

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ABBVIE INC.,)	
)	
)	
Plaintiff,)	Civil Action No.: 1:23-cv-2658
v.)	
)	
INTERNAL REVENUE SERVICE,)	DECLARATION OF
)	DANIEL A. ROSEN
)	
Defendant.)	
)	
_____)	

I, Daniel A. Rosen, pursuant to 28 U.S.C. § 1746, declare as follows:

Section 1234A Speaking Engagements FOIA Request

1. On February 15, 2023, I prepared a request for certain records in the possession, custody, or control of the Internal Revenue Service (“IRS” or “Defendant”) and the IRS Office of Chief Counsel relating to or referencing IRS Office of Chief Counsel employee Helen Hubbard’s participation in a January 16, 2018, Practising Law Institute (“PLI”) conference on the taxation of financial products and transactions in New York and records relating to or referencing Helen Hubbard’s or any other IRS official’s participation in any conference addressing the federal income tax treatment of termination or break fees and/or the application of I.R.C. §§ 162, 165, and/or 1234A to termination or break fees (the “Section 1234A Speaking Engagements FOIA Request”). Attached as Exhibit I is a true and correct copy of the Section 1234A Speaking Engagements FOIA Request.
2. On February 15, 2023, I caused the Section 1234A Speaking Engagements FOIA Request to be delivered to the IRS.

3. On May 16, 2023, the IRS sent me a letter in connection with the Section 1234A Speaking Engagements FOIA Request, indicating that the IRS was unable to comply with the 20 working-day statutory deadline and claiming a 10-day statutory extension to June 9, 2023 (“Defendant’s May 16, 2023 Letter”). Attached as Exhibit II is a true and correct copy of the Defendant’s May 16, 2023 Letter.

4. On July 14, 2023, the IRS sent me a letter in connection with the Section 1234A Speaking Engagements FOIA Request, indicating that the IRS needed additional time to “obtain and review the records” and expected to provide a final response by September 29, 2023 (“Defendant’s July 14, 2023 Letter”). Attached as Exhibit III is a true and correct copy of Defendant’s July 14, 2023 letter.

5. Other than the Defendant’s May 16, 2023 Letter and Defendant’s July 14, 2023 Letter, attached hereto as Exhibits II and III, respectively, I have not received a response from the IRS to the Section 1234A Speaking Engagements FOIA Request.

IRS Determinations FOIA Request

6. On March 9, 2023, I prepared a request for certain records in the possession, custody, or control of the IRS relating to or referencing Technical Advice Memorandum 200438038 (release date Sep. 17, 2004) or Private Letter Ruling 200823012 (release date June 6, 2008) (the “IRS Determinations” and the “IRS Determinations FOIA Request”). Attached as Exhibit IV is a true and correct copy of the IRS Determinations FOIA Request.

7. On March 9, 2023, I caused the IRS Determinations FOIA Request to be delivered to the IRS.

8. On March 15, 2023, the IRS sent me a “final response” letter in connection with the IRS Determinations FOIA Request, confirming that Defendant received the IRS

Determinations FOIA Request on March 9, 2023 (“Defendant’s March 15, 2023 Letter”).

Attached as Exhibit V is a true and correct copy of the Defendant’s March 15, 2023 letter.

Defendant’s March 15, 2023 Letter indicated that Defendant has “routine agency procedure[s] to request documents related to a written determination file available under [26 U.S.C. §] 6110” and provided instructions for requesting records pursuant to Revenue Procedure 2012-31.

Defendant’s March 15, 2023 Letter also noted that “requests for records processed in accordance with routine agency procedures are specifically excluded from the processing requirements of FOIA.” *Id.*

9. On July 28, 2023, my colleague Brendan Sponheimer and I had a telephonic discussion with Gail Minauro, Defendant’s tax law specialist assigned to the IRS Determinations FOIA Request. We explained to Ms. Minauro that the IRS Determinations Request sought records not included within the scope of 26 U.S.C. § 6110. Ms. Minauro indicated that she would discuss the matter internally and respond to us shortly.

10. On August 8, 2023, I sent a letter to Ms. Minauro, by email, referencing the July 28, 2023 discussion and requesting a response as soon as possible (“Plaintiff’s August 8, 2023 Letter”). Attached as Exhibit VI is a true and correct copy of Plaintiff’s August 8, 2023 Letter.

11. On August 8, 2023, the IRS responded by email to my August 8, 2023 Letter (“Defendant’s August 8, 2023 Letter”). Attached as Exhibit VII is a true and correct copy of Defendant’s August 8, 2023 Letter.

12. On August 10, 2023, I replied to the IRS by email (“Plaintiff’s August 10, 2023 Email”). Attached as Exhibit VIII is a true and correct copy of Plaintiff’s August 10, 2023 Email.

13. On August 10, 2023, the IRS sent me an email, indicating that the IRS Determinations FOIA Request was closed and would not be reopened (“Defendant’s August 10, 2023 Email”). Attached as Exhibit IX is a true and correct copy of Defendant’s August 10, 2023 Email.

14. Other than the correspondence attached hereto as Exhibits V, VII, and IX, I have not received a response from the IRS regarding the IRS Determinations FOIA Request.

Break Fee FOIA Request

15. On May 31, 2023, I prepared a request for certain records in the possession, custody, or control of the IRS relating to or referencing the IRS’s examination of Plaintiff for the taxable year ended December 31, 2014, specifically seeking all records related to or referencing Plaintiff’s terminated proposed combination with Shire plc (“Shire”) and Plaintiff’s related \$1.635 billion break fee payment to Shire (the “Break Fee FOIA Request.”). Attached as Exhibit X is a true and correct copy of the Break Fee FOIA Request.

16. On May 31, 2023, I caused the Break Fee FOIA Request to be delivered to the IRS.

17. On July 10, 2023, I received a letter from the IRS dated June 29, 2023 in connection with the Break Fee FOIA Request, indicating that the IRS received the Break Fee FOIA Request on May 31, 2023, but was unable to meet the 20 working-day statutory deadline and claiming a 10-day statutory extension to July 14, 2023 (“Defendants June 29, 2023 Letter”). Attached as Exhibit XI is a true and correct copy of Defendant’s June 29, 2023 Letter.

18. Other than the correspondence attached hereto as Exhibit XI, I have not received a response from the IRS regarding the Break Fee FOIA Request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on September 11, 2023.

A handwritten signature in black ink, appearing to read "Daniel A. Rosen", written over a horizontal line.

Daniel A. Rosen
Baker & McKenzie LLP