**UNITED STATES TAX COURT**
**WASHINGTON, DC 20217**

**DRC**

| | | |
|---|---|---|
| BOULDER ALTERNATIVE CARE, LLC, GLG HOLDINGS, LLC, TAX MATTERS PARTNER, | ) | |
| Petitioner(s), | ) | |
| v. | ) | Docket No. 16495-16. |
| COMMISSIONER OF INTERNAL REVENUE, | ) | |
| Respondent | ) | |

**O R D E R**

This case is calendared for trial at the Court's Denver, Colorado, trial session scheduled to commence October 28, 2019. On July 12, 2019, petitioner filed a Motion for Judgment on the Pleadings, which it amended on July 15, 2019. On July 15, 2019, we ordered respondent to file a response to petitioner's First Amended Motion for Judgment on the Pleadings. On August 1, 2019, respondent filed a response. On August 13, 2019 we granted petitioner's motion to file a reply to respondent's response, and filed the reply.

Respondent issued Notices of Final Partnership Administrative Adjustments with respect to tax years 2010, 2011, and 2012. Respondent determined that petitioner's "business consists of trafficking in marijuana, a controlled substance within the meaning of Schedule I or II of the Controlled Substance Act. Accordingly, * * * [petitioner is] subject to limitations of IRC section 280E, which disallows all deductions or credits paid or incurred during the taxable year in carrying on that trade or business." Petitioner contends that the limitations of section 280E[1] do not apply because: "Colorado state-legal marijuana sales do not conflict with the federal Controlled Substances Act or any other federal drug law. Under those circumstances, the Supreme Court has made clear that state law must

[1]Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended, all Rule references are to the Tax Court Rules of Practice and Procedure.

**SERVED Aug 28 2019**

control. Since Colorado law controls, state legal marijuana sales cannot be considered 'prohibited' under federal law."

If a party moves for judgment on the pleadings and relies on facts outside the pleadings, we treat the motion as a motion for summary judgment. Rule 120(b). The Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). In deciding whether to grant summary judgment, we view the factual materials and inferences drawn from them in the light most favorable to the nonmoving party. Id. Because we conclude that petitioner's motion relies on facts outside the pleadings, we treat it as a motion for summary judgment. And, for the reasons set forth below, we deny the motion.

The precedent regarding the application of section 280E to state licensed marijuana dispensaries is well settled. In Gonzales v. Raich, 545 U.S. 1 (2005), the Supreme Court rejected the argument that the cultivation and possession of medical marijuana, isolated to and policed by a state, somehow removed the activities from the purview of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (CSA). The U.S. Court of Appeals for the 10th Circuit has consistently upheld denials of deductions and credits under section 280E, noting in its most recent pronouncement that "[d]espite its legality in many states, marijuana is still a schedule I 'controlled substance' under federal law." Feinberg v. Commissioner, 916 F.3d 1330, 1333 (10th Cir. 2019), aff'g T.C. Memo. 2017-211, petition for cert. filed, No. 19-129 (July 26, 2019); see also High Desert Relief, Inc. v. United States, 917 F.3d 1170 (10th Cir. 2019); Alpenglow Botanicals, LLC v. United States, 894 F.3d 1187 (10th Cir. 2018), cert. denied, 139 S. Ct. 2745 (2019); Green Sol. Retail, Inc. v. United States, 855 F.3d 1111 (10th Cir. 2017), cert. denied, 138 S. Ct. 1281 (2018). This Court has also consistently applied section 280E, irrespective of any permissive state laws, to disallow deductions and credits with respect to a taxpayer's trade or business that consists of trafficking in controlled substances. See Alt. Health Care Advocates v. Commissioner, 151 T.C. ___ (Dec. 20, 2018); Patients Mut. Assistance Collective Corp. v. Commissioner, 151 T.C. ___ (Nov. 29, 2018); Olive v. Commissioner, 139 T.C. 19 (2012), aff'd, 792 F.3d 1146 (9th Cir. 2015); Californians Helping to Alleviate Med. Problems, Inc. v. Commissioner, 128 T.C. 173 (2007).

Petitioner's contention is not about the nature of its activities; in fact, it concedes for purposes of this motion that it operated a marijuana dispensary through which it made sales of marijuana. Petitioner's contention centers around

the idea that Colorado's law permitting the sale of marijuana for medical purposes somehow carves out an exception to the CSA. Petitioner misreads applicable case law from the Supreme Court, the U.S. Court of Appeals for the 10th Circuit and this Court. As noted above, the courts have consistently held that permissive state laws have no effect on Federal enforcement of the CSA. In following that precedent, we conclude that Colorado's permissive medical marijuana laws have no effect on the CSA.

It is hereby

ORDERED that petitioner's Motion for Judgment on the Pleadings, filed July 15, 2019, is denied.

**(Signed) L. Paige Marvel**
**Judge**

Dated: Washington, D.C.
August 27, 2019