69701-3

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NO. 69701-3 (consolidated with 70190-8)

COURT OF APPEALS STATE OF WASHINGTON
DIVISION I

DOUGLAS M. DEWAR,

Respondent,

v.

KENNETH SMITH and JANE DOE SMITH, husband and wife, and their marital community composed thereof; TRANER SMITH & CO. PLLC, a Washington professional limited liability company,

Petitioners.

PETITIONERS' REPLY BRIEF

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I. INTRODUCTION

Respondent/Plaintiff Douglas Dewar (Dewar) fails to respond to Petitioners/Defendants Traner Smith & Co. and Ken Smith's (collectively Traner Smith) opening brief in several material ways. He does not dispute that 26 U.S.C. § 7216 prohibits the disclosure of tax return information, or that Brad Beddall's (Beddall) change of address and receipt of the tax refund was tax return information subject to the confidentiality requirements of 26 U.S.C. § 7216. Dewar does not respond to Traner Smith's argument that, in light of the federal prohibition against disclosure of tax return information, the doctrine of conflict preemption precludes the application of the *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994) multifactor test to impose a duty of disclosure on Traner Smith.

Dewar has never presented competent evidence supporting the *Trask v. Butler* elements and does not dispute that the tax refund was improper. Similarly, he has failed to come forth with clear, cogent and convincing evidence that he was reasonable and justified in relying on Traner Smith to violate federal law and disclose Beddall's tax return information.

Perhaps because there are no applicable arguments that call into question the doctrine of preemption, no facts to support the application of *Trask v. Butler*, and no facts to support Dewar's negligent

misrepresentation claim, Dewar seeks to confuse the issues with reference to conflicts of interest, financial statements, and the independent-duty doctrine. First, Dewar's allegation that a conflict of interest required Traner Smith to disclose Beddall's tax return information is a red herring. The regulations Dewar relies on for imposing the duty do not support his conclusion, and there is no authority for the position that such a conflict would render the protections of 26 U.S.C. § 7216 superfluous as Dewar seems to suggest. Second, information learned in the preparation of a tax return cannot be likened to financial statements precisely because tax return information is deemed confidential by federal law. 26 U.S.C. § 7216 does not address financial statements. Lastly, not only is Dewar's reliance on the independent-duty doctrine totally inappropriate, as the issue was not considered by the trial court, but the doctrine is also inapplicable here, and preempted by federal law.

This court should reverse the trial court's November 8, 2012 and March 20, 2013 summary judgment orders and either dismiss Dewar's claims, or remand for further proceedings.

II. STATEMENT OF ADDITIONAL FACTS

Dewar misstates and mischaracterizes several key facts. The following is a statement of facts to correct the record.

A. Traner Smith did not advise Hatch, or anyone else, that a backdated Agreement or Quitclaim Deed was legally appropriate.

Dewar alleges that Traner Smith approved the terms of the Agreement and gave its blessing, from a tax perspective, to the structure of the Agreement. Resp. Br. at 6. This is a mischaracterization. In January 2010, while Dewar and Beddall were still negotiating the Agreement, Traner Smith was asked to opine, from a tax perspective, whether the Lea Hill Property should be abandoned or transferred to Dewar in some way. CP 28 at ¶ 2. Ultimately, Traner Smith determined that a sale/deed in lieu would be a more appropriate method than abandonment. *Id.*

However, Traner Smith did not provide advice, one way or the other, as to whether a deed executed and conveyed in 2010 could be legally effective in 2009 for the purposes of realizing losses associated with that transfer. *Id.* In his reply, Dewar leaves out key parts of Hatch's testimony[1] on this issue. *See* Resp. Br. at 6, citing CP 1022-25. In reality, Hatch along with Dewar's then attorney, Eugene Wong, determined the deed was effective. CP 345-96. This fact is borne out in the email exchanges between Hatch and Mr. Wong, wherein these attorneys argue

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[1] Hatch testified that he did not recall Traner Smith describing that the backdated deed would be effective. Hatch goes on to testify that his conversations with Traner Smith concerned an abandonment v. sale/deed theory, rather than the legal effect of a backdated deed. *See* Appendix 14 at pp. 25-26.

about the legal effect of the backdated deed. *Id.*, *see* CP 383.

B. There is no dispute that as of May 2010 Beddall instructed Traner Smith not to disclose information related to Beddall's 2009 tax return or refund request.

Dewar spends considerable effort describing Traner Smith's communications with Hatch and Dewar. *See* Resp. Br. at 7-8, 18. However, there is no dispute that these communications were made at a time when Beddall had authorized Traner Smith to communicate with Dewar and Hatch, and before Beddall specifically instructed Traner Smith not to communicate with Dewar and Hatch. CP 28-29 at ¶ 3; CP 33 at ¶ 14; CP 60 at 26-27; CP 61 at 32, ll. 22-25; CP 62 at 33, ll. 1-21. Dewar then baldly suggests, contrary to all of the evidence before this court, that Traner Smith indiscriminately waived its duty of confidentiality. Resp. Br. at 18. That suggestion is false. First, the privilege is not Traner Smith's to waive, but more importantly, the undisputed facts show that initially Beddall gave Traner Smith consent to discuss the return with Hatch and Dewar; then, in May 2010 he withdrew that consent. CP 28-29 at ¶ 3; CP 33 at ¶ 14; CP 60 at 26-27; CP 61 at 32, ll. 22-25; CP 62 at 33, ll. 1-21. Traner Smith was bound by law not to disclose Beddall's tax return information the moment Beddall's consent was withdrawn. 26 U.S.C. § 7216.

