



2025 Year-End Tax Planning Cannabis Operators

MEET THE SPEAKERS



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MEET THE SPEAKERS



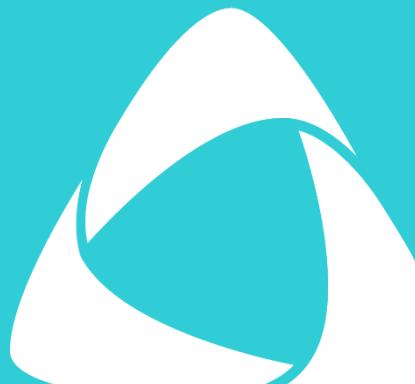
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Practice Leader



Poll 1: Which area of cannabis taxation do you find most confusing or frustrating?

Today's session qualifies for one CPE credit. You must answer three of our four polls today and remain online for >50 minutes to qualify.



Tax Strategies

David McManus
CPA, CGMA

Tax Partner & National Cannabis
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Rescheduling on hold, but let's look at the positives.



The HHS report recognizes that there is a currently accepted medical use for marijuana.



Many of the reasons for this basis go back to bills and approvals by the government as early as 2018.

Tax Strategies To Consider: 280E Is Still in Play!

- Review/revisit cost allocation methodologies
- Square footage/time record documentation
- Job descriptions properly matching employee responsibilities
- Proper accounting records to support activities
- Cost segregation studies to support shorter depreciable life
- Interest tracing to support allocation of interest expense to COGS related buildout cost

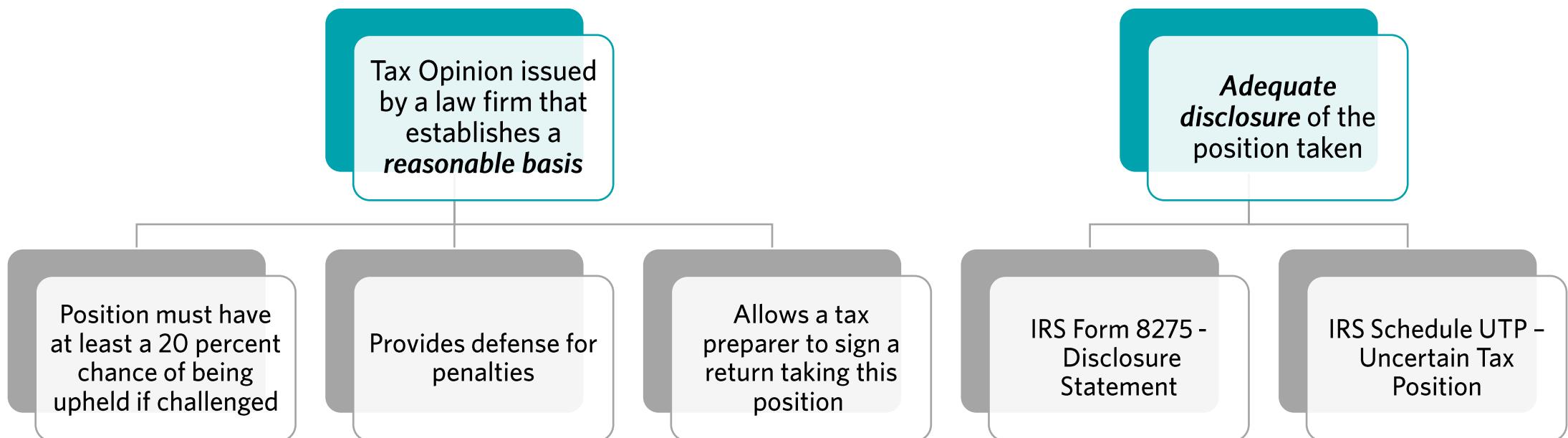
Internal Revenue Code Section 280E

Comply or not?

