



2023 Year-End Tax Planning For Cannabis Businesses

November 7, 2023

Poll: Tax Compliance Readiness

As tax season approaches, how do you
feel about your level of preparedness?





AAFCPAS
Cannabis Practice
Advisors with a Growth Mindset



MEET YOUR SPEAKERS



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Slides are in the Chat.



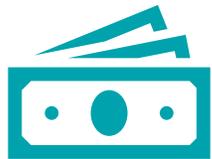
280E Origin

- Prohibits taxpayers from claiming deductions and credits.
- Passed by congress in 1982.
- Applies to both medical and recreational businesses.
- Return of capital is allowable.



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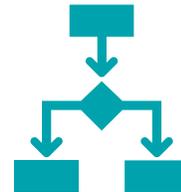
280E Impact on Businesses



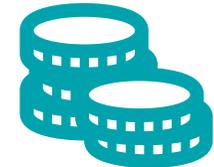
Higher effective tax rates.



Inability to re-invest profit into businesses.



Business model and decision making.



Cost of Goods sold is fundamental.

Planning Considerations



Strong financial reporting & costing methodology.

- Rent, Payroll, Taxes.



Consistency with books and records.



IRC 471 inventory guidance for producers and sellers.

Poll: Inventory Accounting Check

On a scale of 1 to 5, how confident do you feel about your inventory accounting methodology?



Tax Compliance Readiness Key Considerations

- Tax returns are based on accounting records
- Consistency in accounting is important
- Critical to properly classify costs between Cost of Goods Sold and Operating
- Payroll, rent, depreciation, fees, certain taxes, and other expenses potentially may be allocated to CoGS
- Fixed Asset tracking CoGS and Operating
- Inventory costing

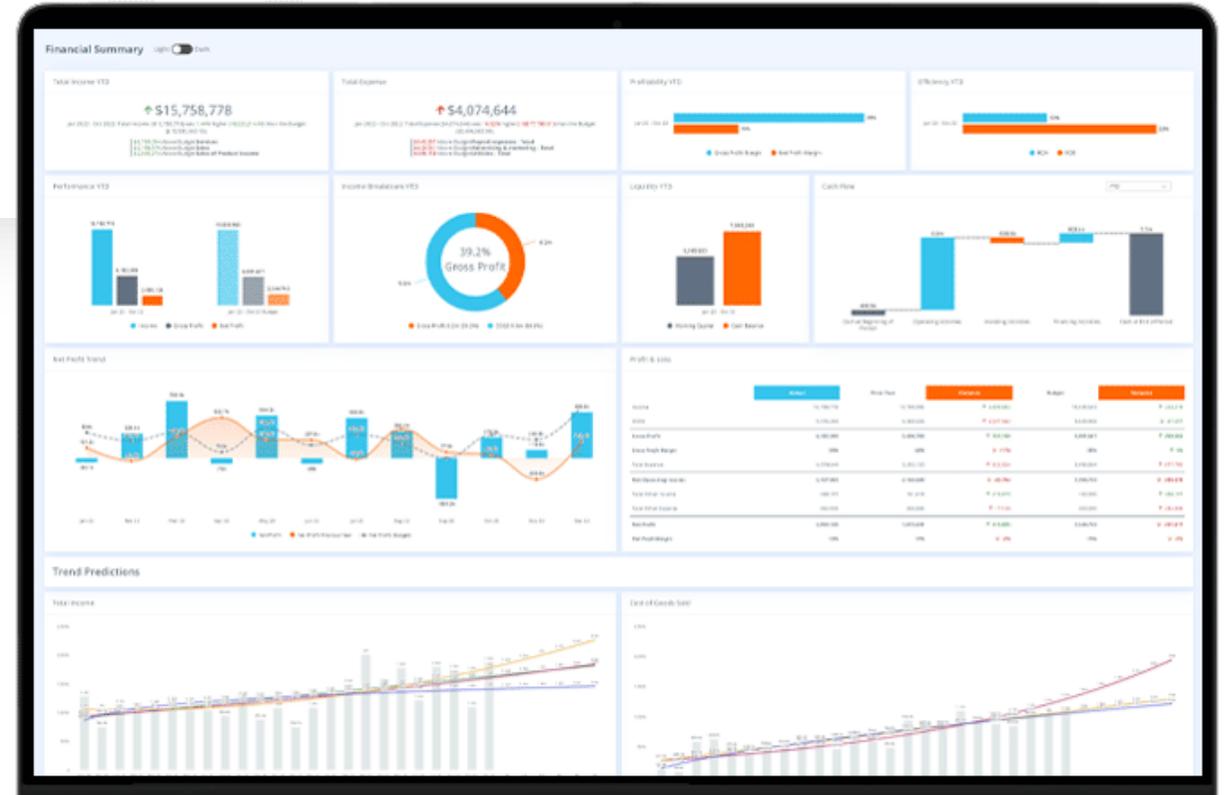
Cannabis knowledgeable accountant can help:

