

Multiple Documents

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

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| TAYLOR LOHMEYER LAW FIRM PLLC | § | |
| | § | |
| Petitioner, | § | |
| | § | |
| v. | § | Case No. <u>5-18-cv-01161</u> |
| | § | |
| | § | |
| UNITED STATES OF AMERICA, | § | |
| | § | |
| Respondent. | § | |
| | § | |
| | § | |

PETITION TO QUASH SUMMONS

1. This is a proceeding by Taylor Lohmeyer Law Firm, PLLC (“Taylor Lohmeyer”), to quash a John Doe summons issued by the Internal Revenue Service.
2. Taylor Lohmeyer is a law firm with a principal business location in Kerrville, Texas.
3. The Court has subject matter jurisdiction over this proceeding pursuant to 26 U.S.C. § 7609(h)(1) and 28 U.S.C. §§ 1331 and 1340.
4. This Court issued an order on October 15, 2018, permitting the Government to serve a John Doe summons upon Taylor Lohmeyer. See I.R.C. § 7609(f) (requiring a court proceeding before issuing a John Doe summons).
5. On October 17, 2018, the summons was served on Taylor Lohmeyer.
6. The summons demands that Taylor Lohmeyer provide the identities and other documentation and information related to certain alleged taxpayers who were Taylor Lohmeyer clients during the period January 1, 1995 through December 31, 2017.

7. The summons should be quashed because the summons is overbroad and represents an unprecedented intrusion into the attorney-client relationship and is plainly abusive.

8. In support of this motion, Taylor Lohmeyer submits the accompanying Memorandum in Support of its Motion to Quash Summons.

WHEREFORE, Taylor Lohmeyer respectfully requests that the Court enter an order quashing the government's summons.

Respectfully submitted,

**CHAMBERLAIN, HRDLICKA, WHITE,
WILLIAMS & AUGHTRY**

By: /s/ Chad Muller III

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record by electronic service on November 6, 2018, as indicated below.

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ATTORNEYS FOR UNITED STATES OF AMERICA

By: /s/ Chad Muller III
Charles J. Muller III

information related to certain alleged taxpayers who were Taylor Lohmeyer clients during the 23 year period spanning January 1, 1995, through December 31, 2017. Specifically, the IRS requests “Documents, including lists, client account records, and client billing records, reflecting any U.S. clients at whose request or on whose behalf [Taylor Lohmeyer or its] agents have acquired or formed any foreign entity, opened or maintained any foreign financial account, or assisted in the conduct of any foreign financial transaction.” Summons at ¶ 1. The requests for documents then go on for an additional five paragraphs with an additional 45 subparagraphs. The intended effect of the summons is to identify Taylor Lohmeyer’s clients for a 23 year period who received legal advice that in any way included foreign entities, foreign financial accounts, or foreign transactions.

The government’s basis for the John Doe summons is supported by a declaration signed by Revenue Agent Joy Russel-Hendrick. Revenue Agent Russel-Hendrick states that she audited an unnamed taxpayer (“Taxpayer-1”) that had received estate and tax planning advice from Taylor Lohmeyer and that the audit resulted in income tax adjustments to the taxpayer’s returns. On that basis, Revenue Agent Russel-Hendrick believes she has authority to delve through Taylor Lohmeyer’s records to determine whether there are other clients of Taylor Lohmeyer that need auditing. The investigatory discretion the government seeks is unprecedented, and if unchecked, will lead to a significant expansion of the government’s summons authority and a correspondingly substantial erosion of the attorney-client privilege. Thus, this case poses important questions regarding the proper administration of tax laws as well the scope of client confidentiality and the attorney-client privilege.

Argument

“The Service does not enjoy inherent authority to summon production of the private papers of citizens. It may exercise only that authority granted by Congress.” United States v. LaSalle National Bank, 437 U.S. 298, 316 fn 18 (1978); see also I.R.C. § 7602 (granting IRS summons authority). In addition to the limitations imposed by statute, the IRS’ summons authority is also “subject to the traditional privileges and limitations.” United States v. Euge, 444 U.S. 707, 714 (1980). Courts have a duty to ensure that the IRS does not exceed its summons authority, or invade these traditional privileges. “It is the court’s process which is invoked to enforce the administrative summons and a court may not permit its process to be abused.” United States v. Powell, 379 U.S. 48, 58 (1964); see also 2121 Arlington Heights Corp. v. Internal Revenue Service, 109 F.3d 1221, 1224 (7th Cir. 1997) (noting that a summoinee may defeat a summons by showing “that enforcement of the summons would constitute an abuse of process”).

