

Articles

An Exploration of the Cannabusiness in Michigan and the Influence of Internal Revenue Code (IRC) 26 U.S. Code § 280E

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Michigan cannabusiness owners face a number of industry-specific limitations and difficulties despite Michigan's legalization of recreational adult-use marijuana in 2018. Michigan marijuana related business (MRB) owners battle repercussions resulting from the federally enacted Controlled Substances Act (CSA). Cannabis is outlawed federally, thereby making participation in the industry illegal and susceptible to federal prosecution. The CSA led to the creation of Internal Revenue Code (IRC) Section 280E; a legislation preventing MRBs from deducting all business expenses. IRC Section 280E negatively affects cannabusinesses by disallowing them from using their net income in computing their business tax liability. Cannabis's designation as a Schedule I illicit substance in the CSA also prevents cannabusinesses from seeking sufficient access to business financing through debt and equity. Despite Michigan's cannabis industry spawning healthy revenues, the impediment imposed by IRC Section 280E leaves all U.S. MRBs artificially stunted. Cannabis as a product is discussed, as well as its history in the U.S. and in Michigan. Relevant literature and proposed solutions for the U.S. cannabis industry are evaluated.

An exploration of the Cannabusiness in Michigan and the influence of Internal Revenue Code (IRC) 26 U.S. Code § 280E

Cannabis has many aliases: pot, weed, marijuana, marijuana, dope. All may be classified as a Schedule I controlled substance under the Controlled Substances Act (CSA). The CSA classifies cannabis and other Schedule I drugs as having the highest potential for drug abuse, as well as having no medical or treatment benefits (Newell, 2021). Trafficking, or in other words, manufacturing, selling, or aiding MRBs, is federally illegal.

Introduction

Being a Michigan marijuana-related business (MRB) is harder than it looks. Customers within the cannabis industry generally only see and interact with marijuana dispensaries. A dispensary is similar to a liquor store, and many times resembles a doctor's office (Lashley & Pollock, 2020). A dispensary's aesthetic atmosphere hides the scores of challenges MRB entrepreneurs face when operating their business.

Many MRBs are trying to make involvement in the cannabis industry feel less "dirty". Lashley and Pollock (2020) focused on how MRBs "showcase," which is defined as deliberate efforts to break negative stereotypes around cannabis. Methods of showcasing include selling products in child-proof containers, a well-lit professional atmos-

phere, and friendly staff (Lashley & Pollock, 2020). Lashley and Pollock (2020) also discuss how MRBs are methodical in advertising their product, like calling it "holistic" and "wellness," in attempts to appease skeptical markets. Showcasing is just one of several challenges MRBs face.

The U.S. cannabis industry experiences some disadvantages due to its Schedule I classification. The main implications for U.S. MRBs include their accessibility to financial institutions, their right to deduct business expenses and the continuation of the negative stigma around cannabis. Michigan MRBs face these limitations, as well as MRBs in other pro-recreational use states. A literature review is fashioned to discuss the multitude of issues facing the United States adult-use recreational cannabis industry.

Controlled Substances Act (CSA)

The DEA (2020) described the CSA as a way of regulating and rating illicit substances within the U.S. The CSA rates substances based upon a schedule basis; the first schedule, Schedule I, being the most hazardous, and Schedule V, being the least (DEA, 2020). Section 280E targets Schedule I substances, such as cannabis and heroin, and Schedule II substances, including methamphetamine, cocaine, and fentanyl. Each controlled substance within the CSA is evaluated for its medical use and potential for abuse (DEA, 2020).

Despite the CSA's dismissal, other research suggests cannabis has health and wellness benefits. Some studies indicate that cannabis may improve the quality of life for

patients with chronic illnesses (Lachance et al., 2023). Ayman et al. (2024) also suggested that synthetic cannabinoids (SCs), the psychoactive ingredient in cannabis, may improve glaucoma conditions. Despite research supporting cannabis's medicinal use, the FDA contends that marijuana has no treatment benefits (FDA, 2023).

The Cole memo and the Rohrabacher-Farr amendment are significant components of the regulatory landscape concerning controlled substances under the Controlled Substances Act (CSA). The Cole memo, issued by then-Deputy Attorney General James M. Cole in 2013, provided guidance to federal prosecutors regarding enforcement of federal marijuana laws in states that had legalized cannabis for medical or recreational use. This guidance urged prosecutors to prioritize certain enforcement priorities, such as preventing distribution to minors and preventing revenue from flowing to criminal enterprises, rather than targeting individuals complying with state marijuana laws (U.S. Department of Justice, 2013).

The Rohrabacher-Farr amendment, first enacted in 2014 and subsequently renewed annually as part of federal appropriation bills, prohibits the Department of Justice from using federal funds to interfere with the implementation of state medical marijuana laws. This amendment effectively shields medical marijuana users, growers, and dispensaries from federal prosecution in states where medical cannabis is legal under state law (Congress.gov, n.d.). These measures represent attempts to navigate the complex interplay between federal and state laws concerning controlled substances, particularly marijuana, highlighting ongoing debates over reinforcement priorities and states' rights in drug policy.

