SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

TAX ANALYSTS, *et al.*, *Plaintiffs*, v. DISTRICT OF COLUMBIA, *et al.*, *Defendants.*	2020 CA 001999 B Judge Shana Frost Matini

DECLARATION OF BAZIL FACCHINA

I, Bazil Facchina, declare that the following is true and correct to the best of my knowledge and belief:

1. I am over the age of 18 and competent to render testimony contained herein based upon my personal knowledge and upon documents of the District of Columbia Office of Tax and Revenue (OTR) that I have reviewed.

2. I am an Assistant General Counsel in the Office of the General Counsel of the Chief Financial Officer of the District of Columbia (OCFO). I work in the Office of Chief Counsel for OTR, which provides legal support to OTR. I have held that position since October 2007. Among my other duties, I am responsible for reviewing legal issues relating to requests received by OTR under the District's Freedom of Information Act (FOIA). As such, I provide legal advice on issues relating to the FOIA, particularly relating to the applicability of the FOIA exemptions.

3. As a part of my responsibilities in processing and reviewing FOIA requests for OTR, I am familiar with the types of records maintained by OTR and the places in which and the

persons by whom these records are maintained. knowledgeable about searching the variety of records that are kept by OTR in response to FOIA requests, familiar with FOIA and its requirements for, and exemptions from, disclosure, and experienced in judging whether documents are responsive and should be provided in full, redacted, or withheld in their entirety.

Background

4. On October 8, 2019, Plaintiffs, Tax Analysts, and Aaron Davis, submitted a FOIA request to the Office of the Chief Financial Officer (OCFO), of which OTR is a sub-agency, seeking copies of all private letter rulings (PLRs), general information letters, and technical advice memoranda prepared by OTR between January 1, 2016, and October 8, 2019.

5. On November 14, 2019, OCFO denied the request, citing FOIA exemptions 1 and 6, which, respectively, exempt from disclosure confidential business records and other records for which disclosure is specifically prohibited by statute.

6. Plaintiffs appealed that decision to the Mayor's Office of Legal Counsel (MOLC) on November 20, 2019. In response to the appeal, OCFO submitted a letter stating that it did not locate any general information letters or technical advice memoranda but had located 24 PLRs responsive to Plaintiffs' request. OCFO further indicated that FOIA exemption 2, which exempts disclosure of personal private information, also applied to portions of the PLRs.

7. On January 14, 2020, the MOLC denied Plaintiff's appeal, agreeing that the three FOIA exemptions OCFO cited were properly applied, and found that any non-exempt material was not reasonably segregable from the exempt portions of the letters.

8. I was involved in responding to the FOIA request made for the records at issue in this case, the preparation of OTR's response to Plaintiffs' appeal to the MOLC, and assisting the Office of the Attorney General in the subsequent litigation after Plaintiffs' appeal was denied.

Accordingly, the statements in this declaration are based on my personal knowledge, on information made known to me in my official capacity as Assistant General Counsel, and upon conclusions and determinations reached and made in accordance therewith.

Private Letter Rulings (PLRS)

9. In preparing this declaration, I reviewed the 24 private letter rulings (PLRs) issued by OTR between January 1, 2016, and October 8, 2019, that are at issue in this case.

10. The PLRs were issued in response to taxpayer requests for guidance on specific tax matters relating to the requesting taxpayer. A taxpayer may request a PLR by providing, under penalties of perjury, the taxpayer's name, business address and federal taxpayer identification number, a statement of the facts and circumstances concerning the specific tax matter for which the taxpayer is requesting guidance, a statement of statutory or judicial authority upon which the taxpayer is relying, and the ruling requested.

11. A PLR may be relied on by a taxpayer concerning such specific tax matter, since the ruling binds OTR as to such matter. However, no opinion is provided on the tax treatment of the matter except as expressly stated in the ruling. A PLR applies solely to the taxpayer requesting it and OTR does not consider PLRs as having precedential effect. A PLR may not be used or cited as precedent by any other taxpayer. A PLR may be withdrawn, revoked or modified if the taxpayer's facts and circumstances change, the law changes or the ruling was issued in error. A PLR expires ten years from the date of the ruling. The taxpayer may request that the ruling be extended after being reviewed by OTR. PLRs thus contrast with other types of tax guidance provided by OTR, such as tax notices or other types of generalized interpretative guidance, which are publicly available.

12. PLRs are prepared by attorneys in the Office of Chief Counsel for OTR. To develop the ruling, the attorney applies governing law to the statement of facts describing the taxpayer's own, unique transactions or activities to reach a conclusion as to the tax treatment of the taxpayer's specific transactions or activities.

13. PLRs typically are comprised of the following sections: (1) A statement of the issues for which the taxpayer seeks a ruling as to the tax treatment of the taxpayer's own, specific transactions or activities; (2) a statement of OTR's conclusions as to the tax treatment of the taxpayer's own unique transactions or activities as described in the taxpayer's statement of facts; (3) a recitation of the taxpayer-specific facts on which the ruling is to be based; (4) a statement of the applicable law; (5) and an analysis of the application of the governing law to the facts specific to the taxpayer.