To merit enforcement, the IRS must first demonstrate its good faith in issuing the summons by showing:

[1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry may be relevant to the purpose, [3] that the information sought is not already within the Commissioner’s possession, and [4] that the administrative steps required by the Code have been followed – in particular, that the “Secretary or his delegate,” after investigation, has determined the further examination to be necessary and has notified the taxpayer in writing to that effect.

United States v. Stuart, 489 U.S. 353, 359 (1989) (quoting Powell). These are often referred to as the four “Powell” factors. If the IRS makes this showing, “it is entitled to an enforcement order unless the taxpayer can show that the IRS is attempting to abuse the court’s process.” Stuart, 489 U.S. at 360.

A taxpayer's challenge to the summons is not restricted to challenging the four Powell factors:

The Powell elements were not intended as an exclusive statement about the meaning of good faith. They were examples of agency action not in good-faith pursuit of the congressionally authorized purpose of § 7602. The dispositive question in this case, then, is whether the Service is pursuing the authorized purposes in good faith.

LaSalle National Bank, 437 U.S. at 317, fn 19. "The cases show that the federal courts have taken seriously their obligation to apply this standard to fit particular situations, either by refusing enforcement or narrowing the scope of the summons." United States v. Bisceglia, 420 U.S. 141, 146 (1975) (citations omitted).

The IRS' Summons Should be Quashed Because Enforcement Would Amount to an Abuse of Process

The government's ex parte petition for leave to serve the summons is supported by the declaration of Revenue Agent Russel-Hendrick. The representations she makes in support of her alleged need to summons Taylor Lohmeyer are replete with misrepresentations and inaccuracies demonstrating a serious abuse of the summons process.

Her primary support for requesting the summons is that she audited a particular taxpayer who received tax planning advice from Taylor Lohmeyer and that that taxpayer's return was subsequently adjusted. This means that the IRS proposed an assessment of additional tax. The IRS also proposed assessment of a fraud penalty. The agent says that Taxpayer-1 agreed to the proposed assessments.

In tying Taxpayer-1's incorrect return to Taylor Lohmeyer, the Revenue Agent refers to a transcript discussing potential penalties the IRS was considering asserting in Taxpayer-1's audit. Russel-Hendrick Declaration at ¶ 12. She cites the discussion in the transcript for purposes of establishing that Taxpayer-1 relied on Taylor Lohmeyer when Taxpayer-1 took the particular

return position.³ Noteworthy is that Revenue Agent Russel-Hendrick's only support for her conclusion is a reference to her *own* statement in the edited transcript. Russel-Hendrick Declaration at ¶ 12. She provided no other credible evidence regarding Taylor Lohmeyer's involvement leading to Taxpayer-1's adjustment. It is important to note that the assessment of a fraud penalty is inconsistent with the agent's claims that the taxpayer relied on Taylor Lohmeyer. This will be explained later in this Memorandum.

A review of the remaining portions of the edited transcripts of Mr. Taylor's testimony further demonstrates weaknesses in the government's assertion that Taylor Lohmeyer created illegal structures to aid clients in evading U.S. income tax. Namely, Mr. Taylor testified that at the time he advised Taxpayer-1, foreign grantor trusts (the type of structure the government alleges is abusive) were lawful and could be used to reduce U.S. taxes. Mr. Taylor testified:

A U.S. person can't just put something into a foreign trust without incurring some type of tax. It only works if the original foreign grantor put money in and the money grew into a substantial amount which could be used for the benefit of the beneficiary.

So I did tell [Taxpayer-1], you can't have anything to do with it, and if your foreign grantor, even a very close friend wants to revoke it, the power to revoke has to be in there, he can take it all. And the reason the power to revoke is in there, which evolved out of the old revenue ruling of many years ago, is that all of the income and gains of this type of trust, because the power to revoke are presumably taxable to the foreign grantor under the laws that the foreign grantor is governed by.

