

## IRS Marijuana Industry Webpage – A Summary of the Tax Rules

By Kelly Lin, EA, Principal and Eric Gelb, CPA, Director

When the first medical cannabis dispensaries began to proliferate in California in the mid-1990s, legalization proponents were excited by the prospect for further developments in this young promising industry. To their disappointment, no major developments occurred until Colorado became the first state to legalize recreational cannabis in 2013. Fast forward seven years later, and cannabis advocates have much progress to tout. Since the November 2020 elections, 15 states and Washington D.C. have now legalized recreational cannabis. The legal cannabis market is expected to grow by 26% in 2021, and at a 20.4% compound annual growth rate (CAGR) for the next four years, according to *Arkview Market Research/BDS Analytics*.

Just a few years ago, it was hard to imagine the existence of a legitimate legal cannabis industry in the U.S.; however, the industry's momentum forces regulators and government agencies to recognize it as an industry with staying power. Of recent note, the IRS launched a [Marijuana Industry webpage](#). This was not only a watershed event, the webpage is also highly practical in that it answers a number of industry-specific tax questions that market participants must be made aware. Here are a few highlights.

### IRC §280E

Expenditures in connection with the illegal sale of drugs is prominently featured. It provides that such a taxpayer cannot deduct expenses for income tax purposes for SG&A (selling, general and administrative) expenses. IRC §280E states, "No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted."

### FAQs

The IRS also published a "[Marijuana Industry Frequently Asked Questions](#)."

According to the FAQs, "Section 280E does not, however, prohibit a participant in the marijuana industry from reducing its gross receipts by its properly calculated cost of goods sold to determine its gross income. The IRS takes the position that section 280E-affected taxpayers must calculate their cost of goods sold pursuant to IRC section 471 and the associated Treasury Regulations. Generally, this means taxpayers who sell marijuana may reduce their gross receipts by the cost of acquiring or producing marijuana that they sell, and those costs will depend on the nature of the business."

### Income Reporting

According to the IRS, "Income from any source is taxable and taxpayers are generally required to file a tax return to report that income to the IRS. Many marijuana-industry businesses conduct transactions in cash, which need to be reported, like any other form of payment." The IRS website refers taxpayers to [IRS Publication 334, Tax Guide for Small Businesses](#). To the extent an entity that sells marijuana generates taxable income, the entity may be subject to income tax, regardless of whether they accept cash in exchange for sales.

### How to Pay Taxes Due in Cash

The U.S. Drug Enforcement Administration lists marijuana (cannabis) as a "Schedule 1" drug, and, as such, "trafficking" of cannabis is illegal at the federal level. This has led certain large, national, and federally chartered banks not to accept cash deposits derived from marijuana sales. Where a taxpayer

operating in the cannabis space cannot find a suitable banking arrangement, the situation can arise where federal income taxes would need to be paid in cash. Fortunately, the IRS has made available cash payment options for such “unbanked” taxpayers. The IRS website states that taxpayers can call the IRS at 1.844.545.5640 to find out which IRS Taxpayer Assistance Centers accept cash. [IRS Publication 334, Tax Guide for Small Businesses \(Need to Pay Your Taxes in Cash?\)](#) provides additional details about cash payment options.

The IRS Marijuana Industry website also reminds us that, “Any person in a trade or business who receives more than \$10,000 in cash in a single transaction or in related transactions must file IRS Form 8300 – Report Cash Payments Over \$10,000 Received in a Trade or Business, within 15 days after receiving payment.”

## Contact Us

For more information, visit the [IRS Marijuana Industry webpage](#) and the frequently asked questions section. Or, to start a dialogue, contact your PKF O'Connor Davies client engagement partner or:

Kelly Lin  
Principal  
Tax Services  
[klin@pkfod.com](mailto:klin@pkfod.com) | 646.699.2865

Eric Gelb, CPA  
Director  
Financial Services  
[egelb@pkfod.com](mailto:egelb@pkfod.com) | 914.341.7049

## About PKF O'Connor Davies

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, twelve offices in New York, New Jersey, Connecticut, Maryland and Rhode Island, and more than 800 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked 27th on *Accounting Today's* 2020 “Top 100 Firms” list. It is also ranked among the top 20 best accounting employers to work for in North America by *Vault*.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.