

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

NEIL FEINBERG & ANDREA E. FEINBERG,)		
ET AL.,)		
)		
Petitioner(s),)		
)		
v.)	Docket No. 10083-13,	10084-13.
)		
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		
)		
)		

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ORDER

In these consolidated cases respondent determined deficiencies for tax years 2009, 2010, and 2011. Respondent disallowed business deductions of petitioners' company Total Health Concepts, LLC (THC), a medical marijuana dispensary, because section 280E disallows expenses incurred in trafficking in controlled substances in violation of the Controlled Substances Act. See sec. 280E. Unless otherwise indicated, all statutory references are to the Internal Revenue Code in effect for the tax years at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

These cases are before the Court on petitioners' motions for summary judgment, filed October 2, 2014. Respondent filed responses thereto on October 24, 2014. Oral argument was heard on December 8, 2014.

Petitioners resided in Colorado when their petitions were filed. Petitioners were part owners of THC in the years at issue. Respondent asserts that THC's operations included trafficking in marijuana.

Petitioners contend that they are entitled to summary judgment on the following grounds: the Commissioner does not have jurisdiction to administratively determine whether petitioners committed a federal crime outside of the U.S. tax code; section 280E as applied by the Commissioner is unconstitutional as it violates petitioners rights against self-incrimination under the Fifth Amendment of the Constitution; and section 280E exceeds the authority granted to Congress under the Sixteenth Amendment of the Constitution. Respondent contends that respondent has the authority and jurisdiction to determine whether section 280E applies to petitioners and THC.

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It appearing to the Court that there are material issues of fact in dispute that warrant further development through discovery and/or trial, summary judgment would be premature and is not appropriate under these circumstances.

Premises considered, it is

ORDERED that petitioners' motions for summary judgment are denied. It is further

ORDERED that these cases are calendared for trial at the Trial Session of the Court commencing at 10:00 a.m. on June 1, 2015, in Courtroom C502, Byron G. Rogers U.S. Courthouse, 1929 Stout Street, Denver, Colorado 80294. It is further

ORDERED that the Clerk of the Court is directed to attach a copy of the Court's Standing Pretrial Order for the June 1, 2015, Denver, Colorado, trial session to this Order.

This Order constitutes official notice of its contents to the parties.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
March 24, 2015