Taylor Transcript 44:2-22. Mr. Taylor also testified that at the time he was advising Taxpayer-1 (apparently 1995) he told the taxpayer that there was pending legislation "which would have taxed income and gains in all foreign trusts, no matter how creative, so I told [Taxpayer-1] I thought the safest thing for him to do was make it a U.S. trust and just go under the usual rules."

³ When the IRS imposes penalties on taxpayers for taking an erroneous position on their returns, taxpayers often argue that they should not be subject to penalties because they acted in good faith and with reasonable cause by relying on a tax professional. See I.R.C. § 6664(d).

Taylor Transcript 67:21-68:2. He also testified that notwithstanding Mr. Taylor's advice, the taxpayer decided that he would proceed by forming a foreign grantor trust and that if the law changed, he would "bite the bullet, domesticate the trust." Taylor Transcript 69:23-24. Revenue Agent Russel-Hendrick then asked Mr. Taylor how the taxpayer would be "caught" by the IRS if the foreign grantor trust failed or was not employed properly. Taylor Transcript 70:2-3.

Mr. Taylor responded that he believed that the British solicitor that set up the trust was highly reputable and would handle the transaction properly. Taylor Transcript 71:5-9. Following all this, Revenue Agent Russel-Hendrick leaps to the unsupported and erroneous conclusion that "Taylor Lohmeyer PLLC created an interconnected web of offshore trusts and entities to conceal taxable income earned by Taxpayer-1 for services he performed for foreign hedge funds" even though the evidence supporting her declaration reflects the contrary. Russel-Hendrick Declaration at ¶ 14.

Revenue Agent Russel-Hendrick describes at paragraphs 15 through 28 of her declaration the way that Taxpayer-1 allegedly assigned an incentive fee arrangement for hedge fund services (ie., "earned income") to a foreign trust established for his family's benefit. She states that "In an effort to restructure the incentive fee so that it was not taxable to Taxpayer-1, Michael Fullerlove ("Fullerlove"), the English solicitor Taylor used to set up structures in the Isle of Man, wrote Taylor a letter dated November 14, 1995". Russel-Hendrick Declaration at ¶ 21. Revenue Agent Russel-Hendrick then selectively quotes from the letter omitting a paragraph that clearly requires a novation of the hedge fund management contracts in order for the structure to work. The proposed amendment in that paragraph that the Revenue Agent ignores would require that the incentive fees be earned by a "new company, which will give such advice direct to the Hedge Fund, in consideration of the incentive part of the original fee. In these circumstances, an

Isle of Man company beneath the [foreign grantor] Trust will be both tax exempt and free of regulation.” Russel-Hendrick Declaration at Ex. 5, ¶ 4. Revenue Agent Russel-Hendrick then acknowledges that following the advice from Mr. Fullerlove, the management agreements were modified to provide that a 20 percent incentive fee would be paid to Corporation-1. Russel-Hendrick Declaration at ¶ 22. However, she then states that the transaction was abusive and that the tax adjustments were necessary because the corporation employed no one who could provide such advice in accordance with the management agreements. Russel-Hendrick Declaration at ¶ 22. This is important because Revenue Agent Russel-Hendrick does not fault the legal advice, but indicates that the advice was not properly implemented by Taxpayer-1. Thus, it appears that Taylor Lohmeyer gave correct legal advice regarding the formation and operation of a foreign grantor trust. Moreover, the English solicitor, Mr. Fullerlove, (and not Taylor Lohmeyer) actually created the structures and advised how through a novation, the incentive fees could be earned by a new corporation under the Trust. It was Taxpayer-1 who failed to carry out the instructions properly. This is further supported by Revenue Agent Russel-Hendrick’s declaration at paragraphs 24 and 25 where she attacks the viability of the corporation, but does not suggest that Taylor Lohmeyer was aware or responsible for Taxpayer-1’s failure to implement the foreign structure as recommended by Mr. Fullerlove. The same is true regarding Revenue Agent Russel-Hendrick’s statement at paragraph 27 where she points out that “even assuming that Trust-1 and Corporation-1 were independent of Taxpayer-1, the incentive fees paid to Corporation-1 by Offshore Fund-1 for Taxpayer-1’s investment advice were properly reportable as income by Taxpayer-1 * * *.” However, it does *not* indicate that Taylor Lohmeyer gave the taxpayer improper tax advice.

