

# DEPARTMENT OF TAXATION

## 2023 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

3. **Committee** Senate Finance and Appropriations

4. **Title** Income Tax; Marijuana Business Expenses

2. **Bill Number** SB 1095

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would permit taxpayers to claim deductions for ordinary and necessary business expenditures made in connection with carrying on a business licensed in Virginia to deal in recreational or medical marijuana. For federal income tax purposes, taxpayers are generally not permitted to deduct business expenses incurred in the production, distribution, and sale of marijuana.

This bill would be effective for taxable years beginning on and after January 1, 2023.

**6. Budget amendment necessary:** No.

**7. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

**8. Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2023. It is unknown to what extent marijuana businesses operating in Virginia have business expenses that are subject to the federal prohibition on claiming such expenses on income tax returns.

**9. Specific agency or political subdivisions affected:**

Department of Taxation

**10. Technical amendment necessary:** No.

## 11. Other comments:

### Federal Tax Law and Marijuana Business Expenses

Federal law generally prohibits tax deductions for any amount paid or incurred during the taxable year in carrying on a trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking controlled substances that are prohibited by federal law or the law of any State in which such trade or business is conducted. This prohibition includes businesses related to the trafficking of marijuana. Marijuana business owners are allowed to deduct their cost of goods sold, which essentially includes the cost of their inventory. This prohibition for federal income tax purposes applies regardless of whether the state in which the business is operated has legalized marijuana for recreational and other purposes.

### Marijuana Business Expenses and Other States

As of January 2023, 37 states and the District of Columbia have legalized medical marijuana in some form, with 21 of these states and the District of Columbia also legalizing recreational marijuana. Eight states (Colorado, Hawaii, Maine, Michigan, Minnesota, Montana, New York, and Oregon) have enacted legislation that permits taxpayers to claim deductions with respect to marijuana business expenses on state income tax returns.

### Proposed Legislation

This bill would permit taxpayers to claim deductions for ordinary and necessary business expenditures made in connection with carrying on a business licensed in Virginia to deal in recreational or medical marijuana. For federal income tax purposes, taxpayers are generally not permitted to deduct business expenses incurred in the production, distribution, and sale of marijuana.

This bill would be effective for taxable years beginning on and after January 1, 2023.

### Similar Legislation

**House Bill 1547** is identical to this bill.

cc : Secretary of Finance

Date: 1/16/2023 JLOF  
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