proposed legislation to make restrictions on cannabis deductions permanent

And now, a new foreboding signal has emerged from Congress. On February 7, 2025, Senators James Lankford (R-Okla.) and Pete Ricketts (R-NE) introduced new legislation that would block the major tax benefit that cannabis businesses expected to see from marijuana rescheduling.^[xi]

Under the proposed bill, section 280E would be amended to disallow any deductions or credits for businesses trafficking in marijuana, no matter how the drug is scheduled under the CSA. In a February 7 press release, Lankford said:

Marijuana doesn't make our families stronger, our streets safer, or our workplaces more productive. Businesses who sell federally illegal drugs—including marijuana businesses—shouldn't get federal tax breaks. This bill clarifies federal tax law to make sure a federally illegal product does not have a federally legal tax deduction.^[xii]

It's unclear for now whether the proposed bill will gain momentum or if the text will be included as part of the upcoming budget reconciliation. However, this new potential roadblock exacerbates the uncertainty confronting a cannabis industry desperately trying to gain traction and profitability.

We will continue to provide updates as events unfold. In the meantime, should you have any questions or issues on this area, federal income tax reporting requirements, or other legal issues in the cannabis industry, you may contact the authors or a member of the [Tax Controversy Practice Team](#), [Tax Planning Practice Team](#), or [Cannabis Practice Team](#).

[i] Congress enacted section 280E as a direct reaction to the outcome of a case in which this Court allowed a taxpayer to deduct expenses incurred in an illegal drug trade. See S. Rept. 97–494 (Vol.1), at 309 (1982). In that case, *Edmondson v. Commissioner*, T.C. Memo.1981–623, the Court found that the taxpayer was self-employed in a trade or business of selling amphetamines, cocaine, and marijuana. The Court allowed the taxpayer to deduct his business expenses because they “were made in connection with * * * [the taxpayer's] trade or business and were both ordinary and necessary.” *Id*

[ii] *Californians Helping to Alleviate Med. Problems, Inc. v. Commissioner*, 128 T.C. 173, 181 (2007); 21 C.F.R. § 1308.11(d)(22); *Canna Care, Inc. v. Commissioner*, T.C. Memo. 2015-206, aff'd 694 F. App. 570 (9th Cir. 2017).

[iii] See e.g., *Oakland Cannabis Buyer's Co-op*, 532 US 483 (2001); T.C. Memo. 2015-206; *N. California Small Bus. Assistants Inc. v. Commissioner*, 153 TC 65 (2019).

[iv] *N. California Small Bus. Assistants Inc.*, 153 T.C. 65, 67 (2019) (citing *Californians Helping to Alleviate Med. Problems, Inc.*, 128 T.C. 173, 182 (2007)).

[v] Rev. Proc. 2024-40; section 11.

[vi] Docket No. DEA-1362; A.G. Order No. 5931-2024 .

[vii] <https://www.regulations.gov/document/DEA-2024-0059-0001/comment>.

[viii] https://www.dea.gov/sites/default/files/2024-11/Marijuana_PreliminaryOrder.fin%20%281%29.pdf;
www.dea.gov/sites/default/files/2024-12/Marijuana%20Rescheduling_PHR.pdf.

[ix] <https://truthsocial.com/@realDonaldTrump/posts/113105431683796730>.

[x] https://www.judiciary.senate.gov/imo/media/doc/2025-01-15_-_qfr_responses_-_bondi.pdf.

[xi] S.471 - A bill to amend the Internal Revenue Code of 1986 to maintain the prohibition on allowing any deduction or credit associated with a trade or business involved in trafficking marijuana.

[xii] <https://www.lankford.senate.gov/news/press-releases/lankford-introduces-bill-to-block-tax-breaks-for-marijuana-businesses/>.

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