

EXHIBIT F

to

Complaint

*July 20, 2015 Letter from Brinda Brown,
Senior Disclosure Specialist, IRS*



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

July 20, 2015

Todd Kaiser, Esq.
Ogletree Deakins
111 Monument Circle, Suite 4600
Indianapolis, IN 46204

Dear Mr. Kaiser:

I am responding to your subpoena concerning Richard and Stephanie Bear v. Michael P. Shanahan and MPS Ultra, received in our office on June 28, 2015. The subpoena requires the testimony of Internal Revenue Service (IRS) Revenue Officer Michael R. Ripley, pertaining to a civil action court proceeding on July 24, 2015 at 10 a.m.

Since this is a civil case and the Internal Revenue Service is not a party to the litigation, we are not required to produce the requested documents under the subpoena.

Two grounds support the conclusion that the IRS does not have to comply with a state court subpoena. They are the doctrine of sovereign immunity and the second is the Supremacy Clause of the United States Constitution.

The doctrine of sovereign immunity prevents a state court from exercising jurisdiction over United States Government agency actions. The Federal Government's sovereign immunity extends to cases where the Government has not consented to be subject to an action, to legal proceedings where the Government is named, or to cases where the effect of the state court judgment would be to restrain the Federal Government from acting or forcing it to act.

The Supremacy Clause of the United States Constitution is a separate basis for opposing subpoenas issued by state courts. Federal law is the only means through which access to Federal documents may be sought and granted.

Please note that the Form 8821 you submitted along with this subpoena does not authorize testimony of our employees. You may use this form to receive tax information through routine agency procedures.

IRC section 6103(p)(2) sets forth the requirement for certification of IRS records. That section only requires certification of tax returns. This information was provided to you in our correspondence dated May 12, 2015, referencing our case number S15132-0030.

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If you have any questions please call me Sr. Disclosure Specialist, Brinda Brown, ID # 72-02505, at 318-683-6324 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number S15181-0005.

Sincerely,

A handwritten signature in cursive script that reads "Brinda Brown".

Brinda Brown
Sr. Disclosure Specialist
Disclosure Office 09

EXHIBIT G

to

Complaint

*August 19, 2015 Letter from Todd Kaiser to
Commissioner, IRS Appeals – FOIA Appeal*

Ogletree Deakins

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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Todd J. Kaiser
317.916.2155
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August 19, 2015

Commissioner
IRS Appeals – FOIA Appeal
6377A Riverside Avenue, Suite 110,
Riverside, California 92506

RE: *FOIA Appeal*

*Richard and Stephanie Bear v. Michael P. Shanahan and MPS Ultra State of Indiana,
Hendricks County Superior Court*

*Cause No.: 32D05-1306-PL-62
Reference Case number: S15111-0030*

Dear Commissioner:

This is an appeal pursuant to 5 U.S.C. § 552(a)(6), concerning the Internal Revenue Service (“IRS” or “Agency”) refusal to authorize testimony and certification of documents by Officer Michael Ripley. The requested testimony and certification pertains to discussions that were made between IRS Officer Michael Ripley and Ultra Property’s Power of Attorney—Michael Shanahan—during the years 2011 and 2012. These conversations were noted in IRS transcripts attached to this appeal and in need of certification. *See Exhibit A to Attachment 1.* The discussions between Officer Michael Ripley and Michael Shanahan involved tax levies that were placed on Ultra Property because of unpaid unemployment taxes. Certification of the IRS transcripts and testimony of the conversations are crucial to bring the above-captioned action against Michael P. Shanahan. The actions brought against Michael P. Shanahan involve actions for legal malpractice and undue influence in connection with Mr. Shanahan’s representation of the Bears involving the Indiana Department of Revenue, the Internal Revenue Service, and tax levies and judgments against the Plaintiffs’ business, and Mr. Shanahan’s subsequent purchase of the assets of the Plaintiffs’ business.

Pursuant to 26 CFR 301.9000-5, please consider the following information in support of our request for testimony and certification. (quoted from FOIA request dated 6/26/15 and attached hereto as **Attachment 1**).

- (1) Plaintiffs are seeking testimony from Revenue Officer Ripley regarding conversations he had with Richard and Stephanie Bear, and conversations he had with Michael Shanahan, their attorney and POA. Details of these conversations are all contained in the IRS tax

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transcripts, attached as **Exhibit A to Attachment 1**. The transcripts at **Exhibit A** contain relevant information to Plaintiff's claims, which Plaintiffs seek to have certified/authenticated for use for trial. The details of conversation that Revenue Officer Ripley had with the Bears and with Mr. Shanahan are critical to proving the Plaintiffs' claims.

