Basics of Marijuana Taxation

Michigan Society of Enrolled Agents

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Disclaimer

Marijuana remains illegal under federal law. John Sheeley and Tax Practice Pro, Inc., offer instruction, consultations and education in accordance with the laws of the various states who have passed medical and recreational marijuana laws, the Internal Revenue Code, Regulations and Tax Court cases.

We do not promote illegal sales or use of marijuana in any way. We encourage you to 'just say no'.

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Legal Status of Marijuana

SURPISE!

The sale, possession, and use of Marijuana is ILLEGAL pursuant to federal law!

Practitioner Concerns

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." - 18 U.S.C. § 2(a) (2006).

- Preparing a lease
- Preparing financial statements
- Tax advice or preparing tax returns (?)
- Lecturing on the tax treatment of medical marijuana businesses (?)

Ethical Concerns - Lawyers

"A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal or fraudulent."

-- MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (2011).

State Ethics Rulings--Maine

- A lawyer cannot assist a client to engage in the medical marijuana business.
- Maine Prof'l Ethiques Comm'n, Op. 199 (2010).

State Ethics Rulings--Arizona

A lawyer can ethically perform such legal acts as are necessary or desirable to assist the client to engage in the conduct that is expressly permissible under the Arizona Medical Marijuana Act so long as the lawyer advises the client with respect to the potential federal law implications and consequences thereof.

State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Opinion 11–01 (2011).

Practitioner Concerns – OPR

“Within those parameters what we would essentially be saying to the preparers in those states is that you've got some hard conversations to have with your clients about what goes on to the tax return, but as long as you are adhering to what the tax law says about treatment, you're going to be within the confines of what Circular 230 expects of your due diligence” - OPR Director Karen Hawkins Nov. 19, 2014

Practitioner Concerns – OPR 2

- IRC 6694 assesses penalty for
  - Understatement of tax liability for not applying law properly
  - Reckless or intentional disregard of rules or regulations
- There are many gray areas open to interpretation – IRS will look at
  - What preparers knew
  - What IRS feels they should have known

Practitioner Concerns – OPR 3

Tax Preparers should consider:

- Section 10.22 Diligence as to Accuracy
- Section 10.34 Standards with Respect to Tax Returns and Documents
- Section 10.35 Competency
  - Lack of training now disreputable conduct
  - Who is really trained on this?

Risk Mitigation 1

- We all use engagement letters ☺
- Be specific on services provided and not provided
- John's exclusions
- Representation letter from owners
  - They understand requirements of State law related to cannabis businesses
  - They intend to comply at all times
- Does your E&O cover marijuana returns
  - It won't if you are deemed to aid & abet client

Risk Mitigation 2

- Make sure your client knows they need to follow all applicable laws and use a bank account (if possible) for all transactions

- Be alert to anything the client may say or do that indicates they are in possible violation of the Cole memo or in violation of state law

Risk Mitigation 4

- Is there a risk of prosecution to a business that provides services to marijuana-related businesses, such as a tax professional's firm.
- What is the likelihood that the DEA or the Department of Justice is going to prosecute this business?

Ethics for CPAs

- Most state CPA boards have not issued any guidance in this area
- Oregon – March 2015
  - "CPAs should consider the potential risks…"
  - Board will not take action for simply providing services to a legal state licensed business
- Washington State – 2014
  - Similar as Oregon with licensed business

Federal Law

Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970) [Controlled Substances Act, or CSA]

- Regime to curtail the manufacture, distribution, and abuse of dangerous drugs (controlled substances).

