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ATTORNEY'S ASSERTION OF HIS CLIENT'S PRIVILEGE AGAINST SELF-INCRIMINATION IN CRIMINAL TAX INVESTIGATIONS

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The fifth amendment to the United States Constitution provides in part that no person "shall be compelled in any criminal case to be a witness against himself." While many decisions have been rendered in trying to ascertain the exact scope of the protection guaranteed the individual thereunder, it was decided at an early date that this privilege against self-incrimination extended, under the appropriate circumstances, to the personal papers, as well as to the speech, of the claimant.[1] Furthermore, it is not necessary that the claimant be an actual defendant in order to invoke the privilege. Even though the amendment speaks in terms of any criminal *case*, the Supreme Court has held that the ". . . provision must have a broad construction in favor of the right which it was intended to secure."[2] Hence, an individual may assert this privilege if the evidence sought would tend to incriminate him in a subsequent criminal proceeding, or if it would furnish a link in an investigation which might connect him with a criminal offense.[3] On this basis, a taxpayer being investigated by the Internal Revenue Service for a possible criminal violation of the revenue laws may likewise avail himself of this privilege, and may refuse to produce or disclose various papers, records and documents which might tend to be self-incriminating.[4]

The surprising aspect is not the fact that the privilege exists in favor of the taxpayer, but that very few cases have squarely faced the question as to whether this privilege against self-incrimination can be claimed by one other than the holder thereof when the holder could have done so. The purpose of this article is to explore this issue with specific reference to whether an attorney can invoke this privilege for and on behalf of his taxpayer-client in a criminal tax investigation or case. While the privilege against self-incrimination and the attorney-client privilege are

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1. Boyd v. United States, 116 U.S. 616 (1886).

2. Counselman v. Hitchcock, 142 U.S. 547, 562 (1892).

3. Blau v. United States, 340 U.S. 159 (1950).

4. Application of House, 144 F. Supp. 95 (N.D. Cal. 1956); United States v. Judson, 322 F.2d 460 (9th Cir. 1963).

often intertwined in tax cases, they are two separate problems;[5] the latter being beyond the scope of this discussion.[6]

I. Where The Privilege Cannot Be Invoked

At the outset, it should be firmly held in mind that the sole question regards the ability of an attorney to invoke the taxpayer-client's privilege against self-incrimination for and on behalf of the client when he could have done so himself if present. Therefore, it is obvious that if the client has no right to the privilege the attorney may not seek to interpose it.[7] Neither can it be asserted if the client has previously waived it;[8] if the incriminating evidence or material is not owned by the client;[9] nor, if the evidence sought consists of corporate records to which the privilege does not apply.[10] Thus, the following discussion will be limited to those situations where a valid privilege does in fact exist in favor of an individual taxpayer.

II. Opposing Views

Various statements may be found which embody the principle that "[t]he constitutional privilege against self-incrimination is essentially a personal one . . ."[11] or that "[t]he right of a person under the Fifth Amendment to refuse to incriminate himself is purely a personal privilege of the witness."[12] Such forthright pronouncements may not, however, preclude an attorney from invoking this privilege on behalf of his client, under the proper set of facts, since they often have reference to the idea that it may not be asserted by a representative of a nonprivileged organization such as a corporation or some unincorporated associations on behalf of those entities.[13] A reading out of context may distort the real meaning of the concept of a "personal privilege."

A. *District Court Cases*

One of the first tax cases where the issue was unequivocally before the court was *Application of House*.[14] Here a proceeding had been instituted to enforce a subpoena requiring the production of certain docu-

5. *See* United States v. Judson, 322 F.2d 460 (9th Cir. 1963) where certain documents were protected by the attorney-client privilege and other records and papers by the privilege against self-incrimination although the latter did not come within the scope of the attorney-client privilege.

6. For a good discussion of the attorney-client privilege see Lofts, *The Attorney-Client Privilege in Federal Tax Investigations*, 19 Tax L. Rev. 405 (1964).

7. Grant v. United States, 227 U.S. 74 (1913).

8. Ziegler v. United States, 174 F.2d 439 (9th Cir. 1949); United States v. Willis, 145 F. Supp. 365 (M.D. Ga. 1955).

9. Schwimmer v. United States, 232 F.2d 866 (8th Cir. 1956); *In re* Fahey, 300 F.2d 383 (6th Cir. 1961).

10. Grant v. United States, 227 U.S. 74 (1913).

11. United States v. White, 322 U.S. 694, 698 (1944).

12. Hale v. Henkel, 201 U.S. 43, 69 (1906).

13. *See* United States v. White, 322 U.S. 694 (1944).

