



STATE OF CALIFORNIA  
**Franchise Tax Board**

# Commercial Cannabis Activity: Personal Income Tax Law – Business Expenses Report

Economic and Statistical Research Bureau

# Commercial Cannabis Activity: Personal Income Tax Law – Business Expenses Report

This report is intended to fulfill the Franchise Tax Board's obligation under Assembly Bill 37 (Chapter 792, Statutes of 2019) which added Revenue and Taxation Code Section 17209 and included language that the Franchise Tax Board shall annually report to the Legislature by July 31, the number and total dollar amount of deductions and credits claimed under this section for the most recent calendar year in which either the deductions or credits are allowed.

Prepared by the Staff of the  
Franchise Tax Board  
STATE OF CALIFORNIA

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## **Background**

In 2016, Proposition 64 was approved by California voters. This proposition legalized commercial adult-use of cannabis and imposed two specific taxes on cannabis, an excise tax to be paid by the consumer and a stepped cultivation tax to be paid by the grower/cultivator.

Under federal law (Internal Revenue Code (IRC) Section 280E), taxpayers in the cannabis industry may not deduct business expenses or claim credits for activities related to a controlled substance. Under California Corporation Law, taxpayers engaged in cannabis activities have been able to claim deductions and credits for state income tax purposes since the adoption of Proposition 64.

Prior to the passage of AB 37 (Chapter 792, Statutes of 2019, effective for tax year 2020), California Personal Income Tax Law (PITL) conformed to IRC 280E. As a result, businesses such as sole proprietorships or partnerships, were unable to deduct ordinary and necessary business expenses.

With the passage of AB 37, California PITL allowed sole proprietorships and partnerships to claim credits and deductions for business expenses paid or incurred during the taxable year in carrying on commercial cannabis activity. This provision of California law is operative for taxable years beginning on or after January 1, 2020, and before January 1, 2025.

The intent of this law is to provide tax equity to the cannabis industry and allow commercial cannabis licensees, reporting under the Personal Income Tax code, to claim deductions and credits available to other legal businesses in the state.

In 2022, AB 195 (Chapter 56, Statutes of 2022) passed the High-Road Cannabis Tax Credit and the Cannabis Equity Tax Credit. For these credits, AB 195 requires the Franchise Tax Board (FTB) to begin reporting in March of 2025. To learn more about these credits please visit the FTB's website.

## **Franchise Tax Board Statutory Reporting Requirements**

Under Chapter 792 of the Statutes of 2019 (AB 37), the FTB is required to provide an annual report to the Legislature, on or before July 31, in which either the deductions or credits are allowed. The FTB shall have the following reporting requirements:

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

## Data

Beginning on or after January 1, 2020, California allows taxpayers operating under the personal income tax law to claim credits and deduction of business expenses paid or incurred during the taxable year in conducting commercial cannabis activity (under RTC Section 17209). The FTB created an information reporting form, FTB 4197, to capture the performance metrics identified by the Legislature.

Table 1 presents data based on form 4197 data processed as of March of 2023 for credits and deductions allowed for business expenses paid or incurred for tax years 2020 through 2022. The data is based on taxpayer's self-reported tax return information.

**Table 1: Total Credits and Deductions Allowed by Tax Year\*\***

Tax Year	Number of Returns	Total Credits Allowed	Total Deductions Allowed
2020*	N/A	N/A	N/A
2021	55	\$10,644	\$248,987
2022*	N/A	N/A	N/A
Total	55	\$10,644	\$248,987

\*The number of 2020 and 2022 taxable year returns reporting data on cannabis activities is too small to be reported under state taxpayer privacy rules. Additionally, not all timely 2022 tax year returns have been processed as of this writing.

\*\* Form 4197 data processed through March of 2023.

Information processed to date continues to show very few of these forms have been filed. The FTB will continue to undertake efforts to improve taxpayer awareness of the existence, purpose, and correct usage of form 4197, including exploring collaborative efforts with other state agencies to increase reporting of available credits and deductions.

Please visit FTB's website for income tax information on the [Cannabis Industry](#).