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Response to Dude, Where's my Deduction?

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Mr. Pullin's thesis is that marijuana should be excluded from § 280E when it is operated legally under state law. However, his preferred solution is that the federal government remove marijuana from Schedules I and II of the Controlled Substances Act of 1970 (CSA), thereby legalizing it for federal law purposes. Either action would exclude the marijuana business from § 280E. While we have no quarrel with Mr. Pullin's well-articulated analysis, our Prompt also addresses the inappropriateness of the penalty chosen by Congress in § 280E to punish those dealing in drugs that are illegal under federal law. The treatment of the marijuana businesses is not the only aspect of § 280E that is inappropriate. In our Prompt, we did not suggest that trafficking in drugs should not be penalized. Nor did we urge that marijuana should be legalized. Rather, our contention is that the structure of the penalty that § 280E imposes on all illegal drug businesses, including marijuana, is arbitrary and fails to comply with a basic principle of the criminal law that the degree of punishment should be related to the seriousness of the crime and the conduct of the offender. Our view is that if Congress wishes to penalize an act, it should choose a rational penalty and not one based on two factors (the amount of expenses and the marginal tax bracket of the taxpayer) that have no relationship to the past and current conduct of the offender nor to the seriousness of the crime.