- Allow you to focus on your business
- Right-size your finance function
- Deal with any complexities for cannabis-related tax (280E) accounting



Analytics can help:

- Cash flow projections, particularly for distributions or tax payments
- Budgeting
- Metrics to scrutinize sales data, gross margins, CoGS, inventory, and any unusual items
- Benchmarking

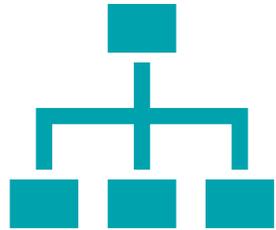


Poll: Finance Function Balance Check!

Reflecting on your finance team's composition and capabilities, how well do they match up with your company's strategic needs?



Multistate Tax Compliance

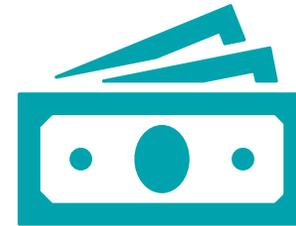


Understand your corporate structure

Partnerships vs Corporations

Vertical integration vs. multiple entities

Accounting structure



Taxes

Payroll Taxes

Sales and Use Taxes

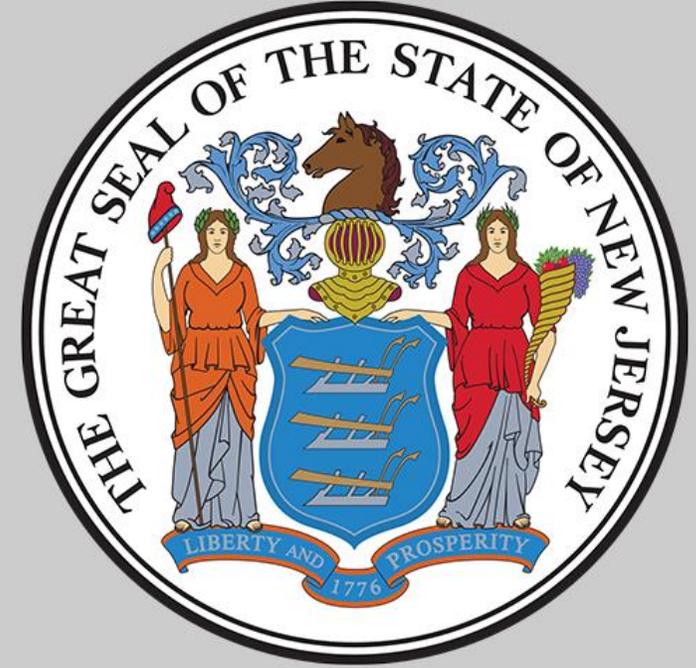
Excise Taxes

Local Taxes



Multistate Tax Compliance

- State Level 280E Considerations
 - Legal \neq Deductible
 - How does the state conform to the IRC?



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Administrative /Cost Efficiencies

- Things to consider as your operations grow and expand:
 - Centralized accounting
 - Centralized payroll
 - Group Purchasing Organizations
 - Energy Incentives/Rebates
- Need to Focus on Running the Business
 - Outsourcing to Gain Accounting Expertise and Efficiency
 - Rightsizing

Poll: Expanding Horizons

Are you considering taking the leap and expanding your operations into a new state?