C. In June 2010, Ken Smith provided Dewar the only copy of the return he ever had.

In June 2010, after the 2009 tax return had been filed, Dewar requested another copy Beddall's original 2009 federal income tax return. CP 35 at ¶ 18; *see also* CP 34-35 ¶¶ 16-19. There is no dispute that as of June 2010, Bedall had already instructed Traner Smith not to communicate with Hatch or Dewar about his tax information. CP 33-34 at ¶¶ 14-15; CP 60 at 26-27; CP 61 at 32, ll. 19-23; CP 62 at 33, ll. 1-21. So, after Ken Smith (Smith) got permission from Beddall, he emailed Dewar the 2009 tax return that had been filed. *Id.* Smith did not have access to the copy of the return that was already in the IRS's possession, and so had no access to the return with the address change. *Id.* Dewar knows, as 20+ year CPA, that Smith could not access Beddall's return after it was filed. *See id.* Dewar knows, as 20+ year CPA that, regardless of the address change, federal law prohibited Traner Smith from disclosing Beddall's tax return information.

III. SUMMARY OF ARGUMENT

Dewar does not dispute that the doctrine of conflict preemption precludes the application of the *Trask v. Butler* multifactor test to impose a duty on Traner Smith to disclose Beddall's tax return information to Dewar. Dewar has failed to produce evidence supporting the *Trask v. Butler* elements, and in particular, Dewar has failed to meet his burden to

prove that Traner Smith and Beddall intended that Dewar be the intended beneficiary of their engagements.

Dewar incorrectly relies on 31 C.F.R. § 10.29 to impose a duty on Traner Smith to disclose. 31 C.F.R. § 10.29 merely requires that a practitioner remain free of conflicts of interests in its representation of a client before the IRS. Dewar was not Traner Smith's client, and Traner Smith never represented Dewar before the IRS. To the extent Traner Smith had a conflict, Dewar has presented no support for his novel theory that the existence of the conflict imposed a duty in Traner Smith to violate federal law by disclosing Beddall's tax return information.

Dewar's analogy to the disclosure guidelines associated with the preparation of financial statements is incongruous. Financial statements and tax returns are prepared for different purposes, and often for different audiences. A tax return is required by federal law, must be filed with the IRS, and contains confidential information. Conversely, a financial statement is, in nearly all cases, not required by federal law, does not need to be filed with the IRS, and its information is generally meant to be shared with third parties.

Dewar does not dispute that the tax refund was improper. Where Beddall was not entitled to the refund, Dewar has no legal right to recover the value of the refund against Traner Smith. It makes no difference that

the IRS has yet to challenge the appropriateness of the refund, (there is no statute of limitations if the IRS determines a taxpayer committed fraud); under Washington law, Dewar is not entitled to any such ill-gotten gain.

Dewar's reliance on *ESCA Corp. v. KPMG Peat Marwick,* 135 Wn.2d 820, 959 P.2d 651 (1998), and *Donatelli v. D.R. Strong Consulting Engineers, Inc.*, 312 P.3d 620 (2013), (2013 WL 6022171 (November 14, 2013)), is misplaced. *ESCA* did not address whether a professional owes a duty of care to disclose, and the independent-duty doctrine has no applicability here.

Finally, Dewar concedes his third-party beneficiary claim is unsupported by the evidence, and the trial court's order denying Traner Smith's motion to dismiss was error.

IV. ARGUMENT

A. There is no dispute that federal law preempts the application of the *Trask v. Butler* multifactor test.

Dewar fails to address, and therefore tacitly concedes, that the doctrine of conflict preemption precludes the application of the test set forth in *Trask v. Butler* to impose a duty of disclosure on Traner Smith. Where no authorities are cited, this court may assume that counsel, after diligent search, has found none. *DeHeer v. Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). This court should therefore reverse the trial court's November 8, 2012 order establishing duty as a matter of law

and negligent misrepresentation, and either remand for further proceedings, or dismiss Dewar's negligence claims where Traner Smith owed him no duty as a matter of law.

B. Dewar has failed to present facts supporting the *Trask v. Butler* multifactor test.

Rather than present facts or arguments to support the application of the *Trask v. Butler* test, Dewar merely states that "there is no logical reason why the Supreme Court's holding in ***Trask*** should apply to lawyers but not to fellow professionals such as certified public accountants." Resp. Br. at 24. This statement highlights Dewar's fundamental misunderstanding of the federal prohibition against disclosure of tax return information and of the multifactor *Trask v. Butler* test.

The *Trask v. Butler* test cannot apply in this case precisely because federal law bars disclosure of confidential tax information. Logic and law dictate that, where federal law makes disclosure of tax return information a crime, state common law is preempted from imposing the duty to disclose. Because the facts do not support the application of the *Trask v. Butler* multifactor test, Dewar inappropriately relies on statements of law by his expert John Cleese, (*see Tortes v. King County*, 119 Wn. App. 1, 13-14, 84 P.3d 252 (2003) (experts may not offer opinion on ultimate legal issue in negligence action)), and/or mischaracterizes contested facts as

undisputed. Resp. Br. at 24-25.

1. No evidence of Beddall's or Traner Smith's intent.

Dewar bears the burden of presenting evidence demonstrating that the purpose of the Traner Smith-Beddall transaction was to benefit Dewar as the intended beneficiary. *Trask*, 123 Wn.2d at 844-45. He has failed to do this. Instead, he relies entirely on Traner Smith's knowledge of the terms of an Agreement to which it was not a party, and he presents no evidence of any kind to prove Beddall's and Traner Smith's intent that Dewar be the intended beneficiary of their engagements. The only evidence before this court is that Beddall engaged Traner Smith to prepare Beddall's tax return, in exchange for payment. And Beddall, in exchange for having his return prepared and requesting a refund in excess of $1 million, stood to be released from nearly $5 million in debt to Dewar. The plain language of the engagements, as well as common sense, dictate that Beddall was the primary and intended beneficiary of his engagement with Traner Smith. *See* CP 515-20.

