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Tax Partner Exits Greenspoon Marder With Landmark Pot Suit

By **Diana Novak Jones**

Law360 (July 14, 2020, 8:29 PM EDT) -- The lead attorney in the landmark tax case brought by California cannabis company Harborside Health Center has left Greenspoon Marder LLP, taking the case with him, he told Law360 on Tuesday.

James B. Mann was a partner in Greenspoon Marder's tax practice group until he left the firm to go out on his own two weeks ago, he said. Harborside, which is in the middle of an appeal before the Ninth Circuit that could reshape the tax landscape for state-legal marijuana businesses, will stick with Mann as its counsel in the case, court records show.

Mann was part of a Greenspoon Marder team that filed a brief at the end of May **challenging the constitutionality** of a clause in the tax code that denies essentially all business deductions for marijuana companies. The case has attracted significant attention from the cannabis industry because many in the space view the lack of deductions as one of the biggest challenges to operating a profitable business.

Mann said spending the last four months working from home changed his attitude about being part of a firm in Manhattan.

"Why am I paying these people for that fancy partner office in Midtown that I don't want to go to anymore?" he told Law360. "So I quit."

The other Greenspoon Marder attorneys representing Harborside, including cannabis law group Chair Rachel Gillette, withdrew from the case on Monday, court records show.

"This is a very important case for the cannabis industry, and we wish Harborside much success," Gillette told Law360.

Harborside is fighting the IRS over an $11 million tax liability. But the case is really about 280E, the tax code clause barring deductions for businesses "trafficking in controlled substances."

The clause, which was added to the tax code during the height of the war on drugs, has resulted in tax rates approaching 70% for some marijuana businesses, those **businesses have told Law360**.

Harborside has argued that 280E violates the 16th Amendment because it allows the government to tax more than a business's income. The amendment restricts taxes to a company's gain from labor and capital, but with 280E, a marijuana company is being taxed on all the money that passes through the business, it said.

Harborside could have no income at all but still be ordered to pay taxes, it argues.

Under the rules, marijuana businesses can only deduct their costs of goods sold, which the IRS has interpreted to mean the wholesale price of the goods a dispensary sells. Harborside's case also takes on that interpretation, arguing that it's too narrow.

Dispensaries and other marijuana businesses should be able to deduct the cost of labor and supplies they use to process and package marijuana in the shop before they sell it, Harborside says. Grocery stores that break down bulk meat into individual packages are able to deduct those costs, so cannabis companies should be able to do the equivalent, it wrote in the brief.

Harborside's case has brought in supporting briefs from the National Cannabis Industry Association, the Colorado-based Marijuana Industry Group and the Cannabis Trade Federation.

The IRS' brief is due at the end of the month, but the U.S. Department of Justice has asked for an extension until Aug. 24, court records show.

The case raises "significant, complex and novel issues," DOJ attorney Nathaniel S. Pollock told the appellate court in his request for more time.

"Because of this case's significance, preparation of the commissioner's answering brief will require more-than-typical consultation with attorney[s] in the IRS's Office of Chief Counsel and within the Department of Justice," Pollock wrote.

A representative for Harborside did not respond to a request for comment.

Harborside is represented by James B. Mann.

The IRS is represented by Nathaniel Pollock and Gilbert Stephen Rothenberg of the U.S. Department of Justice's Tax Division.

The case is Patients Mutual Assistance Collective Corp. v. Commissioner of Internal Revenue, case number 19-73078, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Jack Karp.
