



STATE OF CALIFORNIA
Franchise Tax Board

Commercial Cannabis Activity: Personal Income Tax Law – Business Expenses Report

Economic and Statistical Research Bureau

Commercial Cannabis Activity: Personal Income Tax Law – Business Expenses Report

This report is intended to fulfill the Franchise Tax Board's obligation under Assembly Bill 37 (Chapter 792, Statutes of 2019) which added Revenue and Taxation Code Section 17209 and included language that the Franchise Tax Board shall annually report to the Legislature by July 31, the number and total dollar amount of deductions and credits claimed under this section for the most recent calendar year in which either the deductions or credits are allowed.

Prepared by the Staff of the
Franchise Tax Board
STATE OF CALIFORNIA

Members of the Board:
Betty T. Yee, Chair
Malia M. Cohen, Member
Keely Bosler, Member

Executive Officer: Selvi Stanislaus

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Background

In 2016, Proposition 64 was approved by California voters. This proposition legalized commercial adult-use of cannabis and imposed two specific taxes on cannabis, an excise tax to be paid by the consumer and a stepped cultivation tax to be paid by the grower/cultivator.

Under federal law (Internal Revenue Code (IRC) Section 280E), taxpayers in the cannabis industry may not deduct business expenses or claim credits for activities related to a controlled substance. Under California Corporation Law, taxpayers engaged in cannabis activities have been able to claim deductions and credits for state income tax purposes since the adoption of Proposition 64.

Prior to the passage of AB 37 (Chapter 792, Statutes of 2019, effective for tax year 2020), California Personal Income Tax Law (PITL) conformed to IRC 280E. As a result, businesses such as sole proprietorships or partnerships, were unable to deduct ordinary and necessary business expenses.

With the passage of AB 37, California PITL allowed sole proprietorships and partnerships to claim credits and deductions for business expenses paid or incurred during the taxable year in carrying on commercial cannabis activity. This provision of California law is operative for taxable years beginning on or after January 1, 2020, and before January 1, 2025.

The intent of this law is to provide tax equity to the cannabis industry and allow commercial cannabis licensees, reporting under the Personal Income Tax code, to claim deductions and credits available to other legal businesses in the state.

Franchise Tax Board Statutory Reporting Requirements

Under Chapter 792 of the Statutes of 2019 (AB 37), the Franchise Tax Board (FTB) is required to provide an annual report to the Legislature, on or before July 31, in which either the deductions or credits are allowed. The Franchise Tax Board shall have the following reporting requirements:

- The number of deductions and credits claimed pursuant to Section 17209 of the Revenue and Taxation Code (RTC).
- The total dollar amount of deductions and credits claimed pursuant to Section 17209 of the RTC.

Data

Beginning on or after January 1, 2020, taxpayers operating or holding an interest in a business operating a commercial cannabis activity licensed under the California Medicinal and Adult Use Cannabis Regulation and Safety Act are required to report the total amount of deductions or credits paid or incurred during the taxable year (under RTC Section 17209) for the cannabis activity. The FTB created an information reporting form, FTB 4197, to capture the performance metrics identified by the Legislature.

At the time of the July 31, 2021 report, the number of 2020 taxable year returns reporting data on cannabis activities was too small to be reported under state taxpayer privacy rules. Based on FTB tax return data processed as of April 2022, the number of tax year 2020 returns is still below the threshold and cannot be disclosed.

Return data is still being processed for the 2021 taxable year. Based on data processed as of April 2022:

- Forty-four (44) personal income tax returns included form 4197 and indicated they were reporting cannabis activities.
- No deductions or credits were provided by taxpayers who enclosed the form 4197.

Information processed to date shows very few of these forms have been filed. One possible reason is that taxpayers may not all be aware of the existence of the form. FTB is undertaking efforts to improve taxpayer awareness of the existence, purpose, and correct usage of form 4197.

Please visit FTB's website for income tax information on the [Cannabis Industry](#).