14. 144 F. Supp. 95 (N.D. Cal. 1956).

ments for examination by the Internal Revenue Service. The papers were in the possession of the taxpayers' attorneys who refused to deliver them; one of the contentions being that they were invoking, on behalf of their taxpayer-clients, the fifth amendment privilege against self-incrimination.

The government cited three cases in support of its position that the privilege was purely personal to the taxpayers. The court easily distinguished them on their facts: one on the grounds that the client had already waived the privilege prior to its assertion by another;[15] the second because the attorney was not representing the client at the time he raised the issue;[16] and, the third on the basis that the government had previously validly obtained the records involved before they came into the possession of the attorney.[17]

The real thrust of the argument advanced by the government was that unless the taxpayer himself participates in the hearings with the Internal Revenue Service, he has waived his privilege against self-incrimination, i.e., it is a privilege that the claimant must assert in person. The adoption of such a rule would in reality make the taxpayer choose between attending all of the conferences and hearings or waiving his privilege. "Such a rule," said the court, "would accomplish nothing except to impose a heavy penalty in terms of time and money on those taxpayers who chose to assert their right against self-incrimination under the Constitution."[18] It then concluded that "[t]he effective exercise of Constitutional rights should not be abridged by any such technical and onerous requirements as that."[19]

This approach is very logical. If the taxpayer should decide to attend the meetings along with his attorney, it certainly is extremely doubtful that he would invoke the privilege unless so advised by his attorney. Legal assistance is the only real factor in the attorney's presence to begin with. Nor does there appear to be much of a possibility that the client would refuse to heed the advice of his counsel if it were suggested by him that the taxpayer assert this privilege. Any supposition to this effect seems totally unwarranted. If the taxpayer has such confidence in the attorney that he is willing to permit him to handle the case, or various aspects thereof, in his absence, he would undoubtedly follow his advice if present. Not only is this a logical conclusion by the court, but it seems clearly in line with the earlier statement of the Supreme Court that the privilege against self-incrimination ". . . must have a broad construction in favor of the right which it was intended to secure."[20]

15. Ziegler v. United States, 174 F.2d 439 (9th Cir. 1949).

16. United States v. Shibley, 112 F. Supp. 734 (S.D. Cal. 1953).

17. Remmer v. United States, 205 F.2d 277 (9th Cir. 1953) where the taxpayer's accountant obtained the documents from the government on the promise to return them. Instead he gave them to the taxpayer's attorney who then attempted to assert the privilege.

18. 144 F. Supp. at 100.

19. *Id.*

20. Counselman v. Hitchcock, 142 U.S. 547, 562 (1892).

The government then advanced the proposition that the records sought to be subpoenaed were originally produced by the taxpayers' accountant and that under the applicable state law they belonged to the accountant and not to the taxpayers. In support of this contention a state statute was cited which provided that such papers and documents "shall be and remain the property of such certified public accountant or public accountant, in the absence of an express agreement to the contrary."[21] In other words, the records were not covered by the privilege against self-incrimination because they did not "belong" to the taxpayers. In rebuttal the court noted that "[t]here is no contention by the government that taxpayers or their attorneys are not in rightful, indefinite possession of the documents."[22] For purposes of this case, possession by the attorneys is equivalent to possession by the clients. Hence, the government's position was ". . . reduced to the proposition that the application of the privilege against self-incrimination turns on the difference between rightful indefinite possession and legal title."[23] The court felt that "[n]othing in the cases substantiates this notion that a narrow concept of property law should determine the availability of Constitutional guarantees against self-incrimination."[24] While title versus possession may have some relevancy with regard to the records and documents entitled to protection under the attorney-client privilege,[25] it should not, in and of itself, be a bar to the privilege against self-incrimination under the facts in this case. The court was correct in refusing to be drawn into an analytical discussion of legal title. Unless the taxpayer had previously disclosed this information to the investigating authorities, he should still be allowed to invoke his privilege while the records are in his possession for possible use in his defense.[26]

In *United States v. Boccuto*[27] an opposite result was reached in a somewhat similar factual situation. The attorney was ordered to produce certain papers and documents prepared by the taxpayers' accountant. These records involved both corporate and individual taxpayers. With regard to the corporate papers, the privilege was unavailable due to its application to individuals only.[28] The real issue centered around the work papers of the individual taxpayers.

