

Internal Revenue Code Section 280E
And
Operation of a Cannabis Business in Maryland

Support for Senate Bill 146

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§280E Expenditures in connection with the illegal sale of drugs.

Internal Revenue Code

§ 280E Expenditures in connection with the illegal sale of drugs.

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.

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Effects of Section 280E

	Typical Business	Cannabusiness Under 280E
Revenue	\$ 1,000,000	\$ 1,000,000
Cost of Goods Sold (COGS):		
Costs to Purchase or Produce the Product	(550,000)	(550,000)
Gross Income	450,000	450,000
Business Expenses:		
Rent		
Heat, HVAC, Water, Electricity		
Payroll		
Employee Benefits		
Business Insurance		
Repairs and Maintenance		All Disallowed
Licenses and other fees		
Security		
Internet Connection		
Advertising		
Accounting and legal		
Other Miscellaneous Expenses		
Total Business Expenses	(300,000)	0
Net Income -"Taxable Income"	150,000	450,000
Economic Profit	150,000	150,000
Taxes:		
Federal Tax at Blended Rate of 25%	\$ 37,500	\$ 112,500
State & Local Tax at Blended Rate of 8%	\$ 12,000	\$ 36,000
Total Tax	\$ 49,500	\$ 148,500
Net Cash Generated from Operations After Taxes	\$ 100,500	\$ 1,500
Hypothetical Effective Tax Rate	33%	99%

State Tax Chart Results

Tax Type: Corporate Income

Legend:

N/A - Not Applicable

State Follows IRC Section 280E

This chart shows whether each state conforms to IRC Section 280E dealing with expenses related to the sale of drugs.

State	State Follows IRC Section 280E	Authority	Editorial Reference
AK	Yes. Alaska conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Alaska Stat. § 43-20-021(a) ; Alaska Stat. § 43.20.300(a) ; Alaska Stat. § 43.20.340(5)	¶11,059; ¶ 1063AK:1000
AL	Yes. Alabama conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Ala. Code § 40-18-33 ; Ala. Code § 40-18-1.1 ; Ala. Admin. Code § 810-3-1.1-.01	¶11,059; ¶ 1063AL:1000
AR	No. Arkansas does not conform to IRC 280E for corporate income tax purposes, unless otherwise provided.	Ark. Code Ann. § 26-51-423(a)(1)	¶11,059; ¶ 1063AR:1000
AZ	Yes. Arizona conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit. Note: nonprofit medical marijuana dispensaries are exempt from Arizona income tax.	Ariz. Rev. Stat. Ann. § 43-105(A) ; Ariz. Rev. Stat. Ann. § 43-102(A)(2) ; Ariz. Rev. Stat. Ann. § 43-102(A)(3) ; Ariz. Rev. Stat. Ann. § 43-1201(B)	¶11,059; ¶ 1063AZ:1000
CA	No. California does not conform to IRC § 280E for corporate franchise (income) tax purposes. Taxpayers may deduct ordinary and necessary business expenses, without regard to the limitation in IRC § 280E.	Cal. Rev. & Tax. Cd. § 24436.1 ; Cal. Rev. & Tax. Cd. § 24341	¶11,059; ¶ 1063CA:1000
CO	No. Colorado permits Colorado-licensed marijuana businesses to deduct expenditures that were disallowed at the federal level by operation of IRC § 280E.	Colo. Rev. Stat. § 39-22-304(3)(m) ; Colo. Rev. Stat. § 39-22-304(3)(n)	¶11,059; ¶ 1063CO:1000
CT	Yes. Connecticut conforms to IRC §280E to the extent of conformity to the underlying federal deduction or credit.	Conn. Gen. Stat. § 12-213(a)(23)	¶11,059; ¶ 1063CT:1000
DC	Yes, in part. For District of Columbia corporate income tax purposes, some deductions are subject to federal limitations including IRC 280E.	D.C. Code Ann. § 47-1801.04(28) ; D.C. Code Ann. § 47-1803.03(a)(1) ; School Street Associates Ltd. Partnership v. District of Columbia (2001, D.C. Ct. App.), 764 A2d 798, Dkt. Nos. 97-TX-1442; 1-4-2001	¶11,059; ¶ 1063DC:1000
DE	Yes. Delaware conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Del. Code Ann. 30 § 1903(a) ; Del. Code Ann. 30 § 1901(10)	¶11,059; ¶ 1063DE:1000
FL	Yes. Florida conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Fla. Stat. § 220.03(1)(n) ; Fla. Stat. § 220.03(4) ; Fla. Stat. § 220.13(1)	¶11,059¶ 1063FL:1000
GA	Yes. Georgia conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Ga. Code Ann. § 48-1-2(14) ; Ga. Code Ann. § 48-7-21(a) ; Bourassa v. Commr., Ga. Dept. of Rev., Ga. Tax Tribunal, Dkt. No. TAX-IIT-1407354, 12/14/2015	¶11,059; ¶ 1063GA:1000
HI	No. Hawaii does not conform to IRC § 280E with	Haw. Rev. Stat. § 235-2.4(v) ; Hawaii Dept. of Taxation Announcements No. 2016-07, , 07/26/2016	¶11,059; ¶ 1063HI:1000

