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Tenth Circuit: Medical marijuana company's deductions denied

The U.S. Court of Appeals for the Tenth Circuit today affirmed a decision of the U.S. Tax Court that section 280E prohibits deductions claimed by the taxpayers as shareholders in a company engaged in selling medical marijuana.

The Tenth Circuit agreed with the taxpayers that the Tax Court erred in determining that they were not entitled to business expense deductions because they had failed to substantiate their expenses at trial. However, the Tenth Circuit affirmed on an alternative ground that the taxpayers had failed to meet their burden of proving the IRS erroneously concluded that the company was unlawfully trafficking in a controlled substance. Thus, the appeals court concluded that section 280E precluded the deduction of the claimed business expenses.

As the Tenth Circuit observed in a footnote:

> *Taxpayers are understandably frustrated with the loss of their business expense deductions under § 280E. Despite operating in accordance with state law controlling the distribution of medical marijuana, [they] are subject to greater federal law liability than other legitimate state businesses. But state legalization of marijuana cannot overcome federal law.*

The case is: *Feinberg v. Commissioner,* No. 18-9005 (10th Cir. February 26, 2019). Read the Tenth Circuit's **opinion** [PDF 202 KB]

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