The court started with the assumption that this case was on "all fours" with *House*, but immediately pointed out that there was no evidence

21. *See* Cal. Bus. & Prof. Code sec. 5130.
22. 144 F. Supp. at 101.
23. *Id.*
24. *Id.*
25. *Supra* note 6.
26. Even if the government had been correct in its assumption that title was essential to an assertion of the privilege, the documents had been delivered to the attorney by the accountant by the express order of the taxpayers. Hence, this would have satisfied the requirements of the state statute vesting title in the taxpayer.
27. 175 F. Supp. 886 (D.N.J. 1959).
28. United States v. White, 322 U.S. 694 (1944).

whereby it could be determined whether the inquiry being conducted by the special agent was of a civil or criminal nature. If the investigation was civil in nature then the privilege against self-incrimination would have been unavailable. If it was in fact civil, then *House* was not the same case since the taxpayers there were being investigated for the purpose of determining whether there was a basis for an indictment on a criminal charge. *House* clearly involved a criminal investigation. However, it would appear that the court's confusion over the nature of the investigation was completely unfounded inasmuch as the inquiry was being made by a special agent. If the investigation had proceeded to the point where the original revenue agent had referred the case to the Intelligence Division who in turn assigned a special agent to continue the investigation, then it was clearly criminal in nature. Surely the revenue agent had obtained enough evidence or suspicion to warrant the transfer. The function of the special agent being to investigate the possibility of a criminal infraction, it seems obvious that the entire proceedings were no longer civil in nature. The mere fact that no indictment or accusation might arise as a result of the work of the special agent can hardly be used as a basis for denying the tenor of the investigation. The question is not what he discovered nor what action his superiors might decide to take, but is what he was attempting to do. In short, he was investigating the possibility of a criminal infraction. Thus, his questioning could hardly be labeled as civil in nature.

The court then examined the nature of the papers and documents involved and concluded that they were in fact the property of the accountant who prepared them and not of the taxpayers. By so doing, it failed to follow *House* where that court felt that the privilege against self-incrimination should not hinge upon some concept of property ownership. In support of its holding, the court cited authorities to the effect that there was no accountant-client privilege that would preclude the production of an accountant's work papers.[29] While the court's statements might be true with respect to the accountant-client privilege, neither it nor the attorney-client privilege was the crucial factor. On the contrary, the attorney was seeking to invoke his client's fifth amendment privilege against self-incrimination. Nevertheless, the court concluded ". . . that the attorney does not, under these circumstances, have the right to invoke the privilege against self-incrimination in behalf of his client, and that the work papers are the property of the accountant and must be produced in accordance with the summons."[30]

In analyzing the decision, it is obvious that the court did not completely reject the proposition that an attorney may, under certain other factual situations, raise this privilege for and on behalf of his taxpayer-client. Rather the court would not permit the privilege to be so raised

29. *See* Falsone v. United States, 205 F.2d 734 (5th Cir. 1953); Sale v. United States, 228 F.2d 682 (8th Cir. 1956).

30. 175 F. Supp. at 890.

where the legal title to the records being sought was in the accountant who prepared them. Thus the real distinction between *Boccuto* and *House* lies in ownership of the records and the significance attached thereto. In *Boccuto* they were the property of the accountant who prepared them, whereas in *House* they actually belonged to the taxpayers.[31] Even if they had been the property of the accountant in *House*, the court's decision would not have been affected inasmuch as it stated that no ". . . narrow concept of property law should determine the availability of Constitutional guarantees against self-incrimination."[32]

House went much further in protection of the taxpayer's privilege, and in light of the nature of a tax investigation by the Intelligence Division it appears to be the wiser approach. The taxpayer's rights should not be lost by mere formalities or niceties of property ownership where, for public policy reasons, one state might see fit to lodge title in the accountant and another in the taxpayer. In either case, the papers would never have been prepared by the accountant but for his employment by the taxpayer. Thus if the papers and documents are of a type that would be covered by the privilege against self-incrimination if actually *owned* by the taxpayer, they should likewise be afforded the protection if they have been prepared by an accountant at the request of the taxpayer for his benefit.

B. *Circuit Court Cases*

While the Court of Appeals for the First Circuit had at an earlier date mentioned that an attorney might raise the privilege against self-incrimination for his client,[33] the issue has been directly raised in two Circuits: in the Eighth Circuit in *Bouschor v. United States*[34] and in the Ninth Circuit in *United States v. Judson.*[35] These two cases were decided within three months of each other.

