IN THE SUPREME COURT OF THE UNITED STATES

Michael Presley, Cynthia Presley, and
BMP Family Limited Partnership
Petitioners,
v.
United States of America
Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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August 13, 2019

QUESTION PRESENTED

Whether, by holding that the federal Right to Financial Privacy Act was fully preempted by the Internal Revenue Code despite the Tenth Circuit's decision to the contrary, the Eleventh Circuit erroneously upheld the issuance of United States' summonses to a third party that only notified the taxpayers under investigation instead of all the taxpayers possessing an interest in the accounts, which resulted in the production of financial information of persons and business entities who did not receive notice of the summonses.

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OPINIONS BELOW

The Eleventh Circuit's unpublished opinion (Pet. App. 1-3) is available at 2019 U.S. App. LEXIS 14384 (11th Cir. May 15, 2019). The Southern District's unpublished opinion (Pet. App. 4-5) is not available in a publicly accessible electronic database. Thus, a copy of the Southern District's unpublished opinion has been separately filed and served with this petition pursuant to Rule 32.1, Federal Rules of Appellate Procedure.

STATEMENT OF JURISDICTION

On November 6, 2018, the Southern District dismissed the Petitioners Michael Presley, Cynthia Presley, and BMP Family Limited Partnership's motion to quash summonses directed to Bank of America. (Pet. App. 4-5). The Petitioners appealed the order on December 6, 2018, which was then affirmed by the Eleventh Circuit on May 15, 2019 following a stay of the proceedings. (Pet. App. 1-3).

This petition for *certiorari* seeks the Court's review under 28 U.S.C § 1254(1) of a court of appeals' decision that 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). *Neece* holds that the federal Right to Financial Privacy Act ("Act") must be applied when the Internal Revenue Code ("Code") does not provide express protection to all taxpayers associated with the account instead of just the ones under investigation or audit. USCS Supreme Ct R 10(a), (c).

STATUTORY PROVISIONS

The Code's provision for special procedures for third-party summonses, 26 U.S.C. § 7609, is reproduced at Pet. App. 6-14. The pertinent text of the Act, 12 U.S.C. §§ 3401-3422, is reproduced at Pet. App. 15-20.

STATEMENT OF CASE

The Petitioners petitioned the Southern District to quash summonses issued under 26 U.S.C. § 7609. (Pet. App. 4-5). They did not object to the production of bank accounts containing only their financial information, but, due to their obligation to their former and current clients, they sought to prevent the third party from producing the financial records of escrow and trust accounts that contained money belonging to their former and current clients, who were not identified in the summonses and thus not notified, and who are also not investigated or audited. (*Id.*).

The Petitioners argued in part that their clients had a right to notice under the Act, and, having not received notice, the summons was improperly issued. (Pet. App. 4-5). The summonses only notified the Petitioners. (*Id.* at 4). With their clients having no rights to notice under the Code—causing them to be unable to intervene and assert personal objections unavailable to the Petitioners—the Act must apply otherwise it is meaningless. The Southern District rejected this argument by finding the Act fully preempted by the Code. This permitted the United States to obtain the financial information of the Petitioners' clients without notifying them that their financial information was being produced. The Eleventh Circuit affirmed this decision. (Pet. App. 1).

ARGUMENT IN FAVOR OF GRANTING *CERTIORARI*

I. The Eleventh Circuit decided a question of law not settled by this Court that places the Eleventh Circuit in conflict with the Tenth Circuit.

No notice. No ability to object. No knowledge that their records in custody of a third party will be produced. This is the world the people of the Eleventh Circuit live in when it upheld the dismissal of the petition to quash summonses. The decision allows the United States to avoid notifying all taxpayers associated with an account that their financial records in the possession of third parties are being taken. **Even though the money in the account belongs to other taxpayers not under investigation, the Code provides that notice only needs to be given to the taxpayers under an investigation. All other taxpayers connected with the account need not be notified.** Compare this to the Tenth Circuit's holding that requires the United States to adhere to the Act when the Code does not protect a taxpayer's privacy rights in an account he or she has an interest in, and this Court will see a conflict in decisions that results in disparate treatment of United States taxpayers without any logical, justifiable reason.