**Strategies
for those
who elect
to take a
non-280E
position:**

- Filing refund claims for prior years still open under the IRS Statute of Limitations
- Taking the position on current year and prospective returns
- Filing protective claims

Taking a Non-280E Approach:



Reasonable Basis Tax Opinions: Common Arguments



Statutory Argument - 280E only applies to controlled substances *within the meaning of Schedule I or II of the Controlled Substances Act (CSA)*

HHS evaluation of currently accepted medical use in treatment

CSA definition of Schedule I - no currently accepted medical use

HHS recommendation of move from Schedule I to Schedule III

HHS looked at data as far back as 2018 in making their determination



Constitutional Argument - The CSA does not apply to wholly intrastate, licensed marijuana businesses under the Commerce Clause

Will rely on overturn of Gonzales v. Raich by Supreme Court

Current Challenges on IRC 280E



New Mexico Top Organics, Inc. v. Commissioner

Filed 12/16/24

Primary arguments

- "Within the meaning"
- "Prohibited by Federal Law"
- "Interstate Commerce"



Canna Provisions et. al. v. Bondi

Dismissed by 1st Circuit

Primary Argument – Interstate Commerce

Likely requires Supreme Court to overturn
Gonzales v. Raich

Appeal to Supreme Court due 10/24/25

IRS Position on 280E

28 June 2024: IRS News Release IR-2024-177, issued June 28, 2024

Serves as a reminder that marijuana remains a Schedule I controlled substance subject to limitations under 280E

Taxpayers seeking a refund of taxes paid by filing amended returns are not entitled to a refund or payment

Claims filed are not valid

Until a final rule is published, marijuana remains a Schedule I controlled substance

 The reasonable basis standard is not satisfied by a return position that is only arguable

IRS has identified multiple filings that do not qualify as adequate disclosures that would justify avoidance of penalties

A review of Form 8275 filings has revealed that some taxpayers have taken the position of disregarding the 280E limitation using a variety of rationales that do not constitute reasonable basis

12 December 2024: FS 2024-32 - Proper Use of Form 8275, issued December 12, 2024

IRS Response to These Filings



Mixed Bag



Refund Claims Being
Processed, While
Others Have Not



Refund Claims Have
Triggered IRS Audits

471c Tax Strategy

- 471(c) is available if taxpayer has average annual gross receipts for the three prior tax years of \$31M or less (indexed to \$32M in 2026)
- 471(c) allows taxpayers to not follow the inventory accounting methods required under IRS Code Section 471
- 471 generally limits the inclusion of indirect costs in COGS and is more restrictive for retailers than cultivators/manufacturers
- 471 requires that the taxpayer's method of accounting for inventory clearly reflect income
- 471(c) - the taxpayer's method of accounting for inventory shall not be treated as failing to clearly reflect income if the method conforms to the taxpayer's method of accounting reflected in its applicable financial statements (AFS) or, if the taxpayer does not have AFS, the books and records of the taxpayer prepared in conformity with the taxpayer's accounting procedures
- Consistency is Key!

Poll 2: When it comes to cash flow in the cannabis industry, what's your biggest challenge?



Cash Flow Management, Operational Strategies

**Janice O'Reilly
CPA, CGMA
Partner**





Cash Flow Analysis

- Cash continues to be a challenge for many operators
- Important to have a cash flow projection
 - 13 week
 - At least two years on a quarterly basis
- Banking and debt service

Cash Flow Improvements



Purchasing And
Inventory
Management



Tax Strategies



M&A



Data And
Benchmarking

Purchasing and Inventory Management



Traction

Competition

Pricing

Lead time



Tax Strategies



- Tax returns are based on accounting records
- 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 and 471c