Notwithstanding all of the above evidence to the contrary, Revenue Agent Russel-Hendrick concludes that “On the advice of Taylor, that no income was reportable from the offshore arrangement, Taxpayer-1 never told his return preparer about the offshore structure or the incentive fees * * *.” Russel-Hendrick Declaration at ¶ 28. This is again another unsupported and conclusory statement. The revenue agent cites no source to support her inference. Indeed, the advice Taylor Lohmeyer gave was as to a lawful foreign grantor trust. Mr. Fullerlove advised that with the proper novation, the incentive fees could be earned by and paid to an offshore corporation. Assuming Taxpayer-1 had followed the advice of Taylor Lohmeyer and Mr. Fullerlove, there would have been a lawful position that no income was reportable by the taxpayer. However, the taxpayer obviously did not follow the lawful advice he received. This is supported by the fact that Revenue Agent Russel-Hendrick does not address the fact that Taxpayer-1 apparently agreed to a fraud penalty assessment. This is important, because Section 6664 of the Internal Revenue Code specifically provides that “No penalty shall be imposed ...with respect to any underpayment if it is shown that there was reasonable cause for such position and that the taxpayer acted in good faith....” The cases support the fact that good faith reliance on a tax professional is inconsistent with the imposition of a tax fraud penalty. See Sanchez v. Commissioner, T.C. Memo. 2014-174, slip op. at 23; Full Circle Staffing, LLC v. Commissioner, T.C. Memo. 2018-66, slip op at 43-44.

The revenue agent also fails to advise the Court that the taxpayer apparently lied to his CPA and signed a false income tax return, a felony violation under I.R.C. § 7206(1), by not providing the correct answer to the questions on Schedule B of his return (requiring disclosure of foreign accounts and trusts). The fact that the taxpayer apparently concealed his beneficial

interest in an offshore trust infers that he knew that he had not followed the advice that he received from Taylor Lohmeyer and Mr. Fullerlove.

Finally, we point out that at paragraph 26 Revenue Agent Russel-Hendrick refers to “[a]n internal memorandum of the Isle of Man trust company that created Trust-1 stated that the purpose of the trust was ‘US Tax avoidance.’” Presumably, the government is suggesting that planning for tax avoidance somehow impugns Taylor Lohmeyer’s motives and services. This is incorrect and misleading. First, the memorandum Revenue Agent Russel-Hendrick relied upon is so redacted that it is virtually incomprehensible and thus unreliable. But more importantly, the reference by some unknown person to tax avoidance as being a factor for investigating Taylor Lohmeyer’s records is incredibly misleading because neither Revenue Agent Russel-Hendrick nor the government advise the Court that tax avoidance is entirely proper and lawful. See Gregory v. Helvering, 293 U.S. 465, 469 (1935) (noting that taxpayers have the legal right to decrease or avoid taxes by legally permissible means). According to Revenue Agent Russel-Hendrick, an entire legal industry based on advising clients how best to minimize their tax burdens should be suspect and all clients involved should be investigated. Such a position is untenable and Revenue Agent Russel-Hendrick’s reference to a tax avoidance purpose for setting up a trust is thus irrelevant.

Likely because her above arguments were exceptionally weak, Revenue Agent Russel-Hendrick cooked up another unavailing argument to support her erroneous conclusion that Taylor Lohmeyer was providing illegal services to other U.S. clients. She states that another former client, John Eulich, “engaged in more than ten years of litigation in this Court to attempt to prevent the Internal Revenue Service from enforcing its summonses and formal document requests for details regarding the structure and unreported earnings of the offshore entities that he