2. There is no evidence supporting the alleged foreseeability of the harm.

Dewar argues that Beddall's failure to provide him with the tax refund was foreseeable harm. Resp. Br. at 25. But this argument misses the mark. For the purpose of imposing a duty under *Trask v. Butler*, the

question is not whether Beddall's failure to perform under the terms of the Agreement would cause foreseeable harm to Dewar, but rather whether Traner Smith's failure to perform under the terms of its engagements with Beddall could cause foreseeable harm to Dewar. *Trask*, 123 Wn.2d at 842-43. There is no evidence that Traner Smith failed to perform under the terms of its engagement with Beddall. Dewar has failed to present evidence that any such failure (whatever that might be) would cause foreseeable harm to Dewar. Finally, there is no evidence that Traner Smith knew, or could have known, that Beddall would fail to give the refund money to Dewar. Any argument to the contrary is pure speculation.

3. Dewar concedes that the tax refund was improper and therefore concedes that Traner Smith did not cause him harm.

Dewar does not dispute any of the arguments set forth in Traner Smith's opening brief regarding the validity of the tax refund. As a result, Dewar has no right to the refund as damages. *Sorenson v. Pyeatt*, 158 Wn.2d 523, 523-33, 538, 146 P.3d 1172 (2006); *Omicron Co., Inc., v. Cent. Sur. & Ins. Corp.*, 23 Wn.2d 135, 139, 160 P.2d 629 (1945) (*Omicron II*); *Omicron Co., Inc., v. U.S. Fid. & Guar. Co.*, 21 Wn.2d 703, 707, 152 P.2d 716 (1944) (*Omicron I*). Alternatively, at minimum there are issues of fact as to the amount of Dewar's damages, if any. Thus, the

trial court's November 8, 2012 order finding duty pursuant to *Trask v. Butler* and negligent misrepresentation, as well as its March 20, 2013 order regarding damages should be reversed, and the issues should be remanded for further proceedings.

4. Policy dictates that a CPA's duty is to its client.

Dewar presented no evidence, and advanced no argument, that the alleged duties owed by Traner Smith were superior to the duties that Traner Smith already owed to Beddall. As described in greater detail below, even if Traner Smith was put into conflict when Beddall changed the address on the return, Dewar has presented no argument that such conflict would have rendered Traner Smith's duties to Beddall, its client, inferior to any supposed duties to Dewar. Likewise, there is no evidence that the existence of a conflict would have permitted Traner Smith to violate federal law by disclosing the nature of the conflict, *i.e.* the change of address, receipt of refunds, and delivery to Beddall. Dewar has never disputed that the aforementioned information constitutes tax return information, which shall not be disclosed pursuant to 26 U.S.C. § 7216. Thus, the only way to reconcile the alleged competing interests for a CPA, like Traner Smith, is to honor its commitment to its client, and duties under federal law, and not disclose tax information to third parties.

C. A conflict of interest does not impose on Traner Smith a duty to disclose, or a duty to violate federal law.

Dewar alleges that Traner Smith had a duty to disclose because it had a conflict when Beddall changed the address on the return, and because it knew that Beddall's receipt of the tax refund was contrary to the terms of the Agreement. Resp. Br. at 11, 15-18. However, Dewar's reliance on 31 C.F.R. § 10.29 to impose a duty of disclosure is misplaced. 31 C.F.R. § 10.29 regulates practice before the IRS, not communications with third parties. As Traner Smith never represented Dewar before the IRS, this regulation would not apply to him. *See* CP 80 at 52; CP 734 at 57, ll. 16-25; CP 515-20; Resp. Br. at 6 (Dewar admits that he was not Traner Smith's client). The plain language of 31 C.F.R. § 10.29 provides that a practitioner shall not represent a client before the IRS if the representation involves a conflict of interest. Beddall was the only client Traner Smith ever represented before the IRS. By maintaining Beddall's confidences, Traner Smith complied with 31 C.F.R. § 10.29. More importantly, there is no support for the novel theory that any such conflict would have elevated any alleged duty to Dewar above Traner Smith's contractual and federally mandated duty to Beddall.

However, to the extent a conflict existed, the only action that Traner Smith could have taken, without violating federal law, would have

been to withdraw and to request that Beddall change the address. But even if Traner Smith had withdrawn at the moment Beddall changed the address on the return, Traner Smith could still not disclose Beddall's confidential tax information to Dewar. And Beddall could have simply called the IRS and changed the address on the return, to any other address at any other time. While Dewar argues that Traner Smith should have informed him that there was a conflict, the existence of a conflict is not an exception to the federal prohibition against disclosing confidential tax return information. 26 U.S.C. § 7216; Treas. Reg. § 301.7216-2.

Similarly, Dewar's reliance on AICPA 102-2 is misguided. Not only would AICPA 102-2 not impose any duty to disclose Beddall's confidential tax return information to Dewar in violation of 26 U.S.C. § 7216, but like 31 C.F.R. § 10.29 it contemplates a duty to remain free of conflicts with **clients**. Simply stated, Dewar's conflict-of-interest argument is inapposite here, and the court should disregard it.

D. Rules related to preparation of financial statements are not analogous to a CPA's federally mandated duty to keep confidential its client's tax return information.

Dewar's analogy to disclosure guidelines related to preparation of financial statements is inapt, and the court should disregard it. On its face, 26 U.S.C. § 7216 does not apply to preparation of financial statements. It specifically describes that information obtained in the preparation of a

return must be kept confidential. It does not provide any exception for financial statements. *Id., see also* Treas. Reg. § 301.7216-2.

A common-sense review reveals that Dewar's reference to the disclosure guidelines for the preparation of financial statements is not in any way analogous to information obtained for the purposes of preparing a tax return. Taxpayers are required by law to file tax returns. 26 U.S.C. § 6011. Taxpayers file their returns with the IRS. Failure to file tax returns is a crime. 26 U.S.C. § 7203. The Internal Revenue Code is notoriously complicated. As a result, many taxpayers require the use of a tax return preparer. As part of the tax preparation process, taxpayers must necessarily provide very confidential information to their tax return preparers. This includes information such as social security numbers, income and expense information. The sole purpose of providing this information is to convey a confidential tax return to the IRS. 26 U.S.C. § 7216 prohibits release of any information gathered in the course of preparing a tax return, (with exceptions, none of which are applicable here). Congress further prohibits the IRS from disclosing confidential information. 26 U.S.C. § 7213.