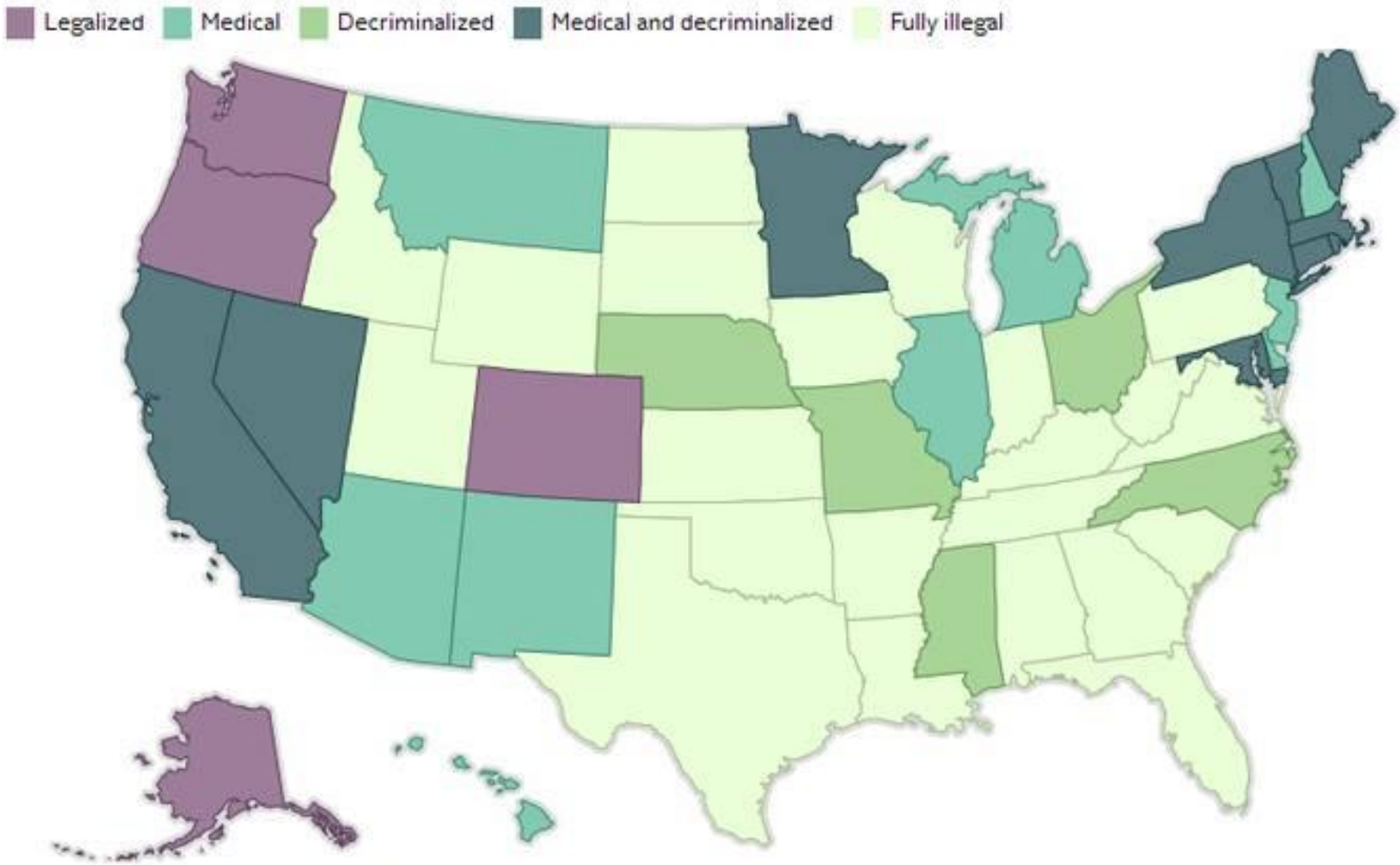
CSA, continued

- Controlled substances land on one of 5 lists, Schedule I through Schedule V.
- Schedule I includes:
  - Opiates
  - Opium derivatives (heroin and morphine)
  - Hallucinogenic substances
    - LSD, mescaline, peyote and **Marihuana**

The States Change It Up

- California passed proposition 215 in 1996
  - Seriously ill have access to medical marijuana
  - Requires doctor supervision
- Currently 23 states and Washington DC have legalized medical marijuana
- Colorado, Washington, Alaska and Oregon introduce recreational marijuana
- *Even though the States have legalized the activities, they remain illegal under Federal law*

Status of marijuana laws in the United States



Source: NORML, Drug Policy Alliance, and the Marijuana Policy Project

Conflict -1

- The **Supremacy Clause** is found in Article Six, **Clause** 2 of the United States Constitution. This clause establishes the United States Constitution, federal statutes, and treaties as "the supreme law of the land.“
- Pursuant to this clause, any state law which conflicts with a federal law is preempted.
- Gibbons v. Ogden, 22 U.S. 1, 42 (1824)

Conflict 2

October 19, 2009, Deputy US Attorney David W. Ogden issued a memorandum (Ogden Memo) announcing the Justice Department would not make it an enforcement priority to pursue those in “clear and unambiguous compliance” with State medical marijuana laws.

