No. 21-1599

In the Supreme Court of the United States

HANNA KARCHO POLSELLI, ABRAHAM & ROSE, P.L.C., AND JERRY R. ABRAHAM, P.C., PETITIONERS

v.

INTERNAL REVENUE SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Ave.
Suite 3400
Los Angeles, CA 90071

Maurice A. Rose
Jerry Abraham
ABRAHAM & ROSE, P.L.C.
2600 W. Big Beaver Rd.
Troy, MI 48084

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
Kyser Blakely
Hanaa Khan
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Counsel for Petitioners

QUESTION PRESENTED

When the Internal Revenue Service summonses information from a third-party recordkeeper, it usually must give "notice of the summons" to "any person … identified in the summons." I.R.C. § 7609(a)(1). If the IRS issues a summons directing a bank to produce an accountholder's records, for example, it must generally notify the accountholder. In turn, "any person who is entitled to notice of a summons" has "the right to begin a proceeding to quash such summons." I.R.C. § 7609(b)(2).

Congress carved several specific exceptions from § 7609(a)(1)'s broad notice requirement. *See* I.R.C. § 7609(c)(2)-(3). As relevant here, the IRS need not notify the person identified in a summons "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)." I.R.C. § 7609(c)(2)(D). When the exception applies, the person whose privacy is at stake has no right to petition to quash or even learn about the summons.

The question presented is whether the § 7609(c)(2)(D)(i) exception applies only when the delinquent assessed taxpayer has a legal interest in the summonsed accounts, or whether it applies whenever the IRS thinks that anyone's summonsed records, no matter who owns the account, might somehow relate to the collection of the delinquent taxpayer's liability.

PARTIES TO THE PROCEEDING

Petitioners are Hanna Karcho Polselli, Abraham & Rose, P.L.C., and Jerry R. Abraham, P.C. Petitioners asked the district court to quash the summonses the IRS issued for their bank records, and they were the appellants before the court of appeals.

Respondent is the Internal Revenue Service, an agency of the United States Department of the Treasury. The IRS was the respondent before the district court and the appellee before the court of appeals.

RELATED PROCEEDINGS

United States Court of Appeals (6th Cir.):

Polselli v. United States Dep't of the Treasury—IRS, No. 21-1010 (Jan. 7, 2022)

United States District Court (E.D. Mich.):

Polselli v. United States, No. 19-10956 (Nov. 16, 2020)

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INTRODUCTION

This case arises from a single IRS agent's attempt to secretly summons more than two years' worth of law-firm bank records in the hopes that his snooping might help him figure out where a delinquent taxpayer was hiding money. But Congress never authorized such an "inquisitorial process." Pet. App. 26a (Kethledge, J., dissenting). The IRS's claim to such a clandestine summons power disrespects our legal tradition, disappoints our democratic expectations, and defies § 7609 of the Internal Revenue Code. Indeed, the IRS agent engaged in the very abuse Congress sought to curtail when it enacted § 7609 to guarantee notice and an opportunity to petition to quash third-party summonses. Yet the government claims that § 7609(c)(2)(D)(i) allows it to dispense with notice and the right to challenge a summons whenever it has assessed a taxpayer's liability and an agent thinks that summonsing some third party's bank records might reveal useful information. And the Sixth Circuit, over Judge Kethledge's dissent, agreed.

The problem isn't just that the government's rule is un-American or that the IRS fancies itself the NSA. The problem is that statutory text, structure, purpose, history, and policy all show that the IRS is overreaching. All those interpretive tools make clear that § 7609(c)(2)(D)(i) applies only when the assessed taxpayer whose liability the IRS is trying to collect has a legal interest in the summonsed account. That approach keeps the IRS honest by balancing the agency's investigative needs with the public's privacy rights. But the IRS cannot satisfy that test here. The IRS wants to collect the money Remo Polselli owes the government. But it hasn't shown that Remo has any legal interest in Petitioners' bank accounts. An IRS agent

doesn't get to *secretly* comb through years of law-firm bank records—and all the attorney-client information they contain—just because he thinks doing so might be convenient.

1. Section 7609 requires the IRS to give notice of any third-party summons—like a summons to a bank for records of someone's account—to "any person … identified in the summons." I.R.C. § 7609(a)(1). That person then has the right to petition a federal court to quash the summons. I.R.C. § 7609(b)(2)(A). Among the handful of exceptions to that rule, § 7609(c)(2)(D) allows the IRS to dispense with notice (thus eliminating the right to challenge the summons) for "any summons … 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)." I.R.C. § 7609(c)(2)(D).

Statutory text, structure, and purpose all show that § 7609(c)(2)(D)(i) is a narrow carveout from § 7609(a) and (b)'s broad notice and petition-to-quash protections: it requires the delinquent taxpayer to have an interest in the summonsed account. Section 7609(c)(2)(D) requires the summons to be "in aid of the collection" of a tax liability. That language requires a direct connection between the summons and collection. And that direct connection exists only when the summons seeks account records that may reveal assets that can be collected—*i.e.*, solicited or seized—because the delinquent taxpayer has a legal interest in the account.

Reading § 7609(c)(2)(D)(i) any other way creates significant surplusage problems. It rewrites the

exception to end at "any summons issued in aid of the collection of an assessment," full stop, making the back half of § 7609(c)(2)(D)(i) and all of § 7609(c)(2)(D)(ii) superfluous. It also nullifies § 7609's privacy protections whenever a single IRS agent says he is working on collecting a tax liability.

2. Statutory history and policy confirm that § 7609(c)(2)(D)(i) applies only when the delinquent taxpayer has a legal interest in the summonsed account. Congress enacted § 7609 to overrule this Court's decisions that had stripped taxpayers of the right to challenge IRS summonses. The government's reading of the exception would reinstate the regime Congress rejected, enabling the very IRS abuse Congress tried to stop in § 7609.

3. The court of appeals' decision and the government's counterarguments are wrong. Reading § 7609(c)(2)(D)(i) to apply just because the IRS has made a tax assessment and an agent is curious violates basic interpretive principles. It ignores the meaning of "in aid of the collection," nullifies language in clause (i) and all of clause (ii), and undermines the statute's purpose. The government responds by pointing to a different provision, I.R.C. § 7610, but that section concerns a distinct issue about the recordholder's proprietary interests in the summonsed *records*, not the delinquent taxpayer's interest in the underlying account. And the government's argument that clause (ii) applies "before assessment" ignores the cross-reference in clause (ii) to clause (i), which requires an assessment. The court of appeals' reasoning fares no better. There is no way to minimize the surplusage that the government and court's reading creates.

4. The IRS has not shown that Remo Polselli has a legal interest in Petitioners' bank accounts, so it had no license to secretly seek their bank records. The Court should thus reverse and remand for the lower courts to consider their petitions to quash.

OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a-30a) is reported at 23 F.4th 616. The district court's opinion (Pet. App. 31a-42a) is not published in the *Federal Supplement* but is available at 2020 WL 12688176.

JURISDICTION

The court of appeals issued its judgment on January 7, 2022, and denied rehearing en banc on March 28, 2022. This petition was timely filed on June 24, 2022, within 90 days of the denial of rehearing. The Court granted review on December 9, 2022, and has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in an appendix to this brief.

STATEMENT

A. Legal background

1. a. Congress has authorized the Secretary of the Treasury and the IRS, as her delegee, to summons third-party recordkeepers—like banks, accountants, and attorneys—to produce documents and other forms of information for several purposes. *See* I.R.C. §§ 7602(a), 7603(b); 7803(a)(2). Those purposes include "determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect

of any internal revenue tax," as well as "collecting any such liability." I.R.C. § 7602(a).

Congress checked that intrusive summons power with important procedural protections for persons with privacy interests in the summonsed information, like the customer whose bank account records the IRS seeks. *See generally* I.R.C. § 7609. This case is about two related protections: the right to notice of the summons and the right to petition to quash the summons.

Under § 7609(a)(1), the IRS must give notice of the third-party summons to "any person … identified in the summons." I.R.C. § 7609(a)(1). For example, "if the IRS orders a bank to produce a particular customer's account records, the IRS must provide that customer with notice of the summons." Pet. App. 26a (Kethledge, J., dissenting). The IRS must provide that notice at least 23 days before the production deadline, and it "shall contain an explanation of the right" to challenge the summons under § 7609(b)(2). I.R.C. § 7609(a)(1). "[A]ny person who is entitled to notice of a summons," in turn, "shall have the right to begin a proceeding to quash such summons." I.R.C. § 7609(b)(2)(A); *see also* I.R.C. § 7609(h)(1) (district court jurisdiction). A person entitled to notice has 20 days after receiving notice to petition to quash. I.R.C. § 7609(b)(2).

b. Congress made limited exceptions to these privacy protections. *See* I.R.C. § 7609(c)(2)-(3). The exception at issue, § 7609(c)(2)(D), provides that § 7609 "shall not apply to any summons … 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)." When this exception applies, the IRS need not notify the person identified in the summons that a third party has been ordered to disclose their information to the IRS. *See* § 7609(a)(1). And because the right to challenge the summons turns on the right to notice, the person whose privacy is at stake has no right to petition to quash the summons, even if the third-party record-keeper happens to tell her about the summons. *See* I.R.C. § 7609(b)(2).

The question presented concerns the scope of the § 7609(c)(2)(D)(i) exception to § 7609(a) and (b)'s broad notice and petition-to-quash protections. The question is whether the exception applies only when the assessed delinquent taxpayer has a legal interest in the summonsed account (as the Ninth Circuit has held, *Ip v. United States*, 205 F.3d 1168, 1176 (9th Cir. 2000), and Judge Kethledge would have held here, Pet. App. 25a-30a)—or whether the government need only point to an assessment of *someone's* tax liability and a single IRS agent's subjective belief that trawling other persons' accounts might help the agency figure out how to collect that liability.

c. Although the question presented involves the § 7609(c)(2)(D) exception, the other exceptions in § 7609(c)(2) and (3) provide important context. The rest of subsection (c)(2) provides:

> 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);
>
> …; 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)).

