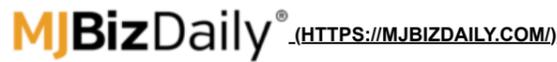


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What tax deductions will be available to marijuana companies if 280E disappears?



By **Neil Prasad and Martin Martinez, Guest Columnists** (<https://mjbizdaily.com/about-us/staff>)

July 5, 2024

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(This is a contributed guest column. To be considered as an MJBizDaily guest columnist, please submit your request here (<https://mjbizdaily.com/guest-columnist/>)).

The cannabis industry has long been shackled by the constraints of Section 280E of the Internal Revenue Code, which prohibits companies dealing with substances classified under Schedules 1 or 2 of the Controlled Substances Act (CSA) from deducting ordinary business expenses.

While Section 280E is applicable to federal deductions, only half of the markets with medical or adult-use marijuana business licenses are decoupled from federal limitations, meaning state-regulated cannabis companies in those regions aren't subject to 280E rules when filing state taxes.



Neil Prasad (Courtesy photo)

This provision has stifled the growth of legal marijuana enterprises across the United States.

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But with the Biden administration [proposing the reclassification of marijuana \(https://mjbizdaily.com/biden-announces-latest-step-in-marijuana-rescheduling-process/\)](https://mjbizdaily.com/biden-announces-latest-step-in-marijuana-rescheduling-process/) from Schedule 1 to Schedule 3, the industry stands on the brink of a fiscal revolution.

What deductions are currently out of reach for cannabis companies?

Under Schedule 1, marijuana businesses face severe limitations when it comes to their tax filings and income-tax obligations.

They also should review whether each state where they operate conforms to federal tax provisions.

The iron grip of Section 280E bars companies from claiming a myriad of selling, general and administrative deductions that are otherwise routine for businesses in other sectors, such as:

- **Rent:** The simple overhead of leasing space for operations – a deductible expense in virtually any other industry – remains a fiscal ghost in the cannabis realm.
- **Salaries and wages:** Employee compensation, from budtenders to executives, is money spent without the prospect of tax relief.
- **Utility costs:** Electricity, water and other utilities essential to cultivating and selling cannabis cannot lighten the tax load.
- **Maintenance and repairs:** Upkeep of facilities is a nondeductible money pit hindering reinvestment and upgrades.
- **Marketing and advertising:** Building and promoting a brand are crucial for growth and customer acquisition, and they bleed funds without tax write-offs that offset their costs.
- **Health insurance:** Employee medical coverage is an unacknowledged expense, pressuring the industry's workforce stability.
- **Depreciation and amortization (on non-plant-touching assets):** Federal tax regulations ignore the gradual loss of asset value over time.



Martin Martinez (Courtesy photo)

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Preparing for 280E changes

Imagine a world where the marijuana industry no longer finds itself in the same category as heroin or LSD but instead sits alongside prescriptions filled daily at local pharmacies.

What transformation could this bring to cannabis businesses once freed from the 280E punitive regime?

- **Full-spectrum deductions:** You could claim deductions for ordinary and necessary business expenses, such as rent, salaries, utility bills and marketing costs.
- **Profit reinvestment:** Funds liberated from 280E could go back into the business, fueling expansion, research and development, innovation and employment.
- **Lower consumer prices:** Potential cost savings might be passed to consumers, making medical cannabis more accessible.
- **Enhanced financial services:** With the stigma reduced, obtaining loans, credit lines and banking services could become more accessible.
- **Elevated market competition:** Tax relief could lead to competitive patient or consumer pricing, driving down the illicit market's appeal.

The prospect of such changes has the industry buzzing with excitement and speculation.

Will these potential deductions lead to a flourishing economic ecosystem for cannabis businesses, or will the dream of financial parity with other industries remain just out of reach?

One thing is clear: The rescheduling of marijuana and the subsequent rendering of Section 280E obsolete for cannabis businesses could potentially unleash a green wave of prosperity, transforming a once-hamstrung industry into a financial powerhouse.

The question remains: When will the cannabis industry be allowed to bloom to its full financial potential?

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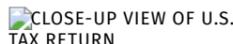
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