The interplay between federal and state laws regarding controlled substances, notably marijuana, underscores a complex legal and policy landscape in the United States. This dynamic interaction is shaped by ongoing debates over enforcement priorities and the balance of authority between federal mandates and state autonomy in drug policy. Scholars such as Caulkins et al. (2016) have examined these tensions, noting that while federal law categorizes marijuana as a Schedule I substance with no accepted medical use, a growing number of states have legalized it for medical and even recreational purposes. This dichotomy has led to varying approaches in enforcement across different jurisdictions, with federal agencies often deferring to state laws in states that have legalized marijuana.

Moreover, the evolving legal framework surrounding marijuana exemplifies broader issues of federalism and states' rights in the context of drug regulation. As articulated by Pacula and Smart (2017), the Cole memo, and the Rohrabacher-Farr amendment represent federal attempts to accommodate state-level decisions on marijuana legalization while maintaining overarching federal prohibitions. This accommodation reflects a pragmatic response to the complexities of drug policy, aiming to mitigate conflicts between federal law enforcement priorities and state-level regulatory regimes. Ultimately, these measures serve as pivotal mechanisms in navigating the intricate legal terrain of marijuana regulation, striving to balance federal man-

dates with states' desires for autonomy in determining drug policy within their borders.

Some cannabinoids derived from marijuana have been approved by the FDA for medical use (FDA, 2023). Epidiolex, a medication for epilepsy, contains cannabidiol, or CBD, as an active ingredient (FDA, 2023). Though the FDA approves the medicinal use of one cannabis derived compound, cannabis maintains its Schedule I designation within the CSA as having no medical use. Recent proposal by the Department of Justice (DOJ) is challenging cannabis's scheduling, thereby changing its required level of federal control (DOJ, 2024).

Research has also suggested that cannabis may medically assist cancer patients. Cannabinoids may reduce tumors, nausea, and pain, while also increasing patient appetite (Al-Khazaleh et al., 2024). Increasing cannabis research regarding its medicinal use may lead to FDA approval of marijuana or SCs. If the FDA were to approve cannabis or its components as a medicine, the substance would be rescheduled as a Schedule II drug.

Cannabis does present some dangers to users, as chronic use has been linked to certain adverse health effects. Ayman et al. (2024) listed the following as health effects linked to chronic use of cannabis: Liver injury or damage, acute renal injury and failure, arrhythmias, myocardial infarction, cardiac arrest, cognitive and motor impairment, psychosis, insomnia, and tremor. The FDA does not recognize marijuana as having any accepted medical use in the U.S., and it may partly be due to health effects associated with long-term use (L. C. Taylor & Prunyn, 2024). Recreational use of marijuana is one of many contentious issues in the U.S.

Yeoh (2020) provided that tobacco, alcohol, and cannabis are, respectively, the most commonly used recreational drugs in the world. However, cannabis is much more dangerous, according to the CSA, despite tobacco and alcohol having higher reported addiction rates than cannabis (Yeoh, 2020). Arguably, scheduling cannabis may be comparable to scheduling cigarettes or alcohol, being that these are the three most used recreational substances, yet cannabis is less addictive than alcohol and tobacco. The scheduling of cannabis as a controlled substance by the CSA may have been a result of the War on Drugs.

One relevant statistic on the War on Drugs is that more than half of those who were incarcerated during Bill Clinton's presidency were arrested for drug-related offenses (Kaufman & Rodgers, 2021). The War on Drugs, as its name implies, is known as the time in American history when drug use was seen as immoral and addressed with legislation. The CSA was first enacted, followed by IRC Section 280E in the 1970s and 1980s (Kaufman & Rodgers, 2021). Both these regulations addressed cannabis.

Cannabis's negative stigma did not begin in the 20th century. Kaufman (2021) reasons that American opposition to cannabis has racist origins. In the 19th century, the mass immigration of Mexicans into America unfortunately led to xenophobia (Kaufman & Rodgers, 2021). Along with xenophobia came negative stereotypes about marijuana, eventually leading to the Marihuana Tax Act (MTA) of 1937, the

first American taxation of cannabis (Kaufman & Rodgers, 2021).

Scheduling cannabis as one of the most dangerous controlled substances has led to disproportionate effects on communities of color (Leff, 2021). Violence by over-policing and heightened incarceration rates have been the result of the criminalization of cannabis (Leff, 2021). As Leff (2021) insightfully stated, the illegality of cannabis perpetuates crime and negative stereotypes. As the 21st century advances, many U.S. states, including Michigan, recognize some benefits of legalizing cannabis's recreational use.