I.R.C. § 7609(c)(2). Similarly, subsection (c)(3) provides that § 7609(a) "shall not apply to any summons described in subsection (f) or (g)." I.R.C. § 7609(c)(3). Subsection (f) addresses John Doe summonses, *see* I.R.C. § 7609(f), and subsection (g) addresses summonses for which the IRS can establish "reasonable cause to believe [that] 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," I.R.C. § 7609(g).

2. Congress enacted § 7609 in response to *Donaldson v. United States*, 400 U.S. 517 (1971), and *United States v. Bisceglia*, 420 U.S. 141 (1975). In those decisions, the Court held that taxpayers could challenge a third-party IRS summons only in rare circumstances, which did not include a taxpayer's

general interest in privacy. *See Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 315-16 (1985).

a. Before *Donaldson* and *Bisceglia*, this Court had suggested, and several lower courts had held, that any person whose privacy interests were implicated by a third-party summons could challenge the summons by (1) raising a complaint with the IRS, or (2) intervening in a formal proceeding, if one was brought by either the summonsed party or the IRS, to contest or enforce the summons. *See Reisman v. Caplin*, 375 U.S. 440, 445, 449 (1964). As the Court later explained in *Tiffany Fine Arts*, however, *Donaldson* and *Bisceglia* changed the rules, wiping away these important privacy protections. *See* 469 U.S. at 315-16.

In *Donaldson*, the Court restricted the ability of non-summonsed parties to challenge third-party summonses. There, the IRS summonsed a third-party recordkeeper to produce records about Donaldson. 400 U.S. at 518-19. When the IRS went to court to enforce the summons, Donaldson sought to intervene under Federal Rule of Civil Procedure 24. *Id.* at 520-21. The Court held that Donaldson could not intervene unless he could show a "significantly protectable interest" prohibiting disclosure, like the attorney-client privilege. *Id.* at 530-31. The Court also made clear that Donaldson's general interest in protecting his privacy was insufficient, even though he had claimed that "the requests in the summonses were overly broad and 'without a showing of particularized relevancy.'" *Id.* at 521, 530-31. *Donaldson* thus left persons with privacy interests implicated by third-party summonses powerless "to prevent compliance with a summons that called for irrelevant or

immaterial records." *United States v. New York Tel. Co.*, 644 F.2d 953, 956 (2d Cir. 1981).

In *Bisceglia*, the Court again "gave a broad construction to the IRS's general summons power." *Tiffany Fine Arts*, 469 U.S. at 314. The Court held that the IRS could summons a bank to disclose the identity of a person if the IRS thought the person's deposits suggested that he might have been committing tax fraud. *Bisceglia*, 420 U.S. at 150. At the same time, the Court "recognized the danger that the IRS might use its § 7602 summons power to 'conduct fishing expeditions' into the private affairs of bank depositors." *Tiffany Fine Arts*, 469 U.S. at 315 (quoting *Bisceglia*, 420 U.S. at 150-51).

b. Congress enacted § 7609 in 1976 to overturn "the result reached in *Donaldson*." *Id.* at 316. Following widespread criticism of *Donaldson*, *see Ip*, 205 F.3d at 1172, Congress became concerned that "the standards enunciated in *Donaldson* and *Bisceglia* might 'unreasonably infringe on the civil rights of taxpayers, including the right to privacy,'" *Tiffany Fine Arts*, 469 U.S. at 316 (citations omitted). Thus, in § 7609, Congress required the IRS to notify any person identified in a third-party summons and gave those identified persons the right to intervene in any proceeding to enforce the summons. *See* Tax Reform Act of 1976, Pub. L. No. 94-455, § 1205(a), 90 Stat. 1520, 1699-1700 (1976 Act). In 1982, Congress added another privacy protection by giving identified persons the right to petition to quash the third-party summons. *See* Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 331(a), 96 Stat. 324, 620. "To a large extent, these procedural modifications sprang from a conviction that taxpayers deserved

greater safeguards against improper disclosure of records held by third parties." *Ip*, 205 F.3d at 1172.

The 1976 Act also included all but one of the exceptions to the broad notice rule in effect today, including the § 7609(c)(2)(D)(i) exception, then codified at § 7609(c)(2)(B)(i). *See* 1976 Act, 90 Stat. at 1700-02; *Ip*, 205 F.3d at 1170 n.4. Congress recognized that giving notice of a summons could prompt a delinquent taxpayer to move his money. Thus, by including these exceptions, Congress did not require the IRS to give a taxpayer notice when issuing a summons "to determine whether the taxpayer has an account in [a] bank, and whether the assets in that account are sufficient to cover the tax liability which has been assessed." H.R. Rep. No. 94-658, at 310 (1975); *see* S. Rep. No. 94-938, pt. 1, at 371-72 (1976) (similar). Congress similarly chose not to require notice "where the [IRS] is attempting to enforce fiduciary or transferee liability for a tax which has been assessed," to avoid enabling the taxpayer, transferee, or fiduciary to move money. H.R. Rep. No. 94-658, at 310; S. Rep. No. 94-938, pt. 1, at 371-72.

In 1998, Congress added the final exception, I.R.C. § 7609(c)(2)(E). *See* Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3415(c)(2), 112 Stat. 685, 755-56 (1998 Act). The 1998 Act amended and restated § 7609(c) in its entirety, including the § 7609(c)(2)(D)(i) exception. *Id.*

B. Factual and procedural background

This case is about the privacy interests and statutory rights of three innocent parties: the law firms Abraham & Rose, P.L.C., and Jerry R. Abraham, P.C., and Hanna Karcho Polselli. The case arises because the IRS, after Remo Polselli failed to pay his taxes,

sought information about the bank accounts belonging to the firms (who represented Remo) and Hanna (Remo's wife) without giving the firms or Hanna any notice of the summonses.

1. After the IRS issued tax assessments against Remo, *see* Pet. App. 3a, "[a] single IRS agent," Officer Michael Bryant, "issued summonses to three banks—Wells Fargo, JP Morgan Chase, and Bank of America—directing them to 'appear before' the agent 'to give testimony' and 'to produce for examination,' among other things, 'all bank statements relative to the accounts' of Hanna and the two law firms," Pet. App. 26a (Kethledge, J., dissenting) (alteration adopted). The summonses requested records from January 1, 2017, or January 1, 2018, to March or April 2019. *See* Pet. App. 70a-72a, 78a-80a, 85a-87a. Officer Bryant sought these records as part of his "investigation" to "locate assets" that might be used to satisfy Remo's tax liability. Pet. App. 66a. In an affidavit, Officer Bryant said he wanted to understand how Remo had paid the law firms. Pet. App. 68a. Officer Bryant swore he thought that Remo was using Dolce Hotel Management, LLC—not his lawyers—as an alter ego. Pet. App. 66a-67a. He also said he wanted to learn whether Remo could access Hanna's accounts. Pet. App. 66a.

2. The IRS did not notify Petitioners of the summonses. Fortunately, the banks did. Petitioners then petitioned to quash the summonses under § 7609(b)(2). They explained that the summonses are overbroad and seek irrelevant information, and that the IRS had failed to provide notice in accordance with § 7609(a). *See* D. Ct. Doc. 3, at 4 (Apr. 29, 2019).

The district court dismissed the petition for lack of subject-matter jurisdiction. Pet. App. 31a-42a. The court ruled that the § 7609(c)(2)(D)(i) exception to the notice requirement applied, because the IRS claimed that the requested records might aid in its collection of Remo's tax lability. *See* Pet. App. 41a-42a. And because Petitioners had no right to notice of the summonses, the court reasoned, they also had no right to challenge the summonses given the United States' sovereign immunity. *Id.* The district court did not make any factual findings. *See* Pet. App. 7a n.5.

3. A divided Sixth Circuit panel affirmed, holding that § 7609(c)(2)(D)(i) applies whenever the IRS thinks that the summonsed records, no matter who has a legal interest in them, might somehow relate to the collection of the delinquent taxpayer's liability. Pet. App. 1a-25a. Judge Kethledge dissented on the ground that § 7609(c)(2)(D)(i) applies only when the delinquent taxpayer has a legal interest in the summonsed records, such that the summons is "in aid of" collecting the taxpayer's liability. Pet. App. 25a-30a.

a. The panel majority held that § 7609(c)(2)(D)(i) strips innocent parties of their privacy rights under § 7609(a) and (b) whenever "(1) an assessment was made or a judgment was entered against a delinquent taxpayer and (2) the summons was issued 'in aid of the collection' of that delinquency." Pet. App. 11a. In other words, so long as the IRS claims that private information about an innocent party might somehow relate to assets that might be used to satisfy the delinquent taxpayer's liability, then the innocent party has no right to know about or challenge the IRS's snooping expedition. The majority acknowledged that its holding would allow the IRS to freely "access information regarding blameless third parties without

notice." Pet. App. 21a. But it thought "the literal text of the statute" compelled that result. Pet. App. 14a.

In reaching that result, the panel majority sided with the Seventh Circuit and an unpublished Tenth Circuit decision. *See* Pet. App. 11a-12a (citing *Barmes v. United States*, 199 F.3d 386 (7th Cir. 1999) (per curiam), and *Davidson v. United States*, 149 F.3d 1190 (Table), 1998 WL 339541, (10th Cir. June 9, 1998)). But most of the majority's analysis focused on the Ninth Circuit's decision in *Ip*. *See* Pet. App. 13a-20a.

In *Ip*, the Ninth Circuit construed § 7609's text, structure, purpose, and history to hold that § 7609(a)(1) establishes a broad notice rule and that § 7609(c)(2)(D)(i) is a narrow exception that applies "only where the assessed taxpayer 'has a recognizable legal interest in the records summoned.'" 205 F.3d at 1176 (alteration adopted; citation omitted); *see also id.* at 1171-76. As Judge O'Scannlain put it, an expansive construction of the § 7609(c)(2)(D)(i) exception would "produce a result demonstrably at odds with the intention of its drafters." *id.* at 1177 (O'Scannlain, J., specially concurring) (citation omitted). As a textual matter, the Ninth Circuit explained, the government's reading of the statute "renders totally meaningless the explicit language" of § 7609(c)(2)(D)(ii), "which suspends notice when the summons is in aid of collection of 'the liability … of any transferee or fiduciary of any person referred to in clause (i).'" *Id.* at 1174.

