

HOSPITALITY INFORMATION MEMO

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New York's 2023 Budget Will Provide State Tax Relief to Cannabis Businesses

On the heels of New York's legalization of recreational marijuana and proposed regulations for the State's emerging cannabis industry, cannabis businesses are positioned to receive new state tax breaks. On April 9, Gov. Kathy Hochul signed off on the State's Fiscal Year 2023 budget (the Budget). Importantly, the Budget carves out exemptions from Internal Revenue Code (IRC) Section 280E for New York cannabis businesses, that will now see significant tax savings beginning Jan. 1, 2023. Senate Bill S8009C (the Bill) enacted into law major components of legislation necessary to implement the Budget.

IRC Section 280E prevents businesses from deducting expenses related to the "trafficking [of] controlled substances within the meaning of schedule I and II of the Controlled Substances Act." Marijuana is a Schedule I substance under the Controlled Substances Act, meaning cannabis businesses, including growers, processors, sellers and distributors, were not allowed to deduct otherwise ordinary business expenses from their state and federal taxes.

Under the Bill, IRC Section 280E will not apply to the production and distribution of adult-use cannabis products. While the Bill does not allow cannabis businesses to deduct business expenses on their federal taxes, they permit cannabis businesses to make those deductions on their New York state taxes starting this year. The Bill also amended New York state tax law to exclude the amount of the disallowed IRC Section 280E deduction from "entire net income" and subtract the same from adjusted gross income.

This is an extraordinary development for New York cannabis businesses, especially for small businesses. The Bill ensures the cannabis market won't be controlled by a small number of large companies and will make it easier for emerging cannabis businesses to profit off of New York's new cannabis market.

For questions about the information provided above or about the cannabis industry in general, please contact [Jeffrey B. Scheer](#), [Dustin M. Dorsino](#) or the Bond attorney with whom you are regularly in contact.



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