

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JOSEPH B. JUDKINS)	
Baker & McKenzie LLP)	
815 Connecticut Avenue, N.W.)	
Washington, D.C. 20006)	
	Plaintiff,)	
)	
v.)	Civil Case No. _____
)	
INTERNAL REVENUE SERVICE)	
1111 Constitution Avenue, N.W.)	
Washington, D.C. 20224,)	
	Defendant.)	
_____)	

DECLARATION OF JOSEPH B. JUDKINS


I, Joseph B. Judkins, pursuant to 28 U.S.C. § 1746, declare as follows:

1. On July 13, 2016, I filed a FOIA request ("FOIA Request") seeking access to documents maintained by the IRS concerning the regulatory history of certain proposed and final regulations under Internal Revenue Code § 385. Attached hereto as Exhibit ("Ex.") A is a true and correct copy of the FOIA Request.

2. I received a response from Frederick O. Crimson, Disclosure Manager, dated August 15, 2016 ("IRS Response"), stating that the IRS required additional time to respond to the request, extending the time to August 31, 2016. The IRS Response further requests an extension until October 3, 2016, when the IRS believes it can provide a final response. Attached hereto as Ex. B is a true and correct copy of the IRS Response.

3. As of the date of this Declaration, the IRS has not disclosed any of the documents and records requested in the FOIA Request.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 8, 2016.



Joseph B. Judkins
(D.C. Bar No. 499737)
Baker & McKenzie LLP

BAKER & MCKENZIE

Baker & McKenzie LLP

815 Connecticut Avenue, N.W.
Washington, DC 20006-4078
United States

Tel: +1 202 452 7000
Fax: +1 202 452 7074
www.bakermckenzie.com

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* Associated Firm
** In cooperation with
Trench, Rossi & Wetanabe
Advogados

July 13, 2016

IRS FOIA Request
Headquarters FOIA
Stop 211
P.O. Box 621506
Atlanta, GA 30362-3006

RE: Freedom of Information Act Request

Dear Disclosure Officer:

In accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, I request copies of documents maintained by the Internal Revenue Service ("IRS") concerning the regulatory history of certain proposed and final regulations under Internal Revenue Code (I.R.C.) § 385. Specifically, I request copies of the following:

1. All documents maintained by the IRS related to the proposed regulations under I.R.C. § 385, published in the Federal Register at 45 Fed. Reg. 18957 (March 24, 1980), including but not limited to, pre-publication documents, notices pertaining to the proposed rulemaking, public comments and other documents submitted to the agency related to the proposed rulemaking, hearing transcripts and recordings, if any, of oral presentations made in the course of the proposed rulemaking, reports and recommendations of any advisory committees, IRS communications (internal or otherwise), similar instruments, and any other documents considered by the IRS during the course of the proposed rulemaking.
2. All documents maintained by the IRS related to the final regulations under I.R.C. § 385, contained in Treasury Decision 7747 that were originally published in the Federal Register at 45 Fed. Reg. 86438 (December 31, 1980), and revised by (i) Treasury Decision 7774, published in the Federal Register at 46 Fed. Reg. 24945 (May 4, 1981), (ii) Treasury Decision 7801 published in the Federal Register at 47 Fed. Reg. 147 (January 5, 1982), and (iii) Treasury Decision 7822 published in the Federal Register at 47 Fed. Reg. 28915 (July 2, 1982), including but not limited to, pre-publication documents, notices pertaining to the rulemaking, public comments and other documents submitted to the agency related to the rulemaking, hearing transcripts and recordings, if any, of oral presentations made in the course of the rulemaking, reports and recommendations of any advisory committees, IRS communications (internal or otherwise), similar instruments,

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and any other documents considered by the IRS during the course of the rulemaking.

3. All documents maintained by the IRS related to the proposed regulations under I.R.C. § 385, published in the Federal Register at 47 Fed. Reg. 164 (January 5, 1982), including but not limited to, any pre-publication documents, notices pertaining to the proposed rulemaking, public comments and other documents submitted to the agency related to the proposed rulemaking, hearing transcripts and recordings, if any, of oral presentations made in the course of the proposed rulemaking, reports and recommendations of any advisory committees, IRS communications (internal or otherwise), similar instruments, and any other documents considered by the IRS during the course of the proposed rulemaking.
4. All documents maintained by the IRS related to the notice of proposed withdrawal of Treasury Decision 7747 that was published in the Federal Register at 48 Fed. Reg. 31053 (July 6, 1983), including but not limited to pre-publication documents and any public comments received in connection with this notice.
5. All documents maintained by the IRS related to the public hearing on the proposed withdrawal of Treasury Decision 7747 that was held on August 18, 1983, notice of which was published in the Federal Register at 48 Fed. Reg. 31054 (July 6, 1983), including but not limited to pre-publication documents, comments received from the public, outlines of proposed oral comments, agendas, and hearing transcripts.
6. All documents maintained by the IRS related to the withdrawal of Treasury Decision 7747 published in the Federal Register at 48 Fed. Reg. 50711 (November 3, 1983), including but not limited to pre-publication documents and comments received from the public.

