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ESQUIRE GROUP LLC

16 UNITED STATES DISTRICT COURT  
17  
18 DISTRICT OF NEVADA

19  
20 James C. Sexton Jr., and )  
21 Esquire Group LLC, )  
22 Plaintiffs, )  
23 Vs. )  
24 Karen L. Hawkins, Director of )  
25 Office of Professional Responsibility, )  
26 Internal Revenue Service, Department )  
27 Of Treasury, )  
Defendant. )

**COMPLAINT FOR  
DECLARATORY RELIEF**  
(Non-jury)

1 Plaintiffs, complaining of the defendant herein, would respectfully show unto this  
2 Honorable Court:

3 **THE PARTIES**

- 4
- 5 1. Plaintiff James C. Sexton Jr. (hereafter "Sexton") is a citizen of the United States and  
6 resident of the County of Clark, State of Nevada. He holds an LL.M. in International  
7 Taxation from Regent University, conferred in 2000.
  - 8 2. Plaintiff Esquire Group, LLC (hereafter "Esquire") is a Limited Liability Company  
9 organized and existing under the laws of the State of Nevada which maintains its  
10 principle place of business in Clark County.
  - 11 3. On information and belief, Defendant Karen L. Hawkins is the Director of the Office  
12 of Professional Responsibility for the Internal Revenue Service, which is under the  
13 jurisdiction of the Department of Treasury (hereafter referred to as "OPR"); suit is  
14 brought against her in that capacity and not against her individually.

15  
16 **JURISDICTION AND VENUE**

- 17 4. Jurisdiction in this Court is appropriate in that the questions raised herein involve  
18 interpretation of federal law. 28 U.S.C. § 1331.
- 19 5. Venue is appropriate in this jurisdiction because the plaintiffs are residents and  
20 citizens in this jurisdiction and a substantial part of the events or omissions giving rise  
21 to the claim occurred are in this jurisdiction. 29 U.S.C. § 1391(b)(2).
- 22 6. Plaintiffs are informed and believe that this Court has personal jurisdiction over the  
23 defendant for the purpose of this action.

24  
25  
26 ///

1 **REQUEST FOR DECLARATORY RELIEF**

- 2 7. There exists an actual and justiciable controversy between the parties sufficient to  
3 support this request the court to declare the rights and legal relations of the parties  
4 pursuant to 28 U.S.C. § 2201(a) and for related relief as sought herein pursuant to 28  
5 U.S.C. §2202.  
6

7 **FACTUAL BACKGROUND**

- 8 8. Sexton was previously a “practitioner” before the Internal Revenue Service as that  
9 term was and is defined by Treasury Department Circular No. 230 (hereafter referred  
10 to as “Circular 230”) and 31 C.F.R. §10.3 by virtue of his membership of a bar of the  
11 State of South Carolina.  
12  
13 9. In 2005 Sexton pleaded guilty in federal court to four counts of mail fraud and one  
14 count of money laundering. He provided considerable assistance to the government  
15 in its case against his father, and received a probationary sentence. He reported this  
16 information to the IRS.  
17  
18 10. Sexton’s right to practice as a lawyer before the IRS, and therefore his status as a  
19 “practitioner” before the IRS, was suspended by the OPR on January 28, 2008  
20 pursuant to Section 10.82 of the then-current version of Circular 230. Sexton has not  
21 disputed that suspension nor has he sought to lift it.  
22  
23 11. Sexton’s status as a “practitioner” before the IRS, and therefore the defendant OPR’s  
24 jurisdiction over Sexton, ended on January 28, 2008.  
25  
26 12. Since he was suspended from practice before the IRS, Sexton has not been a  
27 practitioner before the IRS.  
28

1 13. Prior to and during his suspension, Sexton was employed by plaintiff Esquire and  
2 holds the office of President. Sexton has and does perform various duties within the  
3 course and scope of his employment with Esquire, including management, marketing,  
4 tax preparation and client relations.  
5

6 14. During his employment with Esquire, Sexton has assisted in or been primarily  
7 responsible for the preparation of tax returns for individual clients of Esquire. In  
8 connection therewith, in 2007 Sexton applied for and was granted by the IRS a  
9 Preparer Tax Identification Number (PTIN), pursuant to 26 C.F.R. §1.6109-2 and  
10 §10.8 of Circular 230.  
11

12 15. Sexton's possession of a PTIN does not make him a "practitioner" under 31 U.S.C.A.  
13 Section 330(a).

14 16. Sexton's PTIN has been renewed annually by the IRS and is current.

15 17. On information and belief, defendant does not dispute that Sexton is authorized to  
16 prepare tax returns nor does it dispute that Sexton's PTIN is current.  
17

18 18. On information and belief, without jurisdiction over Sexton and without notice to him  
19 or Esquire, OPR began a pre-investigation of Sexton as early as October, 2012, when  
20 it contacted the Supreme Court of South Carolina asking for information regarding  
21 Sexton's education and the date upon which he first became licensed to practice law.  
22 (Letter from OPR to South Carolina Supreme Court attached hereto and incorporated  
23 by reference as Exhibit A.)  
24

25 19. In January, 2013, in an unrelated matter, the defendant was enjoined from attempting  
26 to enforce certain provisions of 2011 amendments to Circular 230 by the United  
27  
28

1 States District Court for the District of Columbia, in *Loving et al. v. Internal Revenue*  
2 *Service et al.*, Civil Action No. 12-385-(JEB)(Document 22).

