Here's the Tax Beat broadcast for March 18

Subject Line: Chatbot Attorney at Flaw

You know that friend who always has a "guy" for everything? Need a plumber? He's got a guy. Need concert tickets? He's got a guy. Need legal advice while facing federal securities fraud charges? Well, Bradley Heppner of Dallas thought he had a guy for that, too. Except his guy was an AI chatbot.

Heppner, a financial services executive, found himself on the wrong end of a grand jury subpoena late last year. So, like millions of Americans who've discovered they can ask an AI anything at 2 a.m. without judgment, he turned to Anthropic's Claude and started typing. He fed it details about his case, asked for legal strategy, and generated roughly 31 documents laying out his defense. Then federal agents showed up at his mansion, seized his devices, and found every last one of them.

The Department of Justice wanted those documents. Heppner's lawyers said they were privileged. On February 10, Judge Jed Rakoff of the Southern District of New York issued a ruling that sent shockwaves through the legal world: not a single one of those 31 documents was protected by attorney-client privilege or the work product doctrine. Not one.

Judge Rakoff's reasoning was elegant in its simplicity. First, Claude isn't a lawyer. It has no law license, owes no duty of loyalty, and can't form an attorney-client relationship. (Anthropic's own materials state that Claude is designed to avoid "giving the impression of giving specific legal advice." So even the chatbot knows it's not your attorney.) Second, there was no confidentiality. Anthropic's privacy policy explicitly says that user prompts may be disclosed to "governmental regulatory authorities" and used to train the model. Heppner was essentially dictating his defense strategy into a megaphone pointed at the internet and hoping nobody was listening.

Here's where it gets interesting for us tax pros. The court didn't just reject privilege over the AI-generated documents. It suggested that feeding privileged attorney-client communications into a consumer AI tool could waive the privilege over those *original* communications, *too*. Think about that. If you take your lawyer's advice and run it through ChatGPT or Claude to "double-check" it, you may have just blown up the confidentiality protection on everything! The IRS doesn't need to hack your email. You just need to copy-paste it into a chatbot.

Judge Rakoff did leave one narrow escape hatch. He noted that if your lawyer specifically tells you to use the AI tool as part of the legal engagement — essentially treating the chatbot as the lawyer's own research assistant — privilege might survive. But that's a thin reed, and it only works if you've structured the arrangement deliberately. The key word is "agent." If Claude is functioning as your agent, within the scope

of your professional engagement, maybe you're okay. Maybe. (Lawyers love a good "maybe." It's that's how they keep the meter running.)

The practical takeaway for us? Every tax planner in America needs to have the AI conversation with their clients yesterday. So let's have it! Are you using consumer AI tools to analyze your tax situations? Are you uploading K-1s, partnership agreements, or strategy memos into free chatbots with privacy policies that would make a Facebook executive blush? Because if you are, and those documents ever become relevant in an audit or litigation, Heppner is now your precedent. And "I didn't read the privacy policy" has never been a winning argument before the IRS — or anyone else.

The 31 documents Bradley Heppner generated were supposed to be his shield. Instead, they became the prosecution's exhibit list. So before you start treating AI like a $20-a-month attorney, remember that *we're* the ones with actual privilege — and the planning strategies to go with it. Unlike Claude, we won't testify against you!

Kevin