

280E Isn't a Tax Break, It's a Burden on Cannabis Companies

The No Deductions for Cannabis Businesses Act Seeks to Codify 280E Tax Burden, Even if Cannabis is Rescheduled

The No Deductions for Marijuana Businesses Act, introduced by U.S. Sens. James Lankford and Pete Ricketts, aims to cement the application of Section 280E of the Internal Revenue Code against state-legal cannabis businesses. This would remain in effect even if marijuana were reclassified as a Schedule 3 drug under the Controlled Substances Act.

Congressional Republicans Double Down on Keeping 280E Intact for Cannabis Companies

A few weeks after Lankford and Ricketts' proposal, seven more congressional Republicans introduced similar legislation. Their goal: to permanently disallow any tax deduction or credit for businesses engaged in selling marijuana, further entrenching the financial strain on the legal cannabis industry.

Section 280E Imposes Excessive Tax Burdens on Legal Cannabis Businesses

In practice, Section 280E subjects cannabis businesses to disproportionately high tax rates by disallowing the "ordinary and necessary" business deductions that other industries enjoy. This significantly inflates their taxable income and operational costs.

Currently, 280E applies only to businesses trafficking in Schedule 1 or Schedule 2 controlled substances. A reclassification of marijuana to Schedule 3 would permit cannabis businesses to be taxed like traditional companies, potentially alleviating their financial burden.

Fair Taxation for Cannabis Is Not a 'Break' – But 280E Is a Backdoor Subsidy for the Illicit Market

Lankford and Ricketts argue that maintaining 280E is necessary to prevent the federal government from "subsidizing an industry that profits from addiction and undermines public safety." They claim their bill ensures that cannabis businesses do not receive tax breaks while still violating federal law.

However, their reasoning is flawed in two key ways:

280E unintentionally subsidizes the illicit cannabis market, not state-regulated businesses. Unlicensed operators rarely pay taxes, and the IRS rarely enforces 280E against them. This enables illegal sellers to undercut licensed competitors, fostering an unregulated market.

Eliminating 280E would merely allow legal cannabis businesses to be taxed at the same rate as mainstream retailers and manufacturers. This is not a tax “break” – it is simply fair taxation.

California’s Struggles Demonstrate the Impact of 280E on Legalization Efforts

A recent report by California’s Department of Cannabis Control estimated that only about 40% of the marijuana consumed in the state comes from the legal market. The report suggests that one of the most effective ways to curtail illegal operators is to “decrease costs for licensed businesses” – eliminating 280E being a prime example.

280E’s Supposed Revenue Generation for the Federal Government Is a False Narrative

Many federal policymakers mistakenly believe that 280E generates significant tax revenue and want to preserve it for fiscal reasons. In reality, 280E suppresses operational success for legal businesses and incentivizes illicit market activity, ultimately reducing potential tax collections.

For instance, California Governor Gavin Newsom reported that in 2024 alone, authorities seized over \$534 million worth of illegal marijuana. Since 2019, the state has confiscated and destroyed nearly 800 tons of illicit cannabis, valued at more than \$2.8 billion—none of which contributed to tax revenue.

By removing 280E, tax authorities could collect more revenue from legal businesses, as they would be better positioned to compete against illicit sellers.

280E Is a Tax on Expenses, Not Profits, and Cripples Legal Cannabis Operators

As a tax attorney, I can attest that the IRS struggles to collect past-due taxes from cannabis businesses. Why? Because 280E taxes money that was never truly earned. These businesses are financially strangled by a system that prevents them from deducting essential expenses.

Furthermore, because of its inherent unfairness, 280E is frequently contested in IRS audits, appeals, and Tax Court cases—draining government resources and increasing enforcement costs.

280E Functions as a Backdoor Federal Crackdown on the Cannabis Industry

The way 280E is applied ultimately forces many cannabis companies out of business, effectively serving as an indirect form of federal enforcement of the Controlled Substances Act.

Federal, state, and local tax authorities cannot collect revenue from struggling or shuttered cannabis companies, yet they continue to spend resources enforcing 280E. This economic inefficiency contradicts the goal of government fiscal responsibility.

Eliminating 280E Would Strengthen Legal Markets and Boost State and Local Economies

Excessive taxation on legal cannabis businesses encourages illicit-market participation and leads to:

Stagnant business growth

Higher consumer prices

Job losses, which reduce state tax revenue

Ultimately, 280E contradicts the fundamental objectives of cannabis legalization: ensuring consumer safety, reducing harm from failed drug policies, and fostering regulated markets.

Most Americans understand—unlike some members of Congress—that shutting down legal cannabis businesses will not eliminate cannabis consumption. Reforming 280E is a necessary step toward fair taxation, economic growth, and responsible regulation of the industry.

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