	respect to the production and sale of medical cannabis and manufactured cannabis products by Hawaii-licensed dispensaries and their subcontractors.		
IA	Yes. Iowa conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Iowa Code § 422.32(1)(h)	¶11,059; ¶ 1063IA:1000
ID	Yes. Idaho conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Idaho Code § 63-3004 ; Idaho Admin. Rules § 35.01.01.291(03)(e)	¶11,059; ¶ 1063ID:1000
IL	Yes. Illinois conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	ILCS Chapter 35 § 5/1501(a)(11) ; ILCS Chapter 35 § 5/203(b)(1)	¶11,059; ¶ 1063IL:1000
IN	Yes. Indiana conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Ind. Code § 6-3-1-3.5(b) ; Ind. Code § 6-3-1-11(a)	¶11,059; ¶ 1063IN:1000
KS	Yes. Kansas conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Kan. Stat. Ann. § 79-32,138(a) ; Kan. Stat. Ann. § 79-32,109(a)(1)	¶11,059; ¶ 1063KS:1000
KY	Yes. Kentucky conforms to IRC §280E to the extent of conformity to the underlying federal deduction or credit.	Ky. Rev. Stat. Ann. § 141.010(15)	¶11,059; ¶ 1063KY:1000
LA	Yes. Louisiana conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	La. Rev. Stat. Ann. § 47:287.63 ; La. Rev. Stat. Ann. § 47:287.73	¶11,059; ¶ 1063LA:1000
MA	Yes. Massachusetts conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Mass. Gen. L. Chapter 63 § 1 ; Mass. Gen. L. Chapter 63 § 30(3) ; Mass. Gen. L. Chapter 63 § 30(4) ; Massachusetts Department of Revenue Website, Marijuana Retail Taxes FAQs, 10/01/2018; Massachusetts DOR Directive No. 14-4, , 12/16/2014	¶11,059; ¶ 1063MA:1000
MD	Yes. Maryland conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Md. Code Ann. Tax-Gen. § 10-304(1)	¶11,059; ¶ 1063MD:1000
ME	No. For tax years beginning on or after January 1, 2018, Maine allows a subtraction modification for business expenses related to carrying on a trade or business as a Maine-registered caregiver or a Maine-registered dispensary in an amount equal to the deduction that would otherwise be allowable if not for IRC § 280E.	Me. Rev. Stat. Ann. 36 § 111(1-A) ; Me. Rev. Stat. Ann. 36 § 5200-A(2)(BB) , eff. 12/13/2018 (retroactively applicable)	¶11,059; ¶ 1063ME:1000
MI	No. Under the Michigan Regulation and Taxation of Marihuana Act, in computing net income for marihuana establishments, deductions from state taxes are allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business.	Mich. Comp. Laws Ann. § 333.27962 ; Michigan Revenue Administrative Bulletin No. 2019-17, , 11/18/2019	¶11,059; ¶ 1063MI:1000
MN	No. Effective for taxable years beginning after December 31, 2018, taxpayers are allowed a subtraction from federal taxable income equal to the expenses of a medical cannabis manufacturer related to the business of medical cannabis, and not allowed for federal income tax purposes under IRC § 280E.	Minn. Stat. § 290.0134, Subd. 19	¶11,059; ¶ 1063MN:1000
MO	Yes. Missouri conforms to IRC § 280E to the extent	Mo. Rev. Stat. § 143.091 ; Mo. Rev. Stat. § 143.431	¶11,059; ¶ 1063MO:1000