Addressing this conflict requires determining whether the Code fully preempts the Act as thought by the Eleventh Circuit or if the Act is to be read in unison with the Code to apply where the Code provides no express protections to a taxpayer connected to the account, as held by the Tenth Circuit. The Petitioners recognize that whether the United States complied with the Act here was not decided as the Eleventh Circuit only concluded that the Act is inapplicable due to the Code's existence. Thus, the sole issue is whether the Act is fully preempted, and the Eleventh Circuit's decision that it does directly conflicts with the Tenth Circuit's holding that leaves open the door to applying the Act to protect a taxpayer's privacy rights when the Code does not.

In this case, the United States obtained financial records from trust and escrow accounts by issuing summonses pursuant to 26 U.S.C. § 7609 of the Code. Although the Petitioners opened these accounts, the accounts hold their clients' money, which belongs to the clients until disbursed. It can fairly be said that the financial information obtained through the summonses reflect money belonging to the Petitioners' former and present clients, yet those clients did not receive notice that records showing their money were taken. This is because the Eleventh Circuit previously held that they have no right to receive notice under the Code, which also unfortunately means they have no standing to contest the production of their financial information held by third parties. *See Presley v. United States*, 895 F.3d 1284 (11th Cir. 2018).

In light of this, the Petitioners argued below that the court should apply the Act since the Code does not provide their clients with any means of protecting their privacy rights, but the Eleventh Circuit rejected this argument by concluding that the Code fully preempts the Act. This conflicts with the Tenth Circuit. According to the Tenth Circuit's holding 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 is **not** completely preempted where the Code does not apply to protect the privacy rights of a taxpayer associated with the account in any situation.

Under *Neece*, the Act is not preempted when a taxpayer has no expressed right under the Code to protect his or her privacy rights in records kept by third parties. *Neece*, 922 F.2d at 575-576. **Where multiple taxpayers possess an interest in the account, if even one of those taxpayer's privacy right is not protected under the Code, that taxpayer gets to rely upon the Act, and the summons is invalid when notice is not provided to that taxpayer in accordance with the Act.** *See Id.* at 576. Concluding that the Code fully preempts the Act but does not protect the privacy right of a taxpayer connected to the account but not investigated "largely negate[s] the taxpayers' protection"

found in the Act since the Act would protect that privacy right. *See Id.*

Even if *Neece* was fact specific, the Tenth Circuit's decision opens the door to applying the Act in the face of the Code by acknowledging that it is not fully preempted. This conflicts with the Eleventh Circuit's complete preemption finding. *Neece* holds that the Act, which must be read in unison with the Code, provides for "an elaborate mechanism to protect a taxpayer's privacy rights in records kept by third parties." *Neece*, 922 F.2d at 577-58. Here, there is no doubt that the records are in the possession of third parties, and that the Petitioners' clients are customers of the bank as their money is reflected in the requested financial documents. Thus, they have an interest in the accounts. Before allowing them to be produced, *Neece* would require an analysis into whether all of the taxpayers having an interest in the accounts have any expressed protection or rights under the Code regarding the third party production of these financial records. *Id.* The taxpayers lacking any protection or rights under the Code receive the protection of the Act because the Act is not fully preempted. *Id.* at 578. Holding otherwise renders the Act meaningless, which does "unnecessary violence" to the Act. *Id.* at 578.

Adhering to the Act when the Code provides no direct, expressed protection for a taxpayer avoids "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…." *Neece*, 922 F.2d at 578. **With the right to obtain records fettered, *Neece's* holding is understood as stating that the Act is not completely preempted but is used to provide additional procedures for obtaining financial documents where the Code does not expressly protect the recognized privacy rights of a taxpayer(s) connected to the account.** *Id.* at 576-578.

Simply stated, the Act is not fully preempted, and must be followed when the Code weakens the taxpayer's protection in the financial records. Weakening occurs in a case such as the one before this Court, where although the

Code protects a few of the taxpayers, it does not extend this protection to all taxpayers possessing an interest in the account. *See Neece*, 922 F.2d at 578. The Act provides those within the Tenth Circuit, and any circuit following it, with notice to challenge a third party's production of financial records that are statutorily recognized as being private even though the Code affords them no protection. The Tenth Circuit leaves open the door for applying the Act—and that door is for taxpayers who have an interest in the records but have no rights to notice or protection under the Code.