The Sixth Circuit rejected *Ip*. The majority first disagreed that its "interpretation renders [§ 7609(c)(2)(D)(ii)] meaningless" because, in its view, the "IRS's efforts to collect a taxpayer's liability" are "legally and procedurally distinct from [its] collection efforts of the transferee's or fiduciary's liability—

which liability must be rooted in state law." Pet. App. 15a-16a. Next, the majority acknowledged "[t]he Ninth Circuit's concern that 'it is virtually impossible to conceive of any situation where the notice requirement would apply once an assessment of tax liability against anyone has been made.'" Pet. App. 17a (quoting *Ip*, 205 F.3d at 1173). But the majority thought the statutory text was clear. Pet. App. 14a, 17a-18a. Finally, the majority reasoned that its holding did not undermine § 7609's pro-notice purpose because the IRS must still "provide notice when issuing summonses related to any of its non-collection functions." Pet. App. 18a.

b. Judge Kethledge dissented, reasoning that the Ninth Circuit's interpretation of § 7609(c)(2)(D)(i) is more faithful to "§ 7609 as a whole," and that the panel majority's "literal" reading defies basic interpretive principles. Pet. App. 30a. Given the statutory text, structure, and purpose, he explained, § 7609(c)(2)(D)(i)'s "in aid of the collection" language requires "a more direct connection between the summons and the 'collection' of the liability of the" delinquent taxpayer. *Id.* That "more direct connection" is met, he continued, when the delinquent taxpayer "has a recognizable legal interest in the records summoned." *Id.* (quoting *Ip*, 205 F.3d at 1176).

Judge Kethledge also explained that his interpretation of § 7609(c)(2)(D)(i) reflects this Court's "deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." Pet. App. 25a (citation omitted). The majority's interpretation, on the other hand, "maul[s] the bulk of § 7609" by making three provisions superfluous: § 7609(a), (b) and (c)(2)(D)(ii). Pet. App. 30a.

Judge Kethledge first explained that the majority's interpretation leaves no work for § 7609(c)(2)(D)(ii). "*Every* summons 'issued in the aid of the collection of' the liability of a 'transferee or fiduciary' of an assessed taxpayer" under clause (ii) "is 'issued in the aid of the collection of' that assessment," he observed, and "nobody argues otherwise." Pet. App. 28a. Thus, he continued, "every summons that falls within § 7609(c)(2)(D)(ii) already falls within the government's (and now the majority's) interpretation of § 7609(c)(2)(D)(i)." *Id.* On that view, "Congress was wasting its time in writing § 7609(c)(2)(D)(ii)." *Id.* Indeed, "[f]or all its experience administering the tax code, the government offer[ed] not a single concrete example of a summons that falls within § 7609(c)(2)(D)(ii) but not (D)(i)." *Id.*

Judge Kethledge then explained that the majority's interpretation also made § 7609(a) and (b)—the notice and petition-to-quash provisions—"entirely superfluous as to summonses issued in aid of collecting a previously assessed tax liability." Pet. App. 29a. On the majority's reading, "once an assessment is rendered," the IRS is *never* required to give notice of a summons, thus locking any person identified in the summons out of court. Pet. App. 30a. That construction can't be correct, Judge Kethledge reasoned, because it "vitiates completely the legislative purpose of providing notice to third parties." Pet. App. 29a (quoting *Ip*, 205 F.3d at 1174).

In sum, Judge Kethledge contrasted the majority's approach of reading "§ 7609(c)(2)(D)(i) in isolation" with the correct approach of "[r]eading § 7609 as a whole." Pet. App. 29a-30a. Under the correct approach, he explained, there is "only [one] way" to give full effect to the words Congress chose:

§ 7609(c)(2)(D)(i) must be a narrow exception that applies only when the delinquent taxpayer has a legal interest in the summonsed records. Pet. App. 30a.

c. The Sixth Circuit denied rehearing en banc, Pet. App. 45a-46a, but the panel granted Petitioners' motion to stay the mandate pending this Court's resolution of the case, Pet. App. 43a-44a.

SUMMARY OF ARGUMENT

A. Statutory text, structure, and purpose all show that § 7609(c)(2)(D)(i) is a narrow carveout from § 7609(a) and (b)'s broad notice and petition-to-quash protections: it requires the delinquent taxpayer to have an interest in the summonsed account. Section 7609(c)(2)(D) requires the summons to be "in aid of the collection" of a tax liability. That language mandates a direct connection between the summons (the aid) and the "collection," which means obtaining payment for a debt. *See, e.g.*, *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). Those phrases contrast with Congress' use elsewhere in the statute of "in connection with" (rather than "in aid of") and its listing of activities other than collection. By putting "in aid of the collection" together with a particular taxpayer's assessment, Congress limited the § 7609(c)(2)(D)(i) exception to summonses for account records that may reveal assets that can be solicited or seized—collected—because the delinquent taxpayer has a legal interest in the account.

Reading § 7609(c)(2)(D)(i) the IRS's way creates significant surplusage problems by rewriting the exception to mean that the IRS need not provide notice for "any summons issued in aid of the collection of an assessment"—period. That reading would make the bulk of clause (i) and all of clause (ii) superfluous. And

the mutilation wouldn't end there. Reading § 7609(c)(2)(D)(i) to require only an assessment would maim the notice and petition-to-quash protections that were the reason for § 7609 in the first place. The Court should instead read § 7609(c)(2)(D)(i) according to its text and the statute's structure—to preserve § 7609(a) and (b)'s critical notice and petition-to-quash protections by applying only when the IRS summonses records of an account in which the delinquent taxpayer has a legal interest.

B. Statutory history, purpose, and policy also support construing § 7609(c)(2)(D)(i) to apply only when the delinquent taxpayer has a legal interest in the summonsed account. Congress enacted § 7609 in response to concerns that this Court's decisions in *Donaldson* and *Bisceglia* would allow the IRS to unreasonably infringe on taxpayers' privacy rights. Reading § 7609(c)(2)(D)(i) the government's way, to require no more than a tax assessment, would not just gut § 7609's core notice and petition-to-quash protections. It would endorse an "inquisitorial process" at odds with our Constitution, Pet. App. 26a (Kethledge, J., dissenting), and enable the very IRS abuse Congress tried to curtail in § 7609.

C. The court of appeals' decision and the government's counterarguments are wrong. *First*, construing § 7609(c)(2)(D)(i) to apply whenever the IRS has made a tax assessment violates basic principles of statutory interpretation. It ignores the meaning of "in aid of the collection," a phrase requiring the summons (the aid) to have a direct connection to the collection (the subject of the aid). It also nullifies the second half of § 7609(c)(2)(D)(i) and all of clause (ii), rewriting clause (i) to apply to "any summons … issued in the aid of the collection of … assessment made or judgment

rendered"—full stop. The government cannot escape those problems by pointing to § 7610, which concerns the recordholders' proprietary interests in the summonsed *records* (a different issue) or by claiming, contrary to its plain text, that clause (ii) actually applies *before* assessment. And the court of appeals' attempts to minimize surplusage are just illogical.

Second, the government's and court of appeals' statutory history and policy arguments likewise fall flat. This Court's decisions and § 7609(a) and (b)'s broad language both make clear that § 7609 establishes a broad, pro-notice guarantee. Yet the government would give greater privacy rights to pre-assessment delinquent taxpayers than to innocent parties. And the court of appeals' atextual suggestion that its rule will still somehow permit innocent parties to challenge bad-faith IRS summonses is nonsensical. Under the IRS and court's rule, those innocent parties will not even learn of the summons, much less receive notice of the IRS agent's bad faith.

D. Petitioners had the right to notice and to petition to quash under § 7609(a) and (b) because the government has not established that Remo Polselli has a legal interest in their summonsed accounts. The Court should thus remand for the lower courts to consider their petitions to quash under § 7609(b)(2) and (h)(1) or, at the very least, for factfinding that no court has conducted.

ARGUMENT

A. Statutory text, structure, and purpose all show that the § 7609(c)(2)(D)(i) exception applies only when the delinquent taxpayer has a legal interest in the summonsed account.

Statutory text, structure, and purpose all show that § 7609(c)(2)(D)(i) is a narrow exception to the broad notice and petition-to-quash protections in § 7609(a) and (b): it requires the delinquent taxpayer to have an interest in the summonsed account. As a textual matter, § 7609(c)(2)(D) requires the summons to be "in aid of the collection" of a tax liability. Unlike terms used elsewhere in the statute, such as "in connection with" in § 7609(c)(2)(E), "in aid of" requires a direct connection between the aid (the summons) and the endeavor (the collection). And "collection" means to obtain payment, including through legal proceedings, for a debt. *See, e.g.*, *Heintz*, 514 U.S. at 294. It doesn't mean a host of other activities only tangentially related to obtaining payment, like determining whether a taxpayer is liable in the first place—a concept Congress recognized as distinct from collection. *See* I.R.C. § 7602(a). The upshot is that § 7609(c)(2)(D)(i) applies only when account records could reveal assets that can be solicited or seized—collected—because the delinquent taxpayer has a legal interest in the account. It doesn't apply just because the IRS has assessed *someone's* tax liability and thinks its summonses might turn up useful information.

The canon against surplusage reinforces those points. Failing to read § 7609(c)(2)(D)(i) to apply only when the delinquent taxpayer has an interest in the

account would rewrite § 7609(c)(2)(D) to read that the IRS need not provide notice for "any summons issued in aid of the collection of an assessment"—period. It would leave the rest of clause (i) superfluous. It would also eliminate clause (ii) entirely, because transferee or fiduciary liability is derivative of taxpayer liability. Fundamental canons of statutory construction protect against mauling § 7609(c)(2)(D) like that. And the damage wouldn't end there. The government and Sixth Circuit's reading would eviscerate the purpose of § 7609, which Congress enacted to provide important privacy protections—the rights to notice and to petition to quash. The simple solution is to read § 7609(c)(2)(D)(i) according to its text and the statute's structure—to preserve § 7609(a) and (b)'s critical notice and petition-to-quash protections by applying only when the IRS summonses records of an account in which the delinquent taxpayer has a legal interest.

