
IN THE SUPREME COURT OF THE UNITED STATES

BMP Family Limited Partnership, and
Presley Law and Associates, P.A.
Petitioners,

v.
United States of America
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The issue is whether the court below erroneously held that the issuance of summonses under 26 U.S.C. § 7609 preempts the privacy rights of non-party clients not under the purview of section 7609.

OPINIONS BELOW

The Eleventh Circuit’s unpublished opinion (Pet. App. 1-16) is available at 741 F. App’x 764 (11th Cir. 2018). The Southern District’s unpublished opinion (Pet. App. 17-20) is available at 2017 U.S. Dist. LEXIS 127208 (S.D. Fla., Aug. 9, 2017).

STATEMENT OF JURISDICTION

On August 9, 2017, the Southern District dismissed BMP Family Limited Partnership and Presley Law and Associates P.A.’s motion to quash summonses directed to Bank of America. BMP and Presley Law appealed the order on August 11, 2017, and the Eleventh Circuit affirmed the dismissal on November 1, 2018.

This petition for *certiorari* seeks the Court’s review under 28 U.S.C § 1254(1) of a court of appeals’ decision that (a) relied upon *United States v. Powell*, 379 U.S. 48 (1964), which finds no violation of Fourth Amendment rights belonging to **party taxpayers** when a summons complies with a test directed at the party, to decide upon an important question of law not settled, but should be, by the Court; (b) conflicts with *Katz v. United States*, 389 U.S. 347 (1967), which enhances a state’s authority to create rights of privacy; and (c) conflicts with the Tenth Circuit in *Neece v. IRS*, 922 F. 2d 573 (10th Cir. 1990) *rev’d in part on other grounds* 41 F. 3d 1396 (10th Cir. 1994), which finds that the Right to Financial Privacy Act (“Act”) is not preempted by the Internal Revenue Code (“Code”) when the Code does not provide procedures to give notice and a hearing to a bank’s customers. USCS Supreme Ct R 10(a), (c).

STATUTORY PROVISIONS

The Internal Revenue Code's provision for Special procedures for third-party summonses, 26 U.S.C. § 7609, is reproduced at Pet. App. 7. The pertinent text of the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422 is reproduced at Pet. App. 16. Florida's Constitutional Right to Privacy, found in Article I, Section 12, is reproduced at Pet. App. 22.

STATEMENT OF CASE

BMP and Presley Law petitioned the Southern District to quash summonses issued under 26 U.S.C. § 7609. Pet. App. 3. They did not object to the production of accounts containing only their financial information. Pet. App. 1. As obligated by the Florida Bar, they sought to prevent disclosure of escrow and trust accounts held by the bank containing finances belonging to their non-party clients. Pet. App. 1. BMP and Presley Law argued that their non-party clients had a Fourth Amendment right grounded in Florida's Right to Privacy. Pet. 1. The non-party clients are not part of any investigation or audit, and did not receive notice. Pet. App. 6. The Southern District dismissed the petition on grounds of collateral estoppel as the matter had been decided in *Presley v. United States*, 895 F. 3d 1284 (11th Cir. 2018) and as 26 U.S.C. 7609(f) does not apply. Pet. App. 4-6.

Appealing to the Eleventh Circuit, BMP and Presley Law argued that Florida's constitutional right to privacy creates a subjective, reasonable expectation of privacy over financial records not preempted because this is a function reserved to the states, which permits the non-party clients to assert a Fourth Amendment right. Pet. App. 1. They also asserted that *Tiffany Fine Arts Inc. v. United States*, 469 U.S. 310 (1985) would not permit bootstrapping a request for non-party financial records on summonses issued to third parties not under investigation, and that for the United States to obtain such records, a hearing must occur under 26 U.S.C. § 7609(f). Pet. App. 1.

The United States argued that the Internal Revenue Service (“IRS”) complied with *Powell* test as to BMP and Presley Law, and that the non-party clients do not have a subjective, reasonable expectation of privacy as the records belong to the bank and not the clients. Pet. App. 2. It also argued that *Tiffany Fine Arts* was inapplicable.

BMP and Presley Law then submitted a letter of supplemental authority citing to supplemental authority citing to *Neece v. IRS*, 922 F.2d 573 (10th Cir. 1990) *rev'd in part on other grounds* 41 F. 3d 1396 (10th Cir. 1994).

The Eleventh Circuit affirmed the Southern District’s dismissal by applying *Presley v. United States*, 895 F. 3d 1284 (11th Cir. 2018). Pet. App. 2.