beneficially owned or controlled.” Russel-Hendrick Declaration at ¶ 24. Revenue Agent Russel-Hendrick’s arguments allegedly supporting her assertion are seriously flawed and are an attempt at material misrepresentation. First, Revenue Agent Russel-Hendrick points to the fact that Mr. Eulich’s unidentified counsel asserted Mr. Eulich’s attorney-client privilege with respect to documents and communications with Taylor Lohmeyer. This is normal given that *clients* hold and assert privilege (as Mr. Eulich did). Although Taylor Lohmeyer was not the summonsed party in that case, Revenue Agent Russel-Hendrick nonetheless tries to draw a parallel by inferring that because the Court determined that some documents were not privileged, Taylor Lohmeyer somehow provided illegal tax advice to other clients. This is a leap too far in logic to land. We see no meaningful connection between Mr. Eulich’s broad assertion of his attorney-client privilege and Taylor Lohmeyer’s tax advice to Mr. Eulich. Second, what Revenue Agent Russel-Hendrick conveniently fails to mention is that after undergoing years of audit, Mr. Eulich was never assessed any additional tax and he was never determined to have engaged in an abusive transaction. In other words, the IRS did not require a change in his tax reporting position, nor assess any additional taxes. Thus, Revenue Agent Russel-Hendrick’s only grievance is that Mr. Eulich asserted his attorney-client privilege more broadly with respect to certain documents than the Court eventually sustained. We can’t help but scratch our heads as to how that establishes that a witness, Fred Lohmeyer, was likely providing improper services to other U.S. clients as Revenue Agent Russel-Hendrick suggests at paragraphs 45 through 46 of her declaration.

Consistent with the foregoing, we have attached as Exhibit 1 a declaration from Fred Lohmeyer, Mr. Taylor’s former law partner and the only remaining Taylor Lohmeyer shareholder. Mr. Lohmeyer avers that after Mr. Taylor died in March 2016, he wound down the

Dallas practice and moved all active files to Kerrville. Mr. Lohmeyer has reviewed his remaining client files and has determined that they are distinguishable from Taxpayer-1 and thus seeking the review of twenty-three years of client files to determine the identities of law firm clients is a significant abuse of the summons process and violates the first two Powell factors requiring that an investigation be conducted pursuant to a legitimate purpose and that the inquiry be relevant to the purpose.

Unlike Taxpayer-1's case, there is no evidence that any of the remaining taxpayers disregarded Taylor Lohmeyer's advice regarding the proper structure and maintenance of foreign grantor trusts. Thus, the client identities and files would not be responsive to the government's alleged need for production and allowing the summons to be enforced would amount to picking fruit from a poisonous tree.

The Attorney-Client Privilege Prohibits the Production of the Identities of Taylor Lohmeyer's Clients Because Disclosure Would Reveal Their Motive for Seeking Legal Advice and the Substance of the Advice They Received

Notwithstanding the seriously tenuous relationship between Taxpayer-1 and Taylor Lohmeyer's other clients, requiring disclosure of Taylor Lohmeyer's clients under these circumstances for the purpose of merely sniffing around for other potential audits would amount to a substantial erosion of the attorney-client relationship.⁴

⁴ We do not necessarily allege that the government is acting with sinister motive. Rather, we recognize that government representatives have only one client and thus may be unfamiliar with the importance of the necessity of a robust attorney-client privilege. We also recognize that giving Revenue Agent Russel-Hendrick access to the names of Taylor Lohmeyer's clients may help her quickly close out some additional cases given the time and resources she has expended in familiarizing herself with foreign grantor trusts and what she presumes are similar structures developed by Taylor Lohmeyer that have been improperly carried out. However, as discussed further below, the long-standing existence of the attorney-client privilege would be seriously impaired if a taxpayer seeking legal services thought that their confidential information would be released merely because another taxpayer-client erroneously prepared his return. Congress has provided the IRS with numerous methods for selecting taxpayer's returns for audit. For good reason, fishing around a law firm's records is not one of them.

The attorney-client privilege “is founded upon the necessity, in the interest of the administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from consequences of apprehension and disclosure.” Hunt v. Blackburn, 128 U.S. 464, 470 (1888). The privilege recognizes that “sound legal advice or advocacy serves public ends and that such advice or advocacy depends on the lawyer’s being fully informed by the client.” Upjohn Co. v. United States, 449 U.S. 383, 389 (1981). It therefore protects confidential communications between attorney and client in order to “encourage clients to make full disclosure to their attorneys.” Fisher v. United States, 425 U.S. 391, 403 (1980).