In *Bouscher* the workpapers of the taxpayer's accountant and other documents and records prepared by him were turned over to the taxpayer's attorney at his (the attorney's) request. The attorney refused to produce them attempting to assert the client's fifth amendment privilege. The court held that the papers remained the property of the accountant and, therefore, under *Boccuto* they were outside of the privilege. Furthermore, the privilege was a personal one and could not be asserted by a third party on behalf of the holder thereof. This latter reason was felt by the court to be sufficient to dispose of the fifth amendment argument. No elaboration was made.

While the court very summarily disposed of the privilege against

31. *See* note 26 *supra.*
32. 144 F. Supp. at 101.
33. Brody v. United States, 243 F.2d 378 (1st Cir. 1957).
34. 316 F.2d 451 (8th Cir. 1963).
35. 322 F.2d 460 (9th Cir. 1963).

self-incrimination as being personal to the taxpayer, one interesting sidelight should be noted. The court mentioned the uncontested fact that it was the attorney who had requested the papers and records, and that while this might have been necessary or desirable for the representation of his client, it could not be used to thwart an investigation by the Internal Revenue Service. What possible difference should this make with regard to the client's privilege? Since when does a constitutional right depend upon the ease with which the investigating or prosecuting agency might otherwise secure enough evidence to establish its case? Perhaps this statement might be interpreted to mean that the delivery of the papers to the attorney could not raise a defense not otherwise available, but this seems unlikely since the court had previously stated that the privilege was purely personal in nature. Surely the court did not intend to imply that the mere fact that the Internal Revenue Service might be forced to seek evidence elsewhere was sufficient to negate the client's privilege. Neither was there any indication that the attorney had asked for the papers for any reason other than to assist him in the preparation of the client's case. Even if the attorney had asked for them as a delaying tactic, this would not have affected the client's privilege if one had existed.

The court admits that this was being added for what it was worth. The problem comes in trying to determine its value.

One of the most important cases affecting the law in this area is *United States v. Judson*[36] where the issue was directly before the court. Virtually every important case and argument previously used by the Internal Revenue Service was raised and examined. Hence, it will be discussed in detail.

The taxpayer, upon discovering that he was under investigation by the Intelligence Division of the Service, retained an attorney to represent him. The attorney requested a net worth statement and one was prepared by the taxpayer's accountant. The statement, together with the data used in preparing it, was delivered to the taxpayer's counsel. Thereafter, the attorney was served with a subpoena duces tecum directing him to produce all paid checks and bank statements of the commercial accounts of the taxpayer at various banks along with all of the work papers, computations and other accounting work sheets prepared by the firm of accountants engaged by the taxpayer.

The attorney refused, alleging that the work papers prepared by the accountants were covered by the attorney-client privilege. The court agreed since the role of the accountants was to facilitate an accurate and complete consultation between the attorney and the taxpayer. Without them the attorney could not be expected to prepare a complete and adequate defense.

36. *Id.*

Far more important to the discussion here were the cancelled checks and bank statements which were clearly outside the attorney-client privilege. These were items which the taxpayer could not have been compelled to have produced if he had asserted his privilege against self-incrimination, but it was undisputed that he had not invoked the application of the fifth amendment. However, it was asserted by the attorney on behalf of the taxpayer. The issue was squarely presented to the court.

The main contention of the Service was that the privilege against self-incrimination is purely personal in nature and cannot be asserted by any other person in a representative capacity. After reviewing some of the Supreme Court cases where such statements had been made,[37] it was concluded that that Court had ". . . used the term 'personal' in the sense of 'natural individual,' and the term 'representative' in the sense of 'representative of a non-privileged organization.' "[38] The court acknowledged that it had found no Supreme Court case dealing with the exact issue, the closest being, in the Court's opinion, one where corporate records were involved.[39] In that instance, the Court ordered them produced by the attorney since they could not have been withheld by the client. This raised an implication, to the court, that a different result might have been reached if the client possessed the privilege.

It was recognized that there were several decisions containing statements that could be construed in favor of the government's position, but it was felt that such pronouncements were unnecessary to the decisions therein rendered. The court distinguished the earlier cases on the basis that in some of them "the privilege was asserted by an attorney whose client, the privilege-holder, had waived the benefits thereof";[40] "the privilege was asserted by an attorney concerning either 'required' or 'corporate' records, such being outside the scope of the client's privilege";[41] or, they were "cases in which an attorney asserted the privilege concerning incriminating matter not owned or possessed by his client."[42] In short, the cases cited by the government had one common factual feature, i.e., the client himself could not have asserted the privilege.