Conflict 3

In a July 29, 2011 memorandum, Deputy Attorney General James M. Cole confirmed the Ogden Memo, but noted the “increase in the scope of commercial cultivation, sale, distribution and use of marijuana for PURPORTED medical purposes.” He then stated:

Conflict 4

The Ogden Memo was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law enforcement of the CSA.

Conflict 5

August 2013 update to Dept. of Justice Policy

- Marijuana remains illegal
- Federal Prosecutors retain enforcement authority
- Will focus efforts on drug trafficking & sales to minors
- No prosecution of those following state laws

Conflict 6

The Supreme Court has ruled that the federal government has a right to regulate and criminalize marijuana sales and use, even when a state's laws permit marijuana to be used for medical purposes. See:

- Gonzales v. Raich 545 U.S. 1 (2005)
- U.S. v. Oakland Buyers' Coop., 532 U.S. 483 (2001).

Conflict 7

Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA..

Typical Taxation of Illegal Biz

Generally, an activity which violates the law is subjected to tax on its income in the same manner as any legal business would be. Further it is entitled to the same business deductions as would be available to a legal business.

Commissioner v. Tellier, 383 US 687, 691 (1966).

Illegal Payments

IRC 162 (c) prohibits the deduction of Illegal payments by both legal and illegal businesses.

See:

Tank Truck Rentals,Inc v. Comm.,356 U.S. 30,31,24 (1958)

Hoover Motor Express Co. v. US, 356 US 38,39 (1958)

Edmonson v. Commissioner

- AWESOME!
- A drug trafficker with RECORDS
- Convinced tax court to allow ordinary and necessary expenses under IRC 162
  - Phone
  - Auto
  - Cost of goods sold
  - Only lost meals; did not comply with substantiation under IRC 274 (b)

Edmonson v. Commissioner (2)

- Decision comes in 1981
- Nancy Reagan Era
  - Just Say No!
- Congress feels allowing deduction of business expenses bad public policy
- Start of IRC 280E
- *This is BEFORE legalization in California*

Edmonson v. Commissioner (3)

"There is a sharply defined public policy against drug dealing. To allow drug dealers the benefit of business expense deductions at the same time that the U.S. and its citizens are losing billions of dollars per year to such persons is not compelled by the fact that such deductions are allowed to other, legal, enterprises. Such deductions must be disallowed on public policy grounds."

-- 1982 Senate Report 97-494(I)

Edmonson v. Commissioner (4)

Today?

Gross Income Definition

- Gross income is defined in IRC 61
- Regulation Section 1.61-3(a) defines gross income to mean total sales, less the cost of goods sold
- Cost of goods sold is not considered an expense, but rather an adjustment taken into account in arriving at gross income

IRC § 61

"**(a) General definition:** Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items….."

Income from illegal sources, is taxable….

IRC § 280E

- Businesses are allowed deduction for ‘ordinary and necessary’ expenses under IRC § 61.
- IRC 280E disallows any deduction for ordinary and necessary business expenses for illegal controlled substance businesses
- What is the effect?

Nuts and Bolts of 280E

- Section 280E denies a deduction for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business consists of trafficking in controlled substances.
- Marijuana is listed as a Schedule I controlled substance under 21 USC § 812(c)(10).

Nuts and Bolts of 280E

Therefore, a taxpayer operating a medical marijuana business is subject to tax on its gross income rather than its net income. No deduction is allowed for what are clearly business expenses, such as rent, employee salaries, and utilities.

Nuts and Bolts of 280E

Although § 280E disallows any deduction for a marijuana seller's ordinary and necessary business expenses, the legislative history fails to include cost of goods sold in this rule. The literature suggests that Constitutional concerns are the reason for this exception.

S. REP. NO. 97–494 (Vol. I), at 309 (1982), *reprinted in* 1982 U.S.C.C.A.N. 1050, 1050–51; *See Californians Helping to Alleviate Med. Problems, Inc. v. Commissioner*, 128 T.C. 173, at 182. 16

What is Deductible?