	of conformity to the underlying federal deduction or credit.		
MS	No. Mississippi does not automatically incorporate the disallowance of deductions and credits under IRC § 280E. To the extent that a particular Mississippi deduction is limited by the amount actually claimed on the taxpayer's federal return, however, the disallowance of a deduction by reason of IRC § 280E would carry through to the Mississippi return unless otherwise provided.	Miss. Code Ann. § 27-7-13(1) ; Miss. Administrative Code § 35.III.5.01	¶11,059; ¶ 1063MS:1000
MT	No. Montana-licensed medical marijuana providers can subtract from gross income the same ordinary and necessary expenses incurred for the business that are allowed for other types of businesses operating in the state.	Mont. Code Ann. § 15-31-113(1) ; Mont. Code Ann. § 15-31-114(1)(a) ; Montana Tax News You Can Use, 12/14/2017	¶11,059¶ 1063MT:1000
NC	Yes. North Carolina conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	N.C. Gen. Stat. § 105-228.90(b)(1b) ; N.C. Gen. Stat. § 105-130.2(15)	¶11,059; ¶ 1063NC:1000
ND	Yes. North Dakota conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	N.D. Cent. Code § 57-38-01(5) ; N.D. Cent. Code § 57-38-01(13)	¶11,059; ¶ 1063ND:1000
NE	Yes. Nebraska conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Neb. Rev. Stat. § 77-2714 ; Neb. Rev. Stat. § 77-2734.04(24)	¶11,059; ¶ 1063NE:1000
NH	Yes. New Hampshire conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	N.H. Rev. Stat. Ann. § 77-A:1, (XX)(n) ; N.H. Rev. Stat. Ann. § 77-A:1, III(a)	¶11,059; ¶ 1063NH:1000
NJ	Yes. New Jersey conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	N.J. Rev. Stat. § 54:10A-4(k) ; N.J. Admin. Code § 18:7-5.1(b)	¶11,059; ¶ 1063NJ:1000
NM	Yes. New Mexico conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	NMSA 1978 § 7-2A-2(H) ;NMSA 1978 § 7-2A-2(C) ;NMSA 1978 § 7-2A-2(I) ;	¶11,058; ¶ 1063NM:1000
NV	N/A	N/A	N/A
NY	Yes. New York conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	N.Y. Tax Law § 208(9) ; NYCRR 20 § 3-2.2	¶11,059; ¶ 1063NY:1000
OH	N/A	N/A	N/A
OK	Yes. Oklahoma conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Okla. Stat. 68 § 2353(2) ; Okla. Stat. 68 § 2353	¶11,059;¶ 1063OK:1000
OR	No. Oregon taxpayers can deduct from federal taxable income any federal deduction that would have been allowed to the taxpayer for the production, processing, or sale of marijuana items authorized under Oregon law in the absence of IRC Sec. 280E.	Or. Rev. Stat. § 317.363	¶11,059; ¶ 1063OR:1000
PA	Yes. Pennsylvania conforms to IRC 280E for corporate income tax purposes, to the extent of conformity to the underlying federal deduction or credit.	Pa. Stat. Ann. 72 § 7401(3)(1)(a) ; Pennsylvania Department of Revenue, Medical Marijuana Fact Sheet, 07/10/2018	¶11,059; ¶ 1063AR:1000
RI	Yes.	R.I. Gen. Laws § 44-11-11(a)	¶11,059; ¶ 1063RI:1000

	Rhode Island conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.		
SC	Yes. South Carolina conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	S.C. Code Ann. § 12-6-40(A)(1)(a) ; S.C. Code Ann. § 12-6-1110(A) ; S.C. Code Ann. § 12-6-1130(A) ; S.C. Code Ann. § 12-6-580	¶11,059; ¶ 1063SC:1000
SD	N/A	N/A	N/A
TN	Yes. Tennessee conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Tenn. Code Ann. § 67-4-2006(a)(1) ; Tenn. Code Ann. § 67-4-2006(b)(2)	¶ 1063TN:1000; ¶11,059
TX	No. Texas does not conform to IRC § 280E. Texas uses federal gross income (as that term is defined in the IRC in effect on January 1, 2007), except for cost of goods sold, as the starting point for purposes of net taxable margin computation. For the purpose of computing its taxable margin, the total revenue of a corporation is an amount computed by adding the amount reportable as income on Line 1c of IRS Form 1120.	Tex. Tax Code Ann. § 171.0001(9) ; Tex. Tax Code Ann. § 171.1011(c)	¶11,059; ¶ 1063TX:1000
UT	Yes. Utah conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Utah Code Ann. § 59-7-101(21) ; Utah Code Ann. § 59-7-101(30)(a)	¶11,059; ¶ 1063UT:1000
VA	Yes. Virginia conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Va. Code Ann. § 58.1-301(B) ; Va. Code Ann. § 58.1-402 ; Virginia Public Document Ruling No. 88-214, , 07/27/1988	¶11,059; ¶ 1063VA:1000
VT	Yes. Vermont conforms to IRC 280E to the extent of conformity to the underlying federal deduction or credit.	Vt. Stat. Ann. 32 § 5811(18) ; Vt. Stat. Ann. 32 § 5820(a) ; Vt. Stat. Ann. 32 § 5824	¶11,059; ¶ 1063VT:1000
WA	N/A	N/A	N/A
WI	Yes. Wisconsin conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	Wis. Stat. § 71.22(4)(l) ; Wis. Stat. § 71.26(3)	¶11,059
WV	Yes. West Virginia conforms to IRC § 280E to the extent of conformity to the underlying federal deduction or credit.	W. Va. Code § 11-24-3(a) ; W. Va. Code § 11-24-6 ; Code of State Rules § 110-24-2	¶11,059; ¶ 1063WV:1000
WY	N/A	N/A	N/A