Mergers & Acquisitions

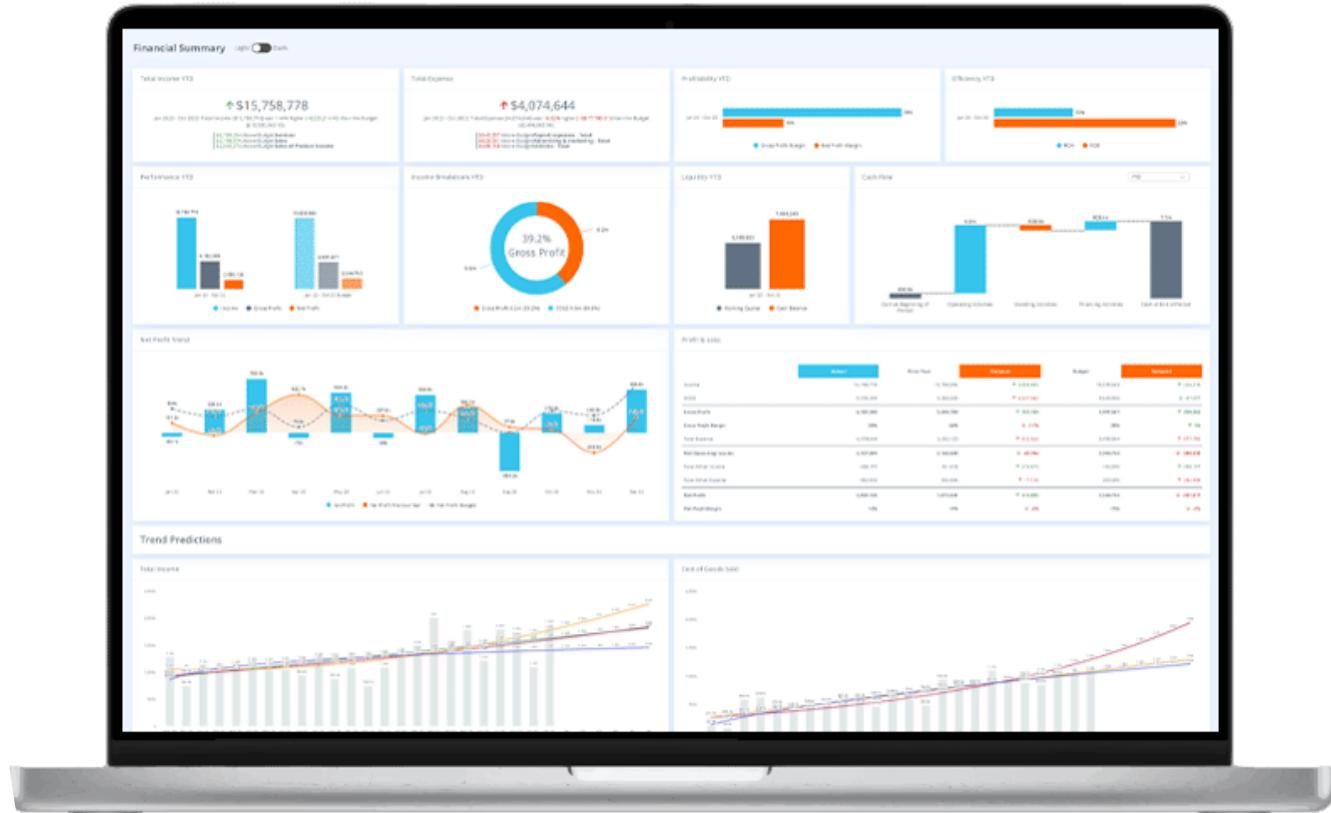
Buy side can
centralize certain
processes

Sell side allows focus



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
 - Many more options in the space
 - Look at competitors, local markets



Poll 3: How would you describe your company's current debt position?



Debt Financing & Restructuring

Tomás A. Pueyo, Jr.
CPA, MSA
Tax Manager



Debt Financing & Restructuring

- Market Overview
- Debt Restructuring Implications
- Management & Business Operations

Market Overview

- Roughly \$6 billion of debt due by the end of 2026.
- Scale and Timing
 - Market Saturation
 - Limited New Investment Opportunities
 - Making Sure Lenders Understand Your Plan
- Bankruptcy Procedures: Unavailable
- Distressed Business Conditions and Restructuring

