

SENATE No. 1828

The Commonwealth of Massachusetts

PRESENTED BY:

Brendan P. Crighton

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act rescinding the discriminatory effect of IRC 280E on businesses legally selling marijuana.

PETITION OF:

NAME:

Brendan P. Crighton

DISTRICT/ADDRESS:

Third Essex

SENATE No. 1828

By Mr. Crighton, a petition (accompanied by bill, Senate, No. 1828) of Brendan P. Crighton for legislation to rescind the discriminatory effect of IRC 280E on businesses legally selling marijuana. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act rescinding the discriminatory effect of IRC 280E on businesses legally selling marijuana.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (d) of chapter 62 of the General Laws, as so appearing in the
2 2018 Official Edition, is hereby amended by adding the following paragraph:-

3 (4) An amount equal to the amount paid or incurred during the taxable year in carrying on
4 the trade or business of a marijuana establishment or a medical marijuana treatment center as
5 permitted by chapters 94G and 94I that would have been deductible under the Code, but for
6 section 280E of the Code.

7 SECTION 2. Section 30 of chapter 63 of the General Laws, as so appearing in the 2018
8 Official Edition, is hereby amended by striking out paragraph 4 and inserting in place thereof the
9 following paragraph:-

10 “Net income”, gross income less the deductions, but not credits, allowable under the
11 provisions of the Federal Internal Revenue Code, as amended and in effect for the taxable year;
12 provided, however, that any deduction otherwise allowable which is allocable, in whole or in

13 part, to one or more classes of income not included in a corporation's taxable net income, as
14 determined under subsection (a) of section thirty-eight, shall not be allowed. In the case of a
15 corporation exempt from taxation under section 501 of the Code, "net income" means unrelated
16 business taxable income, as defined in section 512 of the Code. In lieu of disallowing any
17 deduction allocable, in whole or in part, to dividends not included in a corporation's taxable net
18 income, five per cent of such dividends shall be includable therein, as provided in said
19 subsection (a) of said section thirty-eight. For purposes of this section and subsection (a) of
20 section 38, the term "dividend" shall include but not be limited to amounts included in federal
21 gross income pursuant to sections 951 and 951A of the Code. For purposes of this section, any
22 dividend received directly or indirectly from a real estate investment trust, as provided in
23 sections 856 to 859, inclusive, of the Code, for the taxable year of the trust in which a dividend is
24 paid, shall not be: (i) treated as a dividend; and (ii) included as part of the dividends received
25 deduction otherwise available to the taxpayer under paragraph (1) of subsection (a) of section 38.
26 Any dividend received directly or indirectly from a regulated investment company, as provided
27 in sections 851 to 855, inclusive, of the Code, shall not be included as part of the dividends
28 received deduction otherwise available under paragraph (1) of subsection (a) of section 38.

29 Deductions with respect to the following items, however, shall be allowed: --

30 (i) a deduction for that portion of wages or salaries paid or incurred for the taxable year
31 equal to the amount of the credit allowable for the taxable year under section fifty-one of the
32 Federal Internal Revenue Code and otherwise disallowed under section 280C of said Code.

33 (2) a deduction for any amount paid or incurred during the taxable year in carrying on the
34 trade or business of a marijuana establishment or a medical marijuana treatment center as

35 permitted by chapters 94G and 94I that would have been deductible under the Code, but for
36 section 280E of the Code.

37 Deductions with respect to the following items, however, shall not be allowed:—

38 (i) dividends received

39 (ii) Losses sustained in other taxable years, except for the net operating losses as
40 provided in paragraph five of this section.

41 (iii) taxes on or measured by income, franchise taxes measured by net income, franchise
42 taxes for the privilege of doing business and capital stock taxes imposed by any state.

43 (iv) the deduction allowed by section 168(k) of said Code.

44 (v) except as otherwise provided in section 31J, interest expense paid, accrued or asserted
45 in connection with a dividend of a note or similar obligation stating the requirement that such
46 interest is to be paid by the corporation that dividends such obligation to its shareholders.

47 (vi) the deduction allowed by section 199 of the Code.

48 (vii) the deduction described in section 163(e)(5) of the Code to the extent increased by
49 amendments to section 163(e)(5)(F) and section 163(i)(1) of the Code, inserted by section 1232
50 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

51 (viii) the deductions allowed by sections 245A, 250, and 965(c) of the Code.

52 SECTION 3. Sections 1 and 2 shall take effect for tax years beginning on or after January
53 1, 2021.