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Neat Trick? Attorney-Client Privilege From An Accountant

Thanks to attorney-client privilege, if you tell your **lawyer** you are hiding money offshore, the IRS can't make your lawyer talk. The IRS generally can't even make your lawyer produce documents. See [Latest Foreign Account Prosecution Fuels Fears](#). The privilege is strong so clients (in both civil and criminal cases) will be forthcoming with their lawyers.



Accountants, however, don't have this privilege. If you make statements or provide documents to your accountant, he can be compelled to divulge them no matter how incriminating. Although a statutory "tax preparation" privilege was added in 1998 (IRC [Section 7525\(a\)\(1\)](#)), it is inapplicable to criminal tax cases so is of little value.

In sensitive tax matters, the answer to this quandary is the *Kovel* letter, named after [United States v. Kovel](#). Your tax lawyer hires an accountant. In effect, the accountant is doing **your** tax accounting and return preparation, but reporting as a subcontractor to your lawyer.

Properly executed, it imports attorney-client privilege to the accountant's work and communications. However, recent IRS lawsuits are eroding

it. For example, in [United States v. Richey](#), the Ninth Circuit refused to protect an appraisal that a taxpayer, lawyer and accountant were trying to keep from the IRS. In [United States v. Hatfield](#), the court forced disclosure of discussions between the lawyer and accountant.

Pre-existing relationships between the accountant and the ultimate client are especially prickly. A *Kovel* arrangement is premised on the notion that the accountant's communications were "made in confidence for the purpose of obtaining legal advice from the lawyer." See [United States v. Adlman](#). The attorney is the client in a *Kovel* engagement so the accountant should address all correspondence to the lawyer.

That means information acquired by an accountant under a *Kovel* agreement should be distinguished from information collected by the accountant as an auditor or in some other capacity. Keep things as separate and well-documented as you can. That may include using a different accounting firm for the audit or other work where possible.

Attorney-client privilege is rarely tested in this context. However, you don't want to end up having to fight about disclosure before a judge, especially where the communications may be very revealing.

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