- (2) If Plaintiffs are unable to obtain testimony from Revenue Officer Ripley, and certification of the content of the transcripts, the details of the conversations may be considered hearsay and inadmissible at trial, which would severely prejudice Plaintiffs' ability to prove their case at trial. The volume of information involved is not over burdensome.
- (3) Estimated time that will be required to present the testimony is four hours.
- (4) Information sought by Plaintiffs would be considered return information under section 6103(b) of the Internal Revenue Code, and Plaintiffs have provided consent for its release. See a completed Form 8821 - Tax Information Authorization attached as **Exhibit B to Attachment 1**.
- (5) A declaration of an IRS officer under penalties of perjury likely will not suffice in lieu of deposition or trial testimony in this matter as indicated above.
- (6) The information sought by Plaintiffs is not available from other sources.
- (7) Plaintiff's request allows a reasonable time for compliance.

Unfortunately, by a letter dated July 20, 2015 the Agency has refused to authorize certification of the IRS transcripts or authorize testimony to be given by Officer Michael Ripley. The stated basis is sovereign immunity and the Supremacy Clause of the United States Constitution.

By this letter and the one attached hereto, I am therefore making a timely appeal pursuant to 5 U.S.C. § 552(a)(6), and 26 C.F.R. § 601.702 (c)(10)(i), in response to the Agency's denial of the FOIA request.

Because my clients do not agree that the requested materials are exempt from disclosure, they ask that the Commissioner reverse the denial of their FOIA request. They further request that if any portion of the request is denied, the Commissioner describe the reasons for the denial of the request and specify the statutory basis for the denial as well as the reasons for believing that the alleged statutory justification applies in this instance. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). See 5 U.S.C. § 552(a)(6)(ii). See 26 C.F.R. § 601.702

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DISCUSSION

The Agency's refusal to authorize testimony to be given by Officer Michael Ripley violates the Freedom of Information Act (FOIA or Act), 5 U.S.C. § 552 *et seq.*, as amended. The IRS in its response to our FOIA request sent June 26, 2015, claimed the defenses of sovereign immunity and the Supremacy Clause. *See Attachment 2*. Though true that “[t]he limitations on a state court's subpoena and contempt powers stem from the sovereign immunity of the United States and from the Supremacy Clause, such limitations do not apply when a *federal* court exercises its subpoena power against federal officials.” *Exxon Ship. Co. v. U.S. Dept. of Int.*, 34 F.3d 774, 778 (9th Cir. 1994) (quoting *In re Recalcitrant Witness Boeh*, 25 F.3d at 770 (Norris, J., dissenting)). If the appeal is denied my clients will file a separate claim in Federal District Court under 5 U.S.C. § 552 and 5 U.S.C.A. § 702. By noncompliance with the FOIA request for certification or testimony of Officer Michael Ripley, Richard and Stephanie Bear would be “person[s] suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action” pursuant to 5 U.S.C. § 702.

The Ninth Circuit Court in *Exon* stated, “the public ... has a right to every man's evidence.” *Id.* at 779. (quoting *United States v. Bryan*, 339 U.S. 323, 331, 70 S.Ct. 724, 730, 94 L.Ed. 884 (1950)) (quoting Wigmore, Evidence § 2192 (3d ed.)). “Exceptions ‘to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for the truth.’” *Id.* (citing *United States v. Nixon*, 418 U.S. 683, 710, 94 S.Ct. 3090, 3108, 41 L.Ed.2d 1039 (1974)). “Furthermore, the Federal Rules of Civil Procedure strongly favor full discovery.” *Id.* at 779. “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” *Id.* at 779. (quoting Fed.R.Civ.P. 26(b)(1)).

Under 5 U.S.C.A. § 552(a)(3)(B) “an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” Because certification of the documents and oral testimony is readily reproducible and the record of the phone calls and conversations shall be provided by any form or format requested by the FOIA requesting person, the Agency's has no authority to not comply with such a request. Further Richard and Stephanie bear would be “adversely affected or aggrieved by [IRS] agency action” under 5 U.S.C. § 702, if this appealed request for certification and testimony from Officer Michael Ripley were not granted.

CONCLUSION

Because my clients would be adversely affected, aggrieved, and suffer a legal wrong, certification and authorization for Officer Michael Ripley to give testimony should be granted.

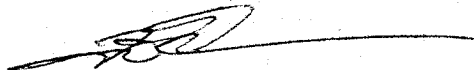
In the event this appeal is denied, the Agency is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter. 5 U.S.C. § 552(a)(6)(ii), 26 C.F.R. § 601.702. If this appeal is denied or the Agency's response is not forthcoming within

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twenty (20) working days, my clients reserve their rights under FOIA to seek judicial review, including the award of attorney's fees. I await your prompt reply.