In contrast, the preparation of financial statements is normally voluntary. For example, the federal government does not require individuals to file financial statements. Financial statements are normally

prepared for use by third parties including banks and in the case of public companies, the general public. Their content is almost always intended for consumption by third parties.

Finally, in reciting certain state regulations related to the practice of public accountancy, Dewar conveniently fails to mention WAC 4-30-050, which, like 26 U.S.C. § 7216, prohibits a CPA from disclosing confidential tax return information to third parties. Dewar presented no facts supporting any exception to this rule and no argument that would call into question the application of the federal, (or state), prohibition against such disclosure.

E. The independent-duty doctrine does not apply, and this court should reject Dewar's efforts to inappropriately interject it here.

In granting Dewar's motion for partial summary judgment on the issues of duty and negligent misrepresentation, the court did not consider, or rely on the independent-duty doctrine. *See* CP 766-78; CP 238-43. As such, the record is not developed, at all, on this issue. *See* RAP 2.5(a). Dewar did not raise the independent-duty doctrine as a basis for establishing duty to the trial court, and his reliance on it here should be disregarded. *See id.*

F. Despite Dewar's inappropriate reliance on the independent-duty doctrine, it has no bearing on the issues before this court.

Dewar's reliance on *Donatelli v. D.R. Strong Consulting Engineers, Inc.*, 312 P.3d 620 is misplaced. *Donatelli* was concerned with whether the independent-duty doctrine barred tort actions arising out of construction related claims between contracting parties. *Id.* at 621-22. Division One and the Supreme Court held that the independent-duty doctrine did not bar the plaintiff's negligent misrepresentation claims, but also acknowledged that the application of the rule was limited to a "narrow class of cases … claims arising out of construction on real property and real property sales." *Id.*, at 623-24 (quoting *Elcon Const.. Inc. v. E. Wash. Unv.*, 174 Wn.2d 157, 165, 273 P.3d 965 (2012)).

The *Donatelli* Court specifically held that: "the independent duty doctrine is only applicable when the terms of the contract are established by the record. To determine whether a duty arises *independently* of the contract, we must first know what duties have been assumed by the parties *within* the contact." *Id.* at 624 (emphasis original); *see also id.* at 627, ¶ 28. There was an issue of fact as to whether D.R. Strong made representations to Donatelli independent of their contract, thereby creating a duty of care vis-à-vis those representations. *Id.* at 626-27.

Here, there is no contract by and between Traner Smith and Dewar

from which the court can ascertain the scope of any obligations between the parties. And the scope of Traner Smith's contract with Beddall is limited solely to the preparation of Beddall's tax return and request for refund, in exchange for payment. CP 515-20. Dewar has failed to present evidence that Traner Smith assumed some duty to him independent of Traner Smith's contract with Beddall.

Finally, despite the absence of facts supporting the existence of an independent duty, Dewar's claim that Traner Smith owed an independent duty to disclose Beddall's tax return information fails because federal law prohibits the imposition of the duty in this case. 26 U.S.C. § 7216.

1. Dewar fails to properly analyze and apply the independent-duty doctrine to the facts of this case.

In *Affiliated Fm Ins. Co. v. LTK Consulting Services, Inc.*, 170 Wn.2d 442, 452, 243 P.3d 521 (2010), the Court found that an engineer owed an independent duty to third parties, with whom the engineer had no contract, by virtue of the type of work that an engineer performs. The Supreme Court held that an engineer's work, if performed negligently, impacts more than just its client, but other people and property as well. *Id.* In *Donatelli*, the Court held that "[t]he first step in analyzing a professional malpractice claim is to determine the scope of the professional obligations." *Donatelli*, 312 P.3d at 624. Thus, to determine

whether Traner Smith owed Dewar a duty independent of Traner Smith's contractual obligations to Beddall, the court must review the scope of the Traner Smith-Beddall contract, the nature of the work performed, and the breadth of the harm resulting from the alleged professional negligence.

The scope of the Traner Smith-Beddall contract is limited to the preparation of Beddall's tax return and request for refund, in exchange for payment. CP 515-20. In a more general sense, when a CPA prepares a tax return, there is no broader duty implicated by virtue of its work in the same way as an engineer's work impacts a broader segment of the public. A CPA's work, if performed negligently, only impacts those for whom the services were performed, ***i.e.*, the CPA's client**. The rationale supporting a finding of duty against an engineer, (or some other professional such as an architect), under the independent-duty doctrine does not support a finding of an independent duty against a tax return preparer.

2. There is no independent duty where Dewar had the opportunity to protect his own interests.

In *Affiliated*, the Supreme Court reasoned that imposing the duty was necessary where "in a calamity, an innocent party who never had the opportunity to negotiate risk of harm would be forced to bear the costs of a careless engineer's work." *Affiliated*, 170 Wn.2d at 454. But here, Dewar negotiated the Agreement that Beddall breached when he took the funds to Thailand. Because tax refunds cannot be assigned, Beddall had to endorse

the checks to Dewar, which would fulfill his obligations under the Agreement. *See* 26 U.S.C. § 6402(a); Treas. Reg. § 301.6402-2(f); Form 2848; Treas. Reg. § 601.504(a)(5) (refund checks are issued only in the name of the taxpayer, may not be assigned, and can be endorsed only by the taxpayer). Dewar's receipt of the refund was conditioned on Beddall's cooperation. Indeed, we would not be in this situation if Beddall, after receiving the funds from his son-in-law, had given them to Dewar. But Dewar specifically negotiated for the protection he received.