- Any and all costs that somehow relate to inventory should be treated as components of inventory.
- Examples of costs arguably related to inventory:
  - Security costs keep inventory safe from theft and pilferage
  - Point-of-sale systems keep track of inventory (change name to “inventory tracking system”?)
- Lots of work for the accountants to wade through what is related to inventory and what is clearly not related to inventory.

What is Deductible? Cont'd

- IRS Memorandum –December 10, 2014
- Section 263A & resellers of cannabis
- Section 471 & Full absorption Costing
- Section 471 and methods required by Section 263A provide that marketing, advertising and selling expenses are "not required" to be treated as inventory costs.
- Seems this rule does not apply to any cost that is both inventory and selling.

What is Deductible? Cont'd

- Cost allocation and assignment should begin at the point when the transaction is entered into the accounting records!

  - Under the Full-Absorption method of Section 471, financial statement treatment will be important

  - Unclear the extent to which adjustments made only for the tax return will be respected

  - Requires a burdensome amount of accounting work!

IRC § 280E

The Supreme Court has ruled that deductions are ‘a matter of legislative grace’ rather than constitutional requirements. See:

- Interstate Transit Lines v. Commissioner
- Deputy v. Du Pont
- New Colonial Ice Co, Inc v. Helvering
- Knight v. Commissioner

Strange Bedfellows

In the typical business, tax professionals look to minimize current income by taking deductions during the current period.

Since the Cannabis business is ‘allowed’ a deduction for cost of goods sold, it seems that the tax professional would want to force as many expenses into COGS as possible (IRC 263A)

IRC 263A

- Decades of legislation
- Case law
- IRS rulings

All of these support capitalization of certain expenses, which when applied to IRC 280E might reduce the businesses' taxable income.

IRC 471 – Full Absorption

- Taxpayers must include as inventoriable costs all direct (*e.g.,* the cost of inventory and delivery, and the cost of materials and labor for manufactured inventory) and indirect production costs (*e.g.,* rent and utilities related to inventory).

- Reg. § 1.471–11, 6(a).

IRC 263A – UNICAP Rules

The uniform capitalization rules (UNICAP rules) require a producer of inventory to include in the cost of its inventory the direct costs of such property, and such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

§ 263A(a)(2); Reg. § 1.263A–1(a)(3)(ii).

IRC 263A – UNICAP Rules

The UNICAP rules, as a general rule, require more indirect costs to be allocated to inventory than the full absorption rules require under § 471, and which also in some cases go beyond the requirements of generally accepted accounting principles (GAAP).

Using the UNICAP Rules

The UNICAP rules must be followed by all manufacturers and most resellers. A small business exception is provided for resellers with less than $10 million in gross receipts on a three-year rolling average basis. Thus, most medical marijuana businesses that do not produce marijuana or marijuana-based products will not be required to comply with the UNICAP rules, because their gross receipts are typically less than $10 million.

- I.R.C. § 263A(b)(2)(B). 23
- Using the UNICAP Rules

Using the UNICAP Rules

- A reseller which is not subject to the UNICAP rules is usually required to include only direct costs in the cost of its inventory.
- *See* Reg. § 1.471–1, –3(b).

Using the UNICAP Rules

A medical marijuana business would be well advised to comply with the UNICAP rules, whether or not it is required to do so, in order to maximize the costs allocated to cost of goods sold and to minimize the amount of disallowed business expenses. There is nothing that says that taxpayers cannot voluntarily follow these rules.

Using the Full Absorption Rules

A medical marijuana business that produces marijuana or marijuana-based products must, and should want to, comply with the full absorption inventory rules. In addition to direct costs, these businesses should include all Category I costs in their inventory costs and should adopt financial accounting treatments which would allow the maximum amount of Category III costs to be included. They should also comply with the UNICAP rules and maximize the indirect costs included in inventory.

Examples

A medical marijuana business should capitalize otherwise deductible insurance costs and taxes relating to inventory (such as personal property taxes) for financial accounting purposes, causing these “Category III” expenses to be capitalized under the full absorption rules.

