



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

OFFICE OF THE CHIEF COUNSEL

December 16, 2010

Number: **2011-0005**
Release Date: 3/25/2011

CONEX-149328-10
UIL: 280E.00-00

The Honorable Fortney Pete Stark
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Stark:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

Section 280E of the Code disallows deductions incurred in the 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. C.I.R.*, 128 T.C. No. 14 (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' Co-op.*, 532 U.S. 483 (2001).

Because neither section 280E nor the Controlled Substances Act makes exception for medically necessary marijuana, we lack the authority to publish the guidance that you request. The result you seek would require the Congress to amend either the Internal Revenue Code or the Controlled Substances Act.

I am sending a similar letter to your colleagues. I hope this information is helpful. If you have any questions, please contact me at

Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)



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OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Barney Frank
U.S. House of Representatives
Washington, DC 20515

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Dear Mr. Frank:

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December 16, 2010

The Honorable Jared Polis
U.S. House of Representatives
Washington, DC 20515

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Dear Mr. Polis:

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OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Linda Sánchez
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Ms. Sánchez:

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OFFICE OF THE CHIEF COUNSEL

December 16, 2010

The Honorable Raúl Grijalva
U.S. House of Representatives
Washington, DC 20515

CONEX-149328-10

Dear Mr. Grijalva:

I am responding to your letter dated November 24, 2010, from you and your colleagues requesting guidance that would allow a deduction for expenses that taxpayers who sell marijuana for medical purposes incur. You noted that the Congress enacted section 280E of the Internal Revenue Code (Code) in 1982 to deny tax deductions to individuals trafficking in illegal drugs. However, you also commented that state laws have changed, and fifteen states now permit the sale and use of marijuana for medical purposes.

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The Honorable Sam Farr
U.S. House of Representatives
Washington, DC 20515

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Dear Mr. Farr:

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