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Supreme Court Affirms IRS Power to Summons Bank Information Without Notice to Delinquent Taxpayer

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Resolving a decades-old circuit court split on Internal Revenue Service (IRS) summons authority, on May 18, 2023, the U.S. Supreme Court issued a unanimous decision in Polselli v. Internal Revenue Service granting the IRS broad power to summons third parties to aid in the collection of a tax debt without giving notice to the account holders.

The Court was tasked with determining whether the IRS, pursuant to powers granted in Internal Revenue Code (IRC) section 7609(c)(2)(D)(i), is entitled to issue third-party summonses, without notice, for bank account records in which the taxpayer targeted by the summons does not have a legal interest. The circuits have been split in determining when the no-notice limitation under IRC Section 7609(c)(2)(D)(i) applies. The Sixth Circuit historically allowed the IRS to issue a summons for an account holder's records without notice, even to collect on someone else's tax liabilities. However, the Ninth Circuit held that the notice exception could only apply if the delinquent taxpayer had a legal interest in the targeted account. The Court ultimately sided with the Sixth Circuit's interpretation, finding that the language in IRC section 7609(c)(2)(D)(i) did not require such legal interest.

The IRS has the authority to issue summonses to seek information from taxpayers during an examination and to pursue payment of taxes. In an effort to limit this broad power, IRC section 7609 generally requires the IRS to provide notice of any summons issued to a third party, to the target identified in the summons. The notice requirement is important because it allows the target of the summons to bring a motion to quash the summons. IRC § 7609(b). However, section 7609(c)(2)(D)(i) provides an exception to the notice requirement when the IRS issues a third-party summons "in aid of the collection of an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." Notably, under the Anti-Injunction Act, these no-notice summonses do not allow for parties to bring motions to quash the summons, which can limit a taxpayer's ability to stop the IRS from obtaining the third-party's summonsed records.

In Polselli, the IRS entered an official assessment against Remo Polselli for more than $2 million in unpaid taxes and penalties that Polselli did not pay. The IRS then issued summonses on three banks, seeking financial records of several third parties including Polselli's wife and two law firms that represented Polselli. These third parties were given notice by the banks who received the summonses, and one of the third parties moved to quash the summons. In the summons litigation that ensued, the third parties argued that the no-notice exception in section 7609(c)(2)(D)(i) only applied if the taxpayer had some legal interest in the accounts or the records sought by the summons.

The Supreme Court's decision is based on its finding that section 7609(c)(2)(D)(i) sets forth only three specific conditions to exempt the IRS from providing notice. The Court found it notable that the statute does not mention a "legal interest" or require that a taxpayer maintain an interest in an account for the exception to apply.

While the Court unanimously found for the IRS, the decision expressed "apprehension about the scope of the IRS's power to issue summonses." The Court declined to determine what "in aid of the collection" of an assessment or judgment means, which, in other cases, could still limit the IRS's ability to issue summonses without giving notice. The Court reasoned that the definition of the term "in aid of … collection" was not raised in the lower court and therefore, defining this phrase was not appropriate for consideration in Polselli. Because the Court did not define "in aid of … collection," there may be further battles with the IRS to limit its ability to issue summonses without providing the required notice to impacted taxpayers.

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