



THE NEIGHBORHOOD ENTREPRENEUR LAW PROJECT

Our Mission:

The Neighborhood Entrepreneur Law Project (NELP) of the City Bar Justice Center was founded in 2003 to provide legal services to NYC-based micro-entrepreneurs of limited economic resources to help them start their small businesses on sound legal footing.

To date, NELP has assisted over 20,000 entrepreneurs and small businesses and has worked with volunteer attorneys from over 100 different law firms and corporate in-house legal departments to deliver legal services to individuals who see entrepreneurship as a means of creating economic stability for their households and their communities.



LEGAL ISSUES WE ADDRESS

NELP focuses on transactional legal issues relevant to small businesses. These include:

- Choosing and setting up the right business structure (sole proprietorship, partnership, corporation or LLC)
 - Protecting intellectual property rights through trademark and copyright
 - Drafting and reviewing business contracts
 - Helping clients understand their legal obligations as employers
 - Reviewing commercial leases and assisting in lease negotiations
- We do not provide assistance with non-profit entity formation, litigation, collection matters or disputes.



OUR SERVICES

We deliver our services in three ways:

Presentations

- Attorneys discuss topics of interest to entrepreneurs such as:
 - Business Structure
 - Commercial Leasing
 - Intellectual Property
 - Worker Classifications
 - Crowd Funding
- Presentations are open to all entrepreneurs, regardless of income.

Legal Clinics

- Entrepreneurs get on-the-spot legal advice during a 45-minute appointment with an attorney or team of attorneys about their business law issues.
- Clinics are open to all entrepreneurs, regardless of income

Direct Pro Bono Representation

- Entrepreneurs can get full legal representation for a particular issue, such as forming a limited liability company, through NELP. They are not charged any legal fees, but are responsible for any filing fees.
- Direct pro bono representation is only available to those NYC-based entrepreneurs who qualify for assistance in line with NELP's income guidelines.



Contact us for more information or for help:

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[Neighborhood Entrepreneur Law Project](#)



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COMMITTEE ON DRUGS AND THE LAW
NEW YORK CITY BAR ASSOCIATION



CANNABIS TAX BORING BUT NECESSARY

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TOPICS TO BE COVERED

Choice of Entity

“Normal” NYC taxes

Special Cannabis New York State Taxes

**Why Do Cannabis Businesses Pay More Federal Tax
than Other Businesses?**

How Can My Cannabis Business Pay Less Federal Tax?

CHOICE OF ENTITTY

**Unincorporated Business – Schedule C on
indiv. tax return – Form 1040**

**Limited Liability Corporation – Form 1065
(partnership return)**

**Corporation – Form 1120 (corporation income
tax return)**

“NORMAL” NYC/NY STATE TAXES ON BUSINESS

1. NYC Unincorporated Business Tax – 4% of income OR

2. NYC Business Corporation Tax – 6.5% to 8.85% of income

NY State Corporate Franchise Tax – 6.5% to 7.25% of income

NEW YORK STATE CANNABIS TAXES

Sales tax on cannabis products of 13% — paid at point of sale

THC potency tax — different tax rates on flower, concentrates and edibles

- paid by the retail license holder to the licensed distributor**
- also paid by microbusiness license holder**
- potency determined by independent testing lab paid for by grower or producer**

FEDERAL TAX — WORLD BEFORE § 280E

Edmondson v. Commissioner (1981)

- Tax Court allowed seller of cocaine, amphetamines, and cannabis to deduct most business expenses
- Allowed business expense deductions included:
 - Portion of rent paid on dealer's apartment (his sole place of business)
 - Cost of scale
 - Packaging, telephone, and automobile expenses
- Very controversial decision which led to Congress enacting §280E

IRC §280E & ITS EFFECTS

“

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of Schedule I and Schedule II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

”

CONTROLLED SUBSTANCE ACT - 1970



DEA Schedule	Abuse Potential	Examples of Drugs Covered	Medical Use
Schedule I	Highest	Heroin, LSD, hashish, marijuana	No accepted use; some are legal for limited research use only
Schedule II	High	morphine, PCP, cocaine	Accepted use with restrictions
Schedule III	Medium	some amphetamines, anabolic steroids, codeine with aspirin	Accepted use
Schedule IV	Low	Equanil, diazepam, darvon	Accepted use
Schedule V	Lowest	Over the counter prescription compounds with codeine, limotil, robitussin A-C	Accepted use

- Despite its medical use, Marijuana is still a **Schedule I** substance and in the same Schedule I as Heroin.

EFFECTS OF §280E ON CANNABIS BUSINESSES

- **§280E disallows any deduction for ordinary and necessary business expenses**
- **However, §280E does not prevent cannabis businesses from deducting cost of goods sold (COGS)**
- **The overall effect is that the federal tax rate for cannabis businesses can reach 70% to 90%**
- **Increased Audit Activity**
 - Cannabis business are audited by the IRS at a rate 2x to 6x higher than non-cannabis businesses
 - Cannabis retail businesses are audited “on par with the percentage for the largest corporations in the country that have assets in excess of \$100 million”

EXAMPLE OF IMPACT OF § 280E

	Bakery	Cannabis Dispensary
Sales	100	100
Cost of goods sold	30	30
GROSS INCOME	70	70
Labor	20	20 (disallowed by 280E)
Rent	20	20 (disallowed by 280E)
TAXABLE INCOME	30	70
TAX AT 35% (FED,NY,NYC)	10.5	24.5
NET PROFIT	19.5	5.5

HOW CAN MY CANNABIS BUSINESS PAY LESS FEDERAL TAX?

Increase expenses allocated to cost of goods sold

Examples – what percentage of dispensary is used for inventory? Use that percentage to allocate rent, utilities, etc.

In the case of a grow or manufacturing facility, there are different rules for determining cost of goods sold that include more expenses.

Use § 471(c) to set up accounting system that allocates more expenses to cost of goods sold.⁶

§ 471 (C) 3

Tax Cuts and Jobs Act

- **Enacted December 2017**
- **Small Business Accounting Method Reform and Simplification IRC Section 471(c)**
- **Requirements: <\$25mil. average revenue for last three years**
- **Inventory:**
 - a) treats inventory as non-incidental materials and supplies; or,**
 - b) conforms to such taxpayer's method of accounting reflected in an applicable financial statement of the taxpayer with respect to such taxable year or, if no applicable financial statement then books and records.**



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