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Court Holds IRS Can Get Key Tax Records Even Held by Your Lawyer

In taxes, there's a difference between lawyers and accountants. Because of attorney-client privilege, the IRS generally cannot make your lawyer talk or produce documents. See [Latest Foreign Account Prosecution Fuels Fears](#). If you make statements or provide documents to your accountant, he can be compelled to divulge them.



Accountants do have a tax preparation privilege (IRC [Section 7525\(a\)\(1\)](#)) but it doesn't apply to criminal tax cases. In sensitive tax matters, the answer is the *Kovel* letter, from [United States v. Kovel](#). Your tax lawyer hires an accountant importing 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. Yet attorney-client privilege is rarely tested in this context, and these cases mostly are about being careful in observing formalities.

Now, a divorce lawyer facing federal tax evasion charges was ordered to turn over her tax records to the government, and even her tax lawyers were ordered to turn over their records. The Court of Appeals for the Ninth Circuit has ruled in [United States v. Sideman & Bancroft](#) that Mary Nolan's 2007 and 2008 tax records were not shielded by attorney-client privilege. See [Ninth Circuit Says Lawyer Can't Keep Tax Records from IRS](#).

Ms. Nolan was [indicted](#) for tax evasion and for allegedly conspiring with a private investigator to eavesdrop on her clients' spouses. However, the government issued a subpoena and that triggered a [fight over the tax records](#). The subpoena covered banker's boxes and accordion files containing check ledgers, client billings, credit card statements, day planners, etc. that Nolan supplied to her accountant to prepare her tax return. The IRS executed a search of Nolan's home and office, and the accountant gave the documents to Nolan's civil tax attorney, who provided them to Sideman & Bancroft.

Some clients assume that merely placing tax records in the hands of tax lawyers instead of accountants automatically shields them. But the government is likely to be emboldened by this case. Where tax records were already used for return preparation and already provided to an accountant, merely transferring them to a lawyer may not be enough.

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