

Accounting Group Urges Clarity on Confusing Cannabis Tax Rules

Supreme Court's Chevron Decision and Cannabis Rescheduling Put Pressure on IRS for Tax Clarity

The cannabis industry is facing increasing uncertainty as the Internal Revenue Service (IRS) comes under pressure to clarify how federal tax rules will apply following a potential rescheduling of marijuana. This issue has become more urgent following a recent Supreme Court decision that could significantly alter how courts interpret IRS regulations, particularly those affecting cannabis businesses. As the IRS navigates these legal and regulatory challenges, industry leaders and legal experts are calling for a definitive transition framework to help companies move forward.

The Complexities of Cannabis Taxation

One of the most pressing concerns for the cannabis industry is how tax regulations will change as marijuana moves toward potential rescheduling at the federal level. Currently, marijuana is classified as a Schedule I drug, meaning it is illegal under federal law. This classification subjects cannabis businesses to Section 280E of the Internal Revenue Code, which prevents them from claiming standard business deductions, effectively leading to much higher tax rates.

For years, cannabis companies and their certified public accountants (CPAs) have been navigating the difficulties of operating in an industry that is legal in many states but still federally prohibited. These businesses are often forced to pay tax rates as high as 70% or more, as Section 280E bars them from deducting ordinary business expenses like rent, payroll, and professional services.

Melanie Lauridsen, vice president of tax policy and advocacy at the **American Institute of CPAs (AICPA)**, highlighted the unique challenges this situation poses. "Since marijuana began to be decriminalized and legalized in an increasing number of states, cannabis businesses and their CPAs have faced the challenge of navigating an industry that is legal locally but illegal federally," she said.

This week, the AICPA urged the U.S. Treasury Department and the IRS to issue proactive guidelines for how the industry will transition away from the burdens of Section 280E once marijuana is rescheduled. A critical issue is whether cannabis businesses will receive retroactive tax relief for the entire year in which rescheduling occurs.

The Supreme Court's Chevron Decision

Adding to the complexity is the Supreme Court's recent **Chevron** decision, which could fundamentally change how courts interpret IRS rules, including those affecting cannabis taxation. Historically, under the Chevron doctrine, courts have deferred to federal agencies like the IRS when interpreting ambiguous laws. However, the Supreme Court has now significantly limited this deference, meaning courts could

independently evaluate whether IRS interpretations are valid.

This change could have serious implications for the cannabis industry. **Jennifer Benda**, a cannabis tax attorney with **Holland & Hart**, explained that the Chevron decision could lead courts to scrutinize IRS guidance on Section 280E more closely. “Without Chevron deference, I would expect a court to independently determine whether this statement is correct,” Benda said, referring to a recent IRS notice that asserted Section 280E would continue to apply until marijuana is officially rescheduled.

However, Benda noted that if the IRS issues favorable guidance that reduces uncertainty, affected businesses are unlikely to challenge it. “Assuming that guidance is favorable because it removes uncertainty, the affected taxpayers are unlikely to challenge it,” she said. But if the guidance remains unfavorable, cannabis companies may have more legal leverage to contest IRS positions on tax issues.

Pressure for Proactive Guidelines

The AICPA’s call for proactive guidelines from the IRS reflects the growing concerns within the cannabis industry about how tax laws will evolve after marijuana is rescheduled. Specifically, the AICPA has asked the Treasury Department and IRS to clarify whether businesses will receive full-year tax relief in the year of rescheduling.

The issue stems from concerns about “mid-year” tax changes. For example, if rescheduling takes place in the middle of 2024, businesses could face a scenario where they are only allowed to deduct expenses incurred after the date of rescheduling. This would create what the AICPA describes as “artificial behaviors” and unnecessary risks, as businesses would be forced to adjust their tax strategies mid-year.

In a letter to **Treasury Secretary Janet Yellen** and **IRS Commissioner Daniel Werfel**, the AICPA proposed allowing cannabis companies to deduct all of their business expenses for the entire year of rescheduling, rather than only expenses incurred after the change takes effect. The organization argued that implementing tax changes mid-year would lead to “significant compliance issues, confusion, unnecessary complexity, and increased tax administration expenses.”

The Need for Clear Guidance

Beyond the issue of full-year deductions, the AICPA also highlighted a range of technical issues that need to be addressed as cannabis businesses transition away from Section 280E. These include changes in accounting methods, partnership basis calculations, and depreciation treatment. Additionally, the AICPA proposed the creation of a voluntary disclosure program for businesses that may have incorrectly claimed deductions, under the assumption that Section 280E did not apply to them.

The stakes are high for the cannabis industry. Section 280E’s restrictions on standard business deductions have long placed a significant financial burden on marijuana companies, often forcing them to pay taxes on gross income rather than net profit. Despite the risk, some businesses are moving forward aggressively, including **Trulieve Cannabis Corp.**, which recently secured \$113 million in tax refunds despite ongoing legal uncertainties.

Lauridsen emphasized the need for the IRS to act quickly, noting that many cannabis businesses are profitable and will need clear tax guidance as marijuana rescheduling approaches. “It’s crucial that the federal government’s tax administration bodies provide guidance to these profitable businesses and their advisors ahead of the marijuana rescheduling to ensure a clear understanding of their federal tax obligations and minimize noncompliance,” she said.

IRS Enforcement and the Future

While the AICPA and industry leaders are pushing for clear guidance, the IRS appears to be ramping up enforcement in anticipation of marijuana rescheduling. **Luke Ortner**, Senior Counsel for the IRS, informed accountants at an AICPA conference in August that the agency might begin seizing cannabis inventory to settle tax debts after rescheduling takes place. This would mark a significant departure from the IRS's previous approach, which typically avoided such aggressive enforcement tactics in the cannabis industry.

As the rescheduling of marijuana looms, cannabis businesses are preparing for major changes to their tax obligations. The AICPA's recommendations, which aim to smooth the transition by allowing full-year deductions and offering clarity on complex tax matters, are seen as crucial steps toward preventing disruption in the industry.

The Road Ahead for Cannabis Taxation

The upcoming months could be pivotal for cannabis taxation in the U.S. If marijuana is rescheduled, cannabis businesses will no longer be subject to the punitive tax rates imposed by Section 280E, potentially allowing them to thrive in a more favorable tax environment. However, without clear guidance from the IRS, businesses may struggle to navigate the transition, leading to compliance challenges and increased legal risks.

As the industry awaits action from the federal government, the Supreme Court's Chevron decision adds another layer of complexity. With courts no longer obligated to defer to IRS interpretations, the future of cannabis taxation could be shaped as much by legal battles as by legislative changes. For now, cannabis companies, tax professionals, and lawmakers are all watching closely, hoping that the IRS will provide the clarity needed to avoid a chaotic transition.

Email: info@cannabisriskmanager.com | Phone: +415-226-4060

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