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Tenth Circuit: Lawsuits challenging activities leading to a U.S. federal tax assessment

The U.S. Court of Appeals for the Tenth Circuit today held that lawsuits challenging "activities leading up to and culminating in" a U.S. federal tax assessment are barred by the Anti-Injunction Act, Code section 7421.

The case is: *The Green Solution Retail, Inc. v. United States*, No. 16-1281 (10th Cir. May 2, 2017). Read the Tenth Circuit's **decision** [PDF 57 KB]

Background

The company, a Colorado-based marijuana dispensary, sued to enjoin the IRS and related parties from investigating the company's business records. The federal district court dismissed the company's complaint for lack of subject matter jurisdiction, concluding the Anti-Injunction Act and the Declaratory Judgment Act bar this action. The court relied on its circuit's prior decision in *Lowrie v. United States*, where it was held that lawsuits challenging "activities leading up to and culminating in" an assessment are barred. 824 F.2d 827, 830 (10th Cir. 1987).

On appeal, the company contended that the district court had jurisdiction to hear its claims because the Supreme Court implicitly overruled *Lowrie* in its recent decision *Direct Marketing Association v. Brohl*, 135 S. Ct. 1124 (2015).

Tenth Circuit's decision

In holding that it is still bound by its decision in *Lowrie*, the Tenth Circuit today concluded that the company's lawsuit was filed for the purpose of restraining an assessment and is therefore barred by the Anti-Injunction Act and the Declaratory Judgment Act, affirming the district court's decision.

KPMG observation

Tax professionals have observed that the *Direct Marketing* case dealt with the Tax Injunction Act and not the Anti-Injunction Act, and thus, the U.S. Supreme Court did not implicitly overrule *Lowrie*.