14. The PLR issued by OTR in response to the taxpayer's request will accordingly incorporate personally identifying information and a statement of the facts describing the taxpayer's transactions and activities on which the ruling is based, as well as OTR's legal analysis and conclusion as to the tax treatment of the taxpayer with respect to the matters ruled upon. PLRs also include language advising the taxpayer of the limitations on the scope of the PLR and circumstances in which reliance on the ruling by the taxpayer may be limited. Accordingly, each PLR is tailored to the specific taxpayer requesting it and applies only to the taxpayer requesting it.

15. As a result, PLRs contain data received or prepared by OTR with respect to a tax return or the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under the District's tax laws for any tax, penalty, interest or other imposition.

16. In my review and redaction of the 24 responsive PLRs to Plaintiffs' FOIA request, I reviewed the Court of Appeals decision in describing the nature of tax information that is protected from disclosure under D.C. Official Code § 47-4406 (protecting from disclosure, *inter alia*, "federal, state, or local tax information either submitted by the taxpayer or otherwise obtained") which is accordingly protected from disclosure under D.C. Official Code § 2-534(a)(6). See *Tax Analysts v. District of Columbia,* 298 A.3d 334, 340 (D.C. 2023).

17. The Court of Appeals ruled that protected "tax information" generally consists of the same type of information protected by Section 6103(b)(2) of the Internal Revenue Code (26 U.S.C.), that is,

> (A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, **or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,** [and]
>
> (B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in [26 U.S.C. § 6110(b)]) which is not open to public inspection under section 6110.

Id. (emphasis supplied). The Court of Appeals noted that such material is unique to a particular taxpayer, that is, it is "taxpayer specific". I also noted that other tax secrecy provisions contain disclosure prohibitions which are stated in a manner similar to those of section 47-4406. *See* D.C. Official Code §§ 47-1805.04, 47-2018(a)(2), 47-3719.

18. I was also mindful of the Court of Appeals ruling that "non-taxpayer specific legal analysis," that is, interpretations and conclusions respecting legal authorities that are not unique to a particular taxpayer, was not protected taxpayer information. *Id.* at 341.

19. Accordingly, my review sought to identify the portions of the PLRs that constituted protected taxpayer-specific tax information, that is, information as to the taxpayer's identity, tax items, finances, and tax liabilities, as well as any other data received by, recorded by, prepared by, or collected by OTR with respect to a return or the existence, or possible existence of liability (or the amount thereof) of any person for any District tax, penalty, interest or other imposition. I sought to distinguish this protected information from "non-taxpayer specific legal analysis" which was not unique to the taxpayer requesting the PLR.

20. Based on this, I concluded that any information in a PLR that concerned a specific taxpayer, including the taxpayer who requested the ruling, was protected from disclosure. This information generally was contained in the statement of issues to be ruled upon, OTR's conclusion as to the tax treatment of the taxpayer's transactions or activities concerning which the taxpayer sought the ruling, the statement of the facts pertaining to the taxpayer's transactions, activities or other circumstances on which the ruling was based, and OTR's analysis of the application of the law to the taxpayer's situation as stated in the facts. To the extent that these portions of the PLRs contained such protected information, I concluded that they were protected from disclosure and should be redacted from the PLRs.

21. I further concluded that general statements as to the applicable law in the PLRs, which were usually found in the sections dealing with the applicable law and legal analysis, were "non-taxpayer specific legal analysis" that were not protected from disclosure. This information was not redacted from the PLRs.

22. I personally reviewed every page of the PLRs line by line to determine whether any reasonably segregable, non-exempt responsive information could meaningfully be segregated and disclosed. I did this in instances where I determined that it was possible and did not redact

such information. This generally occurred in the portions of the PLRs stating the issues to be ruled upon and the analysis of the application of the law to the taxpayer's facts.

23. I further determined that any remaining non-exempt responsive information that might exist within the withheld portions of the PLRs was so inextricably intertwined with exempt information that it could not reasonably be segregated. Moreover, this review of the withheld information showed that attempts to segregate information would result only in the release of disjointed words or phrases with minimal or no informational content.

24. During my review, I also determined that personal identifying information of individuals in the PLRs (*i.e.*, names, telephone numbers, addresses, and email addresses) were protected from disclosure because disclosure would constitute a clearly unwarranted invasion of personal privacy in violation of D.C. Official Code § 2-534(a)(2). I did not believe these privacy interests outweighed any public interest in disclosure. The identifying information does not shed any light upon the operations of OTR, and so there is minimal, if any, public interest in the disclosure of this information. Accordingly, all names, addresses, telephone numbers, and email addresses of individuals named in the PLRs have been redacted.

I solemnly affirm under penalty of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief.

April 5, 2024
Date

Bazil Facchina, Esq.
Assistant General Counsel
Office of Tax and Revenue