

**ASSERTION OF WORK PRODUCT PRIVILEGE, ATTORNEY-CLIENT PRIVILEGE,
AND FEDERALLY AUTHORIZED TAX PRACTITIONER PRIVILEGE OVER TAX-
ADVICE DOCUMENTS IN LIGHT OF *UNITED STATES V. MICROSOFT CORP.***

RICARDO COLÓN*
ÁNGEL ORTIZ**

I. INTRODUCTION

Businesses face increasing scrutiny of their assertions of privilege in litigation. The decision in *United States v. Microsoft Corp.* addresses the court's interpretation of the work product privilege, attorney-client privilege, and the federally authorized tax practitioner privilege in litigation related to tax-advice documents.¹ This case drew the attention of national business organizations such as the U.S. Chamber of Commerce due to the government's arguments for denying tax practitioner privilege, attorney-client privilege, and work product protection to tax-advice documents.² It is common practice for businesses to seek the advice of accountants and consultants in structuring business transactions in order to minimize tax implications. While assertions of privilege in tax litigation is a frequent practice, court decisions interpreting the work product privilege, attorney-client privilege, and the authorized tax practitioner privilege over tax-advice documents are not too common.

This paper explains the fundamentals of the attorney-client privilege, the work product privilege, and the federally authorized tax practitioner privilege. Afterwards, it discusses *United States v. Microsoft Corp.* focusing on the overall facts of the case and the assertions of work product privilege, attorney-client privilege, and authorized tax practitioner privilege over tax-advice documents. Finally, this paper advises taxpayers how to protect possible assertions of work product privilege, attorney-client privilege, and authorized tax practitioner privilege.

II. THE ATTORNEY-CLIENT PRIVILEGE

The attorney-client privilege is one of the oldest privileges of our jurisprudence.³ Recognized under Federal Rule of Evidence 501, the attorney-client privilege refers to “the protection that applicable law provides for confidential attorney-client communications.” The attorney-client privilege “protects confidential communications between a client seeking legal advice and an attorney providing such advice.”⁴ The privilege “recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.”⁵ The attorney-client privilege encourage clients to make “full and

*LL.M., J.D., Associate Professor of Accounting, Lamar University.

** DBA, J.D., MBA, Assistant Professor of Accounting, University of Puerto Rico at Cayey.

¹ *United States v. Microsoft Corp.*, No. C15-102RSM (W.D. Wash. Jan. 17, 2020).

² Press Release, U.S. Chamber Files Motion for Leave to File on Significant Tax Privilege Issue (Oct. 27, 2016).

³ *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007).

⁴ *In re Grand Jury Subpoena 92-1(SJ)*, 31 F.3d 826, 829 (9th Cir. 1994).

⁵ *Upjohn Co. v. United States*, 449 U.S. 383 (1981).

frank” discussions with their attorneys in order to get better advice and effective representation.⁶

The attorney-client privilege requires an attorney-client relationship.⁷ Besides, the existence of the attorney-client privilege consists of four basic elements: “(1) a communication; (2) made between privileged persons; (3) in confidence; (4) for the purpose of seeking, obtaining or providing legal assistance to the client.”⁸ According to *United States v. Graf*, the attorney-client privilege also refers:

“(1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection be waived.”⁹

In *United States v. United Shoe Mach. Corp.*, the court established the extension and application of the privilege:

“The privilege applies only if (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.”¹⁰

The application of attorney-client privilege has some exceptions. The principal exceptions are (a) death of the client, (b) fiduciary duty, (c) crime or fraud exception, or (d) waived by the client. One exception of the privilege is the death of the client in matters related to testator-client litigation. The exception involves cases dealing with the interpretation of wills or testamentary-related disputes.¹¹ Another exception of the privilege is the communication between attorneys and fiduciaries for the discovery of third-party beneficiaries. According to *Garner v. Wolfenbarger*, third party beneficiaries may discover about communications between fiduciaries and attorneys about matters of their fiduciary duties for the discovering beneficiary.¹² A third exception to the privilege occurs when a client seeks advice to commit a crime or fraud. As stated in *United States v. United Shoe Mach. Corp.*, the attorney-client privilege does not apply for communications when a client seeks advice for committing a crime or fraud.¹³ The fourth exception is when the client waives the privilege.¹⁴

⁶ *Id.*

⁷ *Id.*

⁸ *Restatement of the Law Governing Lawyers* § 118 (Tentative Draft No. 1, 1988).