Internal Revenue Code (IRC) Section 280E

Deducting one's business expenses is generally not considered a luxury to business owners as it is necessary in determining the entity's net income. However, Internal Revenue Code Section 280E prohibits the deduction of business expenses incurred from aiding and abetting controlled substances. Therefore, all MRBs are prohibited from deducting advertising, legal, accounting, and all other necessary business expenses, which are typically deductible by all other entities. Section 280E of the tax code succeeded the Controlled Substances Act (CSA).

IRC Section 280E reflects the time of history in which it was enacted. Kahn and Bromberg (2020) reasoned that IRC Section 280E was formed during the height of anti-cannabis sentiment in the 1980s, preceding the enactment of the CSA. The CSA and IRC Section 280E hammered the last two nails in the coffin for the cannabis industry, as both legislations condemned the trafficking of marijuana.

All MRBs within pro-recreational U.S. states have to abide by IRC Section 280E. The MICPA (n.d.-b) explained that by disallowing the deduction of ordinary business expenses, MRBs are taxed at gross income. Very few businesses are not taxed on net income, thereby increasing the taxable income for cannabusinesses. By increasing costs for MRBs, the federal government aims at reducing the amount of cannabis produced in the U.S. (Kahn & Bromberg, 2020).

IRC Section 280E initially appears as a tax code attempting to decrease the quantity of cannabis sold in the U.S. Kahn and Bromberg (2020) argued that Section 280E acts as a sin tax. The net result of Section 280E is that MRBs report a higher than usual taxable income, thereby increasing cannabusinesses' effective tax rate. By disallowing business deductions and increasing the costs of operations, many cannabusinesses refuse to operate legally.

IRC Section 280E increases the costs of legally operating MRBs, but has little effect on raising the costs of illegal cannabusinesses. Taylor et al. (2023) found that activity within illegal cannabis markets is strong because illegal MRBs do not report their business revenues, nor seek appropriate licensure. Therefore, IRC Section 280E only hurts legally operating cannabusinesses who pay taxes and follow legal requirements.

An MRB operating in a more expensive area, selling less cannabis, may pay more in taxes than another MRB, producing more cannabis, but operating in a lower cost area. Kahn and Bromberg (2020) illustrated how MRB 1 is burdened more than MRB 2 because MRB 1 bears higher ex-

penses in which the entity cannot deduct. MRB 1 is left more disadvantaged than MRB 2 even though MRB 2 sold more cannabis (Kahn & Bromberg, 2020). Section 280E does not function as an excise tax for as quantity increases, taxation increases.

Section 280E provides additional implications for the legal and illegal cannabis markets. Kahn and Bromberg (2020) argued Section 280E inhibits the principles of vertical and horizontal equity within taxation; vertical equity refers to taxation being applied progressively as income increases and horizontal equity is equal taxation on equal income. Section 280E is a boilerplate taxation policy that treats all MRBs the same, and as an entity's expenses increase, the weight of Section 280E feels even heavier. Section 280E does not allow MRBs to experience progressive federal taxation.

The History of Cannabis in the State of Michigan

The legalization of recreational adult-use marijuana followed the legalization of medicinal cannabis in 2008. In 2008, Michigan legalized the use of medical marijuana for certain medical patients with the Michigan Medical Marihuana Act (MMMA) (MMMA, Michigan Medical Marihuana Act, 2008). The MMMA, akin to other medical marijuana legislation, specifies that patients with qualifying conditions may be prescribed medicinal marijuana. Michiganders were less accepting of adult-use recreational marijuana use than the response that was seen with medical marijuana (Yaskewich, 2022).

The MMFLA allowed Michigan municipalities to opt-in and allow their community to establish MRBs (MMFLA, Medical Marihuana Facilities Licensing Act, 2016). Without formal consent, or opting-in from a municipality, medical marijuana establishments are prohibited (Yaskewich, 2022). Once a community opts-in, they may also have the authority to specify what types of medical marijuana facilities are allowed within their jurisdiction (Yaskewich, 2022). Taylor (2023) describes Michigan's granted authority to its municipalities regarding cannabis regulations as "polycentric," or decentralized.

Yaskewich (2022) describes the majority of Michigan residents' attitude toward legalizing the use of medical marijuana in 2008 as positive, ultimately leading to the MMMA being established. In 2016, the Medical Marihuana Facilities Licensing Act (MMFLA) was passed allowing the production of medical cannabis (MMFLA, Medical Marihuana Facilities Licensing Act, 2016). Two years later, recreational adult-use cannabis was legalized by the state of Michigan. Though recreational use is legal, many Michigan communities have banned the establishment of MRBs (MMFLA, Medical Marihuana Facilities Licensing Act, 2016).

Adult-use of recreational cannabis was legalized with the passage of the Michigan Regulation and Taxation of Marihuana Act (MRTMA) (Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27002, 2018). Adult-use pertains to individuals 21 years old and older, similar to the laws regarding tobacco and alcohol products. Yaskewich (2022) described the passage of recreational use as less of a landslide than passing the MRTMA was. The

negative stigma associated with the recreational use of cannabis appears to still be an issue today.

