

SUPREME COURT – THIRD-PARTY COLLECTION SUMMONS - NOTICE

The Supreme Court in a unanimous decision in Polselli v. Internal Revenue Service, Case 21-1599 (May 18, 2023) has just ruled that the I.R.S. is not required to notify third parties concerning collection summonses it sent to certain banks.

Background: The IRS is permitted to issue summonses to help it find assets it can use to collect unpaid federal taxes. When the IRS typically issues summonses, it is required to notify any person identified in the summons. I.R.C. 7609(a)(1). That enables the object of the summons to attempt to quash the summons in court prior to compliance. I.R.C. 7609(b)(2)(A). . But when the summons issued is a collection summons (“in aid of the collection of ... an assessment made ... against the person with respect to whose liability the summons is issued.”) no notice is required. I.R.C. 7609(c)(2)(D)(i).

The lower court case: Polselli owed more than \$2 million in taxes, interest and penalties pursuant to I.R.S. assessments. Thus, the IRS issued collection summonses to three banks seeking the financial records of several third parties, including Remo’s wife and two law firms, who then moved to quash the summonses. The district court who first heard the case held that the IRS wasn’t required to give the third parties notice of the summons because the notice exception in Code Sec. 7609(c)(2)(D)(i) applied even though the taxpayer didn’t have a legal interest in the summoned records. Polselli, (DC MI) 129 AFTR 2d 2022-323.

The Sixth Circuit Appeal: The Sixth Circuit affirmed the District Court holding that the summonses fell squarely within the exception to the general notice requirement in Code Sec. 7609(c)(2)(D)(i). Polselli, (CA6) 129 AFTR 2d 2022-313. This was in contrast to the Ninth Circuit which had previously held that the IRS was required to provide notice to third-parties of a summons unless the delinquent taxpayer had a legal interest in the summoned records. See Ip (CA9) 85 AFTR 2d 2000-1095.

Supreme Court: The Supreme Court, affirming the Sixth Circuit’s opinion, rejected the third-parties’ argument that the exception to the notice requirement in Code Sec. 7609(c)(2)(D)(i) only applies

if the delinquent taxpayer has a legal interest in the accounts or records summoned by the IRS. The Court rejected the third parties' argument that the notice exception in Code Sec. 7609 only applies when the delinquent taxpayer has a legal interest in the accounts or records summoned by the IRS.

Conclusion: The power of the I.R.S. to collect just got broader.