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Mastering Cannabis & Marijuana Regulation

The Rosssdate Group

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I. IRS Code Section 280E

A. Supremacy Clause of the U.S. Constitution

- a. Establishes the U.S. Constitution, federal statutes and treaties as “the supreme law of the land”; and
- b. Pursuant to this clause, any state law which conflicts with the federal law is preempted

A. Non-deductible operating expenses

- a. Section 280E disallows any deduction for ordinary and necessary business expenses for illegal controlled substance businesses
- b. IRC section 280E/Ordinary and Necessary Business Expenses
 - i. Denies a taxpayer any deductions for any amount paid or incurred in the year in carrying on any trade or business if such trade or business consisted of trafficking in controlled substances.
 - ii. Supreme Court has consistently upheld the fact that deductions are a matter of “legislative grace” rather than constitutional requirements

Cost of Goods Sold (COGS)

Cost of Goods Sold (COGS) IRC section 61 defines “gross income” as total sales less the COGS

COGS is not considered an expense, but rather an adjustment taken into account in arriving at “gross income”

Cultivators and producers

Full absorption cost method IRC section 471

Beginning inventories plus current-year production costs and/or current-year purchases less ending inventories

Direct costs including material costs, direct labor including burden

- 1. Indirect costs including rent, utilities, nutrients, security, insurance, scales, grinders, packaging materials, traceability software
- a. Dispensaries and resellers
 - i. Cost of purchases
 - a. Cash basis purchases
 - 1. Cost of cannabis and other purchases for resell

I. Bifurcating entity types

- A. Cannabis related activities
 - a. Cultivators, producers and dispensaries
- B. Non cannabis related activities
 - a. Packaging, branding, clothing, lights, software, etc.

I. Form 8300

- A. Bank Secrecy Act (BSA)
 - a. Requires those in the U.S. and its territories, that receive more than \$10,000 in cash in their trade or business, to report the transactions to the U.S. Treasury using Form 8300
 - b. Businesses must report cash payments received if all of the following criteria is met:
 - i. Business receives cash totaling \$10,000 as one lump sum, installment payments received in one year of the initial payment cause the total to exceed \$10,000, or previously unreported payments that cause the total cash received within a 12 month period exceed \$10,000;
 - ii. From the same agent or buyer; and
 - iii. In a single transaction or in related transactions
 - c. Form 8300 data is maintained by the Financial Crimes Enforcement Network (Fin Cen) a branch of the U.S. Treasury
 - d. Some transactions covered by these requirements
 - i. Pre-existing debt payments
 - ii. Reimbursement of expenses
 - iii. Making or repaying a loan

- i. Sale of real property
- ii. Sale of intangible property
- iii. Sale of goods or services
- iv. Rental of real or personal property
- a. Cash includes the following if valued at less than \$10,000 and included in a designated reporting transaction
 - i. Cashier's checks
 - ii. Bank drafts
 - iii. Travelers checks
 - iv. Money orders
- b. Penalties
 - i. Civil penalties for negligent failure to timely file
 - a. \$250 per return not to exceed \$3,000,000
 - b. For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$100,000
 - c. The penalty applies to each return
 - d. \$50 per return not to exceed \$500,000
 - e. For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$75,000
 - ii. Criminal penalties for willful failure to file
 - a. Willfully filing a false or fraudulent Form 8300
 - b. Stopping, or attempting to stop, a Form 8300 from being filed, or
 - c. Setting up, assisting, or trying to set up a transaction in a way that would make it seem unnecessary to file Form 8300
 - 1. Fines up to \$100,000
 - 2. And/or imprisonment up to five years
 - 3. Costs of prosecution

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Report of Cash Payments Over \$10,000 Received in a Trade or Business

IRS Form 8300 (Rev. August 2014)		Report of Cash Payments Over \$10,000 Received in a Trade or Business		FinCEN 8300 (Rev. August 2014)	
Department of the Treasury Internal Revenue Service		Use this form for transactions occurring after August 29, 2014. Do not use prior versions after this date. For Privacy Act and Paperwork Reduction Act Notice, see the last page.		OMB No. 1506-0018 Department of the Treasury Financial Crimes Enforcement Network	
1 Check appropriate box(es) if: <input type="checkbox"/> a Amends prior report; <input type="checkbox"/> b Suspicious transaction.					
Part I Identity of Individual From Whom the Cash Was Received					
2 If more than one individual is involved, check here and see instructions <input type="checkbox"/>					
3 Last name		4 First name		5 M.I.	6 Taxpayer identification number
7 Address (number, street, and apt. or suite no.)		8 Date of birth (see instructions)		M M D D Y Y Y Y	
9 City	10 State	11 ZIP code	12 Country (if not U.S.)	13 Occupation, profession, or business	
14 Identifying document (ID)		a Describe ID c Number		b Issued by	
Part II Person on Whose Behalf This Transaction Was Conducted					
15 If this transaction was conducted on behalf of more than one person, check here and see instructions <input type="checkbox"/>					
16 Individual's last name or organization's name		17 First name		18 M.I.	19 Taxpayer identification number
20 Doing business as (DBA) name (see instructions)		Employer identification number		:	
21 Address (number, street, and apt. or suite no.)		22 Occupation, profession, or business		:	
23 City	24 State	25 ZIP code	26 Country (if not U.S.)	:	
27 Alien identification (ID)		a Describe ID c Number		b Issued by	
Part III Description of Transaction and Method of Payment					
28 Date cash received M M D D Y Y Y Y		29 Total cash received \$.00		30 If cash was received in more than one payment, check here <input type="checkbox"/>	
31 Total price if different from item 29 \$.00					
32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):					
a U.S. currency \$.00		(Amount in \$100 bills or higher \$.00)			
b Foreign currency \$.00		(Country)			
c Cashier's check(s) \$.00		Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶			
d Money order(s) \$.00					
e Bank draft(s) \$.00					
f Traveler's check(s) \$.00					
33 Type of transaction		34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶			
a <input type="checkbox"/> Personal property purchased		f <input type="checkbox"/> Debt obligations paid			
b <input type="checkbox"/> Real property purchased		g <input type="checkbox"/> Exchange of cash			
c <input type="checkbox"/> Personal services provided		h <input type="checkbox"/> Escrow or trust funds			
d <input type="checkbox"/> Business services provided		i <input type="checkbox"/> Bail received by court clerks			
e <input type="checkbox"/> Intangible property purchased		j <input type="checkbox"/> Other (specify in item 34) ▶			
Part IV Business That Received Cash					
35 Name of business that received cash		36 Employer identification number		:	
37 Address (number, street, and apt. or suite no.)		Social security number		:	
38 City	39 State	40 ZIP code	41 Nature of your business	:	
42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.					
Signature ▶		Authorized official		Title ▶	
43 Date of signature M M D D Y Y Y Y		44 Type or print name of contact person		45 Contact telephone number	
:		:		:	
IRS Form 8300 (Rev. 8-2014)		Cat. No. 62133S		FinCEN Form 8300 (Rev. 8-2014)	

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