The Eleventh Circuit took the opposite position: even in situations where a taxpayer has no express protections under the Code. Declaring the Act completely trumped because of the existence of the Code causes it to be in conflict with *Neece* and the Tenth Circuit, and makes the matter ripe for review as the outcome is capable of being repeated, leading to different outcomes in different circuits, and therefore disparate treatment.

Here, the Petitioners' clients have no expressed rights or protections under 26 U.S.C. § 7609 to contest the production of their finances held by third parties. They have no right to receive notice that the financial records they have an interest in will be produced by third parties. Their rights are not even entitled to a review through a John Doe hearing under 26 U.S.C. § 7609(f). *See Presley v. United States*, 895 F.3d 1284, 1294 (11th Cir. 2018). If the Petitioners had been in the Tenth Circuit, the summonses would have been quashed because other taxpayers having an interest in the financial records did not receive notice as required by the Act since the Code does not grant those other taxpayers, the Petitioners' clients, any semblance of protection. Yet, in the Eleventh Circuit, it was not because the court believes the Act is completely preempted—despite the sound reasoning of the Tenth Circuit. This Court must weigh in on this conflict as it treats the people of the United States differently without any justification, or logic, solely depending upon where they reside.

CONCLUSION

As this Court has not weighed in on whether the Act is completely preempted by the Code when the Codes does not cover all situations, it should invoke its jurisdiction to address the conflict that exists between the circuit court of appeals. Therefore, *certiorari* must be granted.

Respectfully Submitted,
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August 13, 2019

Appendix
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Presley v. United States
United States Court of Appeals for the Eleventh Circuit
May 15, 2019, Decided
No. 18-15091 Non-Argument Calendar

Reporter
2019 U.S. App. LEXIS 14384 *; 2019-1 U.S. Tax Cas. (CCH) P50,226; __ Fed. Appx. __; 2019 WL 2142525
MICHAEL R. PRESLEY, CYNTHIA PRESLEY, BMP FAMILY LIMITED PARTNERSHIP, Petitioners-Appellants, versus UNITED STATES OF AMERICA, Respondent-Appellee.

Opinion

PER CURIAM:

This is the fourth in a series of related appeals stemming from the petitioners' attempts to quash summonses sent to multiple banks by the Internal Revenue Service as part of an examination into the petitioners' federal income tax liabilities. We affirm the dismissal of the petition to quash.

In *Presley v. United States*, 895 F.3d 1284, 1291-95 (11th Cir. 2018) ("*Presley I*"), we rejected the arguments presented by the petitioners and held that (a) the summonses did not violate the Fourth Amendment, and (b) the procedures required by the Internal Revenue Code under 26 U.S.C. § 7609(f) did not apply. In two subsequent appeals—*BMP Family Ltd. P'ship v. United States*, 741 F. App'x 764, 764 (11th Cir. 2018) ("*Presley II*"), and *Presley & Presley, PA v. United States*, No. 18-11847, 2019 U.S. App. LEXIS 3526, 2019 WL 449610 at *1 (11th Cir. Feb. 5, 2019) ("*Presley III*")—we concluded that *Presley I* foreclosed the petitioners' arguments to quash the summonses.

In this appeal, the petitioners articulate [*2] another version of an argument we rejected in *Presley I*—that the IRS failed to comply with the Right to Financial Privacy Act

("RFPA"), 12 U.S.C. §§ 3401-3423, in issuing its summonses, and that the RFPA applies based on the Tenth Circuit's opinion in *Neece v. IRS*, 922 F.2d 573, 578 (10th Cir. 1990).[1] Our opinion in *Presley I* forecloses this contention. In that opinion, we expressly "rejected the [petitioners'] alternative argument that the [RFPA] prohibited enforcement of the IRS summonses at issue." *Presley III*, 2019 U.S. App. LEXIS 3526, 2019 WL 449610 at *1 (citing *Presley I*, 895 F.3d at 1292). We reasoned that the RFPA "explicitly provides that nothing in this chapter prohibits the disclosure of financial records in accordance with procedures authorized by Title 26." *Presley I*, 895 F.3d at 1292 (quotation omitted and alteration adopted). Any attempt to challenge the summonses "under the RFPA" fails as it "would conflict with [*Presley I*], which determined that the 'RFPA did not help' the appellants in that case." *Presley III*, 2019 U.S. App. LEXIS 3526, 2019 WL 449610 at *1 (quoting *Presley I*, 895 F.3d at 1292) (alteration adopted). Moreover, the petitioners' contention that *Presley I*'s analysis of the RFPA is merely dicta directly contradicts our application of *Presley I* in *Presley III*, 2019 U.S. App. LEXIS 3526, 2019 WL 449610 at *1.

