

## **Oklahoma Law Review: 280E No Longer Applies After Rescheduling**

### **Oklahoma Law Review Paper Argues Cannabis Rescheduling Could Eliminate Federal 280E Tax Burden for Industry**

Tulsa — A forthcoming article in the *Oklahoma Law Review* argues that the federal rescheduling of cannabis to Schedule III could fundamentally reshape how the Internal Revenue Code Section 280E applies to the industry, potentially eliminating its reach over cannabis businesses and raising questions about past and ongoing tax liabilities.

The analysis, authored by University of Oklahoma law student Anthony Deininger, closely examines the statutory language of Section 280E and its reliance on cannabis being classified under Schedule I or Schedule II of the Controlled Substances Act. The paper contends that once cannabis is moved to Schedule III, the legal foundation for applying the provision may no longer exist.

### **Legal Interpretation of Section 280E Raises Questions About Whether Federal Cannabis Tax Penalties Survive Schedule III Reclassification**

Section 280E currently prohibits businesses engaged in trafficking controlled substances listed in Schedule I or II from deducting ordinary business expenses. As a result, state-legal cannabis companies are taxed on gross revenue rather than net income, often resulting in effective tax rates exceeding 70%, according to industry estimates.

Deininger characterizes the provision as a conditional tax mechanism tied explicitly to the drug's scheduling status. His argument suggests that removing cannabis from Schedule I and II could eliminate the statute's applicability altogether, not just reduce its future impact.

The draft paper, which is expected to be formally published later this year, has not yet undergone peer review but is already drawing attention for its broader interpretation of how rescheduling could affect federal tax enforcement.

### **Industry Faces Billions in Section 280E Liabilities as Legal Debate Intensifies Over Retroactive Tax Exposure**

The cannabis industry is currently facing an estimated \$1.6 billion in disputed or unpaid tax liabilities related to 280E, with ongoing enforcement actions in Tax Court. Companies operating in state-legal markets have long argued that the provision creates a structural disadvantage compared to other regulated industries.

Large multi-state operators continue to report significant financial pressure from the rule, which has limited profitability and distorted standard accounting practices across cultivation, manufacturing, and retail operations.

Analysts estimate that without Section 280E, the industry could have saved approximately \$2.3 billion in federal taxes in 2025 alone, highlighting the scale of potential relief if the statute is no longer applied following rescheduling.

## **Federal Rescheduling Push Under Trump Administration Adds Urgency to Legal and Tax Uncertainty**

The paper arrives amid renewed federal momentum toward rescheduling cannabis. In December 2025, President Donald Trump issued an executive order directing the attorney general to move cannabis to Schedule III “in the most expeditious manner possible,” signaling a potential shift in federal enforcement priorities.

Schedule III classification would acknowledge accepted medical use while maintaining restrictions on non-medical distribution outside state-regulated systems.

While most legal experts expect that rescheduling would prospectively eliminate 280E’s impact, Deininger’s analysis goes further, arguing that the statute’s wording may also limit retroactive enforcement once cannabis is no longer classified under Schedule I or II.

However, the Internal Revenue Service has taken a different position in recent filings, maintaining that tax liabilities are determined based on the law in effect during each individual tax year, regardless of later scheduling changes.

## **Broader Implications for Cannabis Businesses Await Regulatory and Judicial Clarification on Tax Treatment**

For now, cannabis remains a Schedule I substance under federal law, and Section 280E continues to apply to current tax filings. The IRS continues to enforce the provision while litigation over past liabilities moves through federal courts.

The Deininger paper adds a new legal theory to an ongoing national debate over cannabis taxation, but it does not alter current obligations for operators. Industry participants continue to operate under the existing framework while awaiting formal regulatory action and potential judicial rulings.

As the cannabis sector continues to expand under state legalization regimes, federal tax policy remains one of its most significant unresolved challenges. The outcome of rescheduling efforts and how courts interpret Section 280E in response may ultimately determine whether the industry’s long-standing tax burden is reduced, reshaped, or fully eliminated.

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