



# TaxNewsFlash

United States



No. 2019-076  
February 26, 2019

## 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 (10<sup>th</sup> Cir. February 26, 2019). Read the Tenth Circuit's [opinion](#) [PDF 202 KB]

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and

nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)