

American College of Tax Counsel Files Amicus Brief with U.S. Supreme Court

Tax lawyers' association filed "friend of the court" brief urging the Supreme Court to hear a case involving significant attorney-client privilege questions

ROCHESTER, NEW YORK, UNITED STATES, September 20, 2021 /EINPresswire.com/ -- The American College of Tax Counsel (the "College") announces the filing on June 16, 2021, of an amicus brief with the Supreme Court of the United States in the case of Taylor Lohmeyer Law Firm, PLLC v. United States (No. 20-1596). The amicus brief was filed in support of the Taylor Lohmeyer law firm's petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, which had affirmed a federal district court's enforcement of a John Doe summons. The John Doe summons sought, among other things, "the names of all persons or entities acting as clients" who consulted with counsel to acquire or form any foreign entity, foreign financial account or assist in any foreign financial transaction. Taylor Lohmeyer's petition to the Fifth Circuit for a rehearing en banc was denied by a vote of 9-8. In an opinion dissenting from the denial of rehearing en banc, several judges expressed their concern that "when the IRS pursues John Doe summonses against law firms, serious tensions with the attorney-client privilege arise." The government recently filed a brief opposing the cert petition, and the Supreme Court could announce whether it will accept the case later this month.

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 when the government is aware of the confidential communication with legal counsel or the motive for seeking advice. Although the College has long recognized the important role that tax enforcement has on the nation's voluntary tax compliance system, the College filed an amicus brief in this case because of its interest in the fundamental issue at the heart of the case: the effect that enforcement of a John Doe summons issued to a law firm may have upon the attorney-client privilege.

Background of the Case

According to the petition for writ of certiorari, the Fifth Circuit's opinion conflicts with prior decisions of the Fifth Circuit as well as with decisions from the Third, Fourth, Sixth, Seventh, Ninth and Tenth Circuits. In addition, the petition notes that the Supreme Court has never decided the circumstances under which attorneys are required to withhold requests for information concerning the identities of their clients. Specifically, the petitioner contends that

the Fifth Circuit 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 concern in this particular case is that compliance with the John Doe summons would reveal the clients' confidential motives for seeking the services of Taylor Lohmeyer. According to Caroline D. Ciraolo, President of the College, "The College hopes that the Supreme Court will grant review of this case because the Fifth Circuit's decision creates uncertainty in the application of the attorney-client privilege."

Importantly, the College noted in its amicus brief that it was implicit in the lower court's decision that Taylor Lohmeyer was providing legal services, but if the Supreme Court did not believe that the record was clear on this point, then the case should be remanded for further factual development. The government's brief encouraged the Supreme Court to allow the case to proceed in the lower courts for several reasons, including for the reason noted by the College in its brief.

The College encouraged the Supreme Court to grant the petition to ensure that a uniform standard exists for all federal courts to determine when divulging a client's identity would breach the attorney-client privilege. According to Lawrence M. Hill, counsel to the College on the amicus brief, "Uniformity of law is necessary to ensure that all clients' communications with their lawyers are treated similarly. Leaving the circuits split on this issue would lead to inconsistent protections for clients and fundamental systemic unfairness." Similarly, Steven Toscher, who also served as counsel to the College on the amicus brief, observed that "The assistance of tax counsel is critical to help taxpayers navigate the tax code, and the Supreme Court should make certain that taxpayers can have confidence that their consultations with tax counsel will be protected."

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 nonprofit association of tax attorneys in private practice, in law school teaching positions, and in government, who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the legal 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 Steptoe & Johnson LLP in New York, and Steven Toscher, Robert S. Horwitz and Lacey Strachan of Hochman Salkin Toscher Perez, PC in California.

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