Understanding Applicability of Tax Credits & Incentives



Research & Development
Credit



Investment Tax Credit



Employee Retention Credit

Research & Development Credit

- Dollar-for-Dollar Tax Credit.
- Encourages taxpayers to design, develop, and improve products & processes.
- Driven by salaries, cost of supplies, and contractor expenses.
- 14 States
 - AR, CA, CO, HI, IL, LA, ME, MD, MA, MN, NJ, NM, NY, VT
- Find a specialist!





Investment Tax Credit

- Eligible Companies
 - Corporation
 - Manufacturing
 - Agriculture
- Encourages taxpayers to invest in tangible property
- Credit is based on current year fixed asset additions
- Eligible property
 - Buildings, Structural components
 - Limitations

Employee Retention Credit

-
- Encourages businesses to keep employees on payroll
 - Eligibility
 - Decline in sales
 - Partial or Complete Shutdown
 - Current Moratorium
 - Recommendations



Poll: Tax Credit Check

As the year wraps up, which of these golden opportunities are on your radar to explore?



Cannabis Rescheduling

What Happened?

- U.S. Department of Health and Human Services (HHS) made a recommendation to the U.S. Drug Enforcement Administration (DEA) that cannabis be moved from a Schedule I Controlled Substance to a Schedule III Controlled Substance
 - Schedule I is defined as having “no currently accepted medical use and a high potential for abuse.”
 - Schedule III is defined as having “a moderate to low potential for physical and psychological dependence.”
- Both are illegal to possess, distribute and manufacture without a prescription

Cannabis Rescheduling

Why?

- President Biden directed the HHS and the Attorney General to “initiate the administrative process to review expeditiously how marijuana is scheduled under federal law.”
- The Controlled Substances Act gives HHS the authority to make recommendations to DEA on scheduling decisions.
- The Food and Drug Administration (FDA), within HHS, conducts this scientific and medical review.

Cannabis Rescheduling – What Happens?

- DEA is the agency with authority to propose a rule that would effectuate the de-listing and formally promulgate that rule as a regulation.
- There are eight factors the DEA must consider in its review.
- Under the Controlled Substances Act, HHS' recommendations “shall be binding . . . as to scientific and medical matters.”
- Now, the DEA is tasked with promulgating the rule to effectuate any rescheduling within 90 days.

Cannabis Rescheduling

How?

- The Controlled Substances Act requires that DEA undertake formal rulemaking procedures under the Administrative Procedures Act (APA).
- An Agency proposing new regulatory language publishes it in the *Federal Register* along with reasons for the proposal.
- A public-comment period will be opened, usually 30-60 days.
- The DEA will then be obligated to review those comments and respond before the rule change takes effect.

Cannabis Rescheduling

How?

- The DEA is required to hold public hearing on the record with the presentation of evidence, similar to a courtroom proceeding.
- An administrative law judge will then make a decision whether to adopt the regulation. The decision of these agency “judges” becomes the final regulation published in the *Federal Register*.
- All final regulations are subject to challenge and judicial review in federal court.
- Becomes effective no less than 30 days after publication in the *Federal Register*.