Perhaps more importantly, because federal law and the scope of the CPA's engagement agreement with its client determine the CPA's duties, it cannot undertake a duty of care to the broader public by virtue of preparing its clients' tax return; at least, no such duty that would outweigh a CPA's duty to its client. Dewar is not in the class of persons indentified by federal law, the engagement between Traner Smith and Beddall, or as contemplated by the *Affiliated* or *Donatelli* Courts, to whom a CPA, like Traner Smith, owed any duty of care in a case such as this.

3. There is no independent duty because Dewar has no ownership or property interest in the tax refund.

Under *Affiliated*, in order for the independent-duty doctrine to apply here, Dewar must establish that he has an ownership interest in Beddall's tax refund. *See Affiliated,* 170 Wn.2d at 458-59. But pursuant

to federal law, that tax refund was improper, and Dewar has no legal right to the tax refund until Beddall personally endorses the refund checks to Dewar. *See* 26 U.S.C. § 6402(a); Treas. Reg. § 301.6402-2(f); Form 2848; Treas. Reg. § 601.504(a)(5) (describing that refund checks are only issued in the name of the taxpayer, may not be assigned, and can only be endorsed by the taxpayer). Dewar has no property interest in the refund, and so cannot rely on the independent-duty doctrine to impose a duty on Traner Smith.

G. *ESCA Corp. v. KPMG* does not support Dewar's negligent misrepresentation claim, and Dewar fails to present clear, cogent and convincing evidence supporting his negligent misrepresentation claim.

Dewar's reliance on *ESCA Corp. v. KPMG Peat Marwick,* 135 Wn.2d 820 is misplaced. *ESCA*, 135 Wn.2d at 823, involved "a claim by a bank against an accounting firm based on faulty information prepared by the accounting firm which was relied upon by the bank to its detriment." The audit was performed for the purpose of providing information about ESCA to third parties, such as the bank, in order to obtain a line of credit from the bank. *Id.* In *ESCA* the issue of "duty" was already determined, and/or it was an uncontested issue that there was a duty to disclose, precisely because the circumstances involved an audit, and not preparation of tax returns.

Here, Traner Smith was engaged to prepare Beddall's tax return and request for refund. That's it. And 26 U.S.C. § 7216 prohibited Traner Smith from disclosing Beddall's confidential tax return information to Dewar. Dewar has not shown by clear, cogent and convincing evidence that any exception to this rule existed. Where there is no duty to disclose, there can be no misrepresentation. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 181, 876 P.2d 435 (1994); *Consulting Overseas Management, Ltd. v. Shtikel,* 105 Wn. App. 80, 89, 18 P.3d 1144 (2001).

Moreover, Dewar fails to discuss the requirement that his reliance be reasonable. He admits that he was not Traner Smith's client and that federal law prohibits disclosure of tax information to a third party. *See* CP 80 at 52; CP 734 at 57, ll. 16-25; CP 515-20. Dewar had no reasonable basis for his belief that Traner Smith would violate its duties to its client, commit a federal offense, and disclose Beddall's tax return information.

Traner Smith's actions throughout the time that it was engaged by Beddall support this conclusion. Each time Hatch and/or Dewar made some request for tax information, *e.g.*, to review the return, review and change the address on the return, Traner Smith first received permission from Beddall to disclose. CP 32 at ¶¶ 11-12; CP 57 at 14, ll. 11-22. There is no dispute that once Beddall instructed Traner Smith not to communicate with Hatch or Dewar about the return, Traner Smith it did

not, and Dewar presented no facts that suggest that Traner Smith ever acted in a manner inconsistent with its duties of confidentiality to Beddall. There is no evidence, let alone the required clear, cogent and convincing evidence, supporting the conclusion that Dewar's reliance on Traner Smith's silence (or affirmative act) was reasonable or justified under the circumstances. The notion that Dewar relied on Traner Smith is simply a misguided effort to manufacture some duty where none exists.

At minimum, it is for a jury to determine whether, under the facts of this case, Dewar, as a CPA for more than 20 years, and having admitted that he was not Traner Smith's client, was reasonable and justified in thinking that Traner Smith would disclose Beddall's confidential tax information to him in violation of federal law.

H. The refund checks could not be endorsed by Hatch, and could not be assigned to Dewar.

Dewar concedes that the refund checks could not be assigned to him or to anyone else. CP 81 at 54, ll. 7-19; *see also* 26 U.S.C. § 6402(a); Treas. Reg. § 301.6402-2(f); Form 2848; Treas. Reg. § 601.504(a)(5) (refund checks are issued only in the name of the taxpayer, may not be assigned, and can be endorsed only by the taxpayer). So, it is unclear why Dewar, in his response brief, relies on 31 C.F.R. § 240.17 and Treas. Reg. § 601.506, (*see* Resp. Br. at 13-14), particularly where both regulations

require that a power of attorney be on file with the IRS that specifically states that someone other than the taxpayer will endorse the refund checks. The Form 2848 in this case, which is the only power of attorney filed with the IRS, does not state that Hatch could endorse the refund checks. CP 92.

Moreover, whether or not the tax code allows someone other than the taxpayer to endorse refund checks misses the point; here, the power of attorney did not divest Beddall of any of his rights. Beddall had the ability to revoke the Form 2848, and change the address on the return at any time.

I. There is no dispute that the tax refund was improper.

In his response brief, Dewar does not present any facts or argument to rebut Traner Smith's argument that the tax refund was improper. Dewar concedes that the backdated Agreement and deed did not create a taxable event in 2009. Dewar concedes that Beddall's personal guarantee on the Note did not give him tax basis for taking the loss arising from the Note. Dewar concedes that Beddall was not "at risk" vis-à-vis the Note because Beddall borrowed from Dewar, who had an interest in the proceeds of the Project. If Beddall could not take the loss on the Note in 2009, then he was never entitled to a $1.2 million refund. Ergo, Dewar is not entitled to the value of the illusory refund (plus interest) in his action against Traner Smith. Dewar's claims against Traner Smith should be dismissed because he has no recoverable damages. Alternatively, at

minimum, there are issues of fact as to the value of tax refund, and Dewar's alleged damages, and therefore this court should reverse the trial court's November 8, 2012 order, and the March 20, 2013 order regarding damages, and remand for further proceedings.

