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TaxNewsFlash

United States

No. 2023-174
May 19, 2023

# U.S. Supreme Court: IRS summonses issued to banks of taxpayer's wife and taxpayer's lawyers upheld

The U.S. Supreme Court yesterday unanimously affirmed the U.S. Court of Appeals for the Sixth Circuit, in upholding 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 on the grounds that the IRS failed to notify them of the summonses.

The Court held that because the summonses were issued "in aid of the collection of . . . an assessment made . . . against the person with respect to whose liability the summons is issued," no notice was required under section 7609(c)(2)(D)(i). The court rejected the petitioners' argument that the exception to the notice requirement in section 7609(c)(2)(D)(i) applies only if the delinquent taxpayer has a legal interest in the accounts or records summoned by the IRS. The court stated that "[a] straightforward reading of the statutory text supplies a ready answer: The notice exception does not contain such a limitation."

In general, section 7609 requires the IRS to give notice to third parties when it issues summonses for their records. There are exceptions to the notice requirement to prevent the purpose of the summons from being defeated when taxpayers are alerted to the IRS's action (providing taxpayers the opportunity to move assets). The IRS may issue summonses both to determine whether a taxpayer owes money and later to collect any outstanding liability. The Court's decision distinguished IRS conduct in "determining the liability" of a taxpayer, which requires notice under section 7609, from IRS action to "collect any such liability," whereby notice may not be required.

The Court's decision resolved a split between the Sixth Circuit, which aligned with a 1999 decision from the Seventh Circuit, and the Ninth Circuit which held in 2000 that for the notice exception to apply, the delinquent taxpayer must have a legal interest in the targeted account.

The Court noted that its decision did not "define the precise bounds of the phrase 'in aid of collection'" under section 7609 because the parties did not argue, and the Sixth Circuit did not decide, that issue. The Court further stated "both the briefing by the parties and the question presented focus only on

whether the exception provided in [section] 7609(c)(2)(D)(i) requires that a taxpayer maintain a legal interest in records summoned by the IRS. For the reasons we have given, the answer is no."

The case is: *Polselli v. IRS,* No. 21-1599 (S. Ct. May 18, 2023). Read the Court's **opinion** [PDF 174 KB].

**Background**

As previously reported in ***TaxNewsFlash***, 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 suspected the taxpayer was concealing the balance of his assets to shield them from the IRS and 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 IRS served a summons on a bank seeking account and financial records of the wife.

The IRS 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 IRS then issued summonses against two other banks, seeking any financial records of law firms concerning the taxpayer.

After the banks alerted the wife and the law firms of the summonses, they petitioned to quash the summons in federal district court.