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Ninth Circuit: IRS not immune from suit, fraudulent tax refund sting operation

The U.S. Court of Appeals for the Ninth Circuit today reversed a federal district court, and held that the IRS was not immune from suit in an action brought by tax preparation and refund-advance businesses in connection with an IRS “sting operation” with respect to fraudulent tax refunds.

The case is: *Synder & Associates Acquisitions, LLC v. United States*, 15-56011 (9th Cir. June 16, 2017). Read the Ninth Circuit’s [decision](#) [PDF 174 KB] that includes a concurring opinion.

Summary

The IRS set out to catch individuals filing for fraudulent tax refunds. The IRS enlisted the assistance of the plaintiffs’ tax preparation and refund-advance businesses, and warned that refusal to cooperate would interfere with a federal criminal investigation. The IRS used millions of the plaintiffs’ dollars as bait, and promised to reimburse them for any losses. The plaintiffs cooperated, but the IRS never returned their money. Instead, at the conclusion of the sting operation, the IRS subpoenaed more than 5,000 of plaintiffs’ documents to assist with its prosecution efforts and revoked one plaintiff’s electronic tax filing privileges—at the beginning of the tax preparation season—forcing both plaintiffs into bankruptcy.

The plaintiffs sued the IRS under the Federal Tort Claims Act, alleging several causes of action, but the federal district court granted the government’s motion to dismiss. The district court held that the IRS was immune from liability for its conduct because 28 U.S.C. § 2680(c) bars claims against the government “arising in respect of the assessment or collection of any tax.”

Today, the Ninth Circuit reversed, finding that 28 U.S.C. § 2680(c) did not confer absolute immunity on the IRS. The Ninth Circuit construed the facts in the light most

favorable to plaintiffs, and found the IRS's sting operation did not "aris[e] in respect of the assessment or collection of any tax."

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