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IRS Cannabis/Marijuana Initiative May Signal Increased Tax Scrutiny

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Today the Internal Revenue Service (IRS) announced that it is launching a new Cannabis/Marijuana Initiative. The purported goal of this initiative is to “implement a strategy to increase voluntary compliance with the tax law while also identifying and addressing non-compliance.”

Specifically, the IRS states that it intends to:

- ensure training and job aids are available to IRS examiners working cases so they can conduct quality examinations (audits) consistently throughout the country;
- make sure there is coordination and a consistent approach by the IRS to the cannabis/marijuana industry;
- find ways to identify non-compliant taxpayers;
- collaborate with external stakeholders to increase an awareness of tax responsibilities to improve compliance; and
- give taxpayers access to information on how to properly comply with the filing requirements.

While it is commendable that the IRS wants to “help small business owners and others fully understand the unique tax rules before there are any compliance issues,” the reality is that the “unique tax rules” for cannabis businesses are not fully settled. To date, the IRS has issued no regulations under Section 280E of the Internal Revenue Code (Section 280E), the nucleus of the tax challenges faced by cannabis businesses. Further, there is significant disagreement among legal, tax, and accounting professionals regarding how to fully comply with Section 280E. In short, “compliance” is not so straightforward. It is essential for cannabis businesses to seek professional advice regarding their taxes, especially given heightened IRS scrutiny of the industry indicated by today's announcement.

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