

Cannabis Considerations: Federal & State Planning



Meet Today's Panel



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A black and white photograph of a man with glasses, wearing a white long-sleeved shirt, sitting at a desk and working on a laptop. He is looking intently at the screen. The office environment includes a desk lamp, a potted plant, and a window in the background.

Today's Agenda

- UPCOMING ELECTION & PROPOSED LEGISLATION
- 280E
 - RELATED UPDATES & CASES
 - MI STATE AND LOCAL TAXES
- SALES TAX
 - PURCHASES
 - RETAIL SALES

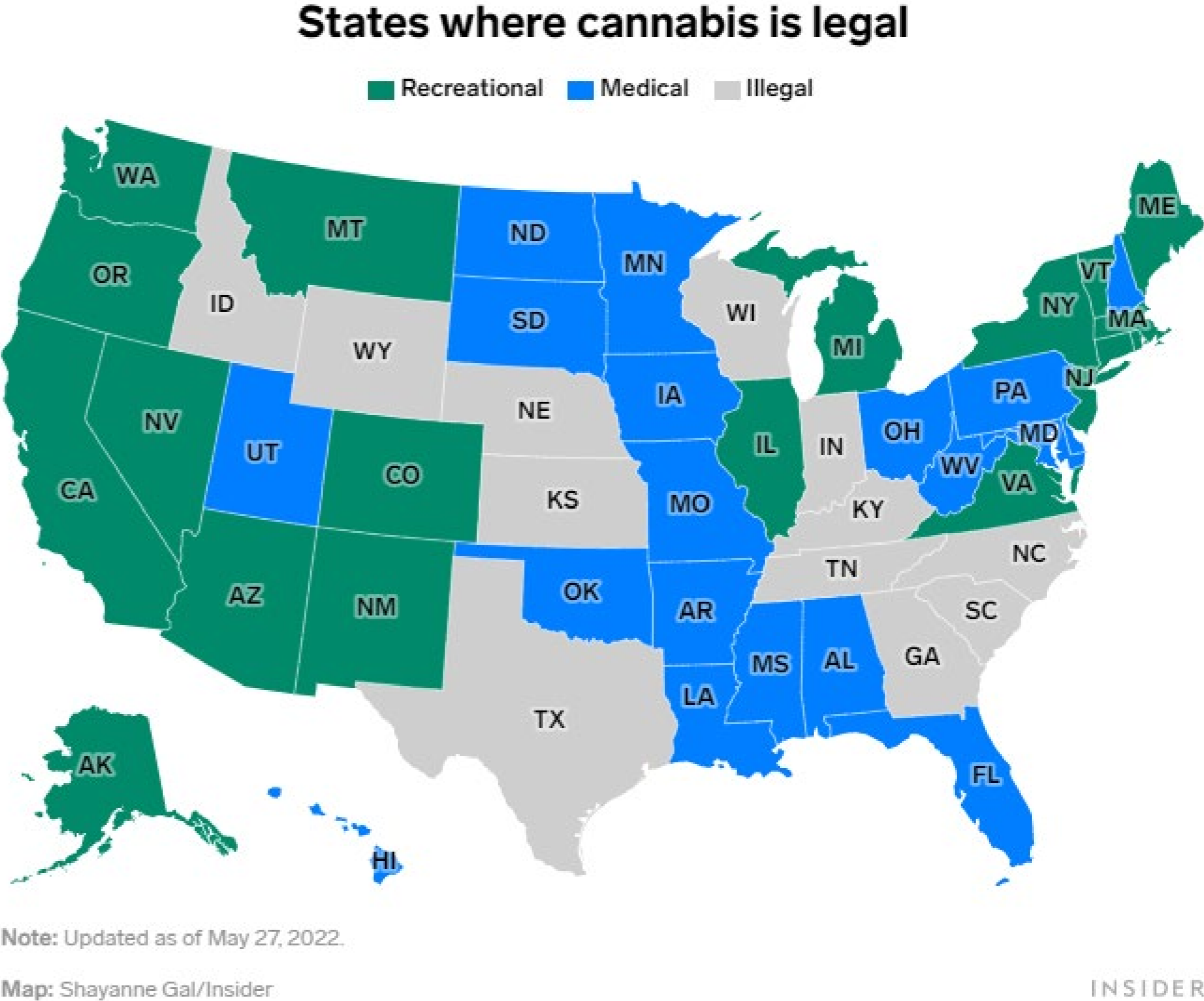


**UPCOMING ELECTION &
PROPOSED LEGISLATION**

States to Pay Attention to

November 2022 Ballot Measures:

