Countryside Ltd. P'ship v. Comm'r, 132 T. C. 347 (U. S. Tax Court 2009)

In *Countryside Ltd. P'ship v. Comm'r*, the U. S. Tax Court ruled that notes and minutes from meetings between a taxpayer and a federally authorized tax practitioner (FATP) were protected by the FATP privilege and not subject to disclosure. The court clarified that the tax shelter promotion exception to the FATP privilege did not apply because the communications were not written and did not involve promotion of a tax shelter. This decision underscores the protection of confidential tax advice within a routine client-advisor relationship, distinguishing it from promotional activities related to tax shelters.

Parties

Countryside Limited Partnership, CLP Holdings, Inc. , Tax Matters Partner, et al. (Petitioners) v. Commissioner of Internal Revenue (Respondent). The case was heard in the U. S. Tax Court, with petitioners represented by Richard S. Levine and Elliot Pisem, and respondent represented by Jill A. Frisch.

Facts

The case involved a series of transactions by Countryside Limited Partnership related to partnership redemptions and associated tax questions. The Commissioner moved to compel production of documents, including "Estate Planning Meeting Minutes" and handwritten notes made by a partnership member during a meeting with Timothy Egan, a federally authorized tax practitioner (FATP) at PricewaterhouseCoopers (PWC). Egan had a long-standing relationship with the Winn organization, providing tax compliance and planning services. The minutes covered communications between clients and their attorneys or Egan regarding legal and tax advice from March 28, 2001, to February 11, 2003. The notes were made by Lawrence H. Curtis and recorded confidential tax advice received during a meeting with Egan.

Procedural History

The case was a partnership-level action filed pursuant to 26 U. S. C. § 6226. The Tax Court issued a report granting partial summary judgment to participating partner Arthur M. Winn. The Commissioner filed two motions to compel production of documents, which the petitioners opposed, claiming protection under the attorney-client privilege and the FATP privilege as per 26 U. S. C. § 7525(a). The court determined that the documents were privileged under the FATP privilege but subject to the exception in § 7525(b) if they involved written communications promoting corporate participation in a tax shelter. The court denied the Commissioner's motions to compel production.

Issue(s)

1. Whether the notes and minutes are protected by the FATP privilege under 26 U.

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S. C. § 7525(a)?
2. Whether the exception to the FATP privilege in 26 U. S. C. § 7525(b) applies to the notes and minutes, thereby requiring their disclosure?

Rule(s) of Law

26 U. S. C. § 7525(a) provides a limited privilege equivalent to the attorney-client privilege for communications between a taxpayer and an FATP regarding tax advice. 26 U. S. C. § 7525(b) states that the privilege does not apply to any written communication between an FATP and a corporate representative in connection with the promotion of the corporation's participation in a tax shelter as defined in 26 U. S. C. § 6662(d)(2)(C)(iii). The burden of proof for the privilege lies with the petitioners, while the burden for the exception lies with the Commissioner.

Holding

The Tax Court held that the notes and minutes were protected by the FATP privilege and that the exception under § 7525(b) did not apply because the notes were not a written communication and the minutes did not involve the promotion of a tax shelter.

Reasoning

The court reasoned that the notes were merely personal, handwritten records of a discussion and were not communicated to anyone, thus not constituting a "written communication" under § 7525(b). Regarding the minutes, the court found that Egan's role was that of a trusted advisor within a routine client relationship, not a promoter of a tax shelter. The court relied on legislative history indicating that the promotion of tax shelters was not part of routine client relationships. The court distinguished between the routine provision of tax advice and the promotion of tax shelters, noting that Egan's actions did not cross the line into promotion. The court also considered the lack of a fixed fee or percentage-based compensation for Egan's advice, further supporting the routine nature of the relationship.

Disposition

The Tax Court denied the Commissioner's motions to compel production of the notes and minutes.

Significance/Impact

This case clarifies the scope of the FATP privilege and the tax shelter promotion exception, emphasizing the protection of confidential tax advice within routine client relationships. It distinguishes between routine tax advice and the promotion of tax shelters, providing guidance on the application of § 7525(b). The decision reinforces the importance of the FATP privilege in maintaining confidentiality in tax planning and compliance, while also setting a high bar for what constitutes promotion under

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the tax shelter exception.

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