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TAXES 4/26/2014 @ 11:30AM

Vast IRS Powers Unlikely To Be Curtailed By Supreme Court, But Maybe If They Got Audited...

Richard Nixon supposedly asked his Commissioner of the IRS to audit his political enemies. Nixon ended up on the losing end of the famous showdown. There has been no proof that President Obama tried to influence the IRS, and he has been effective in quelling claims that he or his subordinates had anything to do with the Tea Party targeting scandal.

Still, some Republicans claim it shows smidgens of the same kind of behavior. Newly pensioned IRS exempt organizations leader Lois Lerner remains stridently mute, claiming Fifth Amendment protection. As a result, we still do not know who said what to whom.

Rogue agents or not, the power of the IRS is legendary. Yet the U.S. Supreme Court seems unlikely to side with taxpayers in an important challenge to the power of the IRS to make you produce documents. Under the law, the IRS can issue a summons for information when a taxpayer refuses to provide it voluntarily.



U.S. Supreme Court building. (Photo credit: Wikipedia)

If the taxpayer ignores an IRS summons, the IRS can ask the Justice Department to get a court order. Judges routinely rubber-stamp such requests. That means they enforce summonses without first holding evidentiary hearings. Michael Clarke, a Florida investor, says that should change. He claims that in 2010, the IRS improperly issued summonses as payback for his resisting an audit.

In [U.S. v. Clarke](#), Mr. Clarke asks for the opportunity to question an IRS agent in district court why the summonses were issued, and how they relate to a \$17 million tax bill. He says the IRS summonses were issued improperly. The district court rubber-stamped the IRS request, but the 11th Circuit Court of Appeals reversed it.

Without such a hearing, the appellate court said, taxpayers face an “impermissible Catch-22” to show that an IRS summons was improperly issued. The Supreme Court has not yet issued a ruling, but it seems likely to hold for the IRS. During oral arguments, Justice Kennedy said that interrogations of the IRS could lead to harassment of IRS agents. Questions from some other Justices suggested that they might be of like mind.

Mr. Clarke says a hearing would be a very limited intrusion on the vast powers of the IRS. But the IRS says the courts should not impose a burden on the IRS just because someone *alleges* the IRS had an improper purpose. Mr. Clarke suggests that the IRS is saying it should be immune from questioning, and that’s hard to swallow.

The Supreme Court hasn’t decided yet. To be sure, the IRS has a hard job to do. But so do taxpayers, and the power of the IRS is imposing. If the oral arguments were any indication, the Justices seem likely to side with the IRS. They seem unlikely to cut back on the IRS power to get information.

And that means, in general, the IRS can get the courts to order taxpayers to produce information except in rare cases. It is enough to make one wonder, what if a Supreme Court Judge was facing an IRS probe? The issue might look different on the other side of the robe.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.