For purposes of this request, the term “document” is used expansively and includes, by way of illustration and without limitation, all documents contained in the legal file (as presently defined in Internal Revenue Manual section 32.1.2.1, or the equivalent thereof), agreements, contracts, communications, letters, reports, analyses, memoranda (including all issues memoranda as presently defined in Internal Revenue Manual section 32.1.2.6.2.1, or the equivalent thereof), e-mails, transcripts, minutes, notes, bulletins, worksheets, schedules, notebooks, drawings, photographs, drafts (including all precirculation drafts, “green” circulation drafts, and “pink” signature packages as presently defined in Internal Revenue Manual sections 32.1.6.6, 32.1.6.7 and 32.1.6.8, respectively, or the equivalent thereof and all versions of such drafts), comments on drafts, executive summaries (as presently defined in Internal Revenue Manual section 32.1.6.7.1 or the equivalent thereof), weekly bulletins to the Secretary of the Treasury and other Treasury officials, materials for joint briefings (briefings attended by attorneys and other staff of the IRS, IRS Chief Counsel, and the Treasury), materials used to brief the Treasury Executive Secretary and the Treasury General Counsel, materials used to

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brief committees and members of Congress and their staff (including the Joint Committee of Taxation, the Senate Finance Committee, the House Ways and Means Committee, and staff of such committees), materials used to prepare government panelists to provide testimony at hearings, summaries of public comments prepared by any member or employee of any government agency, communications with the Department of Justice, communications and/or correspondence between the IRS and any member of Congress, communications and/or correspondence between the IRS and any other agency, communications and/or correspondence between the IRS and the White House, communications and/or correspondence between the White House and any other agency, communications and/or correspondence with the public, communications and/or correspondence with the press, diaries, calendars, workpapers, contracts, purchase orders, telecopies, telexes, or any information stored on optical disc, magnetic tape, microfilm or microfiche, or computer memory storage device. The term "document" also refers to any draft or prior version of a document responsive to this request.

If it is determined that any requested document or record, or any portion thereof, will not be disclosed, please provide us with the non-exempt documents and records and with the non-exempt portions of the remaining documents and records. In the event an exemption is claimed, please provide us with all segregable non-exempt portions of any withheld document or record pursuant to 5 U.S.C. § 552(b). When material is to be redacted, please "black out" rather than "white out" or "cut out" any portions for which an exemption is claimed.

If records responsive to this request have been destroyed, please identify the documents destroyed, the date of destruction, and the person who destroyed the document.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(b), if this request is denied either in part or in whole, please provide us with an index that specifies which exemption(s) is (are) being claimed for each portion of each document withheld. I note that the FOIA Improvement Act of 2016 recently changed the scope of the exemption contained in 5 U.S.C. § 552(b)(5), and the deliberative process privilege no longer applies to records created 25 years or more before the date on which the records are requested. The records at issue in this request likely fall into this vintage of Federal records. Accordingly, please provide such records without regard to assertions or deliberative process privilege. To the extent materials are withheld, please provide a detailed description of each document or record withheld, including the author(s) and any recipients, the date of its creation, its subject matter, and its current physical location. In addition, please provide the reason that each document or record falls within the exemption claimed for it. Please also specify the number of pages in each document or record and the total number of pages that are responsive to this request. Such an index is required to allow us to evaluate the IRS's claims that these documents are exempt from disclosure. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974); Church of Scientology of Cal. v. IRS, 792 F.2d 146 (D.C. Cir. 1986); Osborn v. IRS, 754 F.2d 195 (6th Cir. 1985); White v. IRS, 707 F.2d 897, 899 (6th Cir. 1983) (quoting Founding Church of

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Scientology v. Bell, 603 F.2d 945 (D.C. Cir. 1979)); Brooks v. IRS, 80 A.F.T.R. 2d 97-6370 (E.D. Cal. 1997) (citing Wiener v. FBI, 943 F.2d 972 (9th Cir. 1991)).

I do not wish to inspect the records, but desire copies to be made in accordance with Treas. Reg. § 601.702(c)(4)(i)(G). In accordance with Treas. Reg. § 601.702(c)(4)(i)(H), I agree to pay reasonable charges incurred to search for and duplicate the requested documents. You may incur up to \$1,000 in charges in connection with this request without further authorization. In the event that the total charges are estimated to exceed that amount please seek further authorization.

