

# A Brick Wall for the Marijuana Industry...Or the Key to The Secret Garden?

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In the July 9, 2015 *Olive*<sup>1</sup> decision, the Federal 9th Circuit Court of Appeals upheld a Tax Court decision that a medical marijuana dispensary was precluded from deducting any amount of ordinary and necessary business expenses associated with the operation of the business because the Vapor Room (the "business") is a "trade or business...consist[ing] of trafficking in controlled substances...prohibited by Federal law." I.R.C. § 280E. Deductions were limited to the "costs of goods sold."

The Vapor Room sold only medical marijuana. It provided many other services but didn't charge for them. The appellate court distinguished *Olive*<sup>1</sup> from the 2007 *CHAMP*<sup>2</sup> decision where the Tax Court determined that the taxpayer was engaged in two income generating businesses including the sale of medical marijuana and extensive counseling and caregiving services. In *CHAMP*<sup>2</sup>, the ordinary and necessary business expenses related to the counseling and caregiving services were deductible. See I.R.C. § 162(a).

Participants in the marijuana industry should review the facts of the *Olive*<sup>1</sup> and *CHAMP*<sup>2</sup> decisions carefully, and consult with their tax attorneys and accountants on the most tax efficient way to structure their marijuana businesses.

If the marijuana business owner also obtains revenue from the sale of non-marijuana goods and services then the ordinary and necessary business expenses related to the non-marijuana activity should be deductible.

Finally, on Aug. 10, 2015, the U.S. Tax Court published the *Beck*<sup>3</sup> decision which, in line with the *Olive*<sup>1</sup> decision, held that a marijuana business that only sold marijuana products, could not deduct any of the ordinary and necessary business expenses related to the marijuana business. Deductions were limited to "cost of goods sold" I.R.C. § 280E. The *Beck*<sup>3</sup> decision discussed the *CHAMP*<sup>2</sup> decision and upheld its holding that a business may have two or more businesses and that the ordinary and necessary business expenses relating to the non-marijuana businesses were deductible.

<sup>1</sup> Martin Olive v. C.I.R. 139 T.C. 19

<sup>2</sup> Californians Helping to Alleviate Medical Problems, Inc. - CIR (CHAMP), 128 T.C. 173 (2007)

<sup>3</sup>Beck-v-C.I.R., T.C. Memo 2015-149 (08/10/2015)

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