

# Congress of the United States

Washington, DC 20515

June 3rd, 2026

The Honorable Scott Bessent  
Secretary of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

Dear Secretary Bessent,

The Department of Justice's April 23, 2026, final rule rescheduling certain marijuana products from Schedule I to Schedule III carries significant implications for the federal tax treatment of marijuana businesses.

Under Section 280E of the Internal Revenue Code, businesses trafficking in Schedule I or Schedule II controlled substances are prohibited from claiming ordinary business deductions or credits. This reflects Congress's determination that operations engaged with federally prohibited substances should not claim the same tax advantages as lawful businesses. Movement to Schedule III could allow marijuana businesses to claim federal tax benefits previously unavailable under federal law.

We have long been concerned about the potential fiscal and societal consequences of rescheduling, which is why we introduced the *No Deductions for Marijuana Businesses Act* to prohibit marijuana businesses from receiving federal tax deductions or credits regardless of the drug's classification.

In addition, we were particularly troubled that the final rule encouraged the Secretary of the Treasury to consider providing *retrospective* tax relief to marijuana businesses. The rule states that such relief would only apply to businesses that provide FDA-approved drug products or hold state-issued licenses. However, many state-licensed marijuana operators participate in both medical and recreational markets, making it unclear how Treasury would distinguish business activities that qualify or do not qualify for federal tax treatment.

The shortcomings of relying on inconsistent state licensure are already evident. For example, having a state license to grow or sell marijuana in Oklahoma does not mean that the business acts lawfully. At the height of its medical marijuana program, Oklahoma had 9,178 licensed marijuana growing operations.<sup>1</sup> While law enforcement has worked diligently to close down many of these operations that violated the law, they were all at one point state licensed marijuana businesses. There are documented instances where licensed

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<sup>1</sup><https://www.texomahidta.org/files/DDF/Texoma%20HIDTA%20Oklahoma%20Marijuana%20Report%202025.pdf>

operations funneled marijuana to the black market and engaged in other crimes, like money laundering and human trafficking. Many of these operations have also been owned and operated by Chinese nationals who have exploited state marijuana laws to commit crimes.

Similar concerns have been observed in states like California and Maine, highlighting systemic issues with state-level licensing and regulation of marijuana markets. Across the country, businesses follow a patchwork of laws to become a licensed marijuana business. Some may be more stringent than others, but it remains the case that state licensure alone does not guarantee legal compliance or justify eligibility for federal tax benefits.

Accordingly, we request answers to the following questions by June 29th:

1. Can you further clarify the definition of “retrospective tax relief” in this context? How many prior tax years is the Treasury Department planning to consider for tax relief for marijuana businesses?
2. How will the Treasury Department ensure that marijuana businesses that are potential candidates for tax relief have not violated any law, including the diversion of marijuana to the black market, human trafficking, and money laundering?
3. What is the estimated reduction in federal revenue associated with providing marijuana businesses access to ordinary business deductions and credits?
4. How would providing retrospective tax relief to marijuana businesses help American families?
5. What would be the impact on annual federal deficits and the national debt to give certain marijuana business owners a newly created retroactive tax benefit?
6. What statutory authority permits the federal government to give business owners who sold or manufactured a product against federal law a tax benefit?

Thank you for your consideration and we look forward to our continued engagement with you on this important issue.

Sincerely,



James Lankford  
United States Senator



Jody C. Arrington  
Member of Congress