



New Jersey Court Limits Discoverability of Corporate Tax Returns

Client Advisories

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The New Jersey Appellate Division recently clarified that corporate tax returns are entitled to a presumption of confidentiality in the discovery process just like personal tax returns. But corporate tax returns may still be discoverable if the party seeking them establishes the heightened disclosure requirements. In considering this issue, courts will likely conduct an in-camera review of the returns to determine whether they contain relevant information and if so, whether partial disclosure with redactions is possible.

The *Ullman* Rule

Over fifty years ago, the Appellate Division established the heightened disclosure requirements for tax returns during discovery in *Ullman v. Hartford Fire Insurance Co.*, 87 N.J. Super. 409 (App. Div. 1965). To obtain a party's tax returns in a civil case, the requesting party must demonstrate: (1) the tax returns are relevant to the case; (2) the requesting party has a "compelling need" for the returns because they contain information not readily obtainable from other sources; and (3) disclosure of the returns would serve a "substantial purpose." *Ullman* instructs that before a trial court orders the release of tax filings, it should conduct an in-camera review and consider whether it is sufficient to order partial disclosure of redacted records. Notably, the tax filings at issue in *Ullman* were individual tax returns.

Enter *Parkinson v. Diamond Chemical Co., Inc.*

In *Parkinson v. Diamond Chemical, Inc.*, plaintiff Charles Parkinson sought the tax filings and financial statements of Diamond Chemical Inc., his former employer and the company's president, contending that these records contained information relevant to his wrongful discharge claims and defendants' counterclaims. After defendants objected to this request, motion practice ensued. Seizing on the fact that *Ullman* was decided in the context of individual tax returns, plaintiff argued that *Ullman* did not apply to corporate tax filings and that such filings deserve less protection. Following argument, the trial court ordered the production of certain corporate tax returns and financial statements.

On leave granted, the Appellate Division reversed. The court held that *Ullman*'s heightened good cause standard applies not only to individual tax returns, but to corporate tax returns as well. Yet, the effect of applying *Ullman* to corporate tax returns should not be overstated. Though corporate tax returns are now placed on a similar footing to individual tax returns, a party may still gain access to such returns if it can show that it meets the required elements; an issue the court in *Parkinson* did not decide, and one which is generally entrusted to the discretion of the trial court. Additionally, the Appellate Division stressed that, in deciding whether to require production of tax returns, an in-camera review of the returns is generally advisable so that the court can determine whether the returns contain relevant information and if so, whether partial disclosure with redactions is possible.

The Take-Away

The take-away here is that even though corporate tax returns now stand on equal footing with individual tax returns when it comes to discovery, partial disclosure may still be required. Each corporate tax filer will need to partner with experienced counsel to more thoroughly examine these issues so that it can appropriately evaluate these confidentiality issues.

If you have questions about this decision, or any other issue involving commercial litigation, please contact **Daniel DeFiglio** at ddefilgio@archerlaw.com or 856-616-2611 or **Amy Pearl** at apearl@archerlaw.com or 856-857-2790, or any member of Archer's **Business Litigation Group**.

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