The MRTMA is similar to the MMMA legislation concerning the authority that localities possess. Similarly to the MMMA, the MRTMA allows local governments to pick and choose what types of MRBs allowed within their jurisdiction (Yaskewich, 2022). MRB licenses in Michigan consist of Classes A-C Marijuana Growers, Excess Growers, Processors, Retailers, Class A Microbusinesses, Microbusinesses, Secure Transporters, Safety Compliance Facilities, Designated Consumption Establishments, Educational Research Licenses, Marijuana Event organizers, and Temporary Marijuana Events (CRA, 2023). Localities have the discretion to prevent any MRB from forming within their jurisdiction (Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27002, 2018).

There are some differences between the MMMA and MRTMA. In contrast to the MMMA, the MRTMA required local governments to opt-out of legalizing the establishment of adult-use recreational marijuana facilities (Yaskewich, 2022). When the state legislature passed the legalization of recreational marijuana, localities were automatically opted-in, unlike the MMMA where localities had to opt-in to participate (Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27002, 2018). The automatic opting-in of the MRTMA led most municipalities to opt-out (Yaskewich, 2022).

The Michigan Cannabis Industry Today

Per the Michigan Cannabis Regulatory Agency (CRA) December 2023 statistical report, 1370 municipalities opted-out of the MRTMA while 138 opted-in. Yaskewich (2022) further provided that Michigan localities have to opt-out of allowing MRBs into their community. This contrasts with the previous Michigan medical marijuana legislation, where communities had to opt-in to allow MRBs to enter (Yaskewich, 2022). It appears that many Michigan municipalities, 92% of respondents, do not want to be touched by the cannabis industry (CRA, 2023).

Another obstacle facing Michigan MRBs is stigma. Common reasons for local communities opting-out of the MRTMA are the fear of increased criminal activity, decreased property values, tarnished community image, and increased liability for federal charges (Kavousi et al., 2021; Raczkowski, 2020). Michiganders are widely hesitant to allow cannabusinesses from opening up shop in their communities, largely due to the previously listed concerns. The state of Michigan allowing each municipality to opt-out of the MRTMA may create disruptions in MRB supply chains.

Alongside public opposition to the legalization of recreational cannabis, an insufficient number of cannabis testing centers is another challenge that Michigan cannabusinesses face (Knudson & Miller, 2020). The state of Michigan requires all cannabis products to be tested in an independent laboratory before being sold to consumers. Since there are a limited amount of testing facilities available, introducing new cannabis products may take several weeks. Along with insufficient testing centers, Michigan MRBs face high standards for product testing.

The state of Michigan has enacted relatively stringent safety protocols for cannabis products. Stewart et al. (2023) praised Michigan for maintaining high consumer safety standards, such as requiring biweekly facility testing and prohibiting non-approved FDA inhalants in products. Michigan law requires all MRBs to test their products before being sold (CRA, n.d.). Limited cannabis product testing facilities combined with considerable testing standards may stifle Michigan MRBs.

Moyer and Sungu-Eryilmaz (2023) summarized the main points over which localities have authority. Michigan localities may decide what products and services MRBs may produce, where consumption may take place, control MRBs' hours of operation, as well as prevent the establishment of MRBs near schools, places of worship, hospitals, veterans, military facilities, and charities (Moyer & Sungu-Eryilmaz, 2023). These regulations are similar to those imposed on the sale of alcohol, which shows that Michigan is more forward-thinking about cannabis. The location limitations placed on MRBs may lead to many cannabusinesses being vertically integrated.

Vertical Integration

Knudson and Miller (2020) describe Michigan as having some growing pains arising since the state's legalization of recreational adult-use cannabis in 2018. Local communities' opposition to MRBs is one of the greatest challenges facing entrepreneurs in the cannabis industry (Knudson & Miller, 2020). Localities being able to opt-out of allowing commercial recreational cannabis facilities stifles cannabusinesses supply chains. Limiting the growth of cannabis facilities may also be causing the limited amount of testing facilities available.

One common aspect among cannabusinesses is that they tend to be vertically integrated. Rehmann (2023) surveyed Michigan cannabusinesses, finding that almost half the participants were vertically integrated. Knudson and Miller (2020) observed that Michigander municipality ordinances may be forcing vertical integration among MRBs. Luckily, Michigan allows MRBs to "stack" their cannabusiness licenses which allows them to have a vertically integrated supply chain (CRA, n.d.).

Cannabusinesses who choose not to obtain sufficient licensure are part of the illicit market. Taylor et al. (2023) argues that the barriers to entry for the cannabis industry de-incentivize "legacy" MRBs from participating in the legal markets. Barriers to entry commonly found in the cannabis industry include costly annual licensing costs, multiple rates of cannabis taxation, and increased surveillance of financial activity.