ARGUMENT IN FAVOR OF GRANTING *CERTIORARI*

I. The Eleventh Circuit decided a question of law not settled by this Court.

Under *United States v. Powell*, if the IRS satisfies a test examining how the summons affects the rights of the **party taxpayer**, the summons does not violate those rights. 397 U.S. at 57-58. The key distinction here is that the rights belong to the non-party clients, who are not parties; not investigated; not summoned; and not noticed.

Powell does not have a test for whether the summons violates the rights of non-parties. The test only examines the party taxpayers’s rights. But, the Eleventh Circuit extends *Powell* to decide upon a question of law not settled by the Court by applying the conclusion to non-parties. Not inquiring into whether the IRS satisfies the *Powell* Test as to the non-parties, it finds that if the party taxpayer’s rights are not violated, the non-party clients’ rights must not be violated. The Court should grant *certiorari* as that extension will continually result in the taking of property without notice via unwarranted intrusion. USCS Supreme Ct R 10(c). *See Neece*, 922 F. 2d at 574-75.

II. The decision conflicts with the rules that federal law must apply to the facts, and the states set privacy expectations.

The Eleventh Circuit concludes that the non-party clients' state rights are preempted under section 7609, but finds that the clients are not entitled to protection under that law as the *Powell* Test is satisfied by analyzing the summons impact on BMP and Presley Law. This conflicts with the Florida's Supreme Court in *Vreeland v. Ferrer*, 71 So. 3d 70, 83-84 (Fla. 2011) that finds when a federal law does not apply to the individual's circumstances, such as when federal law applying to common carrier injuries sustained on ground would not apply as the matter happened in the air, the applicable state law dealing with injuries sustained in the air is not preempted. USCS Supreme Ct R 10(a). Here, there is no federal law on point, so state law should control under *Ferrer*. Yet, the Eleventh Circuit concluded otherwise, creating conflict.

This Court in *Katz v. United States*, 389 U.S. 347, 350 (1967) finds that "...the protection of a person's *general* right to privacy...is...left largely to the law of the individual states." Florida's constitutional right to privacy "protect[s] the financial information of persons [held by banks] if there is no relevant or compelling reason to compel disclosure." *Borck v. Borck*, 906 So. 2d 1209, 1211 (Fla. Dist. Ct. App. 2005). With section 7609 inapplicable as to the non-party clients, there is no requirement that the state law yield. Finding "preemption" removes the state's authority to enact privacy laws, which nullifies this Court's ruling in *Katz*, creating a conflict. USCS Supreme Ct R 10(c).

III. The decision conflicts with the Tenth Circuit.

By adopting *Presley* in full, the decision conflicts with the Tenth Circuit in *Neece v. IRS*, 922 F. 2d 573 (10th Cir. 1990) *rev'd on other grounds* 41 F.3d 1396 (10th Cir. 1994). The Act provides “an elaborate mechanism to protect a taxpayer’s privacy rights in records kept by third parties” that must be protected. *Neece*, 922 F. 2d at 577-78. Thus, it must be read in unison with the Code when the Code is inapplicable. *Id.* at 578. The interpretation must avoid “misleading taxpayers who...rely on [the Code] and the ACT in believing that their bank records are secure from IRS intrusion absent notice and an opportunity to challenge IRS access....” *Id.* *Neece* rejects a Southern District of Indiana case that failed “to consider the impact of that statutory interpretation on the remainder of the Act, as well as on section 7609.” *Id.* at 577. Instead, it concludes that the particular provision of the Code only authorized examination of books and records, and did not provide procedures to obtain them. *Id.* at 576. Because the right to examine is **fettered**, *Neece* concluded that the Act is not preempted since it provides the procedures for obtaining the documents where the Code is silent, and the Code must follow the Act. *Id.*

Here, the Eleventh Circuit concludes the opposite. Despite the Code having no procedures on how to obtain records belonging to both parties and non-parties not under summons, nor provide the non-parties with any notice or rights to hearings, the Eleventh Circuit concluded that the Act did not apply. This conflicts with *Neece*. USCS Supreme Ct R 10(a). The Tenth Circuit sought to “protect this mechanism to the extent possible” and the Eleventh Circuit undoes it. *See Id.* at 578.

CONCLUSION

Based on conflict with this Court and the circuit court of appeals, and ruling on a matter that should be but is not yet address by this Court, *certiorari* must be granted.

