

Troutman Pepper Cannabis Communications Newsletter — January 11, 2024

WRITTEN BY

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Troutman Pepper’s Cannabis Practice helps clients throughout their business cycle enter or expand into the cannabis space. Our team combines the resources of attorneys in areas such as licensing and taxation, regulatory compliance, corporate and transactional, intellectual property, and real estate, among others, to provide comprehensive services.

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

RECEIVERSHIPS

NAVIGATING THE STORM: RECEIVERSHIPS IN THE CANNABIS INDUSTRY

By [Jean Smith-Gonnell](#) and [Cole White](#)

With rapid technological advances, expanded regulatory oversight, and constantly shifting market dynamics, owning and operating a business in the modern world has become an increasingly difficult challenge. Chief among the challenges that business owners face is the likelihood of financial distress, a daunting scenario that can arise from market downturns, management issues, or unexpected crises. When a business finds itself in financial turmoil, it is crucial that business owners and investors have viable options for navigating these challenges. Traditionally, bankruptcy is the primary avenue of relief for distressed businesses, offering a structured way to address financial woes and creditor claims.

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TAX UPDATES

THE CONTINUING NEGATIVE IMPACT OF FEDERAL AND STATE TAXATION ON THE CANNABIS INDUSTRY; WHERE DO WE GO FROM HERE?

By [Jean Smith-Gonnell](#) and [Randy Varner](#)

The cannabis industry has experienced significant growth over the past decade, with increasing numbers of states legalizing both medical and recreational use. Currently, cannabis is legal for adults in 24 states and the District of Columbia, and medical cannabis is legal in 38 states and the District of Columbia. However, despite the industry’s

rapid expansion, it faces a unique and significant challenge in the form of Internal Revenue Code Section 280E (IRC §280E).^[1] This federal tax code provision has a profound negative impact on the profitability of cannabis businesses and causes those businesses to constantly evaluate their operational strategies. In addition to IRC §280E and other federal tax challenges, the industry also faces significant state tax burdens.

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FOIA UPDATES

REDACTED CANNABIS RESCHEDULING LETTER IGNITES FOIA EXEMPTION DEBATE

By [Stephen C. Piepgrass](#), [Agustin Rodriguez](#), [Jean Smith-Gonnell](#), and [Cole White](#) on January 8, 2024

The U.S. Department of Health and Human Services (HHS) has drawn criticism for heavily redacting a recommendation letter to the U.S. Drug Enforcement Administration (DEA) concerning the rescheduling of cannabis. HHS said the redactions were justified under Exemption 5 of the Freedom of Information Act (FOIA), which protects inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. As Stephen C. Piepgrass, Agustin E. Rodriguez, Jean Smith-Gonnell, and Cole White noted in a [recent article](#) published by *Law360*, this has sparked debates about the balance between necessary secrecy and the public's right to government information. Legal challenges to these redactions are expected. The deliberative process privilege, which safeguards deliberative discussions within government corridors, is often invoked in the context of FOIA.

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CRYPTOCURRENCY + MARIJUANA

NAVIGATING CRYPTOCURRENCY IN THE MARIJUANA INDUSTRY: RISKS AND TECHNOLOGICAL SOLUTIONS

By [Jean Smith-Gonnell](#) and [Trey Smith](#)

The marijuana industry has seen exponential growth over the past few years. However, the federal prohibition of marijuana poses significant challenges for businesses in this sector, in terms of payment processing and banking. As explained in a previous [article](#), cryptocurrencies present a potential solution to these issues, enabling marijuana businesses to send and receive payments without the need for third-party intermediaries.

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