Michigan Cannabis Banking

The market for ownership of MRBs in Michigan coincides with other states. Kavousi (2021) explains that successful owners of cannabusinesses tend to be strategic and solvent. Demographic information provided by the Michigan Cannabis Regulatory Agency (MCRA) provides that MRBs are mostly owned by White males with Bachelor's degrees

and a household income of \$200,000 or more (MRCA, 2023). Because the cannabis industry is relatively inaccessible compared to others, it weeds out those who need equity or debt.

Despite the risk of losing federal deposit insurance, many of Michigan's financial institutions are lending a hand to MRBs. According to MICPA (n.d.-a), imposing high fees and interest is how Michigan's financial institutions have mitigated the increased risk of dealing with the federally illicit industry. Michiganders wishing to operate a MRB at least have some access to a bank or credit union, just at a higher cost than most everyone else.

It may be that Michigan financial institutions, especially credit unions, are more keen in working with legally compliant Michigan MRBs. The Cannabis Regulatory Agency of Michigan lists the following financial institutions who service MRBs: Community Choice Credit Union, G.W. Jones Exchange Bank, Highpoint Community Bank, Union Bank, and Wildfire Credit Union (CRA, n.d.). All of these institutions are solely within Michigan, which may be a way of limiting civil and criminal liability. In 2023, MRBs were still limited to fewer financial institutions than most other businesses (Michigan Department of Attorney General, 2023).

Due to the lack of financial institutions willing to serve MRBs, many cannabusinesses have to operate exclusively with cash. Lashley and Pollock (2020) considered the challenges MRBs face when operating a business in cash: Having to pay employees in cash and conducting business without a bank account. Most financial institutions refuse to service MRBs due to cannabis's designation as a Schedule I controlled substance. Conducting a cash-heavy business brings risks to businesses, which is why many are eliminating cash payments completely.

Heightened levels of cash within the cannabis industry leads to more extensive administrative procedures, for internal control and to adhere to state requirements. MICPA (n.d.-a) recommended that Michigan MRB owners keep sufficient and appropriate documentation of cash, as it is necessary in the preparation of Annual Financial Statements (AFS). Preparation of AFS is furthermore necessary to obtain annual licensure in the state of Michigan, thereby without appropriate and sufficient documentation of cash, a MRB may be shut down (MICPA, n.d.-a). Michigan is seemingly fair in establishing cannabis regulations that appease both proponents and opponents of the substance.

Michigan Taxation of Cannabis

Michigan MRBs pay their dues. Approximately 75% of surveyed MRBs in Michigan have reported a tax-effective rate on their gross profit between 31-40% (Rehmann, 2023). Considering the majority of these MRBs are C-corporations, their tax rate would normally be 21%. When examining Michigander MRBs, it is revealed that they have a larger-than-average effective tax rate.

The state of Michigan has also been friendly to cannabusinesses as they have introduced numerous pro-MRB legislation. The Michigan Institute of Certified Public Accountants (MICPA, n.d.-a) stated that licensed Michigan MRBs may deduct ordinary business expenses when com-

puting their state income tax liability. The MRTMA delineates from IRC Section 280E by giving Michigan MRBs an opportunity to deduct their expenses at State level. Michigan has imposed cannabis excise taxes as well.

Hansen et al. (2020) stated that most legalized recreational adult-use cannabis states use an ad valorem tax on the product's retail price. The MRTMA allows Michigan MRBs to sell at an inclusive price by including the State's 10% cannabis excise tax (Michigan Department of Treasury, 2020). Allowing Michigan MRBs to pass the State's sales tax onto consumers is beneficial to Michigan's cannabis industry growth. Despite Michigan's attempts at easing MRB's obstacles, the Federal government maintains an ongoing battle against cannabis.

United States Cannabis is an Intrastate Industry

Mikos (2021) called the U.S. cannabis industry "intrastate." The U.S. cannabis industry may be accurately referred to as intrastate because cannabis is one of the few goods that is entirely synthesized in one state (Mikos, 2021). Interstate commerce of cannabis is not practiced; therefore, cannabis remains within its state of origin (Mikos, 2021). Regulations of the U.S. cannabis industry are furthermore divided up among states' inner governments.

California, being one of the first in the U.S. to legalize the recreational adult-use of cannabis, is one of the best states to study when examining the results of MRB laws and regulations. Taylor et al. (2023) interviewed Medicino, California legacy farmers who complained of the state and local licensing costs amounting to \$100,000 annually. Owners of MRBs share how the cost of operating a legal cannabusiness deters legacy farmers from legally operating. Expensive licensing fees are just one more hurdle U.S. MRBs face in the cannabis industry.

Allowing smaller jurisdictions to create their own regulations regarding cannabis has led to complex legal hurdles for U.S. MRBs to jump through. Kavousi et al. (2021) attested that many Californian MRBs have experienced obscure and conflicting municipal laws, deterring entrance from legacy growers. Complex legal hurdles may have contributed to approximately 80% of 2020 U.S. cannabis sales being illegal (Leff, 2021). The intrastate cannabis approach has not eliminated illicit sales of cannabis.