Respectfully Submitted,
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January 25, 2019

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BMP Family Ltd. P'ship v. United States
United States Court of Appeals for the Eleventh Circuit
November 1, 2018, Decided
No. 17-13645 Non-Argument Calendar

Before TJOFLAT, WILLIAM PRYOR, and ROSENBAUM,
Circuit Judges.

[*764] **PER CURIAM:**

This case is a companion to, and is resolved by, *Presley v. United States*, 895 F.3d 1284 (11th Cir. 2018). In *Presley*, the plaintiffs — including current Plaintiffs-Appellants BMP Family Limited Partnership ("BMP") and Presley Law and Associates, P.A. ("Presley Law")¹ — petitioned to quash [*765] summonses the Internal Revenue Service ("IRS") sent to a bank in the course of investigating the 2014 federal income-tax liabilities of BMP and Presley Law. 895 F.3d at 1287-88. The IRS requested records pertaining to accounts over which the plaintiffs had signatory authority. *Id.* In seeking [**2] to quash the summonses, the plaintiffs objected that some of these records revealed their clients' financial information. *Id.* at 1288. The government moved to dismiss, and the district court granted the government's motion. *Id.*

The plaintiffs appealed the dismissal on two grounds. *Id.* at 1290. First, they argued that the Fourth Amendment requires the government to demonstrate probable cause because their clients had a reasonable expectation of privacy in the records held by the bank. *Id.* Second, they contended that the IRS was obligated to proceed under 26 U.S.C. § 7609(f) by issuing John Doe summonses to their clients and petitioning the district court for an ex parte hearing before obtaining plaintiffs' bank-account records. *Id.*

¹ Presley included two additional plaintiffs who are not parties here: Michael Presley and Cynthia Presley.

Rejecting these arguments, we affirmed. We held that probable cause was not required because the plaintiffs' clients lacked a reasonable expectation of privacy in financial records held by the bank, that the IRS summonses were reasonable under the Fourth Amendment, and that the procedures required by 26 U.S.C. § 7609(f) did not apply. *Id.* at 1291-95. We therefore concluded that the IRS could enforce the summonses.

Presley controls here. As BMP and Presley Law note in their brief, "[t]he only notable difference between this matter and the companion case [*/**3/ Presley*] is that the summonses here seek to obtain records from December 31, 2014 through and including January 1, 2016, which are dates different from the companion case." Appellants' Br. at 3. In all other respects this case is identical to *Presley*. The same plaintiffs, BMP and Presley Law, petitioned to quash IRS summonses requesting the same kinds of financial records at issue in *Presley*. The district court dismissed the action, and BMP and Presley Law now appeal the dismissal on the same grounds that we addressed and rejected in *Presley*. Because the dates of the records at issue do not affect the resolution of the legal issues, we affirm for the reasons explained more fully in *Presley*.

AFFIRMED.

AFFIRMED.

BMP Family Ltd. P'ship v. United States
United States District Court for the Southern District of
Florida, West Palm Beach Division
August 9, 2017, Decided; August 9, 2017, Entered
Case No. 9:17-cv-80754-RLR

**ORDER GRANTING UNITED STATES' MOTION TO
DISMISS**

The United States has moved to dismiss an amended petition to quash brought by BMP Family Limited Partnership and Presley Law and Associates, P.A. ("Petitioners"). See ECF No. 12 (amended petition to quash), No. 13 (United States' motion to dismiss). The present dispute arises from two summonses issued by the Internal Revenue Service to Bank of America seeking records related to Petitioners as part of examinations into their 2015 tax liabilities. Petitioners previously moved to quash identical summonses related to tax year 2014, and the Court granted the United States' motion to dismiss in that case. See *Presley v. United States*, No. 9:16-cv-81735-RLR, 2017 U.S. Dist. LEXIS 1457 (S.D. Fla.), ECF No. 20.1. Here, Petitioners primarily attempt to relitigate the same issue that was previously decided, but collateral estoppel prevents them from doing [*2] so. They also raise a new argument, but it lacks merit. As a result, the Court grants the United States' motion to dismiss.²

1 Michael and Cynthia Presley were additional Petitioners in the previous case. They are not parties to this case, however.

