

TAX ANALYSTS,
Plaintiff,
v.
INTERNAL REVENUE SERVICE,
Defendant.

United States District Court for the District of Columbia

94-CV-00220 (TFH)

SUMMARY:

Plaintiff filed its statement of undisputed material facts in support of its motion for summary judgment in the case of Tax Analysts v. IRS, a suit seeking release of all exempt organization closing agreements entered into by the IRS after Dec. 31, 1992.

TEXT:

PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Pursuant to Local Rule 108(h), plaintiff TAX ANALYSTS hereby submits its Statement of Undisputed Material Facts in support of its Motion for Summary Judgment. Plaintiff submits there is no genuine issue regarding the following facts:

A. Undisputed Facts Relating to the Parties

1. Plaintiff, TAX ANALYSTS, is a corporation organized and operating under the District of Columbia Nonprofit Corporations Act. Plaintiff is recognized by defendant INTERNAL REVENUE SERVICE as exempt from federal taxes under Internal Revenue Code section ("IRC") 501(a) as an educational organization described in IRC 501(c)(3). (Complaint paragraph 3, Declaration of Thomas F. Field (hereinafter "Field Declaration"), paragraph 3.)

2. In furtherance of its exempt purposes, plaintiff publishes and disseminates information concerning the enactment and administration of federal and state laws, with primary emphasis on matters relating to taxation. Plaintiff publishes a variety of tax publications, including, Tax Notes, Daily TaxFax, International Tax Notes, The Exempt Organization Tax Review, The Insurance Tax Review and, State Tax Notes. Plaintiff also makes available a wide variety of tax information to the public, including full text IRS, Treasury and Congressional documents and hearing transcripts, the IRS Master File of Exempt Organizations and directories of government tax officials and private tax practitioners. (Complaint, paragraph 3; Field Declaration, paragraph 4.)

3. Defendant INTERNAL REVENUE SERVICE, is an agency of the United States within the meaning of 5 U.S.C. 552(a)(2), (3) and (4)(B). (Complaint paragraph 4; IRS Ans. paragraph 1.)

B. Undisputed Facts Relating to Plaintiff's FOIA Request

4. On or about November 10, 1993, plaintiff filed a Freedom of Information Act ("FOIA") request with defendant INTERNAL REVENUE SERVICE. By its FOIA request, plaintiff sought to obtain copies of closing agreements the IRS entered into with exempt organizations on or after December 31, 1992. (Complaint, paragraph 5; IRS Answer, paragraph 1; Declaration of William A. Dobrovir (hereinafter "Dobrovir Declaration"), paragraph 3.)

5. Plaintiff's FOIA request complied with all applicable IRS regulations. (Dobrovir Declaration, paragraph 3.)

6. The IRS failed to timely respond to plaintiff's November 10, 1993 FOIA request, and, on January 10, 1994, plaintiff appealed the Service's de facto denial of its request to the Commissioner of Internal Revenue. (Complaint, paragraph 6; Answer, paragraph 1; Dobrovir Declaration, paragraphs 4, 5.)

7. On February 7, 1994, the IRS advised TAX ANALYSTS that it would not produce any documents responsive to its November 10, 1993 FOIA request. The IRS asserted that the requested closing agreements were "return information" and, pursuant to Internal Revenue Code section 6103 and 5 U.S.C. 552(b)(3), were exempt from disclosure under FOIA. (Complaint, paragraph 7; Answer, paragraph 1; Dobrovir Declaration, paragraph 6.)

C. Undisputed Facts Relating to the Exemption Application Process

8. IRS Form 1023, "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code", requires exemption applicants to provide the IRS with substantial information about their prior operations and proposed activities. Information required by Form 1023 includes: prior tax returns filed by the organization; a list of officers and directors and compensation paid to them; copies of leases and relevant contracts; likely sources of revenue; projected expenditures; proposed budgets; and, balance sheets. (Stern Declaration, paragraph 3, Exhibit "A" thereto.)

9. Exemption applications are typically filed with the IRS Key District Office in which the applicant's principal place of business is located. (Deposition of Jay Rotz ("Rotz Deposition"), p. 15, ll. 15 - 23; Deposition of Jeanne Gessay ("Gessay Deposition"), pp. 20 - 21, ll. 24 - 3.)

10. The Key District Office will review the application and, generally, will issue the applicant either a favorable determination letter or an initial adverse determination letter. (Deposition of Howard Schoenfeld ("Schoenfeld Deposition"), p. 18, ll. 3 - 9.)

11. Under certain circumstances, exemption applications will be forwarded by a Key District Office to the IRS National Office for consideration and issuance of a ruling letter. Applications will be forwarded to the National Office for ruling if the application presents an issue for which there is no published precedent or where the District Office believes National Office review is warranted. (Rotz Deposition, p. 16, ll. 4 - 9.)

12. If an application is forwarded to the National Office, the National Office's Exempt Organizations Division will determine whether the organization will be recognized as exempt. (Rotz Deposition, pp. 16 - 17, ll. 15 - 10.)