1. Statutory text and structure show that the phrase "in aid of the collection" requires a direct connection between a summons and obtaining payment, not merely the possibility of obtaining information.

Section 7609(c)(2)(D) provides that notice is not required when the IRS issues a third-party summons "in aid of the collection" of a tax liability. The words "in aid of" and "collection," when read alongside clauses (i) and (ii), indicate that § 7609(c)(2)(D) is tailored closely to the government's obtaining payment to satisfy the tax liability. Put differently, the exception serves a collection purpose, not a general information-gathering-yet-somehow-related-to-collection purpose. Section 7609(c)(2)(D)(i) therefore applies only when the IRS is summonsing records of an

account legally tied to the delinquent taxpayer, because only then is there a direct connection between the third-party summons and the IRS obtaining payment.

a. "In aid of" means assisting or helping with a particular objective and does not include activities that do not directly advance that objective. Start with the ordinary meaning of "aid": "support, help, [or] assist." *Black's Law Dictionary* 63 (5th ed. 1979) (*Black's Fifth*); *see also The Compact Edition of the Oxford English Dictionary* 49 (1971) (*Compact OED*) (same). The definitions of "support," "help," and "assist," for their part, "are overlapping and circular, with each one pointing to another in the group." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1759 (2018). "Assist" means "help" or "aid," *Black's Fifth* 111; *see also Compact OED* 128 (same); "help" means affording "aid or assistance," *Compact OED* 1287; and "support" means "assistance," *Compact OED* 3167.

These words mean a direct connection between the activity providing aid and the object of the aid. Indeed, as this Court has recognized, the phrase "'in aid of' … does not enlarge" its subject. *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999) (language in All Writs Act allowing courts to issue writs "in aid of their respective jurisdictions" does not give courts additional jurisdiction). Phrases like "relating to" or "in connection with," on the other hand, "generally [have] a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *Lamar*, 138 S. Ct. at 1760. But "in aid of" does not, and those are the words Congress chose. The Court must presume that Congress' word choice was intentional, especially because

elsewhere in § 7609 Congress used the different, broader phrases "in connection with" and "relates to." *See* I.R.C. § 7609(c)(2)(E)(i) (exception applies when a summons is issued "in connection with" a criminal IRS investigation); I.R.C. § 7609(f)(1) (requirement for John Doe Summonses that "the summons relate[] to the investigation of a particular person or ascertainable group or class of persons"); *see also Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1813 (2019) (disparate word choice presumed intentional). The next question, then, is what endeavor the aid is directly supporting. The answer here is "collection" of money owed to the government. I.R.C. § 7609(c)(2)(D).

b. "Collection" means obtaining payment or liquidation of a debt, including through legal proceedings. Collecting a tax liability—*i.e.*, obtaining payment—from the delinquent taxpayer is the focus of § 7609(c)(2)(D)(i). The ordinary meaning of "collection" is "the act of collecting (as taxes by a tax collector)." *Webster's Third New International Dictionary* 444 (1981); *see also Compact OED* 465 (same). To "collect" is to "receive payment." *Black's Fifth* 238. And to "collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings." *Id.*; *see also Black's Law Dictionary* 328 (4th ed. 1968) (same). This Court has endorsed that definition, explaining that it encompasses efforts "to obtain payment of … debts through legal proceedings." *Heintz*, 514 U.S. at 294.

The word "collection" thus indicates a strong relationship between the collector and the liability being collected. The collector here is the IRS, and the thing being collected is a tax liability because the object of "collection" is "(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)." I.R.C. § 7609(c)(2)(D). In this way, clauses (i) and (ii) inform the meaning of "collection." They also inform who the IRS will obtain payment from: either the delinquent taxpayer, under clause (i), or his transferee or fiduciary, under clause (ii). The term "collection" in § 7609(c)(2)(D)(i) thus focuses on obtaining payment from the delinquent taxpayer for his assessed liability.

Other provisions confirm that "collection" bears its ordinary meaning and not some more expansive meaning embracing attenuated activities merely related to collection. Start with § 7602(a), the provision granting the IRS its summons authority. Section 7602(a) separately lists the purposes of "collecting [tax] liability" and "determining the liability" of a taxpayer, transferee, or fiduciary. I.R.C. § 7602(a). The provision thus shows that Congress understands collecting a tax liability as distinct from gathering information about a tax liability. Other exceptions to the notice and petition-to-quash protections reflect the same distinction. *See, e.g.*, I.R.C. § 7609(c)(2)(B) (summonses "to determine whether or not records of the business transactions or affairs of an identified person have been made or kept"); I.R.C. § 7609(c)(2)(C) (summonses "to determine the identity of any person having a numbered account (or similar arrangement) with a bank"). Read alongside § 7609(c)(2)(D), that distinction shows that only collection activities, and not mere information-gathering activities, are "in aid of the collection" of a tax liability.

c. "In aid of the collection" of a liability refers to activities that directly help obtain payment for that liability. Putting together the

meanings of "in aid of" and "collection" shows that the phrase "in aid of the collection" of a liability refers to activities that directly help obtain payment for that liability. As Judge Kethledge put it, the phrase covers activities that have a "direct connection" with transferring money into the federal treasury. Pet. App. 30a.

To explain, the statutory language requires a direct connection between the third-party summons (the aid) and the IRS's obtaining payment for the tax liability (the object of the aid). That connection exists only when the delinquent taxpayer, in the case of § 7609(c)(2)(D)(i), "has a recognizable legal interest in the records summoned." *Id.*; *see also Ip*, 205 F.3d at 1176. That is because account records will reveal assets that can be solicited or seized—collected—only when the account contains the delinquent taxpayer's money (or money he has some legal right to). Only when the delinquent taxpayer has a legal interest in the account can a summons be "in aid of the collection" of a liability through that account.

When an IRS agent targets an innocent party, in contrast, he isn't doing so "in aid of the collection" of an assessed tax liability. He might be trying to *determine* whether a transferee or fiduciary is liable or whether the delinquent taxpayer has an interest in some account. But by its terms, § 7609(c)(2)(D) doesn't cover those scenarios, even if snooping through an innocent party's private information might reveal a clue that could eventually help the IRS obtain payment. As noted, "in aid of" does not mean "in connection with," a more expansive phrase that Congress selectively used in § 7609(c)(2)(E). *See supra* pp. 21-22.

None of this means that the IRS cannot effectively administer the tax laws. The point is simply that

Congress determined that scavenger hunts require notice and an opportunity to petition to quash given the important privacy rights at stake. *Supra* pp. 7-10; *infra* pp. 31-33.

2. Reading § 7609(c)(2)(D)(i) to refer only to summonses for records of accounts in which the delinquent taxpayer has a legal interest gives effect to § 7609(c)(2)(D)(ii).

The canon against surplusage also supports construing § 7609(c)(2)(D)(i) to refer only to summonses for records of accounts in which the delinquent taxpayer has a legal interest. "The cardinal principle of statutory construction is to save and not to destroy." *United States v. Menasche*, 348 U.S. 528, 538 (1955) (citation omitted). Courts thus have a "duty 'to give effect, if possible, to every clause and word of a statute,' rather than to emasculate an entire section." *Id.* at 538-39 (internal citation omitted); *accord Corley v. United States*, 556 U.S. 303, 314 (2009). Indeed, this Court "consistently [has] expressed 'a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." *Freytag v. Commissioner*, 501 U.S. 868, 877 (1991) (citation omitted). As Judge Kethledge and the Ninth Circuit explained, construing § 7609(c)(2)(D)(i) to require the delinquent taxpayer to have a legal interest in the account gives effect to subsection (c)(2)(D)(ii). Reading § 7609(c)(2)(D)(i) not to contain that limitation, in contrast, would make subsections (a), (b), *and* (c)(2)(D)(ii) insignificant, if not wholly superfluous. *See* Pet. App. 27a-30a; *Ip*, 205 F.3d at 1174-76.

a. Congress specified two scenarios in which § 7609(c)(2)(D) applies. *First*, the exception applies

when "an assessment [has been] made or judgment [has been] rendered against the person with respect to whose liability the summons is issued." I.R.C. § 7609(c)(2)(D)(i). *Second*, the exception applies when there is a "liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i)." I.R.C. § 7609(c)(2)(D)(ii). The Court has a duty to give effect to both clause (i) and clause (ii). *Menasche*, 348 U.S. at 538-39.

Reading clause (i) to reach records or accounts simply because the IRS has rendered an assessment against *someone* and the IRS thinks that the records might be helpful, even if the delinquent taxpayer has no interest in the account, would make clause (ii) "totally meaningless." *Ip*, 205 F.3d at 1174. As Judge Kethledge explained, all agree that "*[e]very* summons 'issued in the aid of the collection of' the liability of a 'transferee or fiduciary' of an assessed taxpayer" under clause (ii) "is 'issued in the aid of the collection of' that assessment.'" Pet. App. 28a. That's because clause (ii) refers to a transferee or fiduciary "of any person referred to in clause (i)." I.R.C. § 7609(c)(2)(D)(ii). Thus, without limiting clause (i) to summonses for accounts in which the taxpayer has a legal interest, "every summons" within clause (ii) would already "fall[] within" clause (i). Pet. App. 28a. On that view, "Congress was wasting its time in writing § 7609(c)(2)(D)(ii)." *Id.*

b. That's not all. Reading § 7609(c)(2)(D) to apply whenever the IRS thinks that the summonsed information might reveal clues that could somehow help it with collection down the road would vitiate the bulk of clause (i) as well. If that reading were right, Congress could have ended § 7609(c)(2)(D) with "issued in aid of the collection of a tax liability." Instead, Congress

went to the trouble not only of crafting both clauses (i) and (ii), but of connecting the assessment in clause (i) to "the person with respect to whose liability the summons is issued." I.R.C. § 7609(c)(2)(D)(i). That limiting language likewise supports reading clause (i) to require that assessed delinquent taxpayer to have an interest in the summonsed account. In short, clauses (i) and (ii) must both mean something, and "the only way to give [them] concrete meaning" is to read them the way the Ninth Circuit and Judge Kethledge do. Pet. App. 30a.