2 In *United States v. Powell*, 379 U.S. 48, 85 S. Ct. 248, 13 L. Ed. 2d 112 (1964), the Supreme Court held that IRS summonses are presumptively enforceable where: 1) "the investigation will be conducted pursuant to a legitimate purpose," 2) "the inquiry may be relevant to the purpose," 3) "the information sought is not already within the [IRS's] possession," and 4) "the administrative steps required by the

Petitioners' primary argument here—and their sole contention in the last case—is that Florida law provides an expectation of privacy in the Bank of America records that is enforceable under the Fourth Amendment. However, collateral estoppel "forecloses relitigation of an issue of fact or law that has been litigated and decided in a prior suit." *I.A. Durbin, Inc. v. Jefferson Nat. Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986). This doctrine will apply if four criteria are met: "(1) the issue at stake must be identical to the one involved in the prior litigation; (2) the issue must have been actually litigated in the prior suit; (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in that action; and (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding." *Id.*

All four elements of collateral estoppel are met here. First, Petitioners' current argument is identical to the previous one. Indeed, they concede as much and indicate that they are relitigating the issue here in case they prevail on [*3] their appeal of the previous order. See ECF No. 12 at 4 (noting that they are filing to "preserve the rights of the Petitioners' clients"). Second, the Court squarely rejected the argument on the merits following briefing and an oral argument. See *Presley*, No. 9:16-cv-81735-RLR (S.D. Fla.), 2017 U.S. Dist. LEXIS 1457, ECF No. 20 at 2 (concluding that "state law is inapposite in these proceedings" and that Petitioners have no valid Fourth Amendment defense). Though that decision

[Internal Revenue] Code have been followed." *Id.* at 57-58. Since then, an additional requirement—the lack of a Justice Department referral—has been added. See 26 U.S.C. § 7602(d)(1). The United States submitted a declaration from an IRS revenue agent attesting that all of these requirements are satisfied. See ECF No. 13-1. Petitioners do not challenge the United States' compliance with Powell or § 7602(d)(1).

is currently on appeal, that does not alter the preclusive effect of the judgment. See *Jaffree v. Wallace*, 837 F.2d 1461, 1467 (11th Cir. 1988); *Pincus v. Law Offices of Erskine & Fleisher*, 617 F. Supp. 2d 1265, 1269 (S.D. Fla. 2009). Third, resolution of the state law argument was necessary to the judgment because it was Petitioners' sole defense. See *Presley*, No. 9:16-cv-81735-RLR (S.D. Fla.), 2017 U.S. Dist. LEXIS 1457, ECF No. 20 at 2 (noting that "Petitioners base their argument exclusively on an expectation of privacy"). And finally, Petitioners brought the previous action and had a full and fair opportunity to make their argument.³

Petitioners also present a new argument, which is that 26 U.S.C. § 7609(f) bars enforcement of these summonses. Though this contention is not barred by collateral estoppel because it was not previously raised, it fails on the merits. Section 7609 deals with summonses issued to third-party recordkeepers. Generally, it [*4] requires the IRS to provide notice to the taxpayer under examination when a summons is served on a third party holding the taxpayer's records. *Id.* § 7609(a). The United States complied with that requirement by notifying Petitioners of the summonses issued to Bank of America. See ECF No. 13-1 ¶ 5. Sometimes, however, the IRS wants to issue summonses to identify persons engaged in particular conduct without yet knowing their identities, which makes notice to them impossible. These are called John Doe summonses. These summonses must comply with special requirements, which are laid out in § 7609(f). The purpose of these requirements is to "provide extra protection to unknown target taxpayers to whom the IRS cannot give notice." *United States v. Samuels, Kramer & Co.*, 712 F.2d 1342, 1346 (9th Cir. 1983). But § 7609(f), by its own terms, only applies when a summons to a third-party recordkeeper does not "identify the person with respect to whose liability the summons is issued."

³ Even if collateral estoppel did not apply, Petitioners' reliance on Florida law would fail for the same reasons the Court identified in the previous case.

Petitioners' contention that the summonses should be quashed for failure to follow § 7609(f) is baseless because the IRS did not issue John Doe summonses in this case. Instead, the summonses clearly identify that Petitioners are the persons, within the meaning of § 7609(f), "with respect to whose liabilit[ies] the summons[es] [are] issued." The fact that [*5] Petitioners were identified and received notice removes the summonses from the scope of § 7609(f), which only applies when such procedures are not possible. Moreover, the mere fact that the bank records will contain information about Petitioners' clients, some of whose identities are unknown, does not transform this into a John Doe summons case. See *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 324, 105 S. Ct. 725, 83 L. Ed. 2d 678 (1985).⁴

In sum, the IRS has issued valid and enforceable summonses, and Petitioners' arguments for quashing them fail. As a result, it is ORDERED that the United States' motion to dismiss (ECF No. 13) is GRANTED. The amended petition to quash (ECF No. 12) is hereby DISMISSED WITH PREJUDICE. The Clerk of the Court shall CLOSE THIS CASE.

