IRS Issues FAQs for the Marijuana Industry

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Recently, the IRS posted a set of FAQs addressing various tax, payment, and reporting obligations for the marijuana industry. The FAQs address the issues surrounding the basic income tax, employment tax, payment, and information return obligations common to the marijuana industry. In sum, the FAQs state:

- State legal marijuana companies are subject to income taxes and are required to collect and pay employment taxes the same as any other business.
- Payment plans and other collection options are available to marijuana businesses. Further, the IRS has procedures (discussed here and here) for making payments of income taxes and employment taxes in cash if a marijuana business does not have access to banking. Reading between the lines, marijuana businesses will not be given a pass for failure to make tax payments and deposits on the basis of the business's limited access to banking. Note: failure to make the appropriate tax payment and deposits can result in significant penalties.
- Section 280E applies to the marijuana industry and must be applied in computing a marijuana business's income tax. The IRS position is that marijuana businesses should calculate cost of goods sold using the methodologies available under Section 471. According to the FAQs, this Internal Revenue Code Section 280E disallows "advertising and selling expenses."
- The IRS has been successful in litigation in imposing penalties on marijuana businesses which it has audited. Taxpayers should be mindful of these situations when they are preparing income taxes and applying Section 280E.
- Because the marijuana industry largely deals in cash, marijuana businesses should be mindful of the obligation to file Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business, within 15 days of receiving such payment. Marijuana businesses should educate themselves on the record keeping requirements related to Form 8300, including the need to aggregate certain payments and provide detailed information related to each reportable transaction or series of transactions. Note: significant penalties can apply when Form 8300 in not properly or timely filed.

What the FAQs don't address is the ongoing litigation between marijuana businesses and the IRS related to the proper computation of cost of goods sold. In audits, the IRS may disallow costs which are arguably inventory costs. Further, recent changes to Section 471 have reopened the debate as to how to determine

inventory costs under Section 471. Any marijuana business facing reporting obligations or audits should seek advice from tax advisor familiar with these ongoing disputes and changes in determining their income tax liabilities and handling other disputes with the IRS.

At Hall Estill, we have years of experience handling these matters and working with the IRS to appropriately contest and resolve disputes between marijuana businesses and the IRS. Please contact your Hall Estill attorney if you are a marijuana business seeking tax advice.

Practices

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