3. Section 7609's purpose also supports reading § 7609(c)(2)(D)(i) to require the delinquent taxpayer to have an interest in the summonsed account.

Reading § 7609(c)(2)(D)(i) to require the delinquent taxpayer to have a legal interest in the summonsed account also honors the purpose of § 7609: providing notice and an opportunity to petition to quash—the privacy protections guaranteed in subsections (a) and (b). Reading § 7609(c)(2)(D)(i) to require only *some* previously assessed tax liability, in contrast, nullifies the privacy protections in subsections (a) and (b), which were the reason for enacting § 7609 in the first place.

a. The cornerstone of § 7609 is subsection (a)'s broad notice provision. *See* I.R.C. § 7609(a). And subsection (b) rests on subsection (a), guaranteeing "any person who is entitled to notice" the right to intervene and the right to petition to quash. I.R.C. § 7609(b)(1)-(2). Both provisions are instrumental to § 7609. Indeed, they are the very reason Congress enacted § 7609—to protect the privacy interests of those whose personal information is the subject of third-party

summonses, especially when the IRS uses its summons power to conduct fishing expeditions. *See supra* pp. 7-10; *infra* pp. 31-33; *Tiffany Fine Arts*, 469 U.S. at 314-16.

The words Congress used in § 7609(a) and (b) reflect the broad scope of their protections. Congress provided that "[i]f *any summons* to which this section applies" requires a third-party to produce information pertaining 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." I.R.C. § 7609(a)(1) (emphases added). And Congress provided the right to petition to quash to "*any person* who is entitled to notice of a summons under subsection (a)." I.R.C. § 7609(b)(2)(A) (emphasis added). Of course, "the word 'any' has an expansive meaning," *Patel v. Garland*, 142 S. Ct. 1614, 1622 (2022) (citation omitted), signaling Congress' intent to broadly apply the privacy protections this Court had wiped away in *Donaldson* and *Bisceglia*.

b. Unlike § 7609(a) and (b)'s broad notice and petition-to-quash provisions, § 7609(c)'s exceptions are narrow. Indeed, Congress referenced the default notice rule just before describing the particular exceptions: "[Section 7609] shall not apply to" the following summonses. I.R.C. § 7609(c)(2); *see also* I.R.C. § 7609(c)(3) (same). Congress then tailored each exception to a specific scenario. The § 7609(c)(2)(C) exception, for example, serves a narrow information-gathering purpose: notice is not required when the third-party summons is "issued solely to determine the identity of a person having a numbered account" with a banking institution. I.R.C. § 7609(c)(2)(C). And the § 7609(g) exception, through § 7609(c)(3), serves a distinct preservation purpose: notice is not required

when the IRS establishes "reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records" or otherwise interfere with enforcement efforts. I.R.C. § 7609(g). In short, each exception—§ 7609(c)(2)(D)(i) included—is a particular carveout from the broad notice rule.

c. Given the primacy of privacy in § 7609, it makes the most sense to interpret § 7609(c)(2)(D)(i) as applying only when the delinquent taxpayer has a recognizable legal interest in the summonsed records or accounts. That reading furthers the purpose of § 7609's default rule because it preserves the notice and petition-to-quash provisions that were the entire point of § 7609. *See infra* pp. 31-33.

Reading § 7609(c)(2)(D)(i) to allow a noticeless summons whenever the IRS says it is trying to collect *someone's* tax liability and speculates that it *might* get some useful information from the summons, in contrast, "vitiates completely" the purpose of § 7609. *Ip*, 205 F.3d at 1174. As Judge Kethledge put it, if the § 7609(c)(2)(D)(i) exception applies whenever the IRS thinks that the summonsed records or accounts, no matter who has a recognizable legal interest in them, might somehow relate to the collection of the delinquent taxpayer's assessed liability, then subsections (a) and (b) will be "entirely superfluous as to summonses issued in aid of collecting a previously assessed tax liability." Pet. App. 29a. Congress could not have intended that result, and as the statute's text and structure show, the statute doesn't support it.

Indeed, such an expansive view of § 7609(c)(2)(D)(i) violates the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their

place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citation omitted). It also violates the presumption against ineffectiveness, A. Scalia & B. Garner, *Reading Law* 63 (2012), which reflects "the idea that Congress presumably does not enact useless laws," *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in the judgment). Because Judge Kethledge and the Ninth Circuit's narrow reading of § 7609(c)(2)(D)(i) is a "textually permissible interpretation that furthers rather than obstructs [§ 7609's] purpose," that option "should be favored." *Reading Law* 63.

For these reasons and those discussed below, even if "in aid of" could be construed to mean "in connection with," basic interpretive principles would require a reading that "prevent[s] the statute from assuming near-infinite breadth." *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 278 (2016). As this Court has reiterated, courts must construe broad phrases like "in connection with" and "relate to" not "in isolation," but with an eye to "the structure and purpose" of the statute, *Maracich v. Spears*, 570 U.S. 48, 59 (2013), considering its "objectives" and avoiding reading "limiting language … out of the statute," *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656, 661 (1995). In *Electric Power Supply*, for example, the Court adopted a "common-sense construction" of the Federal Power Act, holding that "affecting" means "*directly* affect[ing]." *Id.* (citation omitted). This case involves a similar near-infinite-breadth concern—that a broad interpretation of § 7609(c)(2)(D)(i)'s "exception to the notice rule would swallow the rule itself." *Ip*, 205 F.3d at 1175. The direct-connection standard that Judge

Kethledge and the Ninth Circuit have identified is the only test that fits the bill. And the unavailability of judicial review if an IRS agent applying the § 7609(c)(2)(D)(i) test thinks it's satisfied is all the more reason to construe that test narrowly.

B. Statutory history, purpose, and policy support construing § 7609(c)(2)(D)(i) to require the delinquent taxpayer to have a legal interest in the summonsed account.

Statutory text and structure aren't the only signs that the § 7609(c)(2)(D)(i) exception applies only when the delinquent taxpayer has a legal interest in the summonsed account. Statutory, history, purpose, and policy likewise support that construction.

1. Congress enacted § 7609 in response to concerns that failing to allow challenges to IRS summonses would infringe important privacy rights.

Section 7609's history shows that Congress could not have intended the § 7609(c)(2)(D)(i) exception to apply just because the IRS is trying to collect someone's assessed tax liability. As this Court has explained, § 7609 "was clearly a response" to *Donaldson* and *Bisceglia*—decisions that broadly construed the IRS's summons power at the expense of the public's privacy rights. *Tiffany Fine Arts*, 469 U.S. at 314-15. Congress recognized "that the IRS might use its … summons power to 'conduct fishing expeditions' into the private affairs of [ordinary people]." *Id.* at 315 (citations omitted). It also knew that the IRS "might 'unreasonably infringe on the civil rights of taxpayers, including the right to privacy.'" *Id.* at 316 (citation omitted). To address those serious privacy

concerns, Congress enacted § 7609, making the expansively worded notice and petition-to-quash provisions in subsections (a) and (b) its principal pillars. *Supra* pp. 7-10. Congress' purpose was clear: to check the IRS's summons power with broad procedural protections for any person whose privacy interests are implicated by a third-party summons. This crucial context demonstrates that Congress could not have intended the § 7609(c)(2)(D)(i) exception to swallow the broad notice rule.

Reading § 7609(c)(2)(D)(i), according to its text and the statute's structure, to apply only when the delinquent taxpayer has a legal interest in the summonsed accounts, aligns with statutory history and purpose. Innocent parties whose privacy interests are implicated by third-party summonses retain (a) their right to know when the IRS is snooping through their information, and (b) their right to have the IRS justify its intrusion in federal court. At the same time, if the delinquent taxpayer whose assessed liability the IRS is trying to collect has a legal interest in the summonsed accounts, then the IRS need not provide notice. That rule both restricts the exception to its text by requiring the summons to directly aid the activity of collecting the assessed taxpayer's liability and prevents the taxpayer from using notice to transfer or otherwise conceal assets or interfere with collection. (The same goes for the assessed taxpayer's transferees and fiduciaries under § 7609(c)(2)(D)(ii), who must likewise have a legal interest in the summonsed accounts for that exception to apply.) What's more, if the IRS thinks an innocent party is in cahoots with the delinquent taxpayer and might try to interfere with collection efforts by manipulating records,

then the IRS can invoke the § 7609(g) safety valve. *Supra* pp. 28-29.

Reading § 7609(c)(2)(D)(i) not to require the delinquent taxpayer to have an interest in the summonsed account, on the other hand, conflicts with the statute's history and purpose. As explained, a broad interpretation would undermine the very reason Congress enacted § 7609, specifically the broad privacy protections in subsections (a) and (b). But Congress put subsections (a), (b), and (c)(2)(D)(i) in the same bill. 1976 Act, 90 Stat. at 1699-1701. If Congress enacted subsections (a) and (b) specifically to protect the public's privacy interests, as this Court explained in *Tiffany Fine Arts*, 469 U.S. at 316, then Congress could not have gutted that guarantee just a few provisions later.

2. Reading § 7609(c)(2)(D)(i) broadly is anathema not only to Congress' purpose but also to our legal tradition, and it creates the same opportunity for government abuse that Congress sought to curtail.

a. Congress had good reason to enact § 7609. As this Court has recognized, "[a] person's interest in maintaining the privacy of his 'papers and effects' is of sufficient importance to merit constitutional protection." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992) (quoting U.S. Const. amend. IV). And financial documents like "bank statement[s]" contain "sensitive personal information." *Riley v. California*, 573 U.S. 373, 394-95 (2014). Thus, when the IRS orders third-party recordkeepers to produce financial data about any person—especially innocent persons—that person's privacy interests are at stake.