⁹ *United States v. Graf*, 610 F.3d 1148, 1156 (9th Cir. 2010).

¹⁰ *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 358-59 (D. Mass. 1950).

¹¹ Charles McCormik, *Evidence* § 94, at 227 (3d ed. 1984).

¹² *Garner v. Wolfenbarger*, 430 F.2d 1093 (5th Cir. 1968).

¹³ *Id.* at *10.

¹⁴ *Id.* at *10.

The attorney-client privilege provides the protection and confidentiality to communications between clients and attorneys. The privilege is also related to other privileges such as the work product privilege (Fed. R. Civ. P. 26(b)(3)) and federally authorized tax practitioner privilege (I.R.C. Section 7525). The attorney-client privilege promotes better advice and effective representation to clients.

III. THE WORK PRODUCT PRIVILEGE

The work product privilege protects from discovery “documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent).”¹⁵ Originally, the privilege was framed as a protection of lawyer’s work product in *Hickman v. Taylor*.¹⁶ However, the adoption of Fed. R. Civ. P. 26(b)(3) extended the privilege to materials prepared in anticipation of litigation by or for a party or its representative, not just by or for a lawyer.¹⁷ The work product doctrine is intended to preserve a zone of privacy to develop legal theories and strategies toward a litigation, free from unnecessary intrusion by adversaries.¹⁸

Despite the work product protection, the adverse party may request the other party’s documents and tangible things in some instances.¹⁹ The work product privilege may be overcome if there is a substantial need of the materials for the case preparation and the opposing party cannot reasonably obtain their substantial equivalent by other means.²⁰ The court may evaluate that the adverse party demonstrate a ‘substantial need for the materials’ and ‘undue hardship in obtaining the substantial equivalent of the materials by other means’.²¹

Dual-purpose documents in anticipation of litigation and for business purposes (ex. consulting, memorandums, legal strategies) are also entitled to work product protection.²² As stated in *United States v. Adlman*, dual-purpose documents where litigation was anticipated are protected work product.²³ In *Adlman*, the court provided examples of dual-purpose documents that are protected work product.²⁴ One illustrative example is:

“A company contemplating a transaction recognizes that the transaction will result in litigation; whether to undertake the transaction and, if so, how to proceed with the transaction, may well be influenced by the company’s evaluation of the likelihood of success in litigation. Thus, a memorandum may be prepared in expectation of litigation with the primary purpose of helping the company decide whether to undertake the contemplated transaction.”²⁵

¹⁵ Fed. R. Civ. P. 26(b)(3) (2022).

¹⁶ *Hickman v. Taylor*, 329 U.S. 495 (1947).

¹⁷ *Id.* at *15.

¹⁸ *Schaeffler v. United States*, 806 F.3d 34.

¹⁹ *In re Grand Jury Subpoena (Mark Torf/Torf Env’t Mgmt.)*, 357 F.3d 900 (9th Cir. 2004).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *United States v. Adlman*, 134 F.3d 1194 (2d Cir. 1998).