Such was not the case here because it was admitted that the taxpayer could have personally raised this protective privilege. Instead of

37. *See* Hale v. Henkel, 201 U.S. 43 (1906); Wilson v. United States, 221 U.S. 361 (1911); United States v. White, 322 U.S. 694 (1944).

38. 322 F.2d at 464.

39. Grant v. United States, 227 U.S. 74 (1913).

40. 322 F.2d at 464. The cases thus distinguished were Ziegler v. United States, 174 F.2d 439 (9th Cir. 1949) and United States v. Willis, 145 F. Supp. 365 (M.D. Ga. 1955).

41. 322 F.2d at 464. The cases noted were Grant v. United States, 227 U.S. 74 (1913); Falsone v. United States, 205 F.2d 734 (5th Cir. 1953); and United States v. Willis, 145 F. Supp. 365 (M.D. Ga. 1955).

42. 322 F.2d at 465. The cases listed were Remmer v. United States, 205 F.2d 277 (9th Cir. 1953); Schwimmer v. United States, 232 F.2d 866 (8th Cir. 1956); and *In re* Fahey, 300 F.2d 383 (6th Cir. 1961).

pursuing this course he engaged the services of an attorney, and the court felt that "[t]he government would have us hold that the taxpayer walked into his attorney's office unquestionably shielded with the Amendment's protection, and walked out with something less."[43] If the taxpayer was willing to permit the attorney to handle his case, is there any justifiable reason why he should not be allowed to assert any of the defenses for and on behalf of his client when it is readily admitted that they could be raised by the client? The Service would contend that since only the client knows what will or will not incriminate him, he alone knows whether the privilege should be raised. This is illogical. The average taxpayer has very little knowledge of what he can or cannot constitutionally withhold from the revenue agents. This is his reason for seeking legal assistance in the first place. The more probable fact is that the taxpayer is far more likely to divulge incriminating evidence in his eager desire to show that he is not hiding anything from the investigating authorities. In any event, in the final analysis it is neither the privilege-holder nor his attorney who makes the actual determination as to whether he is entitled to the protection. It is the court. Viewed in this light, is there any basis for denying to the attorney the ability to raise the defense for his client when he feels that such a step is appropriate?

The government further contended ". . . that the evil which the Fifth Amendment sought to prevent is not present when the prosecution seeks evidence of *A*'s guilt from *B*."[44] But the court was quick to point out that any such rationalization ignores the fundamental relationship between an attorney and his client. The attorney is no mere agent or representative of his client. The two ". . . are so identical with respect to the function of the evidence and to the proceedings which call for its production that any distinction is mere sophistry."[45] They are so intertwined for purposes of the client's defense that the attorney should be entitled to raise the defense if the client could do so.

The government then countered that law enforcement would be needlessly hampered if someone other than the privilege-holder were ever permitted to assert it. This might possibly be true if the client did not want the privilege raised, but this was not the question. Granted, no one specifically asked the taxpayer if he desired to ratify the assertion made on his behalf. Nevertheless it seems obvious that he wanted the protection or he would have subsequently given the information being sought or he would have instructed his attorney to deliver it. His attitude is exemplified by his conduct and his privilege should be respected even though not specifically asserted by him. Is it possible that the real concern of the government was that they desired the taxpayer to *voluntarily* waive

43. 322 F.2d at 466.
44. 322 F.2d at 467.
45. *Id.*

this right, and that they realized that the likelihood of such a course of action would be substantially reduced through the presence or assistance of counsel.

The court went on to add that:

> Few areas of the law draw so many individuals in contact with governmental powers as does federal taxation. Yet this branch is one of the thickest of the law's "bramble bush." The ramifications of tax law are often a stubborn challenge to the most expert legal practitioner. The very nature of the tax laws requires taxpayers to rely upon attorneys, and requires attorneys to rely, in turn, upon documentary indicia of their clients' financial affairs. In light of these realities a very real danger would be created if we were to sustain the government's position.[46]

It was then concluded that:

> The government has at its disposal inquisitorial powers and administrative procedures which it may invoke at its pleasure. If the government's position were sustained here, those powers could be utilized to stimulate a taxpayer's consultation with his attorney and the predictable transfer of his records. The government's powers could then be utilized to compel disclosure of those matters by the attorney whenever the taxpayer was not available to utter the magic words. In our judgment, the inherent power to compel indirectly an individual's self-incrimination is curbed by the Fifth Amendment as effectively as the power to compel the same result directly.[47]

Therefore, once the court in *Judson* cleared the hurdle of the "personal privilege" argument it was free to explore the potential results of the denial of the right of a taxpayer's attorney to assert his client's privilege against self-incrimination. By so doing, the merits of the issue were considered and the arguments of the government were found wanting.

