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AB-37 Personal income taxes: deductions: business expenses: commercial cannabis activity. (2019-2020)

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Assembly Bill No. 37

CHAPTER 792

An act to add and repeal Section 17209 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 37, Jones-Sawyer. Personal income taxes: deductions: business expenses: commercial cannabis activity.

Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities and authorizes persons to conduct specified commercial cannabis activities, as defined, in the state.

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. The Personal Income Tax Law conforms as of a specified date to federal income tax laws with respect to itemized deductions, including business deductions and items not deductible, except as specifically provided. The Corporation Tax Law does not conform to those federal income tax provisions, but specifically provides for deductions for purposes of that law.

Existing federal income tax laws disallow a deduction or credit for business expenses of a trade or business whose activities consist of trafficking specified controlled substances, including marijuana. The Personal Income Tax Law conforms to those federal income tax law provisions with respect to deductions.

This bill, for each taxable year beginning on or after January 1, 2020, and before January 1, 2025, would specifically provide in the Personal Income Tax Law for nonconformity to that federal law disallowing a deduction or credit for business expenses of a trade or business whose activities consist of trafficking specified controlled substances only for commercial cannabis activity, as defined under MAUCRSA, by a licensee under MAUCRSA, thus allowing deduction of business expenses paid or incurred during the taxable year in carrying on that commercial cannabis activity under the Personal Income Tax Law.

This bill would take effect immediately as a tax levy.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17209 is added to the Revenue and Taxation Code, to read:

17209. (a) For each taxable year beginning on or after January 1, 2020, and before January 1, 2025, Section 280E of the Internal Revenue Code, relating to expenditures in connection with the illegal sale of drugs, shall not apply to the carrying on of any trade or business that is commercial cannabis activity by a licensee.

(b) For purposes of this section, "commercial cannabis activity" and "licensee" shall have the same meanings as set forth in Division 10 (commencing with Section 26000) of the Business and Professions Code.

(c) This section shall remain in effect only until December 1, 2025, and as of that date is repealed.

SEC. 2. (a) It is the intent of the Legislature to apply the requirements of Section 41 of the Revenue and Taxation Code to this act.

(b) With respect to Section 17209 of the Revenue and Taxation Code, as added by this act, the Legislature finds and declares as follows:

(1) The objectives of this act are as follows:

(A) To provide tax equity to the cannabis industry.

(B) To exempt commercial cannabis activity by a licensee from Section 280E of the Internal Revenue Code, relating to expenditures in connection with the illegal sale of drugs, in order to allow cannabis businesses to claim deductions and credits available to other legal businesses in the state.

(C) To provide commercial cannabis licensees the ability to claim ordinary business deductions from taxable income in the same manner that other state businesses do for state purposes.

(D) To align the Personal Income Tax Law with the Corporation Tax Law in relation to deductions under Section 280E of the Internal Revenue Code.

(2) The performance indicators related to this act are as follows:

(A) The number of deductions and credits claimed pursuant to Section 17209 of the Revenue and Taxation Code.

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

(3) The Franchise Tax Board shall have the following data collection and reporting requirements:

(A) Collect data on the number of deductions and credits claimed pursuant to Section 17209 of the Revenue and Taxation Code.

(B) Collect data on the total dollar amount of deductions and credits claimed pursuant to Section 17209 of the Revenue and Taxation Code.

(c) The Franchise Tax Board shall provide the data required by this section in a report to the Legislature on or before July 31 of each calendar year in which either the deductions or credits are allowed. The report shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.