²⁴ *Id.*

²⁵ *Id.*

Work product doctrine applies to tax planning including to documents prepared before an event that give rise to a litigation.²⁶ As indicated in *United States v. Adlman*, “in many instances the expected litigation is quite concrete, notwithstanding that the events giving rise to it have not yet occurred.” In *United States v. Roxworthy*, a document prepared in anticipation to deal with the IRS is protected by the work product privilege.²⁷ As stated in *Roxworthy*, “although not every audit is potentially the subject of a litigation, a document prepared in anticipation of dealing with the IRS may well have been prepared in anticipation of an administrative dispute and this may constitute litigation within the meaning of Rule 26.”²⁸ Moreover, work product privilege applies to documents in anticipation of a litigation arising from an investigation of a government agency.²⁹ In *Abdallah v. Coca-Cola Co.*, “a document may be considered to have been prepared in anticipation of a litigation even if the litigation that caused its preparation was an investigation by a government agency and not a traditional civil suit.”³⁰

In tax planning, the work product doctrine applies to a taxpayer dealing with a complex transaction if it is reasonable to anticipate an IRS audit, administrative dispute, or litigation.³¹ In *Schaeffler v. United States*, a memorandum prepared by a tax practitioner to his client “was necessarily geared to anticipated audit and subsequent litigation, which was on this record highly likely.”³² Moreover, “the predicted litigation was virtually inevitable because of the size of the transaction and losses” (citing *United States v. Adlman*).³³ Among different court decisions, the circumstances considered in relevant tax cases are:

- Identifying a specific transaction that may result in a litigation³⁴
- Identifying a specific legal controversy that may result in a litigation³⁵
- Size of the company³⁶
- Size of the transaction³⁷
- Complexity of the tax treatment³⁸
- IRS’s investigation of all taxpayer return³⁹
- IRS’s previous investigation of similar transactions⁴⁰
- Taxpayer and accounting firm prepares many documents because anticipate a “vigorous legal challenge by the IRS.”⁴¹

²⁶ *Id.*

²⁷ *United States v. Roxworthy*, 457 F.3d 590,600 (6th Cir. 2006).

²⁸ *Id.*

²⁹ *Abdallah v. Coca-Cola Co.*, CN AI:98CV3679RWS, 2000 WL 33249254 (N.D. Ga. Jan. 25, 2000)

³⁰ *Id.*

³¹ *Id.* at *18.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at *27.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at *18.

³⁸ *Id.*

³⁹ *United States v. ChevronTexaco*, 241 F. Supp. 2d at 1082

⁴⁰ *Id.*

⁴¹ *Id.*

Based on Rule 26 and court decisions, the work product doctrine protects documents and tangible things in anticipation of litigation. The work product privilege also applies to another party or its representatives (ex. consultants, insurer, or agent) in expectation of a litigation.⁴² In tax planning, different court decisions sustained that work product privilege applies to documents and memorandums prepared before an event or transaction in anticipation of litigation (*United States v. Adlman*, *United States v. Roxworthy*, *Schaeffler v. United States*). Different court decisions (*United States v. Roxworthy*, *United States v. ChevronTexaco*, *Schaeffler v. United States*) also found that predicted litigation is anticipated with the IRS for complex transactions considering the size of transactions, complexity, losses, and previous IRS's investigations of similar transactions.

IV. THE FEDERALLY AUTHORIZED TAX PRACTITIONER PRIVILEGE

The federally authorized tax practitioner privilege expands the protections of the client-attorney privilege to communications between “a taxpayer and any federally authorized tax practitioner.”⁴³ The statute establishes:

“With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.”⁴⁴

According to I.R.C. Section 7525, a “federally authorized tax practitioner” consists of “any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under section 330 of title 31, United States Code.”⁴⁵ Under 31 U.S.C. Section 330, the Internal Revenue Service (IRS) establishes the regulations allowing attorneys, certified public accountants (CPAs), and enrolled agents, among others, to practice before the IRS. Therefore, under I.R.C. Section 7525, these tax practitioners are covered by the protections of the federally authorized tax practitioner privilege when providing tax advice.