As Judge Kethledge put it, when the government seeks years of bank statements, "that is the archetype of what the Founding generation would have called 'inquisitorial process,' as opposed to due process of law." Pet. App. 26a. Given the great importance of personal privacy and the significant risks to privacy associated with IRS trawling, Congress had good reasons to enact broad privacy protections in § 7609. Reading § 7609(c)(2)(D)(i) to extend only to scenarios in which delinquent taxpayers have a legal interest in the summonsed account respects these serious privacy concerns.

b. The government and Sixth Circuit's reading of § 7609(c)(2)(D)(i), in contrast, creates exactly the potential for abuse that Congress sought to eliminate. That potential isn't just theoretical. The IRS has not hesitated to summons records of accounts belonging to persons with only a tenuous relationship to the delinquent taxpayer. *See, e.g.*, *Ip*, 205 F.3d at 1169 (bank records of American fiancée of Hong Kong corporation's agent); *Robertson v. United States*, 843 F. Supp. 705, 705 (S.D. Fla. 1993) (bank and property records of third party with "no legal or business relationship with" taxpayers). Of course, there is no telling how often IRS agents have invoked § 7609(c)(2)(D)(i) to summons recordkeepers to disclose private information about an innocent person, all behind that person's back. That's because § 7609(c)(2)(D)(i) doesn't require notice and so both legally and practically doesn't permit a petition to quash.

"Sunlight" may be "the best of disinfectants," L. Brandeis, *Other People's Money* 62 (1933), but the government's rule lets it operate in the shadows. Thus, there's no way the *Federal Reporter* or *Federal*

Supplement chronicles even a fraction of the IRS's summonses. And without the sunlight that notice provides, single IRS agents can invoke § 7609(c)(2)(D)(i) without challenge unless the bank decides to provide notice itself.

The government's response to this point at the cert stage—silence—is telling. Either the government has no idea how often its agents are flying solo (avoiding sunlight even within the agency itself), or it knows but isn't saying. You don't have to be Holmes to recognize the dog that isn't barking. ("Sherlock or Oliver Wendell: either Holmes will do here." *United States v. Takhalov*, 827 F.3d 1307, 1319 n.9 (11th Cir. 2016).)

The government's interpretation of the § 7609(c)(2)(D)(i) exception also puts third-party recordkeepers between a rock and a hard place. On the one hand, they may risk upsetting their innocent customers by complying with the IRS. On the other hand, they will risk being subjected to enforcement proceedings for not timely complying with the summonses. Either way, they lose. What's more, because customer service is a premium in many industries, especially the banking industry, a broad view of the § 7609(c)(2)(D)(i) exception would likely create a de facto notice requirement for third-party recordkeepers. But that just creates more trouble: because the accountholders wouldn't have the right to notice under § 7609(a), they likewise wouldn't have the right to petition to quash. The situation will make banks the target of angry customers when they decide not to oppose the summons in court (even assuming they have grounds to do so). There is no reason to put the onus to safeguard personal privacy on third-party recordholders. Congress determined in § 7609 that the IRS should bear the administrative burden of

giving notice to parties, not third-party recordkeepers, just as it determined in § 7610 that the IRS would pay third-party recordkeepers' reasonable costs of responding to summonses, *see* I.R.C. § 7610(a).

c. This case highlights the potential for abuse under the government's rule. Petitioners claim that the third-party summonses are overbroad and seek irrelevant information. *See* D. Ct. Doc. 3, at 4. "Judicial review of the lawfulness of three summonses is all that [they] seek." Pet. App. 26a (Kethledge, J., dissenting). If § 7609(c)(2)(D)(i) requires Remo to have an interest in the summonsed accounts, then a federal court can decide whether Officer Bryant ordered production of far more records than the law allows, because the government cannot satisfy that test. But if § 7609(c)(2)(D)(i) requires only an effort to collect someone's tax liability, then no court can ever decide whether Officer Bryant is trying to unlawfully invade Petitioners' privacy.

The latter outcome is manifestly unjust. Two Petitioners are law firms. Their bank records reveal information about the clients who have sought their legal advice and who have nothing to do with Remo, the delinquent taxpayer. But despite Officer Bryant's assertion that he only wanted to understand how Remo had paid the firms, Officer Bryant summonsed *all* the bank records pertaining to the law firms over a multiyear period, without regard for the firms' or their clients' privacy. Pet. App. 70a-91a. That was not a reasonable step to take—much less in secret—just because Bryant thought that Remo might be using Dolce Hotel Management, LLC, as an alter ego. Pet. App. 66a-67a. Fortunately, the banks gave Petitioners notice. But under the government's reading of § 7609(c)(2)(D)(i), the *banks* must fight the

summons—and there is no guarantee that they will—or else Petitioners, and their entire client base, are helpless to fight off a single overreaching government agent. That outcome would leave Petitioners, and everyone else similarly situated, with fewer rights to contest an overbroad government summons targeting their personal information than an ordinary civil litigant served with a subpoena seeking documents. *See* Fed. R. Civ. P. 45(d)(3). Congress could not have intended that absurd consequence.

3. Reading § 7609(c)(2)(D)(i) to require the delinquent taxpayer to have a legal interest in the summonsed account will not tie the IRS's hands.

Reading § 7609(c)(2)(D)(i) as Congress intended will not tie the IRS's hands. Congress enacted § 7609 not to strip the IRS of its third-party summons power, but to offset that power with the important procedural protections of notice and an opportunity to petition to quash when privacy rights are at stake. And it placed important limits on those protections.

First, Congress established tight timelines favoring the IRS. For example, the IRS can give notice only 23 days before the third-party recordkeeper must produce the summonsed records or accounts. I.R.C. § 7609(a)(1). And those who receive notice have only 20 days "to begin a proceeding to quash such summons." I.R.C. § 7609(b)(2)(A). Contrast that with Federal Rule of Civil Procedure 4, which provides that "at least 30 days" is "a reasonable time" to give a defendant to decide whether to "waive service of a summons." Fed. R. Civ. P. 4(d)(1)(F).

Second, Congress gave the IRS special exceptions to the notice requirement for scenarios in which

someone might interfere with enforcement efforts. *See Ip*, 205 F.3d at 1172-73. The § 7609(c)(2)(D) exception is one such tool (when the assessed delinquent taxpayer or his transferee or fiduciary has a legal interested in the summonsed account), but it's not the only one. Congress also gave the IRS § 7609(g), a special exception for scenarios in which any person—not just the delinquent taxpayer or his transferee or fiduciary—might try to conceal information, or otherwise interfere with enforcement. *See* I.R.C. § 7609(c)(3), (g). While the IRS under that exception must obtain court approval to withhold notice, it need only meet the low "reasonable cause" standard. I.R.C. § 7609(g).

In short, the IRS has ample tools to collect tax liability. An "inquisitorial process," Pet. App. 26a (Kethledge, J., dissenting), is not one of them.

C. The court of appeals' decision and the government's arguments are wrong.

Section 7609's text, structure, history, and purpose show that § 7609(c)(2)(D)(i) is a narrow exception, applying only when the delinquent taxpayer has a legal interest in the summonsed account. The government and court of appeals' contrary reasoning lacks merit. *First*, construing § 7609(c)(2)(D)(i) to apply whenever the IRS has made a tax assessment violates basic principles of statutory interpretation. It ignores the meaning of "in aid of the collection" and chops off the second half of § 7609(c)(2)(D)(i) and all of clause (ii). The government cannot avoid the resulting surplusage by claiming that clause (ii) actually applies pre-assessment, and the court of appeals' attempts to minimize that surplusage are illogical.

Second, the government's and court of appeals' statutory history and policy arguments fail, too. As

this Court's decisions and § 7609(a) and (b) make clear, § 7609 provides a broad, pro-notice guarantee. The government's response—gymnastics about pre- and post-collection timeframes—only proves that its rule is absurd, giving greater privacy rights to pre-assessment delinquent taxpayers than to innocent parties. And the court of appeals, for its part, sought to mitigate its harsh rule by claiming that innocent taxpayers not entitled to notice could nonetheless challenge summonses as pretextual. Its lack of a textual hook aside, that reasoning makes no sense, because innocent parties cannot challenge summonses they don't know about, much less do so without evidence of bad faith. In sum, neither the government nor the court of appeals has pointed to any reason to adopt the government's broad reading of § 7609(c)(2)(D)(i), which nullifies § 7609(a) and (b)'s critical privacy protections whenever the government can point to a tax assessment.

1. Construing § 7609(c)(2)(D)(i) to require only an assessment of some delinquent taxpayer violates basic interpretive principles.

a. The court of appeals and the government claim to have followed "the literal text of the statute." Pet. App. 14a; *see* Opp. 10-12. That argument fails. *See supra* pp. 19-31. "[T]he textualist's touchstone" is "*fair meaning*," *Reading Law* 356, not "sterile literalism which loses sight of the forest for the trees," *New York Tr. Co. v. Commissioner*, 68 F.2d 19, 20 (2d Cir. 1933) (L. Hand, J.). And a statute's fair meaning turns on the text "as a whole," *Reading Law* 167, because words are "sensibly interpreted" when they are "read in their context and with a view to their place in the overall statutory scheme," *Roberts*, 566 U.S. at 101-02

(citation omitted). The decision below violated those fundamental interpretive principles and read § 7609(c)(2)(D)(i) "in a literal sense" and "in isolation." Pet. App. 29a-30a (Kethledge, J., dissenting). As a result, it "maul[ed] the bulk of § 7609." Pet. App. 30a (Kethledge, J., dissenting).