Unlikely MRBs

Aiding and abetting also means doing business with an MRB. Newell (2021) stated that any entity, no matter the percentage of income derived from the cannabis industry, may be considered an MRB. Just because a business is not directly producing cannabis, does not mean the business may avoid liabilities that dispensaries or growers may face (Newell, 2021). Newell (2021) painted a series of scenarios illustrating the complexities arising from associating with an MRB.

A specialist assisting an MRB in any way may be implicated. Newell (2021) illustrated a landscaping company in Maine that performed a job to plant cannabis for cannabis cultivators and how the landscaper's involvement would

most likely be deemed an MRB. Newell (2021) analyzed this transaction and determined that the landscaper most likely was aware they were planting cannabis, which constitutes aiding and abetting an MRB. Aiding and abetting an MRB thereby implicates the landscaping business and it may also be considered a MRB.

Let landlords beware, as providing a facility for an MRB constitutes aiding an MRB. Newell (2021) draws an interesting illustration where an Illinois landlord becomes criminally liable for renting their space to cannabis cultivators. Under the CSA, it is illegal to rent a space, with or without payment, for the production or manufacture of illicit substances (Newell, 2021). Any entity that touches an MRB may become an MRB; an additional curveball to the cannabis industry.

Michigan MRBs' Access to Certified Public Accountant (CPA) Services

Most business owners consult with an accountant, or CPA, when seeking business, accounting, and financial wisdom. CPAs are especially helpful when considering entity formation, as seen in *Californians Helping to Alleviate Medical Problems (CHAMP) v. Comm'r* (128 T.C. 173) (Chiang et al., 2019). CHAMP claimed to have two separate businesses, caregiving and medical marijuana, in which the IRS disagreed, thereby preventing both businesses from deducting expenses (Chiang et al., 2019). The Tax Court ruled in CHAMP's favor, finding that CHAMP provided numerous other services, and that selling medical marijuana constituted a separate business activity.

Not all U.S. CPAs may serve MRBs. Chiang and Summers (2019) discussed that CPAs are obligated to have morality as professionals and asks if providing services to MRBs violates ethicality. Chiang and Summers (2019) concluded that CPAs should adhere to the regulations of their State Accountancy Boards, and to exercise extra caution when assisting MRBs due to the cannabis industry's complex regulations and complications. CPAs and other professionals should also consider an MRB's access to banking services, as some may only be able to pay for specialized services in cash.

United States MRBs and Banking

Accessibility to a financial institution is pertinent to a business's success (Merz & Riepe, 2021). In 2021, FinCEN reported 755 financial institutions across the U.S. serving the cannabis industry (FDIC, 2023). Not being able to access financial services limits opportunities for debt financing, as well as limiting access to bank accounts and debt. Despite some credit unions and banks taking a risk and serving MRBs, most do not.

Until the Federal government takes a stance on marijuana, there will be very limited banking access for MRBs. The SAFER Banking Act of 2023 is one legislation that Congress may pass which would encourage financial institutions to do business with MRBs (Michigan Department of Attorney General, 2023). The SAFER Banking Act of 2023 would eliminate criminal liability for assisting an MRB. In-

creasing financial institution access for U.S. MRBs is important in regard to cannabusiness's safety, security, and bottom line.

There are costs associated with businesses carrying large amounts of cash. Raczowski (2020) explained that cash-heavy businesses face increased administrative costs, increased risk of theft, as well as heightened chances of extortion. MRBs, if enabled, would most likely follow the mainstream trend of going cashless to circumvent these potentially costly risks. Financial institutions also recognize the risk of cash-heavy business dealings.

Providing financial services to MRBs is illegal, and also incurs additional costs to financial institutions. The Money Laundering Control Act requires that financial institutions monitor and report suspected illegal activity through the use of Suspicious Activity Reports (SARs) (Merz & Riepe, 2021; Plakias et al., 2021). FinCEN imposing additional paperwork and policies may dissuade financial institutions from wanting to serve MRBs. Aside from filing SARs on the entity, financial institutions are also required to survey employees of MRBs.

All entities touching an MRB become scrutinized, as can be seen for the employees of MRBs. Plakias et al. (2021) states that once a financial institution becomes aware of a customer's employment at an MRB, the institution must file SARs because their income originates from trafficking a controlled substance. The increased level of surveillance that comes along with being an employee of an MRB does not assist in the recruitment and retention of employees—a vital aspect to a prosperous business. Financial institutions are required to increase their rate of surveillance when they come across entities within the cannabis industry.

Many MRBs have been forced to pursue nontraditional funding as a way to finance their business. Merz and Riepe (2021) discovered that the primary funding source for MRBs is internal funding. This may be a reason why Michigan's MRB owner demographic is White males with higher than average household income. Limited access to banks limits the amount of people able to operate a MRB.