Although the identify of a client who has sought legal advice from a lawyer is generally not considered a confidential communication, and thus not ordinarily protected by the attorney-client privilege, a client’s identity is protected by the attorney-client privilege if its disclosure would result in the disclosure of a confidential communication. See In re Cherney, 898 F.2d 565 (7th Cir. 1990); United States v. Liebman, 742 F.2d 807 (3d Cir. 1984); Tillotson v. Bougher, 350 F.3d 663 (7th Cir. 1965). Protection of clients’ identities under such circumstances is necessary to protect our adversary system of government and the attorney-client privilege itself. Cherney, 898 F.2d at 569. “A rule that would permit the government to compel an attorney to disclose her client’s identity under circumstances that would reveal the client’s confidential communications would have serious consequences for our system of justice.” Id.

The identity of a client is protected by the attorney-client privilege whenever “so much of an actual confidential communication has been disclosed already that merely identifying the client will effectively disclose that communication.” United States v. BDO Seidman, 337 F.3d 802, 811 (7th Cir. 2003). This occurs when either the client’s motive in seeking legal advice has

already been disclosed, or when the substance of the legal advice provided to the client has already been revealed. See Cherney, 898 F.2d at 568 (“A client’s motive in seeking legal advice is undeniably a confidential communication. Accordingly, the privilege protects an unknown client’s identity where its disclosure would reveal a client’s motive for seeking legal advice.”); United States v. Liebman, 742 F.2d 807 (3d Cir. 1984) (concluding that clients’ identities were privileged because the substance of the advice they received from their attorney was already known to the government).

The Court of Appeals for the Third Circuit applied the identity privilege in a summons enforcement case involving the issuance of an IRS summons to a law firm in United States v. Liebman, 742 F.2d 807 (3d Cir. 1984). In that case, the IRS issued the summons requesting the identities of clients who had paid fees over a three-year period in connection with tax advice for certain real estate transactions. Id. at 808. The law firm had advised these clients that the fees paid to the law firm in connection with the advice were deductible. Id. The IRS did not agree with the advice provided by the law firm and thus sought to initiate audits of all the law firm’s clients who had received that advice by issuing and then seeking to enforce a summons to the law firm under I.R.C. § 7609(f). The district court granted the IRS’ request to enforce the summons. Id.

On appeal, the Court of Appeals reversed the district court and held that enforcement of the summons to the law firm would violate the attorney-client privilege because the government was already aware of the substance of the advice the law firm provided its clients – that the fees were deductible for tax purposes. Id. at 809. The court concluded that this case “falls within the situation where so much of the actual communication had already been established, that to disclose the client’s name would disclose the essence of a confidential communication * * *.”

Id. The court further determined that “[b]ecause the IRS request was limited to the group of persons who paid for specific investment advice, the IRS would automatically identify those who were told they could make the questionable deductions.” Id. In sum, the court concluded that:

If appellants were required to identify their clients as requested, that identity, when combined with the substance of the communication as to deductibility that is already known, would provide all there is to know about a confidential communication between the taxpayer-client and the attorney. Disclosure of the identity of the client would breach the attorney-client privilege to which that communication is entitled.

Id. at 810. Any contrary ruling, the court concluded, “would vitiate the privilege.” Id.

This case is indistinguishable from Liebman. As in Liebman, the IRS is requesting the identities of a specific group of clients who participated in certain transactions. The IRS summons seeks the identities of particular taxpayers based on the advice and services they sought from Taylor Lohmeyer. Thus, when the specific requests are combined with the client identities (not to mention the related client files), the net effect is to identify individuals as well as the specific services and structures they were provided. As in Liebman, the attorney client privilege prohibits such disclosures because they effectively reveal the privileged reason the client sought legal advice in the first place (even if non-privileged information becomes enveloped as privileged in the process).