- Arkansas
- Maryland
- Missouri
- Nebraska
- North Dakota
- South Dakota
- Oklahoma



SAFE Banking Act



- Secure and Fair Enforcement Banking Act
- First introduced by Ed Perlmutter (D-CO-7) in 2013
- Creates a workaround for the Federal Bank Secrecy Act
- Has passed the house 7 times, yes 7

States Reform Act

- Removes cannabis from the federal controlled substance act
- States will control all regulation of production and retail
- Excise tax and moratorium on excise tax increases
- Both parties favor the bill





Cannabis Administration and Opportunity Act

- Transfers federal jurisdiction from Drug Enforcement Agency to the Food and Drug Administration and The Alcohol and Tobacco Tax and Trade Bureau
- Impose excise tax on based on company size
 - Small to mid-size businesses 5 – 12.5%
 - Large businesses 10 - 25%
- Prioritizes restorative economic justice

Medical Marijuana & CBD Research Expansion Act

- Passed the house on July 26, 2022 with 325 votes
- Expected to pass the senate
- Should streamline the research application process
- Lays out specific research protocols





280E Related Updates & Cases

Current IRS Initiatives

- Collaborating with external stakeholders to increase awareness of tax responsibilities
- Finding ways to identify non-compliant taxpayers
- Improving consistency in approach
- Ensuring training and job aids are available to IRS examiners working cases





**Tax
Court
Case**

**Lord v. Comm’r T.C.
Memo. 2022-14**

- Tax Court determined that tax depreciation methods applied to production assets did not conform with Section 471.
- Tax Court also held that depreciation methods provided in the code are not available to taxpayers subject to Sec. 280E.



Form 8300

- Designed for Anti-Money Laundering law which requires other business to keep records and report cash transactions exceeding \$10,000 to the IRS
- Who fills it out?
 - Any person in a trade or business who receives more than \$10,000 in cash in a single transaction.
- Non-Willful Failures (Section 6721): \$280 penalty per Form 8300 not filed (2021 rate adjusts to \$290 in 2023)
- **Cannabis is an easy audit target**



MICHIGAN STATE AND LOCAL TAXES

Michigan Treatment of 280E

The vast majority of marijuana businesses in Michigan are flow through entities, i.e. partnerships, LLCs or S corporations.

- 280E expenses are disallowed for federal income tax purposes
- K-1s going to owners reflect higher business income
- Michigan income tax starts with federal AGI
- The Income Tax Act does not address 280E



Michigan Treatment of 280E

- The Michigan Medical Marijuana Act legalized marijuana or medical use in 2008.
- The Michigan Regulation and Taxation of Marihuana Act (MRTMA) legalized recreational marijuana use in 2018.
- MRTMA contains a provision allowing all “marijuana establishments” to deduct 280E expenses.
- The MRTMA definition of “marijuana establishments” is broad encompassing growers, processors or any other type of marihuana-related business licensed by the Marijuana Regulatory Agency.



Michigan Treatment of 280E

- Based on the MRTMA language and guidance from treasury, owners take a subtraction on their MI-1040 for 280E.
- Treasury has denied these subtractions and requesting detailed information.
- Treasury's position is that the 280E subtraction was never intended to apply to medical establishments.
- The denial can generally be resolved if the taxpayer agrees to take only the 280E deduction related to Adult Use.
- A ratio based on sales or square footage of grow space has been accepted.



All returns should include documentation to support the deduction and the allocation between medical and adult use marijuana.