3 20. The District Court held, *inter alia*, that holders of PTINs are not practitioners who are  
4 subject to regulation by the IRS. *Id.* The Court also issued a permanent injunction  
5 prohibiting the IRS from enforcing the registration scheme of Circular 230 to holders  
6 of PTINs or persons who seek to be issued PTINs. *Id.*

7  
8 21. On information and belief, the IRS has appealed that decision, and the appeal is  
9 currently pending before the United States Court of Appeals for the District of  
10 Columbia Circuit, Case No. 13-5061.

11  
12 22. By order dated March 27, 2013, the Court of Appeals for the District of Columbia  
13 Circuit refused a request by the IRS to stay the decision of the District Court. *Loving*  
14 *v. Internal Revenue Service*, No. 13-5061, Document #1427635. Therefore the IRS,  
15 and therefore the OPR, is prohibited from treating persons who hold PTINs as  
16 practitioners before the IRS.

17  
18 23. On or about February 25, 2013, OPR issued a directive to Sexton, via his position at  
19 Esquire, demanding production of a wide range of documents, which essentially  
20 request every document generated by Esquire at any time for any purpose for any  
21 client for an indeterminate period of time, and propounding interrogatories requiring  
22 Sexton and/or Esquire to provide information to it regarding Sexton and virtually  
23 every professional activity undertaken by Sexton on behalf of Esquire, identifying all  
24  
25  
26  
27  
28

1 employees and independent contractors of Esquire, and otherwise<sup>1</sup>. A copy of the  
2 directive is attached hereto and incorporated herein by reference as Exhibit B<sup>2</sup>.

3  
4 24. The basis for the broad request for documents and interrogatory responses was the  
5 OPR's assertion that during his suspension, Sexton "alleged practiced before the  
6 Internal Revenue Service within the meaning of section 10.2(a)(4) and therefore, may  
7 have violated section 10.82(f). . ." *Id.*

8  
9 25. In so doing, OPR warned Plaintiff that his status as a "practitioner" before the IRS  
10 required him to respond to the directive or face penalty under Section 101.20(a)(3) of  
11 Circular 230.

12  
13 26. Sexton is not a "practitioner" before the IRS and is not subject to the directives of  
14 Section 10.20(a)(3) of Circular 230.

15  
16 27. Sexton is not a "practitioner" before of the IRS and is not subject to regulatory  
17 authority of the Defendant.

18  
19 28. Much of the documentation demanded by defendant OPR is confidential (although  
20 perhaps not privileged), some of which would reveal proprietary business operation  
21 information of the plaintiff Esquire, which information is outside the scope of  
22 information that can be demanded by defendant OPR via a "practitioner" or otherwise.  
23 Moreover, Esquire's business would likely be severely harmed if clients or potential

---

24  
25 <sup>1</sup> The unreasonable nature of the inquiry is illustrated by the OPR's request for all tax  
26 returns Sexton has prepared, while acknowledging that he had the right to prepare them. (Exhibit  
27 B and C).

28 <sup>2</sup> The name of a third party who is not a party to this action has been redacted in  
accordance with Special Local Order 108.

1 clients were aware that OPR has a blank check to require all of Esquire's files to be  
2 turned over to OPR and/or IRS.

3 29. Sexton has attempted to obtain the OPR's agreement to limit the scope of information  
4 requested, and defendant OPR has purported to limit the scope of the February 25,  
5 2013 request, but not in any meaningful way. A copy of the most recent  
6 communication from the defendant OPR is attached hereto and incorporated by  
7 reference as Exhibit C.  
8

9 30. On information and belief, the defendant lacks authority to demand production of  
10 documents and/or information from Sexton or from Esquire pursuant to Section  
11 10.20(a) or any other provision of law.  
12

13 31. On information and belief, any attempt by the defendant to treat Sexton as a  
14 "practitioner" before the IRS by virtue of his possession of a PTIN is a violation of  
15 the permanent restraining order issued by the District Court of the District of  
16 Columbia as referenced in Paragraphs 20 and 22, *supra*.  
17

18 32. Discussions have continued between Sexton and OPR, which has asserted that it is  
19 investigating Sexton because it has evidence that he has provided tax advice,  
20 allegedly in violation of Circular 230.  
21

22 33. On information and belief, the IRS lacks jurisdiction over persons who provide tax  
23 advice to private parties generally.

24 34. On information and belief, the IRS has jurisdiction only to regulate persons who  
25 practice before the Department of Treasury and/or the Internal Revenue Service and  
26 only to the extent those persons provide advice in connection with representations  
27  
28

1 made to the IRS. 31 U.S.C. § 330. *See also* 31 C.F.R. Part 10, §§10.1 – 10.9 and  
2 Circular 230, §10.3, §10.33, §10.34, §10.35, §10.37 and 26 USC § 601.501(b)(10).

