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Can IRS Force Your Accountant To Talk?

With all the talk of undisclosed foreign bank accounts and coming clean to the IRS, there's renewed buzz about an age-old topic: what tax information can the IRS get? Under the U.S. Constitution, you can't be made to testify against yourself. You can assert your Fifth Amendment rights and decline to answer IRS questions, even in front of a judge.

But documents are a different story. If you have documents—such as foreign bank account records—the IRS can obtain them with a summons, subpoena or search warrant. That may make you wonder if you aren't better off with sensitive information in the hands of your lawyer. That's especially true if you've considered a quiet disclosure.

Thanks to attorney-client privilege, if you confess to a lawyer you're hiding income or assets offshore the IRS can't make the lawyer talk. The IRS can't even make your lawyer produce your documents with a summons or subpoena. See Latest Foreign Account Prosecution Fuels Fears. Such are the basics of the attorney client-privilege.

That should impact how you handle your case. If you ask your lawyer to obtain your foreign bank records, your lawyer can't be forced to hand them over to the IRS. In contrast, if you obtain ***your own*** foreign bank records, they're fair game.

Accountants, however, don't have this privilege. If you make statements or provide documents to your accountant, he can be compelled to divulge it no matter how incriminating it is. The accounting profession lobbied for its own privilege in the 1990s, and a statutory "tax preparation"

privilege was added in 1998 (IRC Section 7525(a)(1)). However, it is inapplicable to criminal tax cases so is of little value.

In sensitive tax matters, the answer to this quandary for the last 50 years has been the *Kovel* letter. Named after *United States v. Kovel*, it works like this: Your tax lawyer hires an accountant to work ***for him*** on your case. In effect, the accountant is doing ***your*** tax accounting and return preparation, but reporting as a subcontractor to your lawyer.

Properly executed, this end-run imports attorney client privilege to the accountant's work and communications. However, recent IRS lawsuits are eroding this well-established principle.

In *United States v. Richey*, the Ninth Circuit Court of Appeals refused to protect an appraisal that a taxpayer, lawyer and accountant were trying to keep out of IRS hands. In *United States v. Hatfield*, a federal court in New York also cut back on *Kovel*, forcing disclosure of discussions between the lawyer and accountant.

Kovel is still good law and the practice remains widespread. But additional precautions, such as more rigid direction from the lawyer to the accountant and segregation of accounting and legal files, are good ideas.

For more, see:

Tax Amnesty: IRS Voluntary Disclosure Part Deux

Why Your CPA Might Blab

How Do you Opt Out Of IRS Voluntary Disclosure?

IRS Updates Voluntary Disclosure Amnesty: What You Should Know

IRS Voluntary Disclosure A Mistake For Some

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