Consider the court of appeals' and government's approach to the exception's "in aid of the collection" language: silence. Rather than try to interpret that key phrase, the court held that the § 7609(c)(2)(D)(i) exception applied because Officer Bryant wanted "to obtain information about entities or persons with ties to Remo's assets." Pet. App. 11a. Indeed, the court seemed to think that the test was merely whether a summons was "related to" a delinquent taxpayer's liability. *Cf.* Pet. App. 16a ("Summonses issued in aid of collecting a transferee's or fiduciary's liability, moreover, may seek information only obliquely related to the underlying taxpayer."). But "in aid of" a subject does not mean "relating to that subject." *Lamar*, 138 S. Ct. at 1760; *see supra* pp. 21-22. What's more, Congress used the more expansive phrase "in connection with" in § 7609(c)(2)(E), which *can* mean "relating to," *Lamar*, 138 S. Ct. at 1760, and used "relates to" in § 7609(f)(1), but used "in aid of" in § 7609(c)(2)(D), showing that the choice was intentional, *see, e.g.*, *Allina Health Servs.*, 139 S. Ct. at 1813. As explained above, obtaining information about *other people's* accounts doesn't have the direct connection to "the collection" of the assessed taxpayer's assessed liability that the "in aid of the collection" language requires. *Supra* pp. 23-25.

b. In support of its textual argument, the government contends that if § 7609(c)(2)(D)(i) required the delinquent taxpayer to have an interest in the

summonsed account, Congress would have used the language it used in § 7610. *See* Cert Reply 10; Opp. 12-13. That argument fails, because the language in § 7610 addresses a different issue.

Section 7610 states that the government may not reimburse production costs if "the person with respect to whose liability the summons is issued has a *proprietary interest in the books, papers, records or other data required to be produced*." I.R.C. § 7610(b)(1) (emphasis added). But having a "proprietary interest in the … records" doesn't mean having a legal interest in the underlying account. "Proprietary" means "owned or held as property." *Compact OED* 2330. Thus, a proprietary interest in records means an ownership interest *in the records themselves*. In the banking context, only banks have a proprietary interest in account records pertaining to their customers. Indeed, just sixth months before Congress enacted § 7610, *see* 1976 Act, 90 Stat. at 1702, this Court reaffirmed—in a tax evasion case—that bank customers "can assert neither ownership nor possession" over their bank statements, which are "business records of the banks." *United States v. Miller*, 425 U.S. 435, 440 (1976); *see Carpenter v. United States*, 138 S. Ct. 2206, 2216 (2018). Bank customers have privacy interests in the "sensitive personal information" in the records of their accounts, *Riley*, 573 U.S. at 395, but their legal interests are in the underlying accounts themselves. The language in § 7610 prohibits the government from reimbursing delinquent taxpayers for coughing up *their own* records, but it has nothing to do with the legal-interest test under § 7609(c)(2)(D)'s "in aid of … collection" language.

That all makes sense. Indeed, if the government's conflation were right, then the IRS would be unable to

reimburse a bank for producing its records pertaining to a delinquent taxpayer's account. Section 7609(c)(2)(D) and § 7610 are about two different things, and § 7610 sheds no light on how to interpret the § 7609(c)(2)(D)(i) exception here.

c. The government and court of appeals' reading also creates several kinds of superfluity, contrary to their claims of interpreting § 7609(c)(2)(D) according to its plain text. As explained, the government and court's reading effectively cuts off § 7609(c)(2)(D)'s language at "in aid of the collection of (i) an assessment made or judgment rendered," because the language in the rest of clause (i) and the language in clause (ii) have no work to do. *Supra* pp. 25-27. The government's and court's responses fall flat.

i. The government says its reading of § 7609(c)(2)(D)(i) does not in fact create surplusage because clause (i) requires "a formal assessment" but clause (ii) does not. Opp. 14. That is incorrect. As Judge Kethledge explained, "§ 7609(c)(2)(D)(i) applies" when "a tax assessment was previously rendered." Pet. App. 27a. Clause (ii) applies to "the liability at law or in equity of any transferee or fiduciary *of any person referred to in clause (i)*." I.R.C. § 7609(c)(2)(D)(ii) (emphasis added). And clause (i) applies to "an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." I.R.C. § 7609(c)(2)(D)(i). Clause (ii) thus cannot apply before there has been a formal assessment or judgment. The government recognized as much below. *See* IRS CA6 Br., Doc. 22, at 21, 24-25.

Not only does the government's argument fail grammatically; it's also nonsensical as a practical matter. If clause (ii) does not require an assessment or

judgment, even though clause (i) does (as the government agrees, Opp. 16), then that means Congress gave delinquent taxpayers *greater* privacy rights than parties who, in the government's words, have "no discernible connection" to the delinquent taxpayer. IRS CA6 Br., Doc. 22, at 33. For example, on the government's view, the IRS would have to give notice of a summons to a delinquent taxpayer up until it makes an assessment or obtains a judgment. But it would *never* have to give notice to a law firm retained by the delinquent taxpayer's transferee (because the government thinks the taxpayer need not have an interest in the account), even before any assessment or judgment (because the government thinks clause (ii) applies pre-assessment). There is no way Congress gave delinquent taxpayers—those with the greatest incentive to interfere with enforcement efforts—such beneficial treatment. It thus makes sense to read clause (ii) as being "derivative" of the assessment or judgment specifically referenced in clause (i), just as clause (ii)'s wording makes clear. Pet. App. 28a (Kethledge, J., dissenting). Even the panel majority read the statute that way. Pet. App. 15a. And the House Report the government relies on (*see* Opp. 11, 16, 18, 20 n.6) demonstrates that Congress also viewed clause (ii) as being limited to attempts "to enforce fiduciary or transferee liability for a tax *which has been assessed*." H.R. Rep. No. 94-658, at 310 (emphasis added).

ii. The court of appeals took a different approach. Unlike the government's position before this Court, the court of appeals "agree[d] that [its] interpretation of the statute leads to some redundancy." Pet. App. 16a. That realization should have given the court "deep reluctance" to read § 7609(c)(2)(D)(i) "so as to render superfluous other provisions in the same

enactment." *Freytag*, 501 U.S. at 877 (citation omitted). But the court did not seriously consider the surplusage problems, as shown by its failure to give clause (ii) independent effect.

First, the court of appeals claimed that clause (ii) is not superfluous on its reading of clause (i) because transferee and fiduciary liabilities are created by state law. Pet. App. 15a-16a. But the court did not explain why the source of substantive law makes a difference in interpreting the statute. The court's categorical holding—that the IRS never needs to give notice of a third-party summons that somehow relates to collection—does not turn on the source of the IRS's ability to collect. The court of appeals' state-law theory leaves clause (ii) redundant under its clause (i) theory.

Second, the court of appeals claimed that clause (ii) is not superfluous because it would cover a third-party summons targeting bank records pertaining to a spouse of the delinquent taxpayer's transferee, and clause (i) would not. Pet. App. 16a. Another miss. Under a broad reading of clause (i), the IRS would not need clause (ii) in this hypothetical because the summons would still *relate to* the collection of the delinquent taxpayer's liability. *See* Pet. App. 28a-29a (Kethledge, J., dissenting). While the court tried distinguishing between "related to" and "obliquely related to," *see* Pet. App. 16a, nothing in the statute supports either standard. The demarcation also makes no sense in the court's hypothetical. The "expansive" sweep of "related to," *Lamar*, 138 S. Ct. at 1760, surely covers the two degrees of separation between the delinquent taxpayer and the spouse of the taxpayer's transferee.

d. As explained, the government and court of appeals' interpretation of § 7609(c)(2)(D)(i) vitiates the statute's purpose by making subsections (a) and (b) "entirely superfluous" whenever the IRS is collecting a tax liability. Pet. App. 29a (Kethledge, J., dissenting). The court's response to that concern not only ignored statutory text and structure, *see supra* pp. 19-31, but it also lost sight of the reason Congress enacted § 7609: to protect the privacy interests of those whose personal information is the subject of third-party summonses. *Tiffany Fine Arts*, 469 U.S. at 314-16. In the court's view, "[e]xcluding summonses issued in aid of IRS collection efforts from the notice requirement" does not "absorb[] the general [notice] rule" because subsections (a) and (b) still apply outside the collection context. Pet. App. 18a.

That logic is misguided. Innocent parties have privacy interests no matter whether the IRS is engaging in collection-related activities or doing something else. And there is no reason to think that Congress wanted to broadly safeguard privacy in the third-party-summons context—which it indisputably did—and at the same time enable the IRS to conduct fishing expeditions and freely invade privacy whenever the IRS has assessed *someone's* taxes and can think up a summons as way of obtaining information. Such reasoning is "demonstrably at odds" with Congress' intention. *Ip*, 205 F.3d at 1177 (O'Scannlain, J., specially concurring) (citation omitted).

2. The government's and courts of appeals' statutory history and policy arguments fail.

a. There is no question that Congress enacted § 7609 in response to *Donaldson* and *Bisceglia*, and to

protect the privacy interests of those whose personal information is the subject of third-party summonses. As explained above, that historical context supports construing § 7609(c)(2)(D)(i), according to its text and the statutory structure, to require the delinquent taxpayer to have a legal interest in the summonsed account. *Supra* pp. 31-33. But the court of appeals ignored *Donaldson*, *Bisceglia*, and *Tiffany Fine Arts*. The government tries to fill the gap, claiming that the historical context supports its view because Congress drew a line in § 7609 "between pre- and post-assessment summonses," with the "pro-notice" approach applying only to "pre-assessment cases." Opp. 18-19. That argument fails.

First, the government's account of the historical context is wrong, and it ignores statutory text and structure. As noted, *Tiffany Fine Arts* explained that § 7609 is pro-notice. Indeed, by enacting subsections (a) and (b)—the notice provision and the rights that come with it—"Congress modified the result reached in *Donaldson*." *Tiffany Fine Arts*, 469 U.S. at 316. The reason Congress favored notice, of course, is that people cannot protect their "right to privacy," *id.* (citation omitted), if they never know about the privacy invasion in the first place. And, as discussed, § 7609(a) and (b)'s broad language confirms that notice is indeed the heartbeat of § 7609. *See supra* pp. 27-28.