I am an "other requestor" under Treas. Reg. § 601.702(f)(3)(ii)(E), and a copy of my State of Virginia driver's license is attached for photo identification as Exhibit A.

Please send any of the above-mentioned documents or communications regarding this request to:

Joseph B. Judkins
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, DC 20006

As set forth in 5 U.S.C. § 552(a)(6)(A)(i), 31 C.F.R. § 1.5(h), and Treas. Reg. § 601.702(c)(9)(ii), I would appreciate a response to this request within twenty (20) working days of its receipt.

I understand and appreciate that you will exercise a presumption in favor of disclosure and are committed to accountability and transparency in connection with this request. See President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (Jan. 26, 2009); Eric Holder, Memorandum for the Heads of Executive Departments and Agencies (Mar. 19, 2009) ("[A]n agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.").

If you have any questions concerning this request or require further identifying information, please contact me at (202) 835-6137.

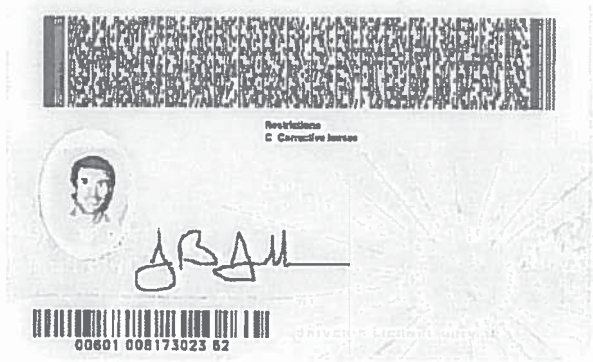
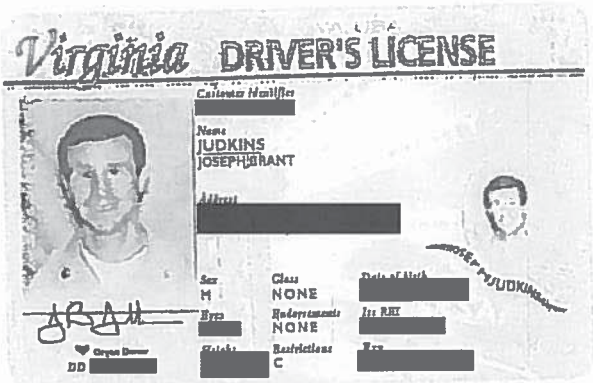
Thank you in advance for your attention to this matter.

Very truly yours,



Joseph B. Judkins

EXHIBIT A



Redacted

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Sent To **IRS FOIA Request**
 Street or P.O. Box **Headquarters FOIA**
 Stop **Stop 211**
 City, State **P.O. Box 621506**
Atlanta, GA 30362-3006

PS Form 3800, October 2015





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

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

August 15, 2016

Joseph Judkins
Baker & McKenzie
815 Connecticut Ave, N.W.
Washington, DC 20006-4078

Dear Joseph Judkins:

I am responding to your Freedom of Information Act (FOIA) request dated July 13, 2016 and received in our office on July 20, 2016.

I am unable to send the information you requested by August 17, 2016, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request, I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to August 31, 2016 after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by August 31, 2016. We have extended the response date to October 3, 2016 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

If you dispute this response you may contact our FOIA Public Liaison, Frederick O. Crismon, to discuss your request at:

EXHIBIT B

Internal Revenue Service
Disclosure Office 08
801 Broadway
Nashville, TN 37203-3816
(615) 250-5866

You may also wish to contact the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, which offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Additionally, you have the right to file suit, if you don't agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business
- Where the records are located, or
- In the District of Columbia

If you file suit, your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require the IRS to be notified of the pending suit through service of process, which must be mailed to:

Commissioner of Internal Revenue Service
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, DC 20224

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business
- Where the records are located, or
- In the District of Columbia

Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions, please call Tax Law Specialist Shira Washington ID # 1000244070, at 312-292-3521 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F16202-0121.

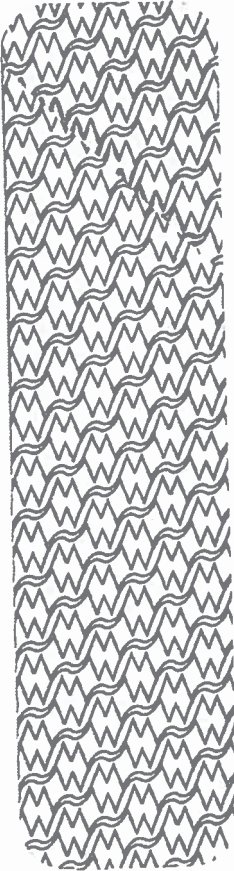
Sincerely,



Frederick O Crismon
Disclosure Manager
Disclosure Office 08

Internal Revenue Service
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