3 35. Sexton has and continues to question the jurisdiction of the IRS through its OPR,  
4 which continues to demand strict compliance from Sexton and therefore Esquire,  
5 which will essentially destroy Sexton's ability and Esquire's ability to perform their  
6 vocation.  
7

8 36. On information and belief, no disciplinary proceedings have been initiated by  
9 defendants against Sexton and/or Esquire pursuant to Circular 230, §10.60 *et seq.* or  
10 otherwise. This action does not seek to interrupt or impede any pending disciplinary  
11 matter.  
12

13 **QUESTION ONE**

14 37. Plaintiffs incorporate each and every paragraph set forth above where relevant as  
15 fully as if repeated herein verbatim.  
16

17 38. Plaintiffs seek a declaration from this Court that Sexton is not a practitioner under the  
18 provisions of applicable federal law, and is therefore not subject to mandatory  
19 directives of the OPR requiring the production of documents and/or information.  
20

21 **QUESTION TWO**

22 39. Plaintiffs incorporate each and every paragraph set forth above where relevant as  
23 fully as if repeated herein verbatim.  
24

25 40. Plaintiffs seek a declaration from this Court that the giving of tax advice generally is  
26 outside the scope of the legislative authority set forth herein, and therefore is not  
27 practice before the IRS and cannot be regulated by the IRS; the IRS lacks jurisdiction  
28



1 to investigate or regulate the giving of tax advice, and the IRS therefore lacks  
2 jurisdiction to mandate Sexton's compliance and cooperation with its investigation.

3 **REQUEST FOR INJUNCTIVE RELIEF**

4  
5 41. Should defendants be permitted to engage in the fishing expedition for documents and  
6 information they are seeking, Sexton and Esquire will be completely consumed in  
7 providing the demanded information, to the extent that it will prevent them from  
8 carrying out their obligations to their clients and customers.

9  
10 42. Sexton and Esquire have already expended substantial time and effort in  
11 communicating with OPR in an effort to convince them that OPR lacks jurisdiction  
12 over Sexton and Esquire for the purposes being advanced or otherwise.

13 43. Defendants have threatened to take action to revoke Sexton's PTIN number for his  
14 failure to cooperate with its demands, which would effectively cease his ability to  
15 carry on his vocation. Such action by the Defendants will be ongoing and will  
16 irreparably harm Sexton and Esquire in the form of lost time, compliance costs, and  
17 loss of income generally.

18  
19 44. The demands by Defendants for production of documents and information are  
20 without jurisdiction, have caused and will continue to cause great harm to Plaintiffs  
21 and to their business activities. This will impose substantial monetary and  
22 opportunity costs on Plaintiffs.

23  
24 45. But for the demands of the Defendants, Plaintiffs would be able to continue to carry  
25 out their business activities without interference by the Defendants and continue to  
26 generate income to operate Esquire.

1 46. Plaintiffs have no adequate remedy at law to assuage the damages being caused to  
2 them by the actions of the Defendants.

3 47. Unless Defendants are enjoined from seeking to exercise jurisdiction over Sexton and  
4 Esquire by its demands to date, Plaintiffs will suffer continuing and irreparable harm.  
5

6 **REQUEST FOR RELIEF**

7 Wherefore, Plaintiffs specifically request the following relief:

- 8 A. A declaratory judgment by the Court that Sexton is not a practitioner as defined by  
9 federal law and that Defendants lack statutory authority to enact, promulgate or  
10 enforce demands or authority over him and/or his employer Esquire as a result of  
11 Sexton's activities as set forth in Paragraph 38, *supra*..  
12
- 13 B. A declaratory judgment by the Court that Defendants and their agents are prohibited  
14 from regulating the providing of tax advice generally, except as specifically provided  
15 by statute and conferred upon them by Congress, as set forth in Paragraph 40 *supra*..  
16
- 17 C. A permanent injunction prohibiting Defendants or their agents from seeking to  
18 enforce Section 10.20 of Circular 230 against them and requiring them from  
19 providing documents and information to Defendants upon demand.  
20
- 21 D. Such other and further relief as the Court deems just and proper.

22 [signatures follow]  
23  
24  
25  
26  
27  
28

1 May 21, 2013

2 Respectfully submitted,

3 SHAWN R. PEREZ

4 /s/ Shawn R. Perez

5 \_\_\_\_\_  
6 Attorney for Plaintiff  
7 JAMES C. SEXTON JR.

8 DESA A. BALLARD  
9 STEPHANIE WEISSENSTEIN

10 \_\_\_\_\_  
11 /s/DESA A. BALLARD  
12 Attorneys for Plaintiff  
13 JAMES C. SEXTON JR.

14 PUOY K. PREMSRIRUT

15 /s/ Puoy K. Premsrirut

16 \_\_\_\_\_  
17 Attorney for Plaintiff  
18 ESQUIRE GROUP LLC  
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Letter from OPR to South Carolina Supreme Court (undated)	Exhibit A
Letter from OPR to Plaintiffs (February 25, 2013)	Exhibit B
Letter/email from OPR to Sextons counsel (4-12-2013)	Exhibit C