Debt Restructuring Implications

Taxable Implications

- Economically Significant
- Debt Forgiveness
- Discounted Pay-Offs

Nontaxable Implications

- Adjusting Interest Rates
- Extending Maturity
- Debt vs. Equity Instruments

Taxable Implications

Forgiveness of Debt

- Potential Income Exclusion Under Insolvency Rules
- Corporations vs. Partnerships
- Debt Settlement

Timing of Making Debt Repayments

- Original Issue Discount (OID) Implications

Accrued Interest

- Waived/Forgiven
- Rolled into Principal

Management & Business Operations

- Improve Cash Flows
- Clean-up Financials for Potential M&A
- Other Considerations
 - Debt Collateral
 - Financing Opportunities
 - Sale Leaseback Transactions
 - Seller Notes

Poll 4: How prepared are you—or your investors—for an eventual exit from your cannabis business?



Exit Strategies

**Joshua England
LLM, Esq.**

Partner & Tax Attorney



Qualified Small Business Stock (QSBS)

Approaching QSBS
casually can be a costly
mistake.

Seeking professional
guidance can help
navigate its complex rules
and maximize benefits.



Qualified Small Business Stock (QSBS)

Must be:

- Issued by a domestic C-Corp
- S-Corporations **DO NOT** qualify
- Acquired at Original Issue and for services rendered or capital contributed
- Held for five years to qualify for 100 percent exclusion
- The shareholder must be a non-corporate taxpayer (individual or trust)



Changes under OBBBA

Feature	Stock Issued Before July 5, 2025	Stock Issued On or After July 5, 2025
Gain Exclusion	100% exclusion: For stock held more than five years.	50% exclusion: 3 years 75% exclusion: 4 years 100% exclusion: 5 years
Maximum Gain Exclusion	The greater of \$10 million or 10 times the stock's adjusted basis.	The greater of \$15 million (indexed for inflation from 2027) or 10 times the stock's adjusted basis.
Corporate Gross Asset Limit	\$50 million at the time of and immediately after stock issuance.	\$75 million (indexed for inflation from 2027) at the time of and immediately after stock issuance.

Stock in a Qualified Trade or Business

Defines QTB By What It's NOT

- **Specified Service Trade or Business**
 - Health, Law, Engineering, Architecture, Accounting, Actuarial Science, Performing Arts, Consulting, Athletics, Financial Brokers...principal asset 'reputation or skills'
- **Financial Businesses**
 - Banking, Insurance, Financing, Leasing
- **Farming Businesses**
- **Oil & Mining Businesses**
- **On-Premise Service Businesses**
 - Hotel, Motel, Restaurant, or Similar Business
- **Real Estate**

Qualified Small Business

- Aggregate Gross Assets **cannot** exceed \$50 million at issuance of stock
- 80 percent of corp's assets by value must be used in active conduct of qualified trade or business
 - ...For "**substantially all** of the shareholders' holding period"

How to Lose QSBS Status

- The responsibility for tracking and documenting QSBS rests with the investor, not the IRS. Inadequate records can lead to disqualification.
- Redeems greater than five percent of the company's stock in a two-year window
- 10 percent of a company's assets are in stock of other, non-subsidiary corporations
- Conversion to an S Corp
- Failed active business requirement
- Secondary acquisition
- Improper transfers

Shareholder Strategies

- Manage Holding Periods Carefully
- Use a Section 1045 Rollover
- Strategic Gift Planning

What is an ESOP?

A retirement plan that allows employees an ownership interest in the company.

A trust holds the company's stock on behalf of the employees, and the company funds the plan through stock contributions or cash.

How an ESOP Works

A trust is created to hold company stock for employees.

The company either contributes its own stock or cash to the trust, or the trust borrows money to buy shares from an owner (known as a leveraged ESOP).

The shares are allocated to employees' accounts typically based on factors like salary or years of service.

As the company grows, employee ownership stakes increase.

When employees retire or leave the company, they receive the value of their shares.

