

IRS Supreme Court Victory in Taxpayer Privacy Case

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PRACTICES Tax

Generally, the IRS has broad power to seek records to carry out its investigatory, collections, and other duties. But those powers have checks to guard against abuse or inadvertent infringements on privacy. One of those checks is IRC Section 7609 which requires that when the IRS issues a summons seeking an individual's records from a third party, such as a bank or accountant, it must provide notice of the summons to identified people. For example, if the IRS seeks bank records in the course of an audit, it generally must also notify the account holder of the summons. The statute then gives the account holder a brief window to challenge the summons based on recognized privileges and defenses, such as lack of relevance or the attorney-client privilege.

The statute excludes from the notice requirement summonses issued "in aid of the collection" of tax assessments § 7609(c)(2)(D)(i). In *PolSELLI v. Internal Revenue Service*, the IRS relied on that exception to issue administrative summonses to the taxpayer wife's and lawyers' bank accounts without notifying the taxpayer, the wife, or the lawyers. The Taxpayer argued that the IRS's interpretation of the exception would allow the exception and not the rule to apply in almost every instance and would render the statute a dead letter. Nevertheless, in a unanimous opinion issued May 18, 2023, the Supreme Court agreed with the IRS and concluded that the summonses fell within the exception and thus the taxpayer's wife and lawyers were not entitled to notice.

In practice, this means that if there is a tax assessment the IRS can issue a summons to a third party record holder without notifying the taxpayer first.