This court should disregard Dewar's strange argument that Traner Smith should have further scrutinized the information it received **from Dewar** regarding the Project and Beddall's finances. First, even if Dewar were correct, (which he is not), it would make no difference here. The refund, if any, was Beddall's. To the extent Traner Smith made a mistake, it is potentially liable to Beddall, not Dewar. Second, Pursuant to 26 U.S.C. § 6694(a), Treas. Reg. § 1.6694-1, and Treas. Reg. § 1.6694-2, Traner Smith is permitted to rely on the advice, and/or tax information of third parties and other tax return preparers. Dewar seems to argue that Traner Smith's reliance on Dewar, who was Beddall's CPA, and the accountant for the Project, was not reasonable. Despite the fact that his position is wrong, Dewar's argument is irrelevant here. Whether Traner Smith's reliance on the information and tax advice provided by Dewar was reasonable may be an inquiry for Beddall or the IRS, but regardless of that determination, the fact remains that the refund was improper.

J. This court should dismiss Dewar's breach of third-party beneficiary claim.

Dewar fails to address, and therefore concedes, that the trial court's November 8, 2012 denial of Traner Smith's motion for summary judgment to dismiss contract claims was error. This court should reverse the trial court's decision and dismiss Dewar's claim for breach of third-party-beneficiary contract.

V. CONCLUSION

Traner Smith requests that this court reverse the November 8, 2012 trial court order establishing duty as a matter of law and negligent misrepresentation, and either dismiss Dewar's negligence claims or remand for further proceedings. Similarly, this court should either dismiss or remand for further proceedings the March 20, 2013 trial court order regarding causation and damages. Finally, this court should dismiss Dewar's claim for breach of third-party-beneficiary contract.

Respectfully submitted this 17th day of January, 2014.

LEE SMART, P.S., INC.

By: ______________________
Sam B. Franklin, WSBA No. 1604
Timothy D. Shea, WSBA No. 39631
Of Attorneys for Petitioners

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APPENDIX

APPENDIX 14:	Excerpts from the deposition transcript of Jonathan C. Hatch
APPENDIX 15:	26 U.S.C.A. § 6011
APPENDIX 16:	26 U.S.C.A. § 7203
APPENDIX 17:	26 U.S.C.A. § 7213
APPENDIX 18:	WAC 4-30-050

Appendix 14

SUPERIOR COURT IN THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

- - -

DOUGLAS M. DEWAR,)
)
Plaintiff,)
)
vs.) NO. 11-2-02662-9
)
KENNETH G. SMITH and JANE)
DOE SMITH, husband and wife)
and the martial community)
composed thereof; TRANER)
SMITH & COMPANY, PLLC, a)
Washington professional)
limited liability company,)
)
Defendants.)
___________________________)

DEPOSITION OF
JONATHAN C. HATCH
SEATTLE, WASHINGTON
September 21, 2011

Reported By:
JOSHUA W. SCOTT
CCR No. 3102
Job No. 269434

1 but it was during a verbal conversation in a meeting we
2 had in his office, probably sometime in January or
3 February 2010.
4 Q. Would it have been just you and Ken Smith
5 there?
6 A. Yes.
7 Q. What was the occasion? Why were you there at
8 his office?
9 A. To discuss the particulars of the settlement
10 agreement we were working on and to get his input as to
11 whether or not the direction we were going would work.
12 Q. How long were you there? Do you remember?
13 A. Well, which meeting?
14 Q. The meeting where Mr. Smith told you that he
15 was comfortable with the effectiveness of the deed
16 signed and notarized on 1-6 to document a loss in 2009?
17 A. Well, if you let me look at my billing record,
18 I can be fairly precise.
19 Q. Let's do that.
20 A. I'm not sure which envelope it is here. Well,
21 I note on my records that I had a meeting with Ken Smith
22 on January 22nd that lasted 1.4 hours. I'm fairly
23 confident that's the meeting where we discussed that
24 issue because my billing records says "Conference with
25 Ken Smith, CPA, regarding mechanism for structural

1 settlement to meet objectives of the parties from a tax
2 standpoint."
3 Q. I don't know if I have your billings. Maybe
4 we better do that. How extensive are they?
5 A. It's straightforward. All the entities are
6 here, probably about six or seven pages.
7 MR. SHEA: I can send out for copies.
8 MR. FRANKLIN: Why don't you do that.
9 MR. SHEA: I'll make three copies of it.
10 BY MR. FRANKLIN:
11 Q. Do you recall in general what Mr. Smith told
12 you as to why he had concluded that the deed that was
13 executed on 1-6-10 was effective to document a loss in
14 2009? Do you remember what his reasoning was?
15 A. Not specifically, no.
16 Q. Any general statements on his part as to why
17 he was comfortable with that?
18 A. Not specifically. I remember there had been
19 some discussion about the difference between a theory
20 that involved abandonment of the property by Mr. Beddall
21 as opposed to some kind of sale with consideration. But
22 beyond that, I don't have any specific recall, no.
23 Q. Do you recall whether or not, ultimately, it
24 was decided to abandon the abandonment idea or was that
25 pursued and incorporated into the analysis and ultimate

Appendix 15

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 61. Information and Returns
Subchapter A. Returns and Records (Refs & Annos)
Part II. Tax Returns or Statements
Subpart A. General Requirement

26 U.S.C.A. § 6011

§ 6011. General requirement of return, statement, or list

Effective: March 18, 2010
Currentness

(a) General rule.--When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer.--The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and former FSC's.--

(1) Records and information.--A DISC, former DISC, or former FSC (as defined in section 922 as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000) shall for the taxable year--

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns.--A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances.--The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.--

(1) In general.--The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. Except as provided in paragraph (3), the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations.--In prescribing regulations under paragraph (1), the Secretary--

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(3) Special rule for tax return preparers.--

(A) In general.--The Secretary shall require than any individual income tax return prepared by a tax return preparer be filed on magnetic media if--

(i) such return is filed by such tax return preparer, and

(ii) such tax return preparer is a specified tax return preparer for the calendar year during which such return is filed.

