

## Other Marijuana Tax Arguments in Court

We previously wrote an article about a Tax Court case involving marijuana and the denial of expenses other than Cost of Goods Sold. It was ruled in favor of IRS as similar cases. It's as if the taxpayers expect different results regarding an issue that has been settled many times.

Following are different arguments taxpayers have tried in Court for getting their expenses through AND failed. We did not discuss any of the details here, but they can be found in the cases.

- 1) IRS lacks the authority to apply Section 280E until a conviction of conducting an illegal activity exists. Argument denied by Court of Appeals. (Alpenglow Botanicals LLC., Tenth Circuit Court of Appeals, 17-1223, July 3, 2018)
- 2) Section 280E violated the 16<sup>th</sup> Amendment's definition of "gross income". Argument denied by Court of Appeals. (Alpenglow)
- 3) Section 280E was an excess fine that violated the 8<sup>th</sup> Amendment. Argument denied by Court of Appeals. (Alpenglow)
- 4) Wages paid are taxable and denying them under Section 280E results in double taxation since the taxpayers also have to pay tax on the S corporation's net income. Denied by Tax Court. (Jesse M. & Desa C. Loughman, TC Memo 2018-85)

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