

LEGAL UPDATES

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Supreme Court Declines to Hear Challenge to IRS Enforcement of Cannabis Tax Rules

On June 21, 2021, the U. S. Supreme Court declined to hear *Eric D. Speidell, et al., Petitioners v. United States*, which sought to overturn the Tenth Circuit Court of Appeals' 2020 opinion on *Speidell v. United States*. In that case, the Tenth Circuit rejected the argument of several Colorado medical marijuana dispensaries that the Internal Revenue Service (IRS) does not have authority to investigate whether a taxpayer is dealing in controlled substances. Because the Supreme Court declined to hear the case, the Tenth Circuit ruling stands, and taxpayers can reasonably expect courts across the country to reach similar results as the Tenth Circuit did. Marijuana-related businesses can expect the IRS to continue aggressively enforcing Section 280E of the Internal Revenue Code.

Section 280E limits most deductions of expenses for business dealing in federally-defined controlled substances. The petitioners in *Speidell* argued that determining whether something constitutes a controlled substance is a quasi-criminal function and outside the IRS's examination authority. The Tenth Circuit rejected this argument, holding that investigations related to Section 280E were within the IRS's authority. In May, the Biden administration opposed the petitioners' request for Supreme Court review, signaling the IRS's intent to continue aggressively enforcing Section 280E.

What this means to you

While the *Speidell* petition was viewed as unlikely to succeed by most commentators, the Supreme Court's decision not to hear the case means that judicial relief from Section 280E is unlikely to come any time soon. Any change in tax law related to marijuana businesses will likely have to be legislative.

Contact us

Marijuana businesses that have questions about Section 280E or a pending IRS investigation should contact their tax advisors or members of Husch Blackwell's Cannabis or Tax teams.