



IRS Summons for Law Firm Client Data Is Enforceable

Court rules that a "John Doe" summons to obtain confidential client records from a law firm isn't barred by attorney-client privilege.

On May 15, 2019, a district court in the Western District of Texas held that the Internal Revenue Service ("IRS") may enforce a "John Doe" summons to obtain confidential client records from a law firm. A "John Doe" summons allows the IRS to demand records by describing a category of taxpayers without naming any individual taxpayers. In *Taylor Lohmeyer Law Firm PLLC v. United States*, the IRS sought to enforce a remarkably broad summons that required an estate planning firm to identify all of its clients from 1995 to 2017 who were engaged in offshore activities and to provide detailed information, including billing records and records relating to offshore accounts, entities, and trusts. The IRS represented that it was seeking this information to investigate the civil tax liability of those who "create[d] and maintain[ed] foreign bank accounts and foreign entities that may have been used to conceal taxable income in foreign countries."

The IRS had previously examined an unidentified client of the Lohmeyer Law Firm, who admitted to failing to report \$5 million in income in an undeclared offshore account. As part of this examination, the client's lawyer testified that he had structured similar offshore entities for multiple other clients. The IRS determined that the lawyer's firm provided services that were "directed at concealing its clients' beneficial ownership of offshore assets," triggering the "John Doe" summons.

In the summons enforcement action, the court rejected the law firm's argument that the IRS summons sought information protected by attorney-client privilege. The court found that the identity of a law firm's clients are not, in general, protected by privilege. The court also rejected the firm's argument that the summons would, in effect, result in disclosure not only of the clients' names, but also the specific services that they sought. The court determined that the law firm's blanket assertion of attorney-client privilege, in the absence of a privilege log or other particularized showing, failed to meet the firm's burden of establishing grounds to quash the summons.

The "John Doe" summons at issue in *Taylor Lohmeyer* is one more potential tool in the IRS's arsenal for investigating the use of offshore structures for tax evasion. Through the summons to the law firm, the IRS will identify taxpayers and will be able to cross-reference the information it receives against the enormous database of information that it has acquired from multiple other sources, including voluntary disclosures made by more than 45,000 taxpayers, disclosures made by foreign banks under a DOJ program and under the Foreign Account Tax Compliance Act, and information from the leaked Paradise and Panama Papers.



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