13. During its processing of an exemption application, the IRS maintains what is known as an "administrative file". This file contains all documents and papers relating to the exemption application which are either received or generated by the Service during its consideration and review of the application. (Rotz Deposition, p. 14, ll. 6 - 13.)

14. If the exemption application of a new organization is approved by the issuance of a private ruling letter, the IRS creates an "administrative record" which consists solely of the documents from the administrative file which it believes are subject to disclosure. (Rotz Deposition, pp. 14 - 15, ll. 14 - 13.)

D. Undisputed Facts Regarding IRS Use of Closing Agreements

15. The IRS has predicated its recognition of exempt status on at least one organization's agreement to be bound by the terms of a closing agreement. (Deposition of Marcus Owens ("Owens Deposition"), pp. 115-116, ll. 19 - 17; Deposition of James McGovern ("McGovern Deposition"), p. 42, ll. 6 - 10.)

16. The IRS has agreed in a closing agreement to grant exempt status to a taxpayer. (Schoenfeld Deposition, p. 115, ll. 7 - 11.)

17. In 1991, the IRS entered into a closing agreement with Jimmy Swaggart Ministries, an organization recognized as exempt from tax under IRC 501(c)(3), under which the Ministries was required to disclose that it had agreed to pay in excess of \$171,000 in back taxes and interest as a result of its failure to adhere to IRC 501(c)(3)'s proscription against involvement in political activities. (McGovern Deposition, pp. 18 - 19, ll. 24 - 4; Stern Declaration, paragraph 4, Exhibit "B" thereto.)

18. In 1993, the IRS entered into a closing agreement with the Old Time Gospel Hour ("OTGH"), an organization recognized as exempt from tax under IRC 501(c)(3), under which OTGH was required to disclose that its exemption under IRC 501(c)(3) had been revoked for 1986 and 1987 and, as a condition of the reinstatement of its exempt status, it paid the IRS \$50,000 in taxes. (McGovern Deposition, pp. 22 - 23, ll. 24 - 4; Stern Declaration, paragraph 5, Exhibit "C" thereto.)

19. In 1994, the IRS entered into a closing agreement with Hermann Hospital, an organization recognized as exempt from federal taxes under IRC 501(c)(3), under which the hospital was required to distribute to the national tax and local Houston media, a copy of its closing agreement. This agreement provided that the hospital had agreed to pay the IRS \$993,500 in back taxes. (McGovern Deposition, p. 30, ll. 3 - 5, p. 31, ll. 4 - 6; Stern Declaration, paragraph 6, Exhibit "D" thereto.)

20. The IRS has not adopted any procedures as to when it will require an exempt organization to consent to disclosure of a closing agreement or the terms thereof. (Schoenfeld Deposition, p. 54, ll. 4 - 10.)

E. Undisputed Facts Regarding the Church of Scientology Closing Agreement

21. The IRS executed a closing agreement with the Church of Scientology and its affiliated organizations that resolved issues surrounding the exempt status of the church and its affiliates. (Schoenfeld Deposition, p. 106, ll. 9 - 22; McGovern Deposition, p. 65, ll. 6 - 24.)

22. The exemption applications filed by the Church of Scientology and its affiliates were not processed pursuant to the IRS' standard procedures. (Rotz Deposition, pp. 73 - 74, ll. 21 - 6.)

23. The IRS adopted special procedures for the handling of the exemption applications filed by the Church of Scientology and its affiliates. (Rotz Deposition, p. 74, ll. 3 - 6.)

24. The IRS formed a special "negotiations committee" to negotiate a resolution to the outstanding issues involving the Church of Scientology and its affiliates, including their pending exemption applications. (Schoenfeld Deposition, pp. 68 - 69, ll. 24 - 5.)

25. The "negotiations committee" was charged with the responsibility of determining whether the Church of Scientology and its affiliates would be recognized as exempt. (McGovern Deposition, p. 62, ll. 11 - 17.)

26. The "negotiations committee" made the determination that the Church of Scientology and its affiliates would be recognized as exempt. (Schoenfeld Deposition, pp. 100 - 101, ll. 6 - 13; McGovern Deposition, p. 83, ll. 7 - 9.)

27. The negotiations committee issued "special instructions" to the Exempt Organization Technical Division regarding the handling of the exemption applications filed by the Church of Scientology and its affiliates. (Schoenfeld Deposition, pp. 100 - 101, ll. 12 - 13.)

28. The Exempt Organizations Technical Division was instructed not to review the exemption applications filed by the Church of Scientology and its affiliates for compliance with IRC 501(c)(3). (Schoenfeld Deposition, pp. 100 - 101, ll. 12 - 13.)

29. On October 1, 1993, the IRS issued favorable ruling letters to the Church of Scientology and 24 of its affiliates recognizing them as exempt from federal tax under IRC 501(a). (Rotz Deposition, pp. 69, ll. 16 - 19.)

F. Undisputed Facts Regarding the Requested Closing Agreements

30. At the time of plaintiff's FOIA request, the IRS had possession of closing agreements responsive to plaintiff's disclosure request. (Defendant's Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents, Response to Interrogatory Number No. 1.)

Respectfully submitted,

June 29, 1995
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