DONE AND ORDERED in Chambers, Fort Pierce, Florida, this 9th day of August, 2017.

/s/ Robin Rosenberg
Robin Rosenberg
United States District Judge

UNITED STATES CIRCUIT JUDGE

⁴ Petitioners cite *Tiffany Fine Arts* for the proposition that the IRS "cannot bootstrap a request" for records of unknown third parties onto a summons related to a taxpayer who is not under examination (ECF No. 12 at 16)—a notion that is irrelevant because Petitioners are under examination.

26 USCS § 7609

§ 7609. Special procedures for third-party summonses.

(a) Notice.

(1) In general. If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2) [26 USCS § 7612(d)(2)]) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice. Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 [26 USCS § 7603] (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left

with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 [26 USCS § 6903] of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons. Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) Right to intervene; right to proceeding to quash.

(1) Intervention. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604 [26 USCS § 7604].

(2) Proceeding to quash.

(A) In general. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day

after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of notice to person summoned and to Secretary. If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention; etc. Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies.

(1) In general. Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) [26 USCS § 7602(a)] or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612 [26 USCS § 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612].

(2) Exceptions. This section shall not apply to any summons--

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A) [26 USCS § 7603(b)(2)(A)];

(D) issued in aid of the collection of--

(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i); or

(E)

(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws; and

(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b) [26 USCS § 7603(b)]).

(3) John doe and certain other summonses. Subsection (a) shall not apply to any summons described in subsection (f) or (g).

(4) Records. For purposes of this section, the term "records" includes books, papers, and other data.

(d) Restriction on examination of records. No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made--

- (1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or
- (2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(e) Suspension of statute of limitations.

- (1) Subsection (b) action. If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 [26 USCS § 6501] (relating to the assessment and collection of tax) or under section 6531 [26 USCS § 6531] (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons. In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 [26 USCS § 6501] or under section 6531 [26 USCS § 6531] with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period--

(A) beginning on the date which is 6 months after the service of such summons, and

(B) ending with the final resolution of such response.

(f) Additional requirement in the case of a John Doe summons. Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that--

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the

summons is issued) is not readily available from other sources.

(g) Special exception for certain summonses. A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of District Court; etc.

(1) Jurisdiction. The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g). The determinations required to be made under subsections (f) and (g) shall be made *ex parte* and shall be made solely on the petition and supporting affidavits.

(i) Duty of summoned party.

(1) Recordkeeper must assemble records and be prepared to produce records. On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion

thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate. The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses. Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statute of limitations in the case of a John Doe summons. In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).

(j) Use of summons not required. Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal

procedures authorized by sections 7601 and 7602 [26 USCS §§ 7601 and 7602].

12 USCS § 3401

Current through PL 115-277, approved 11/3/18

§ 3401. Definitions

For the purpose of this title [12 USCS §§ 3401 et seq.], the term--

- (1) "financial institution", except as provided in section 1114 [12 USCS § 3414], means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;
- (2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;
- (3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;
- (4) "person" means an individual or a partnership of five or fewer individuals;
- (5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a

financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "holding company" means--

- (A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 [12 USCS § 1841]); and
- (B) any company described in section 4(f)(1) of the Bank Holding Company Act of 1956 [12 USCS § 1843(f)(1)];

(7) "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary--

- (A) the Federal Deposit Insurance Corporation;
- (B) the Bureau of Consumer Financial Protection;
- (C) the National Credit Union Administration;
- (D) the Board of Governors of the Federal Reserve System;
- (E) the Comptroller of the Currency;
- (F) the Securities and Exchange Commission;
- (G) the Commodity Futures Trading Commission;
- (H) the Secretary of the Treasury, with respect to the Bank Secrecy Act [12

USCS §§ 1951 et seq.] and the Currency and Foreign Transactions Reporting Act [31 USCS §§ 5311 et seq.] (Public Law 91-508, title I and II); or

(I) any State banking or securities department or agency; and

(8) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

12 USCS § 3405

§ 3405. Administrative subpoena and summons

A Government authority may obtain financial records under section 1102(2) [12 USCS § 3402(2)] pursuant to an administrative subpoena or summons otherwise authorized by law only if--

- (1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;
- (2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the

reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to -----.

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have

expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 [12 USCS § 3410] have

Fla. Const. Art. I, § 12

Section 12. Searches and seizures.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.