Using the UNICAP Rules

- A more interesting question is whether a medical marijuana business could go beyond the rules under § 471 and the UNICAP rules and include in its inventory cost, costs that both sections excuse from required inclusion, such as Category II costs under the full absorption rules or expenses that are not required to be included under the UNICAP rules.
- The answer appears to be that some, but not all, of these costs can possibly be included in the cost of inventory.

Using the UNICAP Rules

- The § 1.263A regulations provide that certain costs are not required to be capitalized, including on-site storage, certain deductible service costs, and property expensed under § 179. An argument can be made, however, that an allocable portion of these costs can be included in the cost of inventory.
- *See* Reg. § 1.263A–1(e)(3)(iii).

Using the UNICAP Rules

- The regulations clearly contemplate a taxpayer going beyond the requirements and adding additional “non-required” costs to inventory costs. The UNICAP regulations provide:
- A taxpayer may . . . elect to capitalize certain period costs [costs which are not required to be added to the cost of inventory and which can be expensed currently] if: The method is consistently applied; is used in computing beginning inventories, ending inventories, and cost of goods sold; and does not result in a material distortion of the taxpayer's income. A material distortion relates to the source, character, amount, or timing of the cost capitalized or any other item affected by the capitalization of the cost.
- Reg. § 1.263A–1(j)(2)(i).

Using the UNICAP Rules

Similarly, the full absorption method regulations state: Notwithstanding the preceding sentence, [which describes the Category II Costs which do not have to be capitalized], if a taxpayer consistently includes in its computation of the amount of inventoriable costs any of the costs described in the preceding sentence, a change in such method of inclusion shall be considered a change in method of accounting.

- Reg. § 1.471–11(c)(2)(ii).

Inventory Accounting Methods

- IRC Sections 471 & 263A allow for lots of leeway!
- Any reasonable method is permitted.
- So long as there is no distortion of income.
- Same method must be used for beginning and ending inventory calculations.
- New businesses are allowed to chose any such method, but…
- Existing businesses must get permission from the Commissioner of the IRS to change methods of accounting filing Form 3115.
- Both Section 471 and 263A can work together in tandem with an election to use the “Lower of Cost or Market”

Inventory Accounting Methods

- The Accounting Burden
- Your occupancy allocation is easier, once the square footage analysis is complete, the percentage allocations normally remain consistent for each type of occupancy cost.
- Each payment for rent is allocated at the time payment is made.
- Same with each payment for utilities, property taxes, insurance, etc. etc. etc.

Inventory Accounting Methods

- Payroll allocation might be quite difficult, requiring real-time information flow.
- Some businesses are designing timesheet payroll reporting procedures to capture the information for each pay period when there are job-shifting personnel and personnel with multiple duties.
- Calculating the year-end inventory true-up adjustment is very complicated!

Examples

- A medical marijuana business should include the costs attributable to on-site inventory storage in inventory costs, even though the regulations do not require its inclusion.
- A medical marijuana business should also consider making the § 179 election for eligible property and including the deductible amount in inventory.

Examples

Example: A medical marijuana business grows marijuana at a facility away from its retail sales location. It also has a secure storage room for inventory at its retail sales location, which uses 25% of the space at that location. This business should include in inventory 25% of its rent (or depreciation on the building and real property taxes, if it owns the building). In addition, it should allocate a portion of its utilities and security costs to inventory, based on the same percentage. It should also include any additional costs specifically incurred to secure the inventory storage area.

Optional Capitalization of Indirect Costs

The regulations permit a taxpayer to elect to capitalize certain indirect costs that do not directly benefit or are not incurred by reason of the production of property or acquisition of property for resale if the method: (1) is consistently applied; (2) is used in computing beginning inventories, ending inventories, and cost of goods sold; and (3) does not result in a material distortion of the taxpayer's income.

-- Reg. § 1.263A–1(j)(2)(i).

Using the UNICAP Rules

Under this optional capitalization rule, a medical marijuana business could capitalize all of the costs in any indirect cost category so long as some portion of the expenses in that category is otherwise properly allocable to inventory under the § 263A regulations. Thus, for example, if an employee of a medical marijuana business spent some of her time working in the inventory operations,

Using the UNICAP Rules

all of her employee compensation costs could be included in inventory costs. Similarly, if the marijuana is grown on site, all of the rent could be included in inventory. This would be of obvious benefit to the medical marijuana business (and would relieve it of the burden of allocating costs between operations as well).

