

CLIENT ADVISORY / OCTOBER 9, 2026

Cannabis Taxation and Section 280E

Section 280E of the Internal Revenue Code generally limits deductions and credits for businesses trafficking in prohibited Schedule I or II controlled substances. The April 2026 order moved covered medical marijuana to Schedule III; it did not reschedule all cannabis. Treasury states that rescheduling generally removes the Section 280E bar for qualifying activity. Eligibility depends on the business, its activities, and the tax year. The firm's recommendation below is a filing recommendation, not a statement that relief is legally unavailable. Review any proposed deduction or refund claim with counsel and a CPA.

Jarvis Law currently advises against claiming cannabis-related operating expense deductions based on relief from Section 280E or seeking related refunds for prior tax years.

This recommendation reflects the potential costs and uncertainties of a tax dispute. Clients should coordinate their return preparation with their CPA or tax preparer accordingly. The recommendation applies to the relief addressed in this advisory, including circumstances in which a deduction may be legally available.

Scope of the Recommendation

The firm advises against claiming the federal and Virginia cannabis expense relief discussed below through an original return, an amended return, or a disputed inventory accounting position. Any proposed departure from this recommendation should be reviewed with counsel and the tax preparer before filing.

Cost of goods sold. Properly calculated inventory costs remain a separate component of the tax analysis. This recommendation does not alter accurate income reporting or the appropriate treatment of legitimate inventory costs and unrelated deductions.^{1, 2, 9}

Federal and Virginia Developments

Federal: The April 28, 2026 rule moved covered medical marijuana to Schedule III. Treasury announced intended transition and allocation guidance. These developments may support relief for qualifying activity, but they are not a blanket exemption for every cannabis business.^{3, 4}

Virginia: The enacted 2026 budget provides expense relief for qualifying Virginia-licensed businesses for tax years beginning on or after January 1, 2026. The firm nevertheless recommends refraining from these deductions. That recommendation is distinct from the statutory availability of relief.⁶

02 / FILING AND TRANSACTION CONSIDERATIONS

Tax Return Preparation

Financial implications: Forgoing an available deduction may increase tax liability. Following this recommendation does not eliminate the possibility of an IRS examination.

1. Maintain supporting documentation.

Maintain invoices, payroll records, leases, inventory schedules, and records distinguishing medical, adult-use, and other activities. Expense classification must reflect the applicable accounting requirements and underlying business activities.

2. Coordinate legal and accounting review.

Provide this advisory to the CPA or tax preparer. Review operating expenses, cost of goods sold, federal and Virginia adjustments, and any resulting owner-level tax consequences.

3. Assess the financial consequences.

Prepare cash-flow projections without the deductions or prior-year refunds addressed here. Quantify the resulting tax liability and the potential benefits being forgone.

4. Identify applicable deadlines.

Identify refund claim, payment, and response deadlines with counsel and the tax preparer. Failure to submit a timely claim may permanently forfeit refund rights. Record applicable deadlines even where no claim is presently contemplated.

Frequently Asked Questions

Should prior returns be amended to claim Section 280E relief?

The firm advises against such amendments. Prior-year claims require an independent legal basis and the appropriate procedure; recent developments do not automatically establish refund entitlement. Any protective claim requires individual legal review.^{3, 7, 8}

Does disclosure protect a disputed deduction?

Disclosure does not establish the validity of a return position or remedy inadequate substantiation. Additional tax, interest, and applicable penalties may remain at issue. The availability of disclosure does not change this recommendation.¹⁰

Does another taxpayer's refund establish entitlement?

A refund issued to another taxpayer does not establish entitlement for a different business. Each position depends on the applicable law, tax year, business activities, and supporting records.

Business Acquisitions and Dispositions

Evaluate disputed refund receivables separately from confirmed assets. Review tax returns and notices, and address refund ownership, repayment obligations, audit control, record access, and appropriate security in the transaction documents. Review licensing requirements independently.

03 / CLIENT CONSULTATION AND AUTHORITIES

Individual Legal Review

Consult Jarvis Law before changing a cannabis-related tax position. Relevant materials include licenses and permits, ownership information, recent returns, amendments, refund claims, tax notices, inventory records, and applicable deadlines. Review should be coordinated with the CPA or tax preparer.

Firm Recommendation: Refrain from claiming the cannabis-related expense deductions and prior-year refunds addressed in this advisory.

Selected Authorities

The following authorities provide background for the issues discussed. Statutory eligibility for relief and the firm's filing recommendation are separate considerations.

1. 26 U.S.C. § 280E.
2. Internal Revenue Service, Cannabis Industry Frequently Asked Questions (last visited Oct. 2, 2026).
3. Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana From Schedule I to Schedule III; Corresponding Change to Permit Requirements, 91 Fed. Reg. 22,714 (Apr. 28, 2026).
4. U.S. Department of the Treasury, Treasury, IRS Announce Process for Tax Guidance Following DOJ Final Order on Medical Marijuana Rescheduling (Apr. 23, 2026).
5. Drug Enforcement Administration, Proposed Marijuana Rescheduling, Stay and Briefing Order, Docket No. DEA-1362, Hearing No. 26-96 (Sept. 29, 2026).
6. Virginia General Assembly, H.B. 30, 2026 Special Session I, enacted budget, Item 4-14 (amending Va. Code Ann. § 58.1-301).
7. Internal Revenue Service, Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund (rev. Sept. 2013).
8. Va. Code Ann. §§ 58.1-1823, 58.1-1824.
9. 26 U.S.C. § 471; 26 C.F.R. § 1.471-1.
10. Internal Revenue Service, Instructions for Form 8275-R, Regulation Disclosure Statement (rev. Nov. 2024).

Procedural update: The September 29, 2026 stay concerns the broader rescheduling proceeding. It does not purport to suspend the April medical rule.⁵

This advisory provides general information as of October 9, 2026. It does not constitute individualized legal or tax advice or establish an attorney-client relationship. Applicable law, agency guidance, and pending proceedings may change. Consult counsel and a tax adviser regarding the circumstances of a particular business.