

American College of Tax Counsel Files Amicus Brief With Court Questioning Issuance of John Doe Summons to Law Firm

Association of tax lawyers filed an amicus brief in Taylor Lohmeyer v. United States (No. 19-50506), supporting a rehearing to resolve an important legal issue.

ROCHESTER, NEW YORK, UNITED STATES, June 29, 2020 /EINPresswire.com/ -- The American College of Tax Counsel (the "College") announces the filing on Jun 15, 2020, of an amicus brief with the United States Court of Appeals for the Fifth Circuit in the case of Taylor Lohmeyer Law Firm, PLLC v. United States (No. 19-50506). The amicus brief was filed in support of the petition seeking rehearing en banc of the Fifth Circuit's decision to affirm the district court enforcement of the John Doe summons. On June 18, 2020, the Fifth Circuit requested that the government respond to the petition for rehearing en banc.

The issue in the case, as stated in court documents, is whether the use of a John Doe summons to obtain the identities of clients who have consulted with counsel on a specific matter invades the protection of the attorney-client privilege. The College recognizes the importance of tax enforcement on the nation's voluntary tax compliance system; however, the need for powerful enforcement tools, such as the John Doe summons, does not justify a frontal attack on the attorney-client privilege.

Background of the Case

According to the petition for rehearing en banc filed with the Fifth Circuit, the panel's opinion conflicts with decisions of the Fifth, Third, and Ninth Circuits. Specifically, Petitioner contends that the panel erred by holding that the Internal Revenue Service can compel a law firm to reveal the identities of its clients so it can investigate the clients for suspected tax violations, and further erred by holding that in order for the clients' identities to be privileged, the government must know the "substance of the legal advice" or "the content of any specific legal advice." The College agrees with Petitioner that rehearing en banc is warranted, and in its amicus brief, urges the Fifth Circuit to reverse the lower court to the extent the record is clear that legal services were provided. Alternatively, the brief asks that the court remand the matter to elicit specific factual findings as to whether the clients engaged the law firm to provide legal services. According to Peter Connors, President of the College, "The district court needs to take a serious look at the underlying documents and make a clear determination as to whether the taxpayer had a legitimate privilege concern; it did not do so in the underlying case, and the panel's

affirmation of the lower court puts the attorney-client privilege in jeopardy.”

About Amicus Briefs

A brief by Amicus Curiae (“friend of the court”), also known as an amicus brief, allows a person or organization with a strong interest in or important views on the subject matter of a case to file a brief explaining those views and urging the court to rule in a manner consistent with those views. Amicus briefs are often filed in cases of broad public interest and are filed with the permission of the court and typically, as in this instance, with the consent of all the parties in the case.

About the American College of Tax Counsel

The American College of Tax Counsel is a non-profit association of tax lawyers in private practice, in law school teaching positions, and in government, who are recognized for their excellence in tax practice and their substantial contributions and commitment to the profession. One of the chief purposes of the College is to provide a mechanism for input by tax attorneys into the development of U.S. tax laws and policy. The College’s brief was submitted by its governing Board of Regents, represented by attorneys Lawrence M. Hill of Winston & Strawn, LLP in New York, and Robert S. Horwitz and Lacey Strachan of Hochman Salkin Toscher Perez, PC in California.

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