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Larry's Tax Law

Another Thought on the Tax Treatment of the Marijuana Industry-Oregon Taxation

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In general, the Oregon income tax laws are based on the federal income tax laws. In other words, Oregon is generally tied to the Internal Revenue Code for purposes of income taxation. As a consequence, we generally look to the federal definition of taxable income as a precursor for purposes of determining Oregon taxable income.

What does this mean to taxpayers in the trade or business of selling recreational or medical marijuana in Oregon?

Currently, it appears these taxpayers are stuck with the federal tax laws. Consequently, unless the Oregon legislature statutorily disconnects from IRC § 280E, for Oregon income tax purposes, all deductions relating to the trade or business of selling medical or recreational marijuana will be disallowed.

I suspect the result of IRC § 280E and its impact on Oregon income taxation will be that many taxpayers in this industry will go to lengthy efforts to capitalize expenses and add them to the cost of goods sold. **Caution is advised.** The taxing authorities will likely closely scrutinize this issue.

In addition to income taxes, retail marijuana sales in Oregon are subject to a sales tax. This is a tax that is paid by the customer, and collected and paid over to the taxing authorities by the retailer. Interestingly, the sales tax regime has been strenuously resisted by Oregon taxpayers for decades. The Oregon Legislature, however, passed HB 2041, introducing a state sales tax of 17% (with the possible add-on of up to 3% by local governments) on the retail sales of marijuana. Governor Kate Brown signed the bill into law on October 5, 2015. As a consequence, taking into consideration both income taxes and sales taxes, the marijuana industry and its customers may become a big contributor to the state's tax revenues. I am not sure I could have ever predicted the current state of affairs.

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