Many businesses rely on lines of credit from their financial institution. Merz and Riepe (2021) reported that approximately 20% of MRBs have lines of credit at financial institutions, and furthermore, approximately 10% have access to bank loans. The lack of financial institutions willing to lend credit and debt to MRBs leaves many cannabusinesses from obtaining sufficient funding. Though many institutions abstain from lending to MRBs, they would most likely economically benefit from banking with cannabusiness.

Plakias et al. (2021) argued that the cannabis industry would positively affect the banking industry. The financial sector may benefit from MRB deposits, increasing the banks' lending abilities (Plakias et al., 2021). As the cannabis industry shows billions in annual sales, other industries, like the financial sector, are missing out in cannabis's growth. Since MRBs are limited in their options for debt financing, they may try to obtain equity financing.

MRBs and Equity Financing

Current legislation also prohibits equity investment in MRBs. Newell, 2021 discusses a bankruptcy case, *In re Malul*, where Malul invested \$50,000 in Heartland Givers, LLC, an MRB. Malul had a noncontrolling interest with no voting rights, but courts found Heartland illegal all-around and that no equity existed (*In re Malul*, 614 B.R. 699, 2020; Newell, 2021). Large and prosperous businesses rely on equity and debt to finance their operations—both of these methods of financing are prohibited in regard to MRBs.

MRB owners cannot expect to be listed on the S&P 500 anytime soon. As Baek (2021) stated, there exists many small-cap MRBs because larger entities are fearful of being charged and their assets being seized by the federal government. Cannabis being federally illegal discourages many large entities from investing in MRBs because of the federal government's ability to cease operations. If dealing with cannabusinesses became less risky, the industry may operate similarly to the alcohol industry.

Many businesses in the U.S. seek financing through government initiative programs. According to Ritchie-Baum et al. (2023), cannabusinesses are not allowed to use the U.S. Small Business Administration (SBA). The U.S. Small Business Administration aims to provide relatively lower interest rates (Merz & Riepe, 2021). U.S. MRBs are left with minimal financing options as many commonly used and accessible financing sources are only for federally legal businesses.

Suggested Amendments

Proposed Federal Taxation

There are a couple of federal taxation methods that may be applied to cannabis. Kahn and Bromberg (2020) argued a single rate excise tax on product weight is a more useful taxation method than Section 280E. Excise taxes may act as sin taxes as they are commonly used to decrease the quantity consumed of other vices, such as tobacco and alcohol. Section 280E has succeeded in limiting the amount of U.S. licensed MRBs, but it has not stopped illicit cannabis markets.

Hansen et al. (2020) advocated for the use of a potency tax on cannabis products. Hansen et al. (2020) found that imposing an ad valorem tax upon Tetrahydrocannabinol (THC) concentration may serve as a pigouvian tax. The THC tax would work as a pigouvian tax by discouraging the demand for highly concentrated cannabis products. A tax on THC potency would decrease consumption of highly concentrated cannabis products instead of penalizing legally operating cannabusinesses, as Section 280E does.

Section 280E fails to make sense in the 21st century as U.S. states are legalizing the recreational use of marijuana. Unintended consequences such as promoting illegal cannabis markets while penalizing legally operating MRBs shows the ineffectiveness of this legislation. Section 280E causes increased costs through the disallowance of business deductions, thereby encouraging legacy growers and cannabis customers to operate and consume illegally. The

dissolution of Section 280E may encourage increased legal cannabis activity where the government is thereby able to collect tax revenues.

Proposed Federal Legislation

Proposing legislation is one way of resolving the inequities in the cannabis industry. One example is the STATES Act bill, proposing to limit regulations and criminal prosecution for assisting MRBs (STATES Act, STATES (Strengthening the Tenth Amendment Through Entrusting States) Act, H.R.2903, 2020). Baek (2021) discussed that the STATES Act would not deschedule cannabis from the CSA, but participating in the cannabis industry and adhering to relevant state and local laws would be recognized as a lawful activity. Another proposed solution for the cannabis industry is the MORE Act.

Baek (2021) compared the actions of the cannabis MORE Act to the legalization of alcohol provided by the 21st Amendment. The MORE Act decriminalizes cannabis and removes it from the CSA's Schedule (MORE Act, MORE (Marijuana Opportunity Reinvestment and Expungement) Act, H.R. 3617, 2022). The 21st Amendment decriminalizing alcohol led to interstate commerce of the substance, and it is predicted that federal legalization of cannabis would do the same. One cannabis industry aspect alcohol never experienced was being part of the CSA.

The SAFE Banking Act of 2023 is currently a proposed bill. The SAFE Banking Act of 2023 would permit financial institutions to lend to state-sanctioned MRBs (SAFE Banking Act, SAFE (Secure and Fair Enforcement) Banking Act of 2023, H.R. 2891, 2023). Specifically, the Safe Banking Act ensures financial institutions do not lose federal deposit insurance when working with MRBs (SAFE Banking Act, SAFE (Secure and Fair Enforcement) Banking Act of 2023, H.R. 2891, 2023). The SAFE Banking Act of 2023 is similar to many other proposed cannabis legislation.

