

Cannabis Business Deductions Permitted at the New Jersey State Level

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Even though New Jersey has legalized the regulated sale, recreational use and possession of cannabis for adults 21 years and older by way of the Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act (CREAAMA), cannabis businesses do not receive the same tax benefits afforded to any other business in the state.

By **Michael F. Schaff and Jennie M. Miller** | May 30, 2023

On May 8, 2023, Gov. Phil Murphy signed a bill (A3946/S340) into law that permits business deductions for cannabis businesses at the New Jersey state level only. This is a big deal for those engaged in the New Jersey cannabis industry—but why?

Historically, the state tax code has been coupled with the Internal Revenue Code, 26 U.S.C. 280E. At the federal level, Section 280E prohibits deductions or credits for businesses selling federally defined schedule I and II controlled substances. Cannabis remains a schedule I controlled substance under the Controlled Substances Act, meaning there is no accepted medical use in the United States, a lack of safety, and a high potential for abuse, at least according to the federal Legislature. So, even though the state has legalized the regulated sale, recreational use and possession of cannabis for adults 21 years and older by way of the Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act (CREAAMA), cannabis businesses do not receive the same tax benefits afforded to any other business in the state.

Effective immediately and applying to tax years beginning on and after Jan. 1, 2023, state treatment of cannabis businesses for tax purposes will change. For cannabis licensees, gross income and income will be determined “without regard to section 280E of the Internal Revenue Code (26 U.S.C. Section 280E).” The new law allows cannabis licensees a deduction equal to any expenditure that would ordinarily be eligible to be claimed as a federal income tax deduction, but which is forbidden because cannabis is a controlled substance under federal law.

Under New Jersey tax laws, a cannabis business will now be allowed to deduct from income all ordinary and necessary business expenses incurred by maintaining a licensed cannabis business, as well as the cost of goods sold. Such ordinary business expenses might include, but are not limited to payroll, rent and utilities.

From a practical perspective, allowing cannabis businesses these deductions may lead to increased financial stability and overall viability of cannabis businesses, many of which are owned and operated by women and/or people of color. Local communities may also reap the benefits associated with a thriving cannabis business contributing to the local economy.

It is important to note here that cannabis licensees remain subject to 26 U.S.C Section 280E for federal tax purposes. This means the state's cannabis businesses are not allowed deductions for ordinary business expenses at the federal level. You should consult with an accountant or a seasoned tax attorney to confirm compliance with all applicable laws.

Disclaimer: Cannabis remains a scheduled narcotic under federal law, and anyone considering entering this field should first consult with competent counsel. The information contained in this article does not constitute legal advice and is for informational purposes only.

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