

Pursuers of Medical Marijuana Business in Florida Face Difficult Tax Reality

For the past year, since Amendment 2 garnered enough signatures to make it onto this November's general election ballot, many Florida citizens have been drooling over the prospect of running a legal medical marijuana business. However, the closer we get to November, those who are serious about the opportunity are beginning to recognize the many obstacles the medical marijuana industry poses. The obstacles most often talked about are the difficulty in establishing a banking relationship, the industry's often changing regulatory and legal landscape, and of course, the constant threat of federal intervention. However, an issue that is often over-looked, or even ignored, is the punitive approach the IRS takes toward medical marijuana companies, otherwise known as 26 U.S. Code § 280E.

Section 280E arose in response to a 1982 U.S. Tax Court decision that allowed a convicted felon to deduct expenses he incurred when selling illegal narcotics. Section 280E, "Expenditures in connection with the illegal sale of drugs," states as follows: "No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted."

The federal government still classifies marijuana, including "medical marijuana," as a schedule I narcotic as defined in the Controlled Substances Act. Accordingly, medical marijuana businesses that operate legally within a state cannot claim many of the deductions upon which so many other businesses rely, including for example rent, payroll, marketing, training, transportation, and meals and entertainment. As a result, it is imperative for medical marijuana business owners to pursue an aggressive tax strategy. Without doing so, medical marijuana companies can face a federal tax rate of 60 to 90 percent.

Such an aggressive tax strategy may include taking simple precautions, like storing savings in anticipation of an audit, as well as more complex arrangements, like diversifying offered services that do not fall under § 280E and allocating expenses to such alternative services. In addition, there may be IRS provisions used in connection to the agricultural industry of which medical marijuana companies in Florida may be able take advantage.

At bottom, § 280E makes successfully operating a medical marijuana business very difficult. Do not hesitate to contact us to learn more about this punitive provision. At ILG we do not practice tax law; however, we are fortunate to work together with a number of strategic tax consultants to ensure tax issues affecting our clients are considered and tactically addressed. For this particular issue, we are working with **Orr & Company**, whose contact information is as follows:



P: 407-333-8181

F: 407-333-8190

**The above article assumes the reader has a basic understanding of the fundamental legal and regulatory landscape that currently exists related to medical marijuana in Florida. For helpful background information, please refer to our previous articles on the topic, which can be found at <http://www.ioppololawgroup.com/insider-updates/>.*

***Adrian Lukis, Esq.
Government Affairs Manager***

The Ioppolo Law Group, PLLC (“ILG”) has been representing both Florida-based and national groups in their pursuance of medical marijuana licenses for the past year. ILG’s representation ranges from regulatory compliance, government affairs and business consulting to creating corporate and financial structures and building teams. Please do not hesitate to contact us at 407 936 3672 or alukis@ioppololawgroup.com for a consultation. Also, please feel free to visit our website at www.ioppololawgroup.com to explore our medical marijuana resource page and to sign up to receive our alerts.

For additional information, please contact:
Adrian Lukis, Esq.
Manager, Government Affairs
alukis@ioppololawgroup.com
P: 407-936-3672; F: 866-529-4717

Ioppolo Law Group, PLLC
250 International Pkwy, Ste 250
Lake Mary, FL 32746
P: 407-444-1004; F: 866-529-4717
www.ioppololawgroup.com

This Ioppolo Law Group Insider Update is issued for informational purposes only and is not intended to be construed or used as general legal advice. Please contact the author(s) if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer’s legal qualifications and experience. ILG is a service mark and trade name of Ioppolo Law Group, PLLC™ 2010. All rights reserved.

CONFIDENTIALITY NOTICE: This email may contain material that is privileged, confidential, and/or attorney-client work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express written permission is strictly prohibited. If you are not the intended recipient, please contact the sender at the above number and delete all copies. Inadvertent waiver shall waive no privileges.

TAX ADVICE DISCLOSURE: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein. The foregoing paragraph has been affixed to comply with U.S. Treasury Regulations governing tax practice.