



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

February 23, 2011

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CC:ITA:B06  
GENIN-150134-10

UIL: 280E.00-00

Dear \_\_\_\_\_ :

This letter responds to your letter dated November 15, 2010, requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur in a state in which such sale is legal under state law. You noted that Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to taxpayers trafficking in illegal drugs. However, you also commented that state laws have changed, and fourteen states and the District of Columbia now permit the sale of marijuana for medical purposes.

Section 280E of the Code disallows deductions incurred in a trade or business of trafficking in controlled substances that federal law or the law of any state in which the taxpayer conducts the business prohibits. For this purpose, the term "controlled substances" has the meaning provided in the Controlled Substances Act. Marijuana falls within the Controlled Substances Act. See *Californians Helping to Alleviate Medical Problems, Inc. v. Commissioner*, 128 T.C. 173 (2007). The United States Supreme Court has concluded that no exception in the Controlled Substances Act exists for marijuana that is medically necessary. *U.S. v. Oakland Cannabis Buyers' Coop*, 532 U.S. 483 (2001). Since marijuana falls within the federal Controlled Substances Act, section 280E disallows deductions incurred in a trade or business of trafficking in marijuana even if such trade or business is permitted under state law.

The statutory provisions of Code section 280E are specific and provide no administrative exceptions. Neither section 280E nor the Controlled Substances Act makes exception for medically necessary marijuana. Consequently, we lack the authority to publish the guidance that you request. The result you seek would require Congress to amend either the Internal Revenue Code or the Controlled Substances Act.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2011-1, §2.04, 2011-1 IRB 1 (Jan. 3, 2011). If you have any additional questions, please contact our office at .

Sincerely,

W. Thomas McElroy, Jr.

W. Thomas McElroy, Jr.  
Senior Technician Reviewer, Branch 6  
(Income Tax & Accounting)