

**TESTIMONY OF
MICHAEL J. ALLEN, ASSOCIATE COMMISSIONER FOR TAX POLICY
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation
Hearing Date: *March 30, 2023*

LD 1063 – “*An Act to Provide Equitable Tax Treatment to State-licensed Cannabis
Businesses*”

Senator Grohoski, Representative Perry, and members of the Taxation Committee – good afternoon, my name is Daniel D’Alessandro, Associate Tax Policy Counsel in the Maine Revenue Services, Office of Tax Policy. I am testifying at the request of the Administration Not For Not Against LD 1063, “*An Act to Provide Equitable Tax Treatment to State-licensed Cannabis Businesses.*”

For taxable years beginning on or after January 1, 2023, this bill proposes to extend the Maine cannabis business expense deduction to cannabis manufacturing facilities, cannabis establishments and cannabis testing facilities. The deduction would be allowed in proportion to those cannabis business expense deductions disallowed on the taxpayer’s federal income tax return under Internal Revenue Code (IRC) section 280E. The bill applies to individual, fiduciary, and corporate income taxes.

IRC section 280E disallows federal deductions and credits related to the illegal sale of drugs. However, based on case law, certain drug-related business expenses used in calculating the cost of goods sold are federally deductible.

Maine’s current law is based on the federal prohibition of cannabis sales. Since Maine legalized the sale of cannabis products and allows business expense

deductions for medical cannabis caregivers and registered dispensaries, providing equal treatment to adult use cannabis businesses would be a reasonable tax policy.

The Administration also notes the following technical concerns:

- For clarification, since registered caregivers and registered dispensaries are included in both existing law and the proposed provisions, the existing law in Sections 1 and 2 of the bill should be sunset so as to apply to taxable years beginning on or after January 1, 2018 and before January 1, 2023.
- It appears unnecessary to separately reference “testing facility” (lines 11 and 24 of the bill) as that term is included in the definition for “cannabis establishment” in 28-B M.R.S. § 102(29).

The estimated revenue impact of the bill is a revenue loss of \$1 million per year starting in fiscal year 2024. However, this estimate will change as the cannabis sector continues to mature.

The estimated administrative costs are \$188,839 for fiscal year 2024 and \$249,000 for fiscal year 2025. Because these expenses are not audited by the IRS, two new Senior Tax Examiner positions would be required, beginning October 1, 2023, to audit a portion of the affected returns to verify eligibility for, and the amount of, the deductions claimed.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee’s questions.