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Income Tax Subtractions

These subtractions will change your Colorado Taxable Income from the amount of Federal Taxable Income. See instructions in the income tax booklet for additional guidance on completing the schedule. Do not enter negative amounts. To ensure faster processing of your paper return, the amount entered in the Subtractions line of the income tax return must exactly match the subtotal amount at the end of the subtractions schedule or form.

Visit the [Credits & Subtractions Forms](#) page to download the forms and/or schedules needed to file for the subtractions listed below.

Reminder: Save time and file online! You may use the Department's free e-file service [Revenue Online](#) to file your state income tax. **You do not need to login to Revenue Online to File a Return.** After you file, you have the option of setting up a Login ID and Password to view your income tax account in Revenue Online. Or, you may opt to e-file through a paid tax professional or purchase tax software to complete and file returns.

- **Agricultural Asset Lease Deduction**
 - Enter the certificate number (YY-####) for the deduction certificate that was provided by the Colorado Agricultural Development Authority (CADA). If you received more than one certificate, then you must file electronically. Enter the amount of the deduction on this line. The amount of deduction allowed to a qualified taxpayer may not exceed \$25,000. You must submit a copy of each certificate with your return.
- [Catastrophic Health Insurance](#)
- [Charitable Contributions](#)
- [Colorado Source Capital Gain](#)
- **Exonerated Persons Deduction**
 - For tax years 2013 and thereafter, certain exonerated persons (or the immediate family members of an exonerated person) who are found to be actually innocent may deduct from their individual income tax return any compensation received pursuant to §13-65-103, C.R.S. that was received on or after January 1, 2014. However, attorney fees that are awarded as part of the compensation shall not be deducted. [§39-22-104(4)(q), C.R.S.] The deduction shall be subtracted from the individual income tax return on the line designated. Write "Exonerated Persons Income" as the explanation for the deduction.
- [First-time Home Buyer Savings Account Interest Deduction](#)
- **Marijuana Business Deduction**
 - To claim this deduction, Colorado-licensed marijuana businesses must list any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the Internal Revenue Code because marijuana is a controlled substance under federal law.
- [Medical Savings Account](#)
- [Olympic Gold Medal](#)
- [Reacquisition of Residence During Active Military Service \(Formerly the Military Income Tax Exemption\)](#)
- **Military Family Relief Fund Grants Deduction**
 - For tax years 2014 and thereafter, military families receiving a grant from the Military Family Relief Fund may deduct the amount of the grant from their individual income tax return to the extent that it is included in federal taxable income. [§39-22-104(4)(p), C.R.S.] The deduction shall be subtracted from the individual income tax return. Write "Military Family Relief Fund Grant" as the explanation for the deduction where designated. If you deducted the income on your federal return rather than claiming the grant (you did not include it in federal taxable income), no Colorado subtraction is allowed since the income is not included in your federal taxable income.
- **Non-resident Disaster Relief Worker Subtraction**
 - For nonresident individuals, enter the amount of income (compensation earned) while working in Colorado during a declared state disaster emergency on disaster-related work. Disaster-related work includes repairing, renovating, installing, building, or rendering services that relate to infrastructure that has been damaged, impaired, or destroyed by a declared state disaster emergency or providing emergency medical, firefighting, law enforcement, hazardous material, search and rescue, or other

emergency service related to a state declared disaster emergency. This subtraction is only available to nonresident individuals. If you are a full-year resident of Colorado, you are not eligible for this subtraction.

- [Pension Annuity](#)
- [Railroad Pension](#)
- **Reservation Income**
 - List any amount of income that was derived wholly from reservation sources by a recognized tribal member, which was included as taxable income on the federal income tax form. Submit proof of tribal membership, residence, and source of income. This must be submitted only every three years by taxpayers claiming this subtraction.
- [State Income Tax Refund](#)
- [Tuition Program Contribution/Distribution](#)
- [United States Government Interest](#)
- **Wildfire Mitigation Measures**
 - Enter the amount of qualified expenses incurred in performing wildfire mitigation on your land, up to \$2,500. Reference [FYI Income 65](#) for information on how to accurately calculate this subtraction.