



NEW YORK STATE SENATOR

Jeremy A. Cooney

## Senator Cooney Introduces Tax Bill to Allow Licensed Cannabis Business Owners to Deduct Business Expenses

JEREMY A. COONEY December 10, 2021

| ISSUE: **SENATOR JEREMY COONEY, MARIJUANA REGULATION AND TAXATION ACT (MRTA), ADULT-USE CANNABIS LEGALIZATION, ROCHESTER**

**(ALBANY, NY) - Senator Jeremy Cooney (D-Rochester)** introduced legislation that will allow future NYS licensed adult-use cannabis businesses to deduct business expenses when filing state taxes. These deductions are standard for existing non-cannabis businesses across the state.

The recently enacted *Marijuana Regulation and Taxation Act* (MRTA) legalized recreational adult-use cannabis, and provides a structure to allow New York State (through the Office of Cannabis Management) to license proprietors to legally conduct business in this new industry. However, section 280E of the U.S. Internal Revenue Code prohibits these licensed businesses from making deductions or account for expenses that come with running a business, while filing state taxes. These restrictions result in taxing cannabis enterprises at a higher rate than businesses in other industries in New York. The higher than average taxes will create an unnecessary barrier to entry and discourage or disqualify equity candidates and legacy market participants from joining the new legal market.

Senate Bill [S.7518](#) will amend the state tax law to allow cannabis enterprises licensed by New York State to deduct ordinary and necessary business expenses. The legislation will provide tax equity to licensed businesses in the emerging industry and aims to prevent the new economy from being dominated by large corporations who can afford to pay the higher tax rates. This Bill was modeled after similar legislation in the State of California ([AB-37](#)), which passed in October of 2019.

**Senator Jeremy Cooney:**

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The MRTA was crafted with a focus on equity at all stages of implementation in the new recreational adult-use cannabis market. We must ensure that this focus includes licensing and taxation of these new businesses is top of mind while we create the foundations of this new sector of the economy. I am proud to sponsor legislation that will create a more equitable taxation system to allow more small business owners and entrepreneurs to participate in the new cannabis market.”

**Allan Gandelman, Executive Founder, NYCGPA:**

“The New York Cannabis Growers & Processors Association fully supports Senator Cooney’s efforts to correct this prohibitionist tax law. Amending section 280E of the Internal Revenue Code is a crucial step in achieving New York’s goal of creating a truly equitable, accessible and opportunistic cannabis industry for upstate farmers and locally-owned and family-owned businesses. Without this amendment, New York’s adult-use market could become dominated by large multi-state operators who can afford to pay the higher tax rates and business costs. In order for the state’s adult-use market to reach its full and true potential, New Yorkers need to be positioned to succeed in the legal market and the effective tax rates that cannabis businesses would currently face is a significant hindrance. There is much to be optimistic about for New York’s legal market, but we must continue to be accountable and do the necessary work to establish an industry that is reflective of our state and the goals set out in the MRTA.”

**Bob Duffy, President & CEO, Greater Rochester Chamber of Commerce:**

“If New York State hopes to be a leader in this emerging industry, we must acknowledge the reality: outrageous taxes will discourage entry and participation in the market, cause dollars to exit our State for more competitive opportunities, and lead to an exacerbated black market that poses real dangers for our communities. I applaud Senator Cooney for leading the effort to ensure New York encourages entrepreneurship, equity, and economic vitality by sponsoring this measure.”

**Anthony M. Gaddy, Co-Founder & President/CEO, Upstate NY Black Chamber of Commerce (A U.S. Black Chamber):**

“Financing and expenses should not create additional barriers for equity applicants, especially seeking to enter the cannabis industry, especially when considering how the failed ‘War on Drugs’ has already impacted the communities from which these new businesses will likely open. This new legislation will help these small businesses, especially Black-owned businesses, launch while also playing a pivotal role in helping equity applicants access this emerging economy.”

**Ken Pokalsky, Vice President, The Business Council of New York State:**

“The Business Council supports this legislation as cannabis businesses operating under New York State law should not be barred by the Internal Revenue Code from taking advantage of state-level business expense deductions that are available to all other businesses. These companies should have equal access to state tax credits that promote in-state investments and job creation.”

**Steven Phan, Co-founder of Come Back Daily and Chair, Retail Committee, NYCGPA:**

“For retail owners looking to break into the adult-use market, the potential effective tax rates we could deal with as a result of the 280E tax law, on top of the already-inflated rent and cost of doing business that exist in New York, could be a crippling hurdle for establishing a successful legal cannabis business. If the state truly wants to provide legacy market members, social equity applicants and diverse business owners with accessible opportunity in a legal market, Senator Cooney’s lead must be followed in amending this discriminatory law. If the cannabis industry is to be considered fully legitimate and legal in this state, it is absolutely imperative that this step be taken to lift yet another unfair barrier that will disproportionately phase out small business owners and individuals meant to be prioritized by the MRTA.”

**Glenna Colaprete, Owner, Glenna’s CBD & Spa:**

“We have seen the inability to write off plant touching activities as a significant part of the barrier to entry in other states. If we truly want social and economic equity then this important legislation is paramount in order to help ensure this, especially for social equity applicants.”

**Kristin Jordan, CEO of Park Jordan, & the Founder and President of the Board of Directors of Asian Cannabis Roundtable:**

"We have seen how taxation, as it stands in the cannabis market, ultimately creates inequity, stifles small business and props up the illicit market. This legislation allowing businesses to deduct expenses with the state is key to not only ensuring economic equity but that New York becomes synonymous with thriving entrepreneurship"

**Lauren Rudick, Partner/Co-Founder, Cannabis Law Practice at Hiller PC:**

“Senator Cooney’s proposed amendment of this tax law is imperative to pushing forward New York’s key goals for its legal cannabis industry, particularly with regard to its goal of awarding 50% of cannabis business licenses to businesses which qualify as social and economic equity applicants. Priority in licensing, however, means nothing if the business cannot be profitable, and 280E is a direct hindrance in profitability. Section 280E of the Internal Revenue Code directly contradicts the MRTA’s vision of establishing an equitable and accessible adult-use market in New York. The existing tax laws stigmatize a

completely legal industry and ostracize those the MRTA was designed to benefit, all while opening the door for large multi-state operators to swoop in and take on the costs small New York-owned businesses otherwise could not afford.”

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#### RELATED LEGISLATION

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### 2021-S7518

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- Introduced
  
- - In Committee Assembly
  - In Committee Senate
  
- - On Floor Calendar Assembly
  - On Floor Calendar Senate
  
- - Passed Assembly
  - Passed Senate
  
- Delivered to Governor
  
- Signed By Governor
  
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[Permits deductions for commercial cannabis activity](#)

November 12, 2021

In Senate Committee [Rules](#)

Sponsored by [Jeremy A. Cooney](#)

Do you support this bill?