LOW RISK

100% 280E deduction if there is no medical use; however, documentation to support deduction should be included.

MEDIUM RISK

Include a 280E deduction based on a ratio of medical and recreational use. The department has not approved an allocation method.

HIGH RISK

100% 280E deduction including medical use and/or without documentation. Treasury will likely scrutinize return.



Sales Tax | Purchases

Why?

If done correctly:

It is an administrative burden

If done incorrectly:

-6% of a project (margin)
or an asset
-worst - it is extrapolated
during an audit

It is form over substance - intent is not relevant on audit

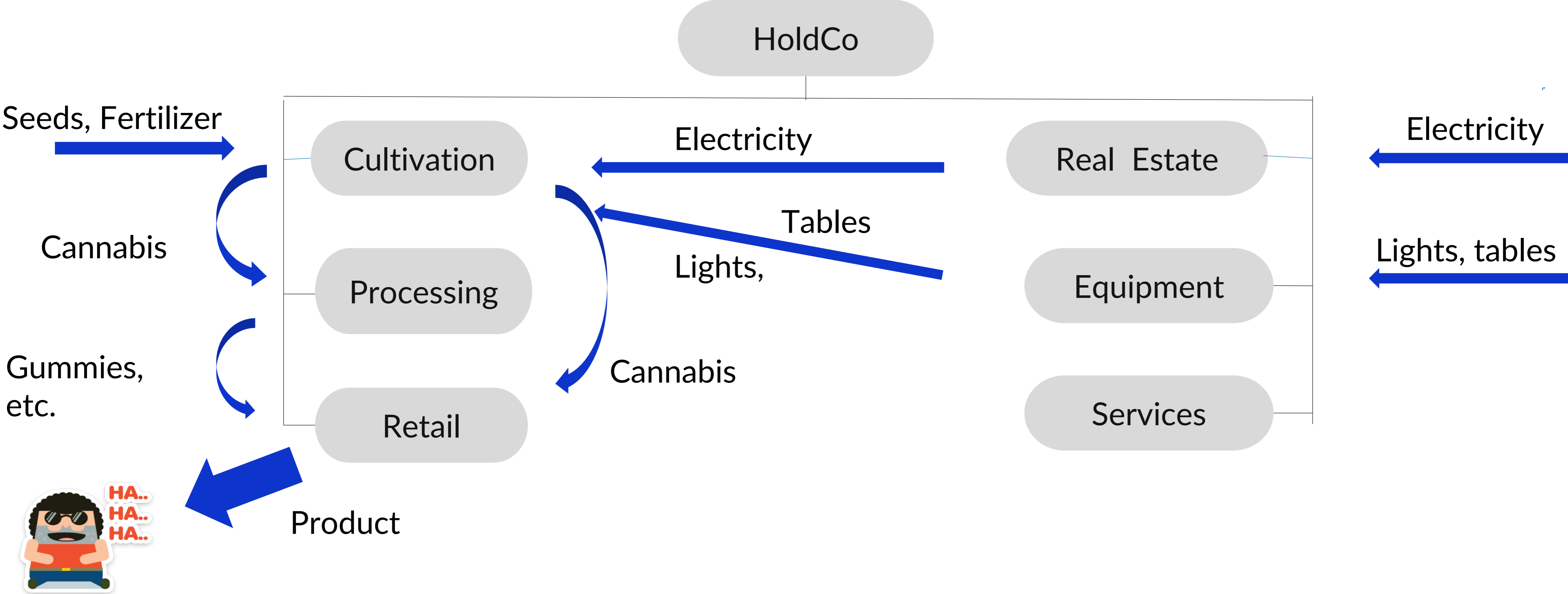
Sales Tax

Lots of Green for the State

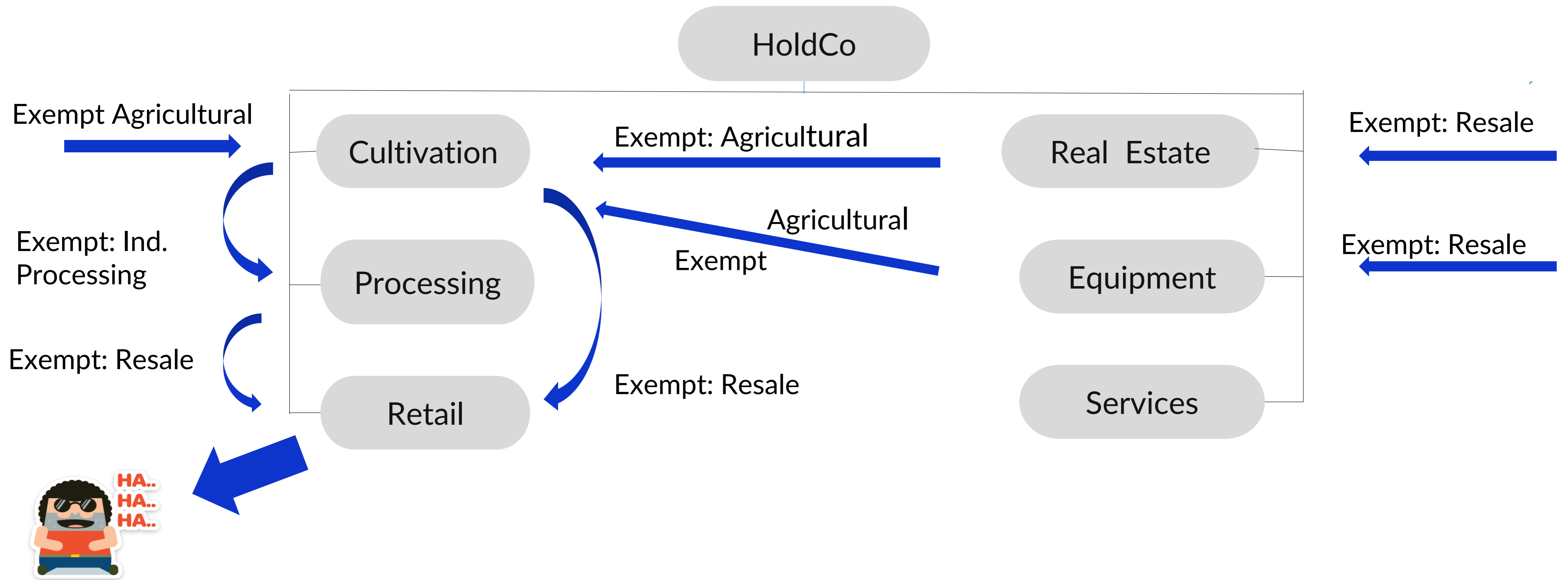
- Focus on the Entity
- Six Percent of the Gross
- On every transaction
- Entity must be registered to issue an exemption certificate



Example Structure



Potential Exemptions



Agricultural Exemption

Sales of goods are exempt if sold to commercial producers of crops, livestock, etc. for sale.

Only exempt if the goods are used in “agricultural producing”.

- **Equipment:** machinery, tools, and sold to a producer for use in agricultural production. *Not exempt if affixed to real estate.*
- **Components:** seeds, plants
- **Supplies:** fertilizer, water, wrappers
- **Fuel and electricity.**

Industrial Processing Exemption



An industrial processing exemption is allowed for property which is used or consumed in transforming, altering, or modifying tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or for sale to another processor for further processing and ultimate sale at retail.

- **Equipment** sold to an industrial processor for use in industrial processing.
- **Components** incorporated into another manufacturer's product.
- **Supplies**



Sales Tax – Retail Sales

Retail Sales Tax

Applies to the final transaction – the sale to the end user

Applies to the “sales price” of the product sold

- includes the 10% excise tax.
- excise tax does not apply to medical use product

Bundled transactions are prohibited. If bundled:

- Excise applies to the full amount
- Sales tax applies to the full amount

Sales tax applies to retail sales of medical and adult use product



QUESTIONS



THANK
YOU

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