As stated in *Schaeffler v. United States*, the federally authorized tax practitioner privilege is “essential coterminous with the attorney-client privilege both in scope and in waiver.”⁴⁶ The privilege covers international accounting firms that provide tax analysis and advice related to international tax field and regulations. According to *United States v. BDO Seidman*, federally authorized tax practitioners are doing “lawyer’s work” when they are providing privilege advice.⁴⁷ The federally authorized tax practitioner privilege extend the client-attorney privilege to tax advice and communications between tax practitioners and taxpayers.⁴⁸

Pursuant to I.R.C. Section 7525, “tax advice” consists of an “advice given by an individual with respect to a matter which is within the scope of the individual’s authority to practice described in subparagraph (A).”⁴⁹ When tax advice is within the scope of federally authorized tax

⁴² *Id.* at *15.

⁴³ 26 U.S.C. § 7525 (2022).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Schaeffler v. United States*, 806 F.3d 34, 38 n.3 (2d Cir. 2015).

⁴⁷ *United States v. BDO Seidman*, 337 F.3d 802 (7th Cir. 2003).

⁴⁸ *Id.*

⁴⁹ *Id.*

practitioner, the individual’s advice is considered as doing “lawyers’ work.”⁵⁰ However, the privilege does not apply to tax advice “in connection with the promotion of the direct or indirect participation of the person in any tax shelter.”⁵¹ According to I.R.C. Section 6662, a “tax shelter” occurs “if a significant purpose of a partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.” Therefore, advice promoting a tax shelter is not protected under the federally authorized tax practitioner privilege.

Based on I.R.C. Section 7525(b), the federally authorized tax practitioner privilege does not apply in connection with the promotion of a tax shelter. According to *Countryside Limited Partnership. v. Commissioner*, the United States has the burden of proving the facts related to promoting a tax shelter to establish the exception of the privilege (citing *United States v. BDO Seidman*).⁵² In *Countryside Limited Partnership. v. Commissioner*, the court found that the term “promotion” did not include an advisor’s provision of routine tax advice: (1) in response to taxpayer’s request; (2) fell within tax practitioner’s area of expertise; (3) to a long-standing client; and (4) where he retained no stake in his advice beyond his employer’s right to bill hourly for his time.⁵³ Under this criteria, routine tax advice does not constitute “promotion” of a tax shelter.

V. UNITED STATES V. MICROSOFT CORP.

In *United States v. Microsoft Corp.*, the court conducted an *in camera* review of documents withheld by Microsoft Corporation (“Microsoft”) in response to summonses issued by the government while conducting an examination of certain cost sharing arrangements transferring ownership of intellectual property between Microsoft’s domestic subsidiaries and a foreign subsidiary in Puerto Rico.⁵⁴ The government believed that Microsoft’s cost sharing arrangements impermissibly shifted revenue out of the United States, decreasing Microsoft’s federal income tax liabilities and obtaining a more favorable foreign tax treatment.⁵⁵ Microsoft asserted that certain documents responsive to the government’s summonses, including documents prepared by its accountants, KPMG LLP (“KPMG”), were privileged or protected from disclosure under the attorney-client privilege, work product privilege, and/or the federally authorized tax practitioner-client privilege under I.R.C. Section 7525.

Upon completing its *in camera* review, the court concluded that the documents at issue were not protected by the work product doctrine.⁵⁶ First, the court held that all the documents served dual business and litigation purposes.⁵⁷ Second, the court found a significant difference between planning to act in a legally defensible manner and in defending against an existing legal dispute.⁵⁸ The court determined that Microsoft was anticipating litigation because it elected to take an aggressive tax strategy that it knew was likely to be challenged by the government.⁵⁹ The record did not provide any indication that Microsoft would have faced its anticipated legal challenges if

⁵⁰ *Id.* at *47.

⁵¹ *Id.*

⁵² *Countryside Limited Partnership. v. Commissioner*, 132 T.C. 347 (2009).

⁵³ *Id.*

⁵⁴ No. C15-102RSM, at *1-2 (W.D. Wash. Jan. 17, 2020).

⁵⁵ *Id.* at *2.

⁵⁶ *Id.* at *5.

⁵⁷ *Id.* at *6.