Chiang and Summers (2019) stated that the cannabis industry will face unique challenges until further notice. The U.S. cannabis industry will experience inconsistency until Congress legalizes cannabis, or removes it from the CSA, or if the Internal Revenue Code amends Section 280E (Chiang et al., 2019). Because the Federal government has superior authority, lending institutions, credit card companies, and investors will remain wary of the cannabis industry until its federal legalization. The literature reviews the legalization of alcohol as it, too, once was an illicit substance.

Comparing the Cannabis and Alcohol Industries

Both the alcohol and cannabis industries have experienced public and political backlash. Baek (2021) stated that during the Temperance Movement in the 1800s, alcohol was negatively personified. The negative personification of alcohol led to prohibition of alcohol; the CSA and Section 280E are of a similar tale within the cannabis industry. Observing the passage of the 21st Amendment, which legalized alcohol, may provide answers for the federal legalization of marijuana.

Alcohol's legalization began similarly to cannabis. The 21st Amendment granted U.S. states authority regarding alcohol laws and regulations (Baek, 2021). Baek (2021) recognized that both the cannabis and alcohol industries were initially at the mercy of the states. The federal legalization of alcohol brought changes to the alcohol industry.

Legalizing alcohol enticed large investments into the industry. Baek (2021) explained that the alcohol industry became dominated by larger firms while driving out smaller ones once the 21st Amendment was passed. Large firms bear more risk than smaller firms causing small-cap businesses to exist in federally illegal markets (Baek, 2021). Since smaller firms have fewer assets and prominence in the market, they are less likely to have their assets seized for participating in a federally illicit market (Baek, 2021).

Future Research

The DEA and DOJ are proposing that cannabis be rescheduled from a Schedule I to a Schedule III controlled substance (DOJ, 2024). The proposed rescheduling is a result of the Department of Health and Human Services (HHS) recommending the DEA to reschedule cannabis as Schedule III in 2023 (DOJ, 2024). HHS reevaluated cannabis's schedule within the CSA per President Biden's request, and found that cannabis has a lower potential for abuse than other Schedule I and II substances; cannabis has a currently accepted medical use (CAMU); and that cannabis use may lead to a low to moderate physical dependence and a high psychological dependence (DOJ, 2024). The DEA's careful rulemaking process concerning the rescheduling of cannabis may not produce immediate impacts on the U.S. cannabis industry (Lampe, 2024).

One immediate change that may be bestowed upon legally operating U.S. cannabusinesses is their ability to deduct business expenses (Lampe, 2024). IRS Section 280E prohibits businesses associated with Schedule I and II controlled substances from deducting business expenses, not Schedules III-V (Lampe, 2024). Therefore, rescheduling cannabis from Schedule I to Schedule III would allow legally operating Michigan cannabusinesses to begin deducting business expenses, thereby decreasing their federal income tax liability. The DEA's rulemaking process will determine what specific actions the rescheduling of cannabis will initiate for the U.S. cannabis industry (Lampe, 2024).

Conclusion

IRC Section 280E poses several difficulties for MRBs. Section 280E was formed shortly after the enactment of the CSA, both were products during the War on Drugs in the 1980s. The CSA and Section 280E are meant to deter illegal cannabis markets from growing. The federal government's scheduling of cannabis as the most dangerous and addictive illicit substance haunts MRBs today.

Section 280E arguably does the opposite of its original intention. By disallowing normally deductible business expenses, illegal businesses are not enticed to join the legal market. Section 280E's burden on legal MRBs is not appealing to legacy farmers who have been operating illegally for years. Michigan, however, has enacted some cannabis legislation in favor of MRBs.

Michigan has enacted pro-MRB legislation since the legalization of recreational use in 2018. Michigan allows MRBs to sell their products at an inclusive price; Michigan MRBs may deduct business expenses when computing their state income tax liability; CPAs may work with legal cannabusinesses; and many Michigan financial institutions are risking federal prosecution in order to serve Michigan MRBs.

There are several proposed solutions for solving the problems the U.S. cannabis industry faces. The most taxing issue for MRBs is the CSA's Schedule I designation of cannabis, thereby making cannabis an illicit controlled substance. Section 280E only addresses Schedule I and Schedule II controlled substances. If cannabis were taken off the CSA's schedule, cannabis would most likely flourish, similar to how the alcohol industry flourished after the 21st Amendment.

The FDA's acceptance of marijuana as a medicine is necessary in increasing access to the cannabis industry. The National Institute on Drug Abuse (NIDA) Drug Supply Program is one of few Federally approved cannabis testing facilities (FDA, 2023). Researching a controlled substance requires extensive bureaucratic foot work, such as having the designated facility approved by the DEA (FDA, 2023). If more cannabis research were conducted, it would be better understood, and better legislation may be enacted.

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