(B) Specified tax return preparer.--For purposes of this paragraph, the term "specified tax return preparer" means, with respect to any calendar year, any tax return preparer unless such preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year.

(C) Individual income tax return.--For purposes of this paragraph, the term "individual income tax return" means any return of the tax imposed by subtitle A on individuals, estates, or trusts.

(4) Special rule for returns filed by financial institutions with respect to withholding on foreign transfers.--The numerical limitation under paragraph (2)(A) shall not apply to any return filed by a financial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).

(f) Promotion of electronic filing.--

(1) In general.--The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

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(2) Incentives.--The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g) Disclosure of reportable transaction to tax-exempt entity.--Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.

(h) Income, estate, and gift taxes.--

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 732; Sept. 2, 1958, Pub.L. 85-859, Title I, § 161, 72 Stat. 1305; Sept. 2, 1964, Pub.L. 88-563, § 3(a), 78 Stat. 843; June 21, 1965, Pub.L. 89-44, Title I, § 101(b)(6), 79 Stat. 136; July 31, 1967, Pub.L. 90-59, § 4(b), 81 Stat. 154; Nov. 26, 1969, Pub.L. 91-128, § 4(f), (g), 83 Stat. 267; Dec. 10, 1971, Pub.L. 92-178, Title V, § 504(a), 85 Stat. 550; Oct. 4, 1976, Pub.L. 94-455, Title XIX, §§ 1904(b)(10)(A)(ii), 1906(b)(13)(A), 90 Stat. 1817, 1834; Nov. 8, 1978, Pub.L. 95-615, Title II, § 207(c), 92 Stat. 3108; Sept. 3, 1982, Pub.L. 97-248, Title III, § 319, 96 Stat. 610; Aug. 5, 1983, Pub.L. 98-67, Title I, § 109(a), 97 Stat. 383; July 18, 1984, Pub.L. 98-369, Div. A, Title VIII, § 801(d)(12), 98 Stat. 997; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, § 1899A(52), 100 Stat. 2961; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1015(q)(1), 102 Stat. 3572; Dec. 19, 1989, Pub.L. 101-239, Title VII, § 7713(a), 103 Stat. 2394; Aug. 5, 1997, Pub.L. 105-34, Title XII, § 1224, 111 Stat. 1019; July 22, 1998, Pub.L. 105-206, Title II, § 2001(c), 112 Stat. 723; May 17, 2006, Pub.L. 109-222, Title V, § 516(b)(2), 120 Stat. 371; Dec. 29, 2007, Pub.L. 110-172, § 11(g)(19), 121 Stat. 2491; Nov. 6, 2009, Pub.L. 111-92, § 17(a), (b), 123 Stat. 2996; Mar. 18, 2010, Pub.L. 111-147, Title V, § 522(a), 124 Stat. 112.)

Notes of Decisions (18)

26 U.S.C.A. § 6011, 26 USCA § 6011
Current through P.L. 113-65 (excluding P.L. 113-54) approved 12-20-13

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Appendix 16

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 75. Crimes, Other Offenses, and Forfeitures
Subchapter A. Crimes
Part I. General Provisions (Refs & Annos)

26 U.S.C.A. § 7203

§ 7203. Willful failure to file return, supply information, or pay tax

Currentness

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 851; June 28, 1968, Pub.L. 90-364, Title I, § 103(e)(5), 82 Stat. 264; Sept. 3, 1982, Pub.L. 97-248, Title III, §§ 327, 329(b), 96 Stat. 617, 618; July 18, 1984, Pub.L. 98-369, Div. A, Title IV, § 412(b)(9), 98 Stat. 792; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7601(a)(2)(B), 102 Stat. 4504; Nov. 29, 1990, Pub.L. 101-647, Title XXXIII, § 3303(a), 104 Stat. 4918.)

Notes of Decisions (388)

26 U.S.C.A. § 7203, 26 USCA § 7203
Current through P.L. 113-65 (excluding P.L. 113-54) approved 12-20-13

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Appendix 17

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 75. Crimes, Other Offenses, and Forfeitures
Subchapter A. Crimes
Part I. General Provisions (Refs & Annos)

26 U.S.C.A. § 7213

§ 7213. Unauthorized disclosure of information

Effective: January 2, 2013
Currentness

(a) Returns and return information.--

(1) Federal employees and other persons.--It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees.--It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (k)(10), (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), (20), or (21) or (m)(2), (4), (5), (6), or (7) of section 6103 or under section 6104(c). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons.--It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation.--It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders.--It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) Disclosure of operations of manufacturer or producer.--Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosures by certain delegates of Secretary.--All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(d) Disclosure of software.--Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(e) Cross references.--

(1) Penalties for disclosure of information by preparers of returns.--

For penalty for disclosure or use of information by preparers of returns, see section 7216.