⁵⁸ *Id.*

⁵⁹ *Id.*

Microsoft had not made the decision to pursue the transactions.⁶⁰ Moreover, the court observed that Microsoft had not provided any reason it could not have planned the transactions in such an unfavorable manner that it was effectively insulated from a tax challenge.⁶¹ Microsoft's documents were not created in anticipation of litigation.⁶² Instead, Microsoft anticipated litigation because of the documents it created.⁶³ The court also found that Microsoft's work product assertions were undercut by the relationships of the parties and the actions of the parties.⁶⁴ For instance, it was noted that Baker & McKenzie, the law firm hired to provide tax advice on the transaction, did not direct KPMG to create any documents necessary to an eventual litigation defense or for use at trial.⁶⁵

With respect to the attorney-client privilege, the court found that most of the documents were not protected by the privilege. The court reviewed eight documents that contained legal advice provided by Microsoft's in-house attorneys. The court noted that increased scrutiny is necessary when advice by in-house counsel is involved because they often act in both a legal and non-legal business capacity and this requires a clear showing that in-house attorney made the communication for the purpose of obtaining or providing legal advice.⁶⁶ The court's review of the eight documents and its conclusions are shown below:

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at *7.

⁶⁶ *Id.* at *8.

Document ID	Description of Document	Court's conclusion regarding attorney-client privilege
Document Number 13	Emails	Partially privileged because some emails were primarily seeking, providing or relaying legal advice.
Document Number 25	Emails	Privileged because the emails discussed legal issues and primarily sought, provided, or relayed legal advice.
Document Number 43	Emails	Not privileged because the emails served primarily a business purpose and there was indication that the information was intended to be shared instead of maintained confidentially.
Document Number 607	Email attaching slides for a presentation	Not privileged because the documents primarily served a business purpose.
Document Number 736	Email attaching slides for a presentation	Not privileged because the documents primarily served a business purpose.
Document Number 870	Emails	Not privileged because the documents primarily served a business purpose and their documents indicated that the information may have been shared with third parties or not maintained confidentially.
Document Number 881	Planning Documents	Partially privileged because some documents had a primary purpose of seeking legal advice while other documents primarily served a business purpose.
Document Number 882	Email attaching two draft agreements	Not privileged because the documents primarily served a business purpose. Also, the recipient of the email was an accountant (a non-attorney third party).

The court also found that the documents at issue were not protected from disclosure by the federally authorized tax practitioner privilege (“FATP”) under I.R.C. Section 7525 because the privilege does not apply to written communications in connection with a tax shelter.⁶⁷ Based on its in camera review of the documents, the court concluded that a significant purpose, if not the only purpose, of Microsoft’s transactions was to avoid or evade federal income tax.⁶⁸ Microsoft did not advance a business purpose for the transactions. To the contrary, Microsoft asserted that the transactions “should NOT have much impact on how we serve customers.”⁶⁹ While operational expenses were expected to increase by “50 million over 10 years”, the transactions would result in “tax savings of nearly 5 billion over 10 years.”⁷⁰ It was evident that with no real impact on how customers were served, the tax savings drove the decision making process. Significantly, the court found that all of the documents prepared by KPMG were not protected from disclosure because

⁶⁷ *Id.* at *15.

⁶⁸ *Id.* at *16.

⁶⁹ *Id.*

⁷⁰ *Id.*

the firm participated in the promotion of a tax shelter to Microsoft, since the transactions did not appear necessary to satisfy Microsoft's operational needs.⁷¹ Also, there was evidence that KPMG struggled internally to identify good faith legal arguments to support Microsoft's transactions.⁷² The court summed up its conclusion stating that "[w]here, as here, a FATP's advice strays from compliance and consequences to promotions of tax shelters, the privilege falls away."⁷³