III. Conclusion

At first blush the entire question may seem of relatively little significance. Viewed, however, from the standpoint of the individual taxpayer, it is extremely important and disturbing. He has few alternatives. He may try to prepare his own defense, a very dubious alternative when it is remembered that the investigation is of a criminal nature. Secondly, he can entrust the case to an attorney. If the latter course of action is taken then he should be able to permit the attorney of his own choosing to represent him in all aspects including the assertion of his privilege against self-incrimination when he himself could have raised it if present. Otherwise, he will be indirectly compelled to attend all hearings, conferences

46. 322 F.2d at 468.
47. *Id.*

and discussions which his attorney has with the Internal Revenue Service for fear that some right or privilege might be waived by his absence. Such a result places an onerous burden on the individual taxpayer when it could be done by his attorney. This should not interfere with the investigation unless the interference be in the sense of requiring them to seek elsewhere for the evidence which could not be constitionally extracted from the taxpayer if he were present.

Any fear of the attorney using the privilege when the client would wish against it is unfounded. The client undoubtedly has complete confidence in the attorney or he would not have selected him. If he should disagree, the privilege is his and he could subsequently waive it if he so desired. There is no more danger here than if the taxpayer were present, for his decision to either avail himself of or waive the privilege will obviously reflect the thinking of his attorney.

Furthermore, if the Service can secure documents and records from the attorney which they could not obtain if in the possession of the taxpayer,[48] chaos would result. The attorney would be unduly hampered in the preparation of the case. He would not want the documents delivered to him lest he be served with a subpoena to deliver them as soon as his client departs. Such a condition is unthinkable. If the privilege is not permitted to be raised by the attorney, the taxpayer may have in reality been denied the effective assistance of counsel in violation of his rights under the sixth amendment as well as his privilege against self-incrimination under the fifth. Surely assistance of counsel would be denied to a taxpayer if his own attorney was not free to work with the records of the taxpayer without the threat or danger of the documents being seized by the prosecuting authorities because they chanced to be in the possession of the attorney rather than the client. Here again the taxpayer would be forced to remain in close proximity to the documents.

Hence, the attorney should be able to assert the fifth amendment privilege against self-incrimination for and on behalf of his taxpayer-client at any time the privilege exists and could be raised by the taxpayer personally. Such a rule would not seem to contravene any decision of the Supreme Court for it appears that its use of the term "personal privilege" has specific reference to the fact that no individual can assert it on behalf of an organization to which the privilege is inapplicable. This is borne out by such statements that "[t]he constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals."[49] Thus the concept of the privilege being a personal one should not prevent the attorney from raising it.

The only possible abuse would be that the attorney might seek to use this as a delaying tactic, but this danger appears to be outweighed by

48. This has reference to those documents not covered by the attorney-client privilege.
49. United States v. White, 322 U.S. 694, 698 (1944).

the loss that might otherwise be incurred by the taxpayer. The idea of delay is nothing novel, for it has long been recognized that proceedings are often drawn out when all constitutional rights are invoked. Protraction of litigation does not negate constitutional rights.

Lest it be felt that the number of abuses is small and the concern for the individual taxpayer unwarranted due to the absence of a large number of cases where the issue has been raised, it might be well to recall a warning of the Supreme Court. At an early date that Court noted that "it may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure."[50] The only way of preventing this is to adhere "to the rule that constitutional provisions for the security of person and property should be liberally construed,"[51] for "it is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."[52] Such a rule should be as zealously applied in the case of a taxpayer as is presently being done with other persons being investigated for possible criminal actions or conduct.[53] The taxpayer should be accorded equal protection.

50. Boyd v. United States, 116 U.S. 616, 634 (1886).

51. *Id.*

52. *Id.*

53. *See* Escobedo v. Illinois, 378 U.S. 478 (1964), and Miranda v. Arizona, 384 U.S. 436 (1966).