(2) Penalties for disclosure of confidential information.--

For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 855; Sept. 2, 1958, Pub.L. 85-866, Title I, § 90(c), 72 Stat. 1666; Sept. 13, 1960, Pub.L. 86-778, Title I, § 103(s), 74 Stat. 940; Oct. 4, 1976, Pub.L. 94-455, Title XII, § 1202(d), (h)(3), 90 Stat. 1686, 1688; Nov. 6, 1978, Pub.L. 95-600, Title VII, § 701(bb)(1)(C), (6), 92 Stat. 2922, 2923; May 26, 1980, Pub.L. 96-249, Title I, § 127(a)(2)(D), 94 Stat. 366; June 9, 1980, Pub.L. 96-265, Title IV, § 408(a)(2)(D), 94 Stat. 468; Dec. 5, 1980, Pub.L. 96-499, Title III, § 302(b), 94 Stat. 2604; Dec. 28, 1980, Pub.L. 96-611, § 11(a)(2)(B)(iv), (4)(A), 94 Stat. 3574; Sept. 3, 1982, Pub.L. 97-248, Title III, § 356(b)(2), 96 Stat. 645; Oct. 25, 1982, Pub.L. 97-365, § 8(c)(2), 96 Stat. 1754; July 18, 1984, Pub.L. 98-369, Div. A, Title IV, § 453(b)(4), Div. B, Title VI, § 2653(b)(4), 98 Stat. 820, 1156; Aug. 16, 1984, Pub.L. 98-378, § 21(f)(5), 98 Stat. 1326; Oct. 13, 1988, Pub.L. 100-485, Title VII, § 701(b)(2)(C), 102 Stat. 2426; Nov. 10, 1988, Pub.L. 100-647, Title VIII, § 8008(c)(2)(B), 102 Stat. 3787; Dec. 19, 1989, Pub.L. 101-239, Title VI, § 6202(a)(1)(C), 103 Stat. 2228; Nov. 5, 1990, Pub.L. 101-508, Title V, § 5111(b)(3), 104 Stat. 1388-273; July 30, 1996, Pub.L. 104-168, Title XII, § 1206(b)(5), 110 Stat. 1473; Aug. 5, 1997, Pub.L. 105-33, Title XI, § 11024(b)(8), 111 Stat. 722; Aug. 5, 1997, Pub.L. 105-35, § 2(b)(1), 111 Stat. 1105; July 22, 1998, Pub.L. 105-206, Title III, § 3413(b), 112 Stat. 754; Jan. 23, 2002, Pub.L. 107-134, Title II, § 201(c)(10), 115 Stat. 2444; Dec. 8, 2003, Pub.L. 108-173, Title I, § 105(e)(4), Title VIII, § 811(c)(2)(C), 117 Stat. 2167, 2369; Aug. 17, 2006, Pub.L. 109-280, Title XII, § 1224(b)(5), 120 Stat. 1093; Mar. 23, 2010, Pub.L. 111-148, Title I, § 1414(d), 124 Stat. 237; Pub.L. 112-240, Title II, § 209(b)(3), Jan. 2, 2013, 126 Stat. 2326.)

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Notes of Decisions (38)

26 U.S.C.A. § 7213, 26 USCA § 7213
Current through P.L. 113-65 (excluding P.L. 113-54) approved 12-20-13

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Appendix 18

Washington Administrative Code Currentness
Title 4. Accountancy, Board of
Chapter 4-30. General Provisions
Ethics and Prohibited Practices

WAC 4-30-050

4-30-050. What are the requirements concerning records and clients confidential information?

(1) **Client:** The term 'client' as used throughout WAC 4-30-050 and 4-30-051 includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client in an initial interview to obtain or provide professional services.

(2) **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the licensee, partnership, limited liability company, or corporation, or any combined or merged partnership, limited liability company, or corporation, or successor in interest.

(3) **Confidential client communication or information:** Licensees, CPA-Inactive certificate holders, nonlicensee firm owners and employees of such persons must not without the specific consent of the client or the heirs, successors, or authorized representatives of the client disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.

This rule also applies to confidential communications and information obtained in the course of professional tax compliance services unless state or federal tax laws or regulations require or permit use or disclosure of such information.

Consents may include those requirements of Treasury Circular 230 and IRC Sec. 7216 for purposes of this rule, provided the intended recipients are specifically and fully identified by full name, address, and other unique identifiers.

(4) This rule does not:

(a) Affect in any way the obligation of those persons to comply with a lawfully issued subpoena or summons;

(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;

(c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.

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Credits

Statutory Authority: RCW 18.04.055(2), 18.04.405(1). WSR 13-04-011, S 4-30-050, filed 1/25/13, effective 2/25/13. Statutory Authority: RCW 18.04.055(2), 18.04.390 (4)(b), and 18.04.405(1). WSR 11-06-062, amended and recodified as S 4-30-050, filed 3/2/11, effective 4/2/11; WSR 08-18-016, S 4-25-640, filed 8/25/08, effective 9/25/08; WSR 05-01-137, S 4-25-640, filed 12/16/04, effective 1/31/05; WSR 03-24-033, S 4-25-640, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(2). WSR 02-22-082, S 4-25-640, filed 11/5/02, effective 12/31/02. Statutory Authority: RCW 18.40.055 (18.04.055). WSR 93-22-046, S 4-25-640, filed 10/28/93, effective 11/28/93.

Current with amendments adopted through the 13-21 Washington State Register dated, November 6, 2013.

WAC 4-30-050, WA ADC 4-30-050

End of Document

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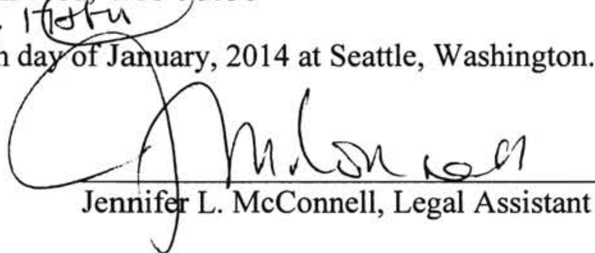
DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on January 16, 2014, I caused service of the foregoing pleading on each and every attorney of record herein:

VIA LEGAL MESSENGER

Law Offices of Robert B. Gould
Mr. Robert B. Gould
Sparling Technological Center
4100 194th Street SW, Suite 215
Lynnwood, WA 98036

DATED this 16th day of January, 2014 at Seattle, Washington.



Jennifer L. McConnell, Legal Assistant

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