Using the UNICAP Rules

The types of indirect costs eligible for capitalization under this rule include only the types of indirect costs for which some portion of the costs incurred is properly allocable to inventory. Thus, for example, marketing or advertising costs, no portion of which are properly allocable to property produced or property acquired for resale, do not qualify for elective capitalization under this rule.

- Reg. § 1.263A–1(j)(2)(ii).

Using the UNICAP Rules

- The difficulty with this argument is the requirement that the use of the optional capitalization rule not result in a material distortion of the taxpayer's income. The regulations provide:

Using the UNICAP Rules

A material distortion relates to the source, character, amount, or timing of the cost capitalized or any other item affected by the capitalization of the cost. Thus, for example, a taxpayer may not capitalize a period cost under § 263A if capitalization would result in a material change in the computation of the foreign tax credit limitation.

- Reg. § 1.263A–1(j)(2)(i).

Indirect Costs that Cannot Be Included in Inventory

The arguments above will not permit all indirect costs to be included in inventory costs. Both the § 471 full absorption rules and the UNICAP rules provide that selling, marketing, distribution, and advertising expenses are not required to be included in inventory costs. Unlike the indirect costs discussed above, these costs are excluded

Using the UNICAP Rules

because they are not in any case attributable to the cost of goods sold -- they represent the costs of selling the products, not acquiring or producing them. In this light, the UNICAP optional capitalization rules specifically provide that marketing or advertising costs cannot be capitalized under that rule.

- Reg. §§ 1.263A–1(j)(2)(ii), 1.471–11(c)(2)(ii).

Disallowance of "Nondeductible" Expenses

The UNICAP rules provide that any cost that may not be taken into account in computing taxable income (*e.g.*, fines and penalties and 50% of meals) cannot be capitalized as part of the cost of inventory under the UNICAP rules. At first blush, this would appear to prevent a medical marijuana business from capitalizing any of its expenses, because under § 280E, none of its business expenses are deductible.

“Nondeductible” Expenses

This is not the case, however. IRC 280E disallows a deduction for business expenses but permits the taxpayer to reduce its sales by the cost of goods sold. The inventory capitalization rules in effect draw the line between these two categories of costs; they define the cost of inventory and thus the cost of goods sold. Any cost included in inventory under these rules is not an otherwise deductible business expense and thus is not subject to disallowance under § 280E.

Section 280E Is Limited to the Marijuana Business

- A taxpayer which sells medical marijuana and is also engaged in another business is not subject to § 280E with respect to the other business.
- Californians Helping to Alleviate Med. Problems, Inc. v. Commissioner, 128 T.C. 173, 182 (2007).

The Two-Business Rule

- It is well established that a taxpayer can have more than one trade or business.
- Alverson v. Commissioner, 25 B.T.A. 482, 488 (1937).
- This principle is reflected in the regulations, which provide standards to determine whether a taxpayer's activities constitute separate businesses.
- Reg. § 1.183–1(d)(1).

The Two-Business Rule

- 1.183(d)(1) states, in relevant part:
- [W]here the taxpayer is engaged in several undertakings, each of these may be a separate activity, or several undertakings may constitute one activity. In ascertaining the activity or activities of the taxpayer, all the facts and circumstances of the case must be taken into account.

Facts and Circumstances Test

Generally, the most significant facts and circumstances in making this determination are the degree of organizational and economic interrelationship of various undertakings, the business purpose which is (or might be) served by carrying on the various undertakings separately or together in a trade or business or in an investment setting, and the similarity of various undertakings.

Facts and Circumstances Test

Generally, the Commissioner will accept the characterization by the taxpayer of several undertakings either as a single activity or as separate activities . . . .”

Caveat

- “The taxpayer's characterization will not be accepted, however, when it appears that his characterization is artificial and cannot be reasonably supported under the facts and circumstances of the case.”
- Reg. § 1.183–1(d)(1).

