



Cannabis Tax Law Update

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Agenda

Current legal environment

- State law changes
- Federal policy changes

Business implications of current and prospective changes

- Remediation
- Pre-rolls
- IRS 280E

Questions



Current legal environment: State changes

An Act to Exempt Certain Sales and Transfers of Adult Use Cannabis from Excise Tax, P.L. 2025, ch. 504 (L.D. 1654)

- Allows cultivators to temporarily transfer, for the purpose of remediation or treatment, cannabis flower and trim to a products manufacturing facility.
- Cannabis flower and trim sent for treatment or remediation by a products manufacturer must be returned to the cultivator that transferred it within 30 days.
- Cannabis flower or trim sent for treatment or remediation must be returned to the cultivator in the same form it was originally sent.



Current legal environment: Federal changes

Medical cannabis rescheduling

- **April 23, 2026**, the United States Acting Attorney General issued a final order moving state-authorized medical cannabis from Schedule I to III.

Hemp

- **December 11, 2026**, federal ban on intoxicating cannabinoids derived from hemp, and synthetic and semi-synthetic cannabinoids will be prohibited from interstate commerce.



Poll Question #1



Business implications of State law changes: Excise tax

- Adult use cannabis cultivation facility licensees will **no longer be required to remit excise taxes for temporary transfers (< 30 days)** of cannabis flower or trim sent to a products manufacturing facility for the purpose of treatment or remediation using ozone, radiation or other methods that do not change to the weight or form (flower/trim) of the cannabis transferred.
- Adult use cannabis cultivation facility licensees will **still be required to remit excise taxes for transfers for treatment or remediation that change the weight or form of the cannabis transferred**, e.g. transferring a batch of cannabis flower that failed mandatory testing for microbials in order to have that biomass extracted into cannabis concentrate.



State-level status quo: Pre-rolls

- The Legislature's taxation committee put in substantial effort examining whether pre-rolled cannabis cigarettes (referred to colloquially as "pre-rolls" or "joints") should be subject to their own cannabis excise tax rate
- Ultimately, the Legislature opted **not** to add a new category to the cannabis excise tax rate
- Cannabis cultivators who manufacture pre-rolls should keep in mind that the excise tax applies only to the weight of cannabis flower/trim used to make the pre-rolls, not the rolling paper and filter used to consume the cannabis
- At present, **pre-rolls are subject to excise tax based upon the content of the pre-rolls** (namely cannabis flower and cannabis trim)
- Licensees are reminded that Maine's adult use cannabis laws require that labels affixed to cannabis and cannabis products (like pre-rolls) not include information that is false or misleading



Poll Question #2



Business implications of Federal law changes: State-authorized medical cannabis

- DEA/DOJ/Treasury/HHS have issued **no guidance** since the acting Attorney General's "final order" in April of this year
- **Litigation continues** challenging the validity of the order; a rulemaking public hearing regarding the general rescheduling of all cannabis was held at the end of June
- Section 280E **prohibits** the deduction of ordinary business expenses by persons engaged in the manufacture or trafficking of Schedule I (or Schedule II) drugs or the taking of tax credits related to that business
- Generally, businesses that manufacture Schedule III substances are **not** subject to IRC Section 280E



Business implications of Federal law changes: State-authorized medical cannabis

- DOJ's final order regarding state-authorized medical cannabis program participants **moves state-legal medical cannabis from Schedule I to III**, however the final order indicated that Treasury would issue guidance regarding the applicability of Section 280E to these businesses
- To date, **no such guidance has been issued** from Treasury
- Financial institutions like banks and credit unions **have not yet received updated guidance** regarding banking of funds derived from cannabis businesses and continue to operate under 2014 FinCEN guidance regarding banking cannabis related businesses (CRBs)



Business implications of Federal law changes: State-authorized medical cannabis

- OCP is aware that several medical cannabis businesses operating in Maine's medical cannabis program **have applied for DEA registration** to “manufacture” and distribute medical cannabis
- OCP has responded to requests from information from DEA but has **not** received any information from DEA regarding:
 - the implementation of the final order;
 - the State's role in implementation;
 - the availability of tax or banking benefits for medical cannabis businesses that opt not to register with DEA; or
 - the impact that Maine's programmatic irregularities (no mandatory inventory tracking system and no mandatory contaminant testing) will have on the availability of DEA registrations to Maine program participants.



POTENTIAL Business implications of Federal law changes: State-authorized medical cannabis

Given the continued lack of guidance from Federal entities, it is **difficult to anticipate the actual business implications** of these changes. However:

- It is **likely** that state-authorized medical cannabis businesses that obtain a DEA registration for the manufacture, distribution or sale of medical cannabis will be eligible to take deductions for ordinary business expenses for the 2026 tax year; and
- It is **possible** that medical cannabis businesses generally, and DEA-registered state-authorized medical cannabis businesses in particular, will have greater access to banking and capital as DOJ and FinCEN update existing guidance regarding cannabis' controlled substance status and the legal implications of the same.



Poll Question #3



Business implications of Federal law changes: Hemp

- Beverage retailers, bars and restaurants, convenience stores and other retail outlets that sell consumable products that contain intoxicating cannabinoids that are derived from hemp, synthesized from compounds derived from hemp or otherwise synthesized will be **prohibited from sale under Federal law** and may not be sold in the state.
- Beverage wholesalers and others with existing stock of these soon-to-be-prohibited products seem to be trying to sell down stock ahead of the **December 11, 2026** deadline.



Business implications of Federal law changes: Hemp

Possible (required by enacting legislation) **forthcoming clarification by FDA** through publication of:

- a list of all **cannabinoids** known to FDA to be capable of being naturally produced by a Cannabis sativa L. plant, as reflected in peer reviewed literature;
- a list of all **tetrahydrocannabinol** class cannabinoids known to the agency to be naturally occurring in the plant;
- a list of all **other known cannabinoids** with similar effects to, or marketed to have similar effects to, tetrahydrocannabinol class cannabinoids; and
- additional information and specificity about the term “**container**”

To date, these lists have **not** been publicly issued by FDA.



Questions?

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Thank you.



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