

Section 100.2060 Compassionate Use of Medical Cannabis Pilot Program Act Surcharge (IITA Section 201(o))

a) In general. *For each taxable year beginning or ending during the Compassionate Use of Medical Cannabis Pilot Program, a surcharge is imposed on all taxpayers on income arising from the sale or exchange of capital assets, depreciable business property, real property used in the trade or business, and Section 197 intangibles of an organization registrant under the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130]. (IITA Section 201(o))*

b) Definitions. For purposes of this Section:

"Act" means the Compassionate Use of Medical Cannabis Pilot Program Act. [410 ILCS 130]

"Organization registrant" means a corporation, partnership, trust, limited liability company, or other organization, but not an individual, that holds either a medical cannabis cultivation center registration issued by the Department of Agriculture under Section 85 of the Act or a medical cannabis dispensary registration issued by the Department of Financial and Professional Regulation under Section 115 of the Act.

"Transactions Subject to the Surcharge" means *sales and exchanges of capital assets, depreciable business property, real property used in the trade or business, and Section 197 intangibles of an organization registrant.* (IITA Section 201(o)) Although a unitary business group filing combined Illinois returns under IITA Section 502(f) is treated as a single taxpayer and its members are jointly and severally liable for any surcharge imposed on the group, the group itself is not an organization registrant and transactions of any member that is not itself an organization registrant are not subject to the surcharge.

c) Imposition of the Surcharge. The surcharge is imposed on any taxpayer who incurs a federal income tax liability on the income realized on a transaction subject to the surcharge, including individuals and other taxpayers who are not themselves the organization registrant that engaged in the transaction. An entity that is exempt from federal income tax and therefore incurs no liability with respect to a transaction otherwise subject to the surcharge will incur no surcharge. For example:

1) A disregarded entity, whose existence separate from that of its owner is disregarded under 26 CFR 301.7701-3, and a grantor trust will incur no federal income tax liability because income of these entities is taxed to the owner or the grantor. The disregarded entity or grantor trust will therefore incur no surcharge. Rather, the surcharge is imposed on the owner of the entity, or the grantor of the trust, who is taxable on the income from a transaction subject to the surcharge.

- 2) A partnership incurs no federal income tax liability because its income is taxed to its partners, and so will incur no surcharge. In the case of an organization registrant that is a partnership, the surcharge is imposed on each partner who is taxable on the income from a transaction of the partnership that is subject to the surcharge.
 - 3) A Subchapter S corporation will generally incur no federal income tax liability because its income is taxed to its shareholders, and so will generally incur no surcharge. However, a Subchapter S corporation subject to federal income tax on built-in gains or passive income from transactions subject to the surcharge is subject to the surcharge. The surcharge is imposed on a shareholder for income from transactions of the Subchapter S corporation that are subject to the surcharge, including transactions on which the surcharge is also imposed on the Subchapter S corporation.
 - 4) A trust will incur no federal income tax liability for transactions subject to the surcharge if the income from a transaction subject to the surcharge is distributed or deemed distributed to its beneficiaries, who are then taxed on the income. In those situations, the trust will incur no surcharge, but the beneficiary to whom the income is taxable will incur the surcharge.
- d) *Amount of the Surcharge. The amount of the surcharge is equal to the amount of federal income tax liability of the taxpayer for the taxable year attributable to transactions subject to the surcharge. (ITA Section 201(o))*
- 1) The federal income tax liability attributable to transactions subject to the surcharge means the federal income tax liability of the taxpayer for the taxable year, minus the federal income tax liability of the taxpayer for the taxable year computed as if the transactions subject to the surcharge made in that year had not been made by the organization registrant.
 - 2) If taxpayer is a member of an affiliated group of corporations that files a federal consolidated income tax return, the federal income tax liability attributable to transactions subject to the surcharge means the consolidated federal income tax liability of the affiliated group for the taxable year, minus the federal income tax liability of the affiliated group for the taxable year computed as if the transactions subject to the surcharge for which taxable income or gain was recognized in that taxable year had not been made, multiplied by a fraction equal to the amount of the separate taxable income of that member that is attributable to transactions subject to surcharge divided by the sum of the separate taxable incomes attributable to transactions subject to surcharge of all members of the affiliated group.

- e) Transactions Exempt from the Surcharge. Under IITA Section 201(o)(1) and (2), the surcharge does not apply to a transaction if:
- 1) the transaction occurs in connection with the transfer of the medical cannabis cultivation center registration, medical cannabis dispensary registration, or the property of the organization registrant as a result of any of the following:
 - A) a bankruptcy, receivership, or debt adjustment initiated by or against the organization registrant;
 - B) the cancellation, revocation, or termination of the organization registrant's registration by the Illinois Department of Public Health;
 - C) a determination by the Illinois Department of Public Health that transfer of the organization registrant's registration is in the best interests of Illinois qualifying patients;
 - D) the death of an owner of the equity interest in a organization registrant;
 - E) the acquisition of a controlling interest in the stock or substantially all of the assets of an organization registrant that is a publicly traded company;
 - F) a transfer by a parent company to a wholly owned subsidiary; or
 - G) the transfer or sale to or by one person to another person where both persons were initial owners of the registration when the registration was issued; or
 - 2) the cannabis cultivation center registration, medical cannabis dispensary registration, or the controlling interest in a registrant's property is transferred in a transaction to lineal descendants or because of a transaction under 26 USC 351, so long as no gain or loss is recognized.
- f) Special Rules and Provisions.
- 1) Because the surcharge is imposed under Article 2 of the IITA, the taxpayer's surcharge liability for a taxable year is included in the tax liability for which estimated payments must be made for that taxable year. (See IITA Section 804(f).)
 - 2) Because the surcharge is imposed under IITA Section 201, refunds of overpayments of the surcharge may be made from funds in the Income Tax Refund Fund. (See IITA Section 901(d)(1).)

(Source: Added at 38 Ill. Reg. _____, effective _____)