Very truly yours,



Todd J. Kaiser

TJK/dli
Attachments

cc: Ronald Mingus, Esq.
Revenue Officer Michael Ripley

22000521.1

EXHIBIT H

to

Complaint

*September 3, 2015 Letter from
A. Amparano, Disclosure Specialist, IRS*



**PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE**

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224**

September 3, 2015

Mr. Todd Kaiser
Ogletree Deakins
111 Monument Circle
Suite 4600
Indianapolis, IN 46204

Re: MPS Ultra

Dear Mr. Kaiser:

I am responding to your Freedom of Information Act (FOIA) request dated August 19, 2015 that we received on August 24, 2015.

You asked for copies of certified transcripts and the Testimony of Revenue Officer Michael Ripley.

You requested the testimony of Revenue Officer Michael Ripley. Therefore, your request does not seek existing records, but is a request for the creation of personalized and specific statements concerning Richard and Stephanie Bear via testimony. The FOIA gives individuals the right to have access to existing agency records. It does not require agencies to create records/statements in response to a request. There are no documents responsive to your request.

Treasury Regulation 26 CFR 601.702(d) provides that request for records processed in accordance with routine agency procedures are specifically excluded from the processing requirements of the FOIA.

As a result, Disclosure offices will no longer process requests for transcripts or other similar information requested. Your request is not being processed. Please resubmit your request using the enclosed procedures for obtaining the information you need.

Tax records are confidential and may not be disclosed unless specifically authorized by law. We must receive the Bear's written consent before we can consider releasing the information you requested.

The FOIA does not require that we certify documents in response to a FOIA request. IRC section 6103(p)(2) sets forth the requirement for certification of IRS records. That section only requires certification of tax returns.

We apologize for any inconvenience this may cause you.

If you have any questions please call Disclosure Specialist A. Amparano ID # 0220447, at 512-460-4433 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F15245-0062.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Amparano".

A. Amparano
Disclosure Specialist
Disclosure Office 9

Enclosure:
Procedures for Requesting Various Transcripts or other Similar Information

Procedures for Requesting Transcripts

Use the following procedures to request the transcripts you need:

Descriptions of Transcripts

Below are the five types of transcripts generally requested:

1. **Tax Return Transcripts** show most line items from the tax return (Form 1040, 1040A, or 1040EZ) as it was originally filed, including any accompanying forms and schedules. This transcript does not reflect any changes your client or the IRS made after the return was filed. In many cases, this transcript meets the requirements for student loans and of lending institutions offering mortgages.
2. **Tax Account Transcripts** provide any adjustments your client or the IRS made after the return was filed. This transcript shows basic data, including payment and refund history, adjusted gross income, and taxable income.
3. **Record of Account Transcripts** combine the information from tax return and tax account transcripts.
4. **Wage and Income Transcripts** show data from information returns, such as W-2s, 1099s and 1098s, reported to the IRS. Most recent year information may not be complete until July.
5. **Verification of Nonfiling Letters** indicates that IRS does not have a record of a return processed for the requested period. Current year requests are available after June 15. A taxpayer may fail to file a tax return even though he/she has a filing requirement. This letter does not address whether or not the taxpayer should have filed a tax return.

Procedures for Requesting Transcripts

To allow the IRS to better serve you, we suggest that you use the following, preferred methods to obtain these transcripts.

Ideally, you want to enroll in e-Services to obtain transcripts. All tax professionals who wish to use e-Services tools must register online to create a user account. To determine if you are eligible to register, please refer to the following online address:

<http://www.irs.gov/Tax-Professionals/e-services---Online-Tools-for-Tax-Professionals>

If you are not eligible to register for e-Services, we recommend the following methods that your client can use to obtain a transcript.

- Go to **Get Transcript** to immediately view and download all transcripts and/or request a tax return and/or tax account transcript be mailed to your address of record. <http://www.irs.gov/Individuals/Get-Transcript>.
- Call 1-800-908-9946 to request tax return and/or tax account transcripts be mailed to your address of record.
- Complete and mail Form 4506-T, *Request for Transcript of Tax Return* to the IRS. <http://www.irs.gov/pub/irs-pdf/f4506t.pdf>

To request Non-Master File (NMF) transcripts, use the following procedures:

For NMF transcripts for individuals, direct your written request to:

Philadelphia Campus, PAMC
2970 Market Street, Mail Stop BLN-3-J23.134, Team 407
Philadelphia, PA 19104

For NMF transcripts for business entities, direct your written request to:

Cincinnati Campus, CAMC
201 W. Rivercenter Blvd., Stop 6111G, Team C103
Covington, KY 41011