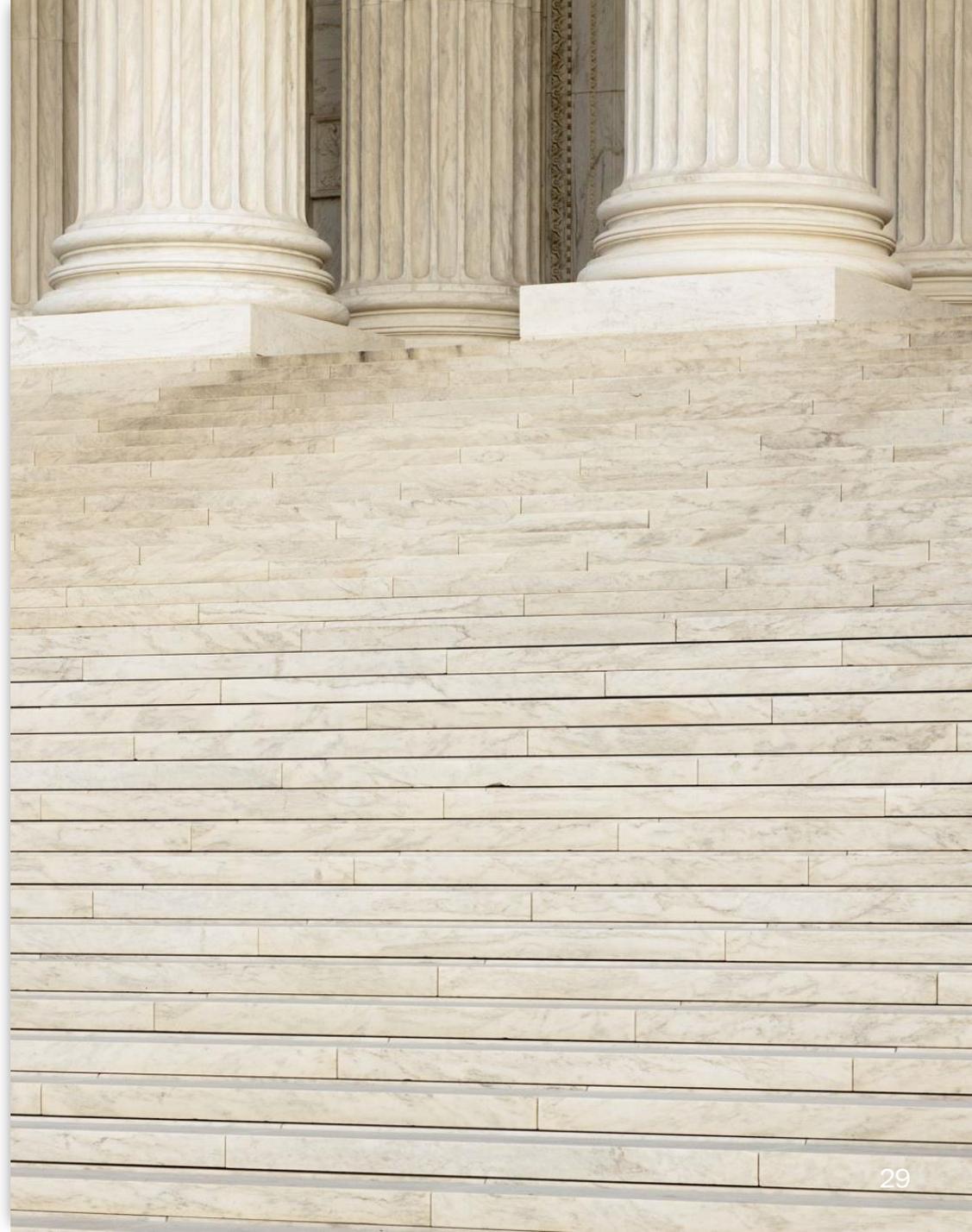
Cannabis Rescheduling – When?

Under the Small Business Regulatory Enforcement Act, new rules must be sent to Congress and the Government Accountability Office for review before they can take effect.

If the House and Senate pass a resolution of disapproval and the President signs it, the rule becomes void and cannot be republished without Congressional approval.

Cannabis Rescheduling - Hurdles

- The biggest legal hurdle is an international treaty: the Single Convention on Narcotic Drugs (1961), to which the US is a signatory. This treaty requires that cannabis be controlled in a certain manner not unlike a Schedule I or Schedule II drug.
- The Controlled Substances Act itself binds the Attorney General to follow that treaty.



Cannabis Rescheduling – Hurdles

The DEA and HHS determined as recently as 2016 that cannabis belonged as a Schedule I drug.

The agencies reached this decision after a scientific review by FDA and application of the Controlled Substances Act factors by DEA.

Agencies are entitled under case law to “change their mind,” but they must provide a reasonable basis for doing so.



Cannabis Rescheduling – What will change?