Thus, compliance with the IRS summons in this case would drastically undermine the purpose and effectiveness of the attorney-client privilege. The privilege is designed to allow clients confidentially to seek and obtain legal advice. But if the government is allowed to obtain the names of a law firm’s clients who received a particular type of legal advice, no client could be assured that his communications with his attorney, including the advice he received, would remain confidential. Who would seek legal advice, and fully disclose all relevant facts to their attorney knowing that such confidential communications could, at the request of the government,

be disclosed to the government? If this were the case, far fewer clients would engage in full and frank communications with their attorneys, and the important public interest underlying the privilege would be severely undermined.

In summary, the revenue agent's declaration is seriously flawed and not supported by the evidence for several reasons. First, there is no credible evidence that Taylor Lohmeyer gave improper advice to Taxpayer-1. In fact, the evidence supports a strong inference that the advice was proper and that Taxpayer-1 failed to properly implement that advice. Second, there is no evidence that Taylor Lohmeyer gave improper advice to John Eulich. In fact, the Service has never proposed any change to Mr. Eulich's tax reporting position. Finally, and most importantly, there is no credible evidence that Taylor Lohmeyer gave any improper advice to other clients. In fact, the attached declaration of Fred Lohmeyer shows that the client files in his possession do not involve the treatment of earned income as income earned by a foreign corporation, that is, the transactions are not similar to the controlling tax issue in the case of Taxpayer-1.

WHEREFORE, Taylor Lohmeyer respectfully requests that the Court enter an order granting Taylor Lohmeyer's Petition to Quash Summons.

[signature block on next page]

Respectfully submitted,

**CHAMBERLAIN, HRDLICKA, WHITE,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record by electronic service on November 6, 2018, as indicated below.

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ATTORNEYS FOR THE UNITED STATES OF AMERICA

By: /s/ Chad Muller III
Charles J. Muller III

Case No. 5-18-cv-01161

EXHIBIT 1

DECLARATION OF FRED LOHMEYER

My name is Fred Lohmeyer. I am over the age of 21 and competent to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct.

1. I am an attorney/member at The Lohmeyer Law Firm PLLC. The Lohmeyer Law Firm PLLC was previously known as Taylor Lohmeyer Law Firm LLP (“Taylor Lohmeyer”), with offices in Dallas and Kerrville, Texas.
2. The Lohmeyer Law Firm PLLC is a boutique specialty law firm focusing on estate planning and probate law.
3. I graduated from the University of Texas at Austin School of Law in 1962.
4. I am Board Certified by the Texas Board of Legal Specialization in estate planning and probate law.
5. I am a Fellow of the American College of Trust and Estate Counsel and I was named a Texas Super Lawyer in Estate Planning/Trusts from 2003 to 2014.
6. My partner was Robert Taylor.
7. Robert Taylor died in March 2016.
8. Following his death, I closed the Dallas office and transferred all active files to Kerrville.
9. I have possession of files of clients who have engaged in foreign estate and tax planning.
10. Each of those clients has facts that are distinguishable from the client named “Taxpayer-1” in Revenue Agent Russel-Hendrick’s declaration, because to the best of my knowledge, Taylor Lohmeyer never advised any other client with respect to the treatment of earned income as income earned by a foreign corporation.

11. Save for the allegations made by the Revenue Agent respecting "Taxpayer-1," I am not aware of any clients disregarding Taylor Lohmeyer's advice regarding the proper implementation of their foreign tax and estate planning structures.
12. The second taxpayer in Revenue Agent Russel-Hendrick's report, John Eulich, was a client of Taylor Lohmeyer.
13. The IRS previously requested certain documents from Mr. Eulich and subsequently sought enforcement of those requests in district court.
14. Mr. Eulich was represented by reputable tax attorneys Josh Ungerman and Charles Meadows.
15. Mr. Eulich, on the advice of his attorneys, asserted his attorney-client privilege with respect to documents and communications relating to advice provided by Taylor Lohmeyer. Taylor Lohmeyer did not claim privilege in those proceedings and did not conceal any information from the Internal Revenue Service. The documents the Court required to be produced, to my knowledge, were all produced by Mr. Eulich.
16. To my knowledge, the IRS has never assessed any additional tax against Mr. Eulich or made adjustments to his income tax returns.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of NOVEMBER, 2018.


FRED LOHMEYER

3068026.v2

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE