

Marijuana (Medical Only, Adult Use Only, Dual Licensee)

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In November of 2010, the Arizona Medical Marijuana Act was passed, which allowed for the opening of Nonprofit Medical Marijuana Dispensaries in the state of Arizona. Ten years later, Arizona voters approved Proposition 207, the resulting Smart and Safe Arizona Act paved the way for the opening of marijuana establishments that sell adult use marijuana.

There are different tax treatments and filing requirements depending on whether an entity holds a medical license, adult use license, or is a dual license. This publication will provide income tax filing guidance for these entities. For further information on licensing and registration or other aspects of marijuana in Arizona, please contact the Arizona Department of Health Services.

Medical Only Licensee

Entities approved as Nonprofit Medical Marijuana Dispensaries (NMMD) by the Arizona Department of Health Services are exempt from income tax per A.R.S. §43-1201(B).

All NMMD are required to file an Arizona Form 99M each year.

C Corporation

If an NMMD is organized as a C corporation or an LLC that elected to be treated as a C corporation for federal income tax purposes, only the Arizona Form 99M return is required to be filed for Arizona purposes.

*If an NMMD is treated as a C corporation and included in a federal consolidated group, the NMMD should be excluded from the consolidated group for Arizona purposes and instead only file a stand-alone Arizona Form 99M since it is exempt from Arizona state income tax.

Partnership

If an NMMD is organized as a partnership or an LLC treated as a partnership for federal income tax purposes, they are required to file an Arizona Form 165 (Arizona Partnership Income Tax Return) along with Arizona Form 99M.

*The partnership is not subject to tax at the partnership level, but the partners are taxable on their distributive share of the partnership income.

S Corporation

If an NMMD is organized as a S corporation or an LLC treated as a S corporation for federal income tax purposes,

it is required to file an Arizona Form 120S (Arizona S Corporation Income Tax Return) along with Arizona Form 99M.

*The S corporation is not subject to tax at the corporate level, but the shareholders are taxable on their distributive share of the S corporation income.

Disregarded LLC

If an NMMD is organized as a single-member LLC that is disregarded for federal income tax purposes, the LLC is required to file an Arizona Form 99M.

*For federal and Arizona purposes, the income of the disregarded LLC is included in the income tax return of the owner and is subject to income tax.

Sole Proprietorship

If an NMMD is organized as a sole proprietorship, the owner includes the income from the dispensary in their federal income tax return. Arizona's personal income tax return (Arizona Form 140) starts with the federal adjusted gross income from the federal return. However, on Arizona Form 140, the individual will be allowed a subtraction for the amount of income of the sole proprietorship dispensary that is included in the calculation of federal adjusted gross income.

*If an NMMD is registered with the Arizona Department of Health Services as anything other than a sole proprietorship, the subtraction will not apply.

*An NMMD organized as a sole proprietorship is also required to file an Arizona Form 99M.

Fiduciary

If an NMMD is organized as a trust, they are required to file an Arizona Form 141 (Arizona Fiduciary Income Tax Return) along with Arizona Form 99M.

*The trust is not subject to tax unless it includes income from sources other than the NMMD. The beneficiaries of the trust are taxable on their distributions.

Adult Use Only Licensee

A.R.S. § 43-108 allows marijuana establishments (at least for Arizona income tax purposes) to deduct their ordinary and necessary expenses.

C Corporation

If a marijuana establishment is organized as a C corporation

or an LLC that elected to be treated as a C corporation for federal income tax purposes, Arizona Form 120 (Arizona Corporation Income Tax Return) must be filed.

*All income earned is subject to Arizona state income tax.

*Expense subtractions are allowed under A.R.S. § 43-108.

Partnership

If a marijuana establishment is organized as a partnership or an LLC treated as a partnership for federal income tax purposes, it is required to file an Arizona Form 165 (Arizona Partnership Income Tax Return).

*The partnership is not subject to tax at the partnership level, but the partners are taxable on their distributive share of the partnership income.

*Expense subtractions are allowed under A.R.S. § 43-108.

S Corporation

If a marijuana establishment is organized as an S corporation or an LLC treated as an S corporation for federal income tax purposes, it is required to file an Arizona Form 120S (Arizona S Corporation Income Tax Return).

*There will probably not be any tax owed by the S corporation, but the shareholders are taxable on their distributive share of the S corporation income.

*Expense subtractions are allowed under A.R.S. § 43-108.

Disregarded LLC

If a marijuana establishment is organized as a single-member LLC that is disregarded for federal income tax purposes, the income from the LLC is reported on the owner's return. The LLC does not file a separate return.

-*Expense subtractions are allowed under A.R.S. § 43-108.

Sole Proprietorship

If a marijuana establishment is organized as a sole proprietorship, the owner includes the income from the dispensary in their federal income tax return. Arizona Form 140 (Arizona Individual Income Tax Return) starts with the federal adjusted gross income from the federal return, so the income from the marijuana establishment is taxable in Arizona.

* Expense subtractions are allowed under A.R.S. § 43-108.

Fiduciary

If a marijuana establishment is organized as a trust, they are required to file an Arizona Form 141 (Arizona Fiduciary Income Tax Return).

*The income from the marijuana establishment is taxable to both the trust and the beneficiaries who take distributions from the trust.

*Expense subtractions are allowed under A.R.S. § 43-108.

Dual Licensee

Per A.R.S. §36-2850: "Dual licensee" means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.

Dual licensees may make an election with the Arizona Department of Health Services, which will impact how their income tax returns are filed.

C Corporation

If a dual licensee is organized as a C corporation or an LLC that elected to be treated as a C corporation for federal income tax purposes and makes the taxable election with ADHS, they will file an Arizona Form 120 (Arizona Corporation Income Tax Return).

*All income earned is taxable.

*Expense subtractions under A.R.S. § 43-108 are allowed.

If a dual licensee is organized as a C corporation or an LLC that elected to be treated as a C corporation for federal income tax purposes and does not make the taxable election with ADHS, they will file both Arizona Form 120 and Arizona Form 99M.

*Income earned from the marijuana establishment portion is taxable and the income earned from the NMMD is subtracted.

*Expense subtractions under A.R.S. § 43-108 are not allowed.

Partnership

If a dual licensee is organized as a partnership or an LLC treated as a partnership for federal income tax purposes and makes a taxable election with ADHS, they will file an Arizona Form 165 (Arizona Partnership Income Tax Return).

*The partnership is not subject to tax at the partnership level, but the partners are taxable on their distributive share of the partnership income.

*Expense subtractions under A.R.S. § 43-108 are allowed.

- If a dual licensee is organized as a partnership or an LLC treated as a partnership for federal income tax purposes and does not make a taxable election with ADHS, they will file an Arizona Form 165 and Arizona Form 99M.

*The partnership is not subject to tax at the partnership level, but the partners are taxable on their distributive share of the partnership income.

*Expense subtractions under A.R.S. § 43-108 are not allowed.

S Corporation

If a dual licensee is organized as a S corporation or an LLC that elected to be treated as a S corporation for federal income tax purposes and makes the taxable election with ADHS, they will file an Arizona Form 120S (Arizona S Corporation Income Tax Return).

*There will probably not be any tax owed by the S corporation, but the shareholders are taxable on their distributive share of the S corporation income.

*Expense subtractions under A.R.S. § 43-108 are allowed.

If a dual licensee is organized as an S corporation or an LLC that elected to be treated as an S corporation for federal income tax purposes and does not make the taxable election with ADHS, they will file an Arizona Form 165 and Arizona Form 99M.

*There will probably not be any tax owed by the S corporation, but the shareholders are taxable on their distributive share of the S corporation income.

*Income from the NMMD is subtracted on the S corporation return.

*Expense subtractions under A.R.S. § 43-108 are not allowed.

Disregarded LLC

If a dual licensee is organized as a single-member LLC that is disregarded for federal income tax purposes and makes the taxable election with ADHS, the income from the LLC is reported on the owner's return. The LLC does not file a separate return.

*Expense subtractions are allowed under A.R.S. § 43-108.

-If a dual licensee is organized as a single-member LLC that is disregarded for federal income tax purposes and does not make the taxable election with ADHS, the income from the LLC is reported on the owner's return, and Arizona Form 99M is filed. The LLC does not file a separate return.

*Expense subtractions are not allowed under A.R.S. § 43-108.

Sole Proprietorship

If a dual licensee is organized as a sole proprietorship and makes the taxable election with ADHS, the owner includes all income in their federal income tax return. Arizona Form 140 (Arizona Individual Income Tax Return) starts with the federal adjusted gross income from the federal return, so all the income is taxable in Arizona.

*Expense subtractions are allowed under A.R.S. § 43-108.

If a dual licensee is organized as a sole proprietorship and does not make the taxable election with ADHS, the owner

includes all income in their federal income tax return. Arizona Form 140 (Arizona Individual Income Tax Return) starts with the federal adjusted gross income from the federal return, so all the income is taxable in Arizona. The owner must also file Arizona Form 99M.

*The income from the NMMD is subtracted.

*Expense subtractions are not allowed under A.R.S. § 43-108.

Fiduciary

If a dual licensee is organized as a trust and makes the taxable election with ADHS, they are required to file Arizona Form 141 (Arizona Fiduciary Income Tax Return).

*The income is taxable to both the trust and the beneficiaries who take distributions from the trust.

*Expense subtractions are allowed under A.R.S. § 43-108.

-If a dual licensee is organized as a trust, and does not make the taxable election with ADHS they are required to file an Arizona Form 141 and Arizona Form 99M.

*The income is taxable to both the trust and the beneficiaries who take distributions from the trust.

*The income from the NMMD that is not distributed is subtracted on Arizona Form 141.

*Expense subtractions are not allowed under A.R.S. § 43-108.

This publication is available in an alternative format upon request.