

Mark Allison Quoted in Tax Notes, Federal Circuit Clarifies Third-Party Info Disclosure Exception

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Tax Notes
Excerpt taken from article.

A January 20 order by the Federal Circuit has brought some clarity to the availability of nonparty taxpayer information in tax litigation by establishing firmer guidelines for when the federal government should release otherwise nondisclosable return information. The case is one of first impression for the Federal Circuit. The per curiam order provides a narrow framework for allowing taxpayers to access thirdparty tax information for litigation purposes under section 6103(h)(4)(B). The court held that ultimately, disclosure of protected return information is permissible only when the item or transaction at issue is "directly related." (For In re United States, No. 992 (Fed. Cir. 2012), see Doc 2012-1221 or 2012 TNT 14-23.)

Mark D. Allison of Caplin & Drysdale said the Federal Circuit presented a better interpretation than the claims court. "It would be a potentially dangerous precedent and a slippery slope for the IRS to be compelled to produce taxpayer information merely on the basis of such information having comparable characteristics or issues to the taxpayer under audit or in litigation," he said. Although there may be relevance as to how similarly situated taxpayers are treated, "it is still a reach" for the IRS to be required to produce or to voluntarily provide that information in such a fashion, he said. But Allison added that taxpayers should probably have a right to understand the testing used by the IRS in assessing a tax liability. Obtaining the results of the testing in a redacted document that does not reveal or suggest the identity of the other taxpayers may be a solution, he said, although he added, "That, of course, may not be possible if disclosure of the other taxpayers' products is necessary."

[Click here to read the article on the Federal Circuit's clarification of third-party info disclosure exception.](#)

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