Factors

(1) whether the undertakings are conducted at the same place;

(2) whether the undertakings were part of a taxpayer's efforts to find sources of revenue from his or her land;

(3) whether the undertakings were formed as separate activities;

(4) whether one undertaking benefited from the other;

Factors

- (5) whether the taxpayer used one undertaking to advertise the other;
- (6) the degree to which the undertakings shared management;
- (7) the degree to which one caretaker oversaw the assets of both undertakings;
- (8) whether the taxpayers used the same accountant for the undertakings, and
- (9) the degree to which the undertakings shared books and records.

Factors

- Rupp v. Commissioner, 103 T.C.M. (CCH) 1594, 1598, 2012 T.C.M. (RIA) 2012-108.

CHAMP v. Commissioner

In *Californians Helping to Alleviate Med. Problems, Inc. v. Commissioner*, the director of the dispensary was well experienced in health services, and he operated the dispensary with caregiving as the primary feature and the dispensing of medical marijuana as a secondary feature. Sixty-eight percent of the CHAMP dispensary's employees—17 out of 25—worked

CHAMP v. Commissioner 2

exclusively in its caregiving business, and the dispensary provided its caregiving services regularly, extensively, and substantially independent of its providing of medical marijuana. It rented space at a church for peer group meetings and yoga classes, but the church did not allow marijuana on the church's premises. It provided its low-income members with daily lunches consisting of salads, fruit, water, soda, and hot food.. (continued)

CHAMP v. Commissioner 3

Its members, approximately 47% of whom suffered from AIDS, paid a single membership fee “for the right to receive caregiving services and medical marijuana from” the taxpayer

CHAMPs Summary

In *CHAMP*, the Tax Court held that the taxpayer's provision of caregiving services and its provision of medical marijuana were separate business activities because the taxpayer "was regularly and extensively involved in the provision of caregiving services, and those services are substantially different from the [taxpayer's] provision of medical marijuana."

- *Californians Helping to Alleviate Med. Problems, Inc. v. Commissioner*, 128 T.C. 173, 183 (2007).

Olive v. Commissioner

- The Tax Court applied the factors in *Olive v. Commissioner* to deny the taxpayer's attempt to treat its medical marijuana dispensary, the Vapor Room, as two activities—the second being a caregiving activity, as in CHAMP.
- *Olive v. Commissioner*, 139 T.C. No. 2 (2012).

Olive v. Commissioner

In *Olive*, the t/p established the Vapor Room so that its patrons, including some suffering from AIDS and HIV, cancer, and other maladies, "could socialize and consume marijuana there." The t/p "designed the Vapor Room with a comfortable lounge-like community center atmosphere, placing couches, chairs and tables throughout the premises. He placed vaporizers, games, books and art supplies on the premises for patrons to use at their desire."

Olive v. Commissioner

The taxpayer claimed that he trafficked marijuana only when actually selling it “and [that] the rest of the Vapor Room’s business was providing caregiving services” by providing the lounge and recreational supplies

State Impact of 280E

- Colorado has decoupled – expenses are a state subtraction for licensed businesses
  - 70/30 rule moves costs towards production
- Washington has decoupled
  - But no integration allowed at all

Entity Structures 1

- Flow through entities
  - Partnerships
  - S-corps
  - LLCs
- C-Corporations
- Not for Profit / Non Stock Corporations
- For Profit / Stock Corporations

Entity Structures 2

- LLCs/Partnerships
- No requirement to pay a salary to the business owner-net profit is income reported by owner –thus avoiding salary expense disallowed under 280E.
- Tax exposure of 280E flows directly to member/partner's personal income tax return

Entity Structures 13

- C Corporations
- 280E tax exposure maintained at corporate/entity level –no flow through to individual shareholders/officers etc.
- No personal liability for corporate income taxes
- If properly dissolved, corporation and shareholders can walk away from tax liability
- “Alter-Ego” Liens/IRS

Software

- Software systems exist to help facilitate compliance and accurate records.
- Point-of-Sale Systems
  - MJ Freeway/BioTrackTHC
- Accounting Systems
  - QuickBooks
  - Xero
- Smart-Phone Applications

Banking?

- Lack of bank account= no checks, no debit/credit cards, no proof of deposits.
- Maintain all receipts (when existent).
- Maintain a log of expenses paid and cash received where no receipt exists.
- Paying employees when no bank account exists
- Paying taxes when no bank account exists

Thank you!

Thank you for inviting me to Michigan!

John Sheeley, EA

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