ESOP Pros and Cons

Advantages

- 100 percent ESOP-owned S Corp. is not subject to income tax
- Sale of company stock can be tax exempt if QSBS or tax deferred if rolled into Qualified Replacement Property (QRP), such as stocks or bonds of U.S. companies
- An ESOP provides personal liquidity to the shareholders
- Platform for growth and expansion
- Can get a second bite of the apple if the company is sold later through issuance of warrants

Disadvantages

- Less Immediate Cash: receives sale proceeds over several years
- Contingent Payment: depends on continued success of business
- High Transaction and Administrative Costs
- ESOP transactions are required to be conducted at fair market value.



What to Expect in a Cannabis ESOP Deal



- Complex process that requires careful planning and regulatory coordination
- Process will take at least six months
- First step is a feasibility study

Poll 5: Which of these
will be your top priority
in the next 12 months?



Questions

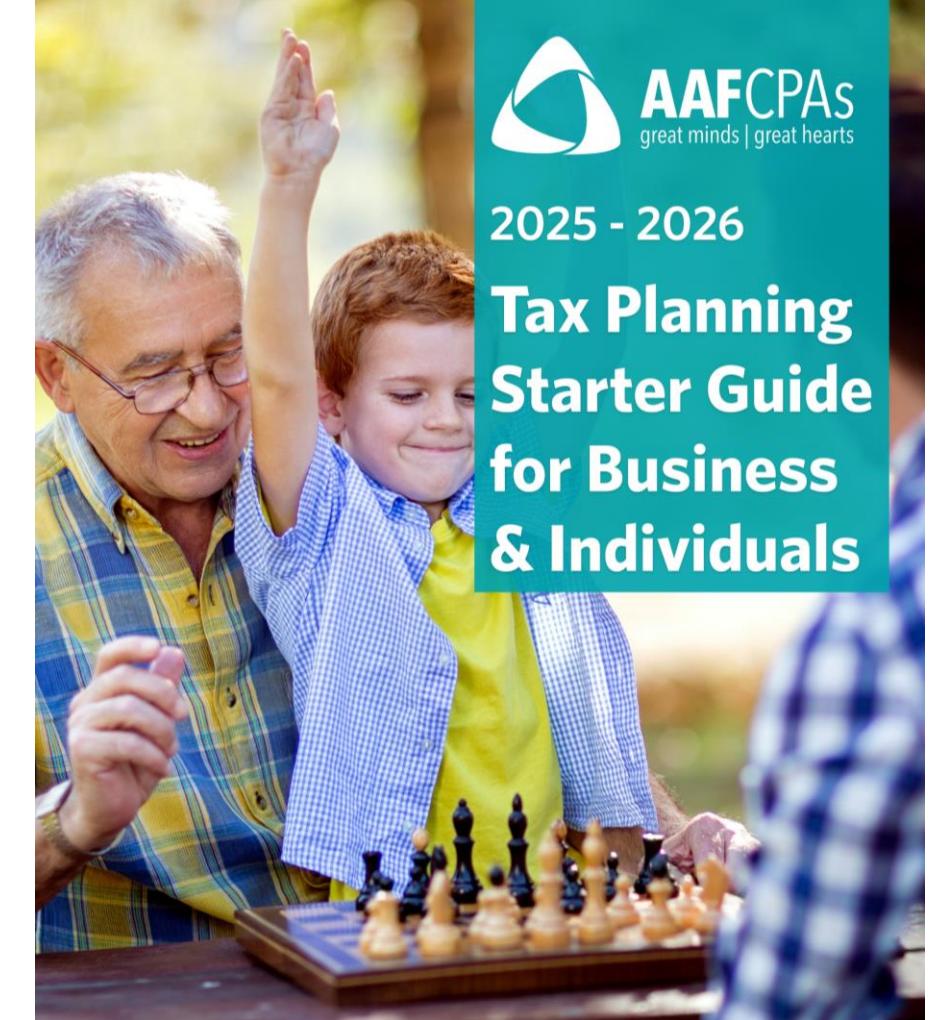


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2025 - 2026 Tax Planning Guide for Businesses & Individuals

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

[2025-2026 Guide here. >>](#)



2025 - 2026
**Tax Planning
Starter Guide
for Business
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Thank You!