280E goes away immediately.

Cannabis Rescheduling – What will not change?

- Cannabis still not be federally legal.
- Cannabis still not legal in states that do not authorize medical and adult use licensed cannabis businesses.
- Cannabis companies with “plant touching” operations in the U.S. not immediately able to list on major U.S. Exchanges.
- FDA will not assume any immediate or enhanced regulatory oversight or enforcement capability with regard to state-legal cannabis operators and operations.
- Restrictions on interstate commerce subject to legal challenge.

Poll: Due Diligence Check

If an external buyer put your company under the microscope today, how confident are you that your business would shine in the due diligence process?





**Cannabis Business Transactions for
Growth & Exit Webinar**
November 21, 2023



Watch Now! Recorded Webinars

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Individual & Family Tax Webinar
October 31, 2023

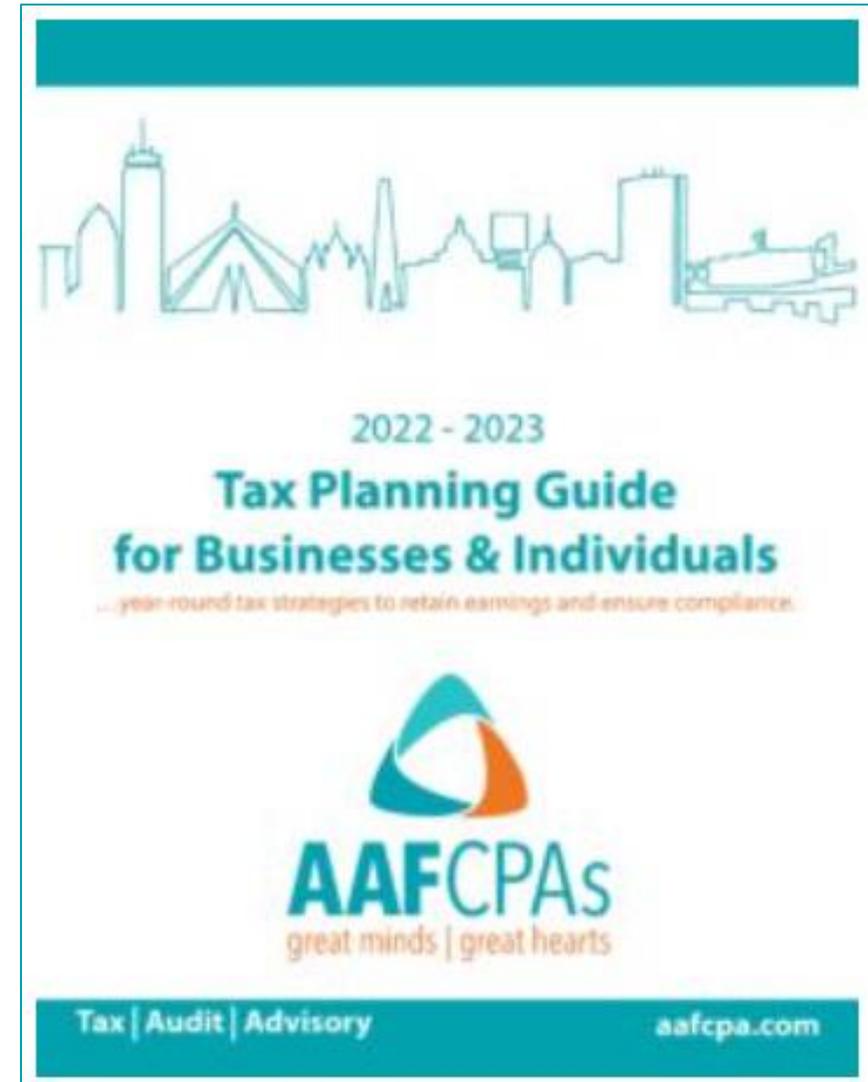


Business Tax Webinar
November 2, 2023



2022 - 2023 Tax Planning Guide for Businesses & Individuals

We welcome the opportunity to help you map out a tax plan that takes full advantage of all strategies available to you.



Questions



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