VI. TAXPAYERS CAN TAKE ACTION TO HEIGHTEN THEIR ASSERTIONS OF WORK PRODUCT PRIVILEGE, ATTORNEY-CLIENT PRIVILEGE, AND THE FEDERALLY AUTHORIZED TAX PRACTITIONER PRIVILEGE

Taxpayers can take action to heighten their assertions of privilege and attempt to avoid an outcome such as the Microsoft decision. With respect to the work product privilege, a change in the relationship of the parties could have potentially prevented the disclosure of some of the documents prepared by KPMG. As the *Microsoft* court noted, Baker & McKenzie, the law firm hired to provide tax advice on the transaction, did not direct KPMG to create any documents necessary to an eventual litigation defense or for use at trial. This situation could have been easily remedied through a *Kovel* type of arrangement where the law firm providing legal services related to the transactions, Baker & McKenzie, engaged KPMG to provide tax advice in anticipation of litigation of the transactions, protecting the communications between KPMG and Baker & McKenzie under the work product privilege.

With respect to the federally authorized tax practitioner privilege, Microsoft could have prevented the disclosure of documents prepared by KPMG had the firm not been found to have been engaged in promoting a tax shelter. To avoid this finding, tax practitioners should ensure that when providing tax advice, they can identify the business purpose of the transactions, beyond merely tax savings. Since the tax shelter exception turns on the purpose for the transaction, "[a] tax structure may be a permissible method to achieve a legitimate business purpose in one context and an impermissible tax shelter in another."⁷⁴ To the extent that practitioners can clearly identify the business purpose of a transaction, the likelihood of finding that their advice falls within the tax shelter exception to disclosure under the tax return practitioner privilege is diminished. When communicating with accountants, companies should not discuss tax benefits in a vacuum without assessing the business purpose of a transaction and its operational impact on the business.

VII. CONCLUSION

Time will tell whether other courts are inclined to follow the *Microsoft* court's narrow interpretation of the work product privilege, attorney-client privilege, and the federally authorized tax practitioner privilege, but the decision has major implications for tax practitioners. Commentators have already raised concerns about *Microsoft*.⁷⁵ First, the decision can be read as expanding the tax shelter exception to the federally authorized tax practitioner privilege to include

⁷¹ *Id.* at *18-19.

⁷² *Id.* at 19, n.9.

⁷³ *Id.* at 19.

⁷⁴ *Microsoft*, No. C15-102RSM, at *68.

⁷⁵ Kat Gregor, Elizabeth Smith, Monica Mlecenko, *INSIGHT: Are Privilege Protections Shifting in the Tax Context?*, Bloomberg Tax (Apr. 13, 2020), <https://news.bloombergtax.com/daily-tax-report/insight-are-privilege-protections-shifting-in-the-tax-context>

otherwise legitimate business decisions to minimize taxes.⁷⁶ Second, “the Microsoft court ignored the broader business justification for Microsoft’s cost-sharing arrangement: its business purpose for holding the intellectual property in the first place and the fact that it has a right to decide which subsidiary will own that property.”⁷⁷ Third, “[Microsoft] may signal a change that is already underway globally, particularly in Europe: a shift in public perception to viewing tax optimization as impermissible.”⁷⁸

In this environment, it is important for companies, accountants and legal counsel to take actions that protect their assertions of work product privilege, attorney-client privilege, and federally authorized tax practitioner privilege. As previously discussed, when dealing with accountants, it may be necessary to engage the accountants through outside counsel through a *Kovel* type of arrangement. In this manner, it will be harder for the government to argue that the tax-advice documents prepared by the accountants are routine business documents. At the same time, by engaging outside counsel, it will be easier for the taxpayer to establish that the accountant’s tax-advice documents were established in anticipation of litigation. Similarly, to protect the federally authorized practitioner privilege, it is important for the accountants to establish the business purpose of a transaction, beyond pure tax savings. To the extent that a transaction serves a legitimate business purpose, the work of the accountant should not be seen as promoting a tax shelter, which will help protect the assertion of the federally authorized tax practitioner privilege over tax-advice documents.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*