

Internal Revenue Service Clarifies Tax Rule for Marijuana Industry

The Internal Revenue Service (IRS) issued [guidance](#) on Thursday, September 10, 2020, to marijuana businesses. The new guidance does not change existing IRS rules, but briefly explains the rules for reporting income, paying taxes with cash, and keeping financial records.

The new guidance, which also links to a [“Marijuana Industry Frequently Asked Questions” document](#), confirms that income from any source is taxable, even if that source is illegal. The IRS also points out that federal courts have upheld IRS determinations that state-compliant marijuana dispensaries have taxable income. The IRS also clarifies that marijuana businesses that meet eligibility requirements can qualify for payment plans and could be subject to interest and penalties for non-payment or underpayment, the same as any other business.

In clarifying its position on deductions for marijuana businesses, the IRS also provides a small amount of relief. Section 280E of the Internal Revenue Code disallows all deductions and credits for a business that sells or traffics in marijuana. This applies to businesses even in states that have legalized the sale of marijuana, because the sale of marijuana remains illegal under federal law. The guidance document points out, however, that Section 280E does not prohibit a marijuana business from reducing its gross receipts by its “properly calculated” cost of goods sold, as calculated pursuant to Section 471 of the Internal Revenue Code, to determine its gross income. As a result, a marijuana business can reduce its gross income by its costs of goods sold, but cannot deduct advertising or selling expenses.

The IRS also highlighted [instructions](#) for paying taxes in cash, for businesses that are unable to establish bank accounts, including via a prepaid credit card, money order or cashier’s check, payment at a retail partner for amounts less than \$1000, or by making an in-person payment at a secure IRS location.

Partridge Snow & Hahn’s [Cannabis Advisory Practice Blog](#) provides updates on marijuana law and policy, covering some of the risks and opportunities in the industry, and makes recommendations regarding best practices. If you are interested in receiving these updates via email, please email us at marketing@psh.com.

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