The petitioners' reliance on *Neece*, 922 F.2d at 578, is similarly misplaced. As we noted in *Presley I*, 895 F.3d at 1292-93, the Tenth Circuit's opinion in *Neece*, 922 F.2d at 578, does not alter our analysis. Unlike the situation in *Neece* [*3] , the IRS here met its notice requirements by

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[1] In an earlier joint status report, the petitioners conceded that our opinion in *Presley I* rejected most of their arguments but advised that "[t]o preserve their rights, . . . [they] must continue forward" while their petition for a writ of certiorari from the Supreme Court in *Presley I* is still pending. D.E. 12 at 2. Since this appeal was briefed, however, the Supreme Court denied certiorari. *See Presley v. United States*, 139 S. Ct. 1376 , 203 L. Ed. 2d 610, 2019 WL 1318587 (U.S. 2019).

giving the required notice to the petitioners, who were the only persons "identified in the summons." 26 U.S.C. § 7609(a). *See also Presley I*, 895 F.3d at 1295 (quoting *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 317 n.5, 105 S. Ct. 725, 83 L. Ed. 2d 678 (1985)).

We therefore affirm the district court's order of dismissal for the reasons explained in *Presley I*.

AFFIRMED.

Presley v. United States
United States District Court for the Southern District of Florida, West Palm Beach Division
November 6, 2018, Decided; November 6, 2018, Entered
Case No. 9:18-cv-806494-RLR

Reporter
Unreported. This document is not available in a publicly accessible electronic database.

Opinion

ORDER GRANTING UNITED STATES' MOTION TO DISMISS

The United States' motion to dismiss (ECF No. 7) is **GRANTED** for the reasons provided by the Eleventh Circuit in *Presley v. United States*, 895 F.3d 1284 (11th Cir. 2018), which rejects all of Petitioners' arguments. Petitioners concede that the Eleventh Circuit's decision forecloses most of their arguments but insist that the circuit court's rejection of their Right to Financial Privacy Act ("RFPA") argument was only in *dicta*. They are mistaken. *See id.* at 1292–93. And even if they were not mistaken, this Court rejects the RFPA argument for the same reasons provided by the Eleventh Circuit.[1]

[1] In *United States v. Powell*, 379 U.S. 48 (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 [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

To the extent Petitioners seek a stay pending a writ of certiorari, their request is **DENIED**. The stay factors are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The first and second factors "are the most critical." *Nken v. Holder*, 556 U.S. 418, 434 (2009). Because the United States is a party to the litigation, the third and fourth factors "merge" and are considered together. *Id.* at 435.

Petitioners have shown no likelihood of success on the merits, particularly now that the Eleventh Circuit has rejected their position. Meanwhile, Petitioners will not be irreparably harmed because, in the highly unlikely event they are successful in front of the Supreme Court, they would still be able to obtain effective relief without a stay. If the Supreme Court determines that the summonses were "improperly issued or enforced," it could order that the "IRS'[s] copies of the [documents] be either returned or destroyed." *Church of Scientology of California v. United States*, 506 U.S. 9, 15 (1992). As for the third and fourth factors, granting a stay would injure the United States and the public interest by adding to the delay already caused by the petition to quash.

DONE AND ORDERED in Chambers, West Palm Beach, this 6th day of November, 2018.

/s/ Robin Rosenberg
Robin Rosenberg
United States District Judge

United States submitted a declaration from an IRS revenue agent attesting that all of these requirements are satisfied. *See* ECF No. 7-1. Petitioners do not challenge this.

§ 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.

§ 3405. Administrative subpoena and summons

A Government authority may obtain financial records under section 1102(2) [12 USCS § 3402(2)] pursuant to an administrative subpena 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 subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena 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 subpena 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 been complied with.