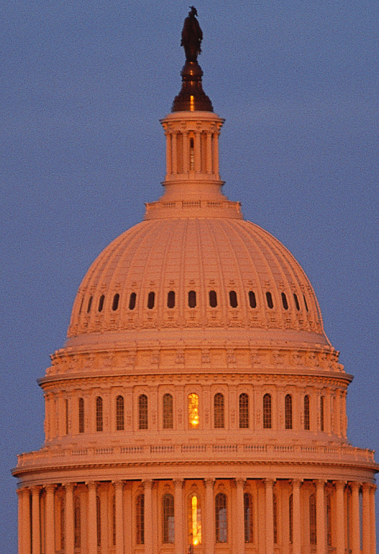




TaxNewsFlash

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Sixth Circuit: IRS summonses issued to banks of taxpayer's wife and taxpayer's lawyers

The U.S. Court of Appeals for the Sixth Circuit today affirmed the judgment of a federal district court that denied petitions to quash IRS summonses issued to banks of the taxpayer's wife and taxpayer's lawyers for lack of subject-matter jurisdiction.

The Sixth Circuit held that the IRS issued the summonses "in aid of the collection" of tax assessments and did not need to notify the wife and the law firms of the summonses and because they were not entitled to notice, they had no right to bring the petitions to quash.

The case is: *PolSELLI v. IRS*, No. 21-1010 (6th Cir. January 7, 2022). Read the Sixth Circuit's [decision](#) [PDF252 KB] that includes a dissent.

Summary

- The taxpayer underpaid his federal taxes for over a decade, and the IRS made tax assessments that eventually had an outstanding balance of over \$2 million.
- The IRS Revenue Officer during an investigation for the location of the taxpayer's assets to satisfy the unpaid tax liabilities, suspected the taxpayer was concealing the balance of his assets to shield them from the IRS.
- The Revenue Office learned that the taxpayer "may have access to and use of" bank accounts held in the name of his wife. Based on this information, the Revenue Officer served a summons on a bank seeking account and financial records of the wife and the taxpayer's company "concerning" the taxpayer.
- The Revenue Officer also learned that the taxpayer was a long-time client of a law firm, and served the law firm with a summons. The law firm responded and asserted attorney-client privilege and represented that the firm did not retain any of the documents that the IRS requested.
- The Revenue Officer then pursued another avenue to locate the financial records and issued identical summonses against two other banks, seeking any financial records of law firms

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“concerning” the taxpayer. The Revenue Officer did not notify the wife or the law firms of these bank summonses.

- When a bank alerted the wife that the IRS had summoned her records, she petitioned to quash the summons in federal district court.
- When a bank notified the law firms of the summonses regarding their accounts, the law firms also petitioned to quash, and the wife joined. They alleged that the IRS had failed properly to notify them of the summonses under section 7609(a).
- The government moved to dismiss the petitions to quash for lack of subject-matter jurisdiction, asserting that because the IRS was seeking the bank records “in aid of the collection” of the taxpayer’s assessed liability, the wife and law firms (the petitioners) were not entitled to notice under section 7609(c)(2)(D)(i).
- The petitioners opposed the motion, arguing that the government’s construction of section 7609 was “hyperliteral.”
- The federal district court agreed with the government that the court lacked subject-matter jurisdiction and found that under the plain language of section 7609(c)(2)(D)(i), the petitioners were not entitled to notice and had no right to bring a petition to quash.
- The petitioners appealed to the Sixth Circuit.

Today, the Sixth Circuit affirmed the judgment of the district court and held that the summonses were issued in aid of the IRS’s collection efforts and that the petitioners were not entitled to notice.

The Sixth Circuit concluded that because the United States waives sovereign immunity only when a taxpayer entitled to notice challenges a summons, the district court lacked subject-matter jurisdiction over the petitioners’ proceedings to quash the summonses.

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