

Office of Chief Counsel
Internal Revenue Service
Memorandum

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subject: Denial of Section 51 Credit by Section 280E

This memorandum provides Chief Counsel Advice regarding the application of §§ 51 and 280E of the Internal Revenue Code. This advice may not be used or cited as precedent.

Issue: Does § 280E prohibit a taxpayer from entitlement to the § 51 Work Opportunity Tax Credit (WOTC) for wages paid or incurred in carrying on a business of trafficking in marijuana?

Conclusion: Yes, § 280E prohibits a taxpayer from entitlement to the § 51 WOTC for wages paid or incurred in carrying on a business of trafficking in marijuana.

Facts:

The taxpayer is an employer operating a business that is engaged in the trade or business of trafficking marijuana, a Schedule I controlled substance under the Controlled Substances Act. The taxpayer has hired and paid wages to individuals from one or more of the targeted groups provided under § 51, and is otherwise eligible for the WOTC but for the possible application of § 280E.

Law & Analysis:

Section 51 provides the rules regarding eligibility for the WOTC. The WOTC is a general business credit available to employers for wages paid or incurred by the employer during the taxable year to employees who are certified as members of a targeted group by a designated local agency (sometimes referred to as a state workforce agency). The WOTC is jointly administered by the Internal Revenue Service (IRS) and the Department of Labor (DOL).

Section 280E provides:

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

Marijuana is a Schedule I controlled substance under the Controlled Substances Act. See Olive v. Commissioner, 139 T.C. 19, 38 (2012), aff'd, 792 F.3d 1146 (9th Cir. 2015).

Consequently, § 280E prohibits a taxpayer from entitlement to the § 51 WOTC for wages paid or incurred in carrying on a business of trafficking in marijuana.

Please call Beverly E. Weshnak at (202) 317-7007 if you have any further questions.