the buzz: court rips

Cannabis News & Policy Update: Special Edition for June 2025

COURT RULES §280E PROHIBITS ERC CREDITS

On May 9th, the U.S. District Court for the Western District of Washington held that IRC § 280E prohibits a cannabis company from obtaining a refund for Covid Era Employee Retention Credits (ERC). This case is important because it is the first case where a court has addressed the application of IRC § 280E to ERC.

The arguments of the parties were straightforward. After the taxpayer filed a refund claim for employment taxes, the government filed a motion to dismiss based, in part, on an argument that IRC § 280E's plain language prohibits any and all tax credits for businesses trafficking in controlled substances, including ERC tax credits. The taxpayer argued that IRC § 280E's application is restricted to income taxes because it is located in subtitle A, citing a Tax Court Memorandum opinion.

The court agreed with the government, stating "[n]othing in the plain text of Section 280E limits its application to income tax credits, citing IRC § 7806(b) (providing "No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title").

The case is: Receivership Estate of Solstice Group, Inc.; Solstice Holdings, Inc., C/O Turning Pointe, LLC, Receiver v. United States of America

Holland & Hart Observations

- *This is a Ninth Circuit case, and the Ninth Circuit common law cited in the briefs suggests that in the Ninth Circuit IRC § 7806(b) is strictly observed in that circuit. We have reviewed other circuit law which may give courts more discretion to take an Internal Revenue Code's location in the Code into account in interpreting a provision.*

- *The briefing focused on the legislative intent and public policy driving IRC § 280E and did not include a discussion of the competing legislative intent of the ERC provisions. This one-sided analysis may have been a missed opportunity for the taxpayer.*

- *The issue of whether IRC § 280E applies to state legal businesses after 2018 is currently being litigated (See New Mexico Top Organics, Inc. v. Comm'r, U.S. Tax Court Dkt. No. 19661-24). If Top Organics is successful, the court's order in Solstice Holdings may need to be revisited.*

FEDERAL APPEALS COURT REJECTS CANNABIS INDUSTRY'S CONSTITUTIONAL CHALLENGE TO CONTROLLEDSUBSTANCES ACT

On May 27th, the US Court of Appeals for the First Circuit rejected all of Canna Provisions' arguments that the Controlled Substances Act. 21 U.S.C. § 801 et seq. ("CSA"), is unconstitutional as applied to cannabis businesses operating in compliance with their state laws. The case is yet another example of courts holding the line on the application of the CSA to state-legal cannabis businesses.

In this lawsuit, Canna Provisions and three other cannabis businesses (collectively Canna Provisions) attempted to overturn Gonzalez v Raich, a 2005 decision of the US Supreme Court. There, the Court found that Congress has a rational basis for concluding that the CSA's criminalization of personal medical use marijuana was an essential part of a larger regulatory scheme, and that even purely intrastate conduct could substantially affect interstate commerce under the Commerce Clause.

Canna Provisions argued their conduct (cultivating, manufacturing, and distributing marijuana in Massachusetts) was purely "intrastate," and that Congress had all but abandoned its goal of controlling interstate commerce of marijuana, and that federal regulation of marijuana was no longer a part of the CSA's larger regulatory scheme.

The Appeals court agreed with the lower court's dismissal of the case, finding it was bound by Raich, and Canna Provisions' "larger scale, commercial activities" would substantially affect interstate commerce. The Court noted that while Raich dealt with non-commercial activity, the Supreme Court found even the personal use of marijuana would have a substantial impact on interstate commerce. Because Canna Provisions' request for a "nationwide exemption" to the CSA was much broader in scope than the exemption for personal use of marijuana sought in Raich, the First Circuit held "the appellants have not plausibly alleged" that the CSA, "as applied, exceeds Congress's authority".

The First Circuit found that Canna Provisions also did not "plausibly allege" the CSA's prohibition on "the intrastate cultivation, manufacture, possession, and distribution of marijuana pursuant to state law" violates the 5th Amendment (Due Process clause) of the US Constitution.

Holland & Hart Observations

- *Canna Provisions has always contended this case is destined for the Supreme Court. But, if the Supreme Court denies certiorari, it's over.*

- *Some cannabis businesses may have staked IRC § 280E refund claims solely on a hoped-for outcome in the Canna Provisions case, so the eventual outcome will be relevant to whether those refund claims ultimately succeed.*

The case is: Canna Provisions, Inc. et al vs. Bondi, 24-1628 (1st Cir. 2025)