Second, the government's attempt to draw a line at assessment would result in an absurd consequence that Congress could not have intended: pre-assessment delinquent taxpayers would have *greater* privacy rights than innocent parties with little connection to those same delinquent taxpayers. *See supra* pp. 42-23. That's because of an internal contradiction in the government's argument. The government

contends that "Congress struck [a balance] between pre- and post-assessment summonses" because Congress did not want § 7609(a)'s notice requirement to "apply in the case of a summons used solely for purposes of collection." Opp. 18 (quoting H.R. Rep. No. 94-658, at 310). But the government also argues (to avoid surplusage) that the IRS can (and does) collect tax liabilities before an assessment is made. *See* Opp. 14-16. In fact, the government says that the "prospect of collecting" is "greater" before an assessment is made, so the § 7609(c)(2)(D)(ii) exception applies "before a formal assessment has been made." Opp. 15. So when the government says that Congress wanted "notice [to] be provided in the mine-run of pre-assessment cases," Opp. 18, it appears to be attributing to Congress an intention to provide notice in many collection-related scenarios where only the delinquent taxpayer stands to benefit.

b. Confronted with the concerning result of its reasoning, the court of appeals claimed that innocent parties "are free to challenge the summons in court" if they "suspect[] that the IRS harbors ulterior motives." Pet. App. 22a. But "in aid of the collection" is not just a subjective standard to measure the motivations of IRS agents. Even the government doesn't defend that Catch-22. After all, an accountholder cannot petition to challenge a summons she never learns about (because a single IRS agent decides that notice isn't required). Nor can an accountholder prove pretext without evidence of bad faith—something the IRS agent isn't going to mail over any faster than he's going to send over the notice. In the end, the court's handwringing shows just how untenable the government's position is. The best solution to these significant problems is to construe the

§ 7609(c)(2)(D)(i) exception according to its text and the statute's structure and purpose—to require the delinquent taxpayer to have a legal interest in the summonsed account.

D. Petitioners had the right to notice and to petition to quash under § 7609(a) and (b).

Petitioners had a right to notice and to petition to quash because the IRS has not established that Remo Polselli has a legal interest in their bank accounts. The Court should therefore reverse and remand for the lower courts to consider Petitioners' request to quash under § 7609(b)(2) and (h)(1). On remand, if appropriate, the lower courts can also consider the government's argument that Petitioners are not entitled to notice under the legal-interest test. Neither court below made any factual findings, *see* Pet. App. 7a n.5, and even the government below asked for a remand if the court of appeals adopted the legal-interest test. *See* IRS CA6 Br., Doc. 22, at 37-40.

* * *

Statutory text, structure, history, purpose, and policy all make clear that the § 7609(c)(2)(D)(i) applies only when the assessed delinquent taxpayer whose liability the IRS is trying to collect has a legal interest in the summonsed account. The IRS's contrary reading would give IRS agents extraordinary and unreviewable power to operate in the shadows. That isn't what Congress intended, and this Court should put an end to it.

CONCLUSION

The Court should reverse and hold that Petitioners had the rights to notice of and to petition to quash the IRS's summonses.

Respectfully submitted.

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Ave.
Suite 3400
Los Angeles, CA 90071

Maurice A. Rose
Jerry Abraham
ABRAHAM & ROSE, P.L.C.
2600 W. Big Beaver Rd.
Troy, MI 48084

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
Kyser Blakely
Hanaa Khan
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Counsel for Petitioners

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APPENDIX

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APPENDIX A

AMENDMENT IV TO THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B

I.R.C. § 7602 provides:

Examination of books and witnesses

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense

The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties

(1) General notice

An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts

The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions

This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral

(1) Limitation of authority

No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect

For purposes of this subsection—

(A) In general

A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination

A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the

administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person or,

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request, described in subparagraph (A)(ii).

(3) Taxable years, etc., treated separately

For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income

The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(Aug. 16, 1954, ch. 736, 68A Stat. 901; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §333(a), Sept. 3, 1982, 96 Stat. 622; Pub. L. 105–206, title III, §§3412, 3417(a), July 22, 1998, 112 Stat. 751, 757.)

APPENDIX C

I.R.C. § 7603 provides:

Service of summons

(a) In general

A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) Service by mail to third-party recordkeepers

(1) In general

A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

(2) Third-party recordkeeper

For purposes of paragraph (1), the term "third-party recordkeeper" means—

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any

bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A)),

(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))),

(C) any person extending credit through the use of credit cards or similar devices,

(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))),

(E) any attorney,

(F) any accountant,

(G) any barter exchange (as defined in section 6405(c)(3)),

(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof,

(I) any enrolled agent, and

(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)).

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which such source code relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II,

§202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–599, title V, §505(c)(5), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577; Pub. L. 105–206, title III, §§3413(c), 3416(a), July 22, 1998, 112 Stat. 754, 756; Pub. L. 106–554, §1(a)(7) [title III, §319(26)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648.)

APPENDIX D

I.R.C. § 7604 provides:

Enforcement of summons

(a) Jurisdiction of district court

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement

Whenever any person summoned under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States magistrate judge for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or magistrate judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States magistrate judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) Cross references

(1) Authority to issue orders, processes, and judgments

For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) Penalties

For penalties applicable to violation of section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602, see section 7210.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–530, §1(c)(6), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–599, title V, §505(c)(5), (6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

APPENDIX E

I.R.C. § 7605 provides:

Time and place of examination

(a) Time and place

The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421(g)(2), or 6427(j)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

(b) Restrictions on examination of taxpayer

No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) Cross reference

For provisions restricting church tax inquiries and examinations, see section 7611.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 91–172, title I, §121(f), Dec. 30, 1969, 83 Stat. 548; Pub.

L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–530, §1(c)(6), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–599, title V, §505(c)(5), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), title X, §1033(c)(1), July 18, 1984, 98 Stat. 1007, 1039; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577.)

APPENDIX F

I.R.C. § 7606 provides:

Entry of premises for examination of taxable objects

(a) Entry during day

The Secretary may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) Entry at night

When such premises are open at night, the Secretary may enter them while so open, in the performance of his official duties.

(c) Penalties

For penalty for refusal to permit entry or examination, see section 7342.

(Aug. 16, 1954, ch. 736, 68A Stat. 903; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

APPENDIX G

I.R.C. § 7608 provides:

Authority of internal revenue enforcement officers

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary is responsible, may—

(1) carry firearms;

(2) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

(b) Enforcement of laws relating to internal revenue other than subtitle E

(1) Any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service, is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

(c) Rules relating to undercover operations

(1) Certification required for exemption of undercover operations from certain laws

With respect to any undercover investigative operation of the Internal Revenue Service (hereinafter in this subsection referred to as the "Service") which is necessary for the detection and prosecution of offenses under the internal revenue laws, any other criminal provisions of law relating to internal revenue, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service—

(A) sums authorized to be appropriated for the Service may be used—

(i) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(I) sections 1341 and 3324 of title 31, United States Code,

(II) sections 6301(a) and (b)(1)–(3) and 6306 of title 41, United States Code,

(III) chapter 45 of title 41, United States Code,

(IV) section 8141 of title 40, United States Code, and

(V) section 3901 of title 41, United States Code, and

(ii) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such

corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(B) sums authorized to be appropriated for the Service and the proceeds from the undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code, and

(C) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code.

This paragraph shall apply only upon the written certification of the Commissioner of Internal Revenue (or, if designated by the Commissioner, the Deputy Commissioner or an Assistant Commissioner of Internal Revenue) that any action authorized by subparagraph (A), (B), or (C) is necessary for the conduct of such undercover operation.

(2) Liquidation of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his delegate determines is practicable, shall report the circumstances to the Secretary. The proceeds of the liquidation, sale, or other disposition, after

obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(3) Deposit of proceeds

As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (B) and (C) of paragraph (1) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) Audits

(A) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year; and

(i) submit the results of the audit in writing to the Secretary; and

(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(B) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(i) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(ii) the number, by programs, of undercover investigative operations commenced in the 1-year period for which such report is submitted;

(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

(IV) the results of the operation including the results of criminal proceedings.

(5) Definitions

For purposes of paragraph (4)—

(A) Closed

The term "closed" means the date on which the later of the following occurs;

(i) all criminal proceedings (other than appeals) are concluded, or

(ii) covert activities are concluded, whichever occurs later.

(B) Employees

The term "employees" has the meaning given such term by section 2105 of title 5, United States Code.

(C) Undercover investigative operation

The term "undercover investigative operation" means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.

(Added Pub. L. 85–859, title II, §204(14), Sept. 2, 1958, 72 Stat. 1429; amended Pub. L. 87–863, §6(a), Oct. 23, 1962, 76 Stat. 1143; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–690, title VII, §7601(c)(1), (2), Nov. 18, 1988, 102 Stat. 4504; Pub. L. 101–508, title XI, §11704(a)(32), (33), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 104–168, title XII, §1205(b)–(c)(2), July 30, 1996, 110 Stat. 1471, 1472; Pub. L. 104–316, title I, §113, Oct. 19, 1996, 110 Stat. 3833; Pub. L. 105–206, title I, §1103(e)(4), July 22, 1998, 112 Stat. 710; Pub. L. 106–554, §1(a)(7) [title III, §303], Dec. 21, 2000, 114 Stat. 2763, 2763A–632; Pub. L. 107–217, §3(f), Aug. 21, 2002, 116 Stat. 1299; Pub. L. 108–178, §4(e), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–135, title III, §304, Dec. 21, 2005, 119 Stat. 2609; Pub. L. 109–432, div. A, title I, §121, Dec. 20, 2006, 120 Stat. 2944; Pub. L. 110–343, div. C, title IV, §401(a), Oct. 3, 2008, 122 Stat. 3875; Pub. L. 111–350, §5(f), Jan. 4, 2011, 124 Stat. 3848.

APPENDIX H

I.R.C. § 7609 provides:

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)) 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 (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 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.

(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) or under section 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);

(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)).

(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 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with the 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 or under 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.

(Added Pub. L. 94–455, title XII, §1205(a), Oct. 4, 1976, 90 Stat. 1699; amended Pub. L. 95–599, title V, §505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95–600, title VII, §703(*l)(*4), Nov. 6, 1978, 92 Stat. 2943; Pub. L. 96–223, title II, § 232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–248, title III, §§311(b), 331(a)–(d), 332(a), Sept. 3, 1982, 96 Stat. 601, 620, 621; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title VII, §714(i), title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 962, 1007; Pub. L. 98–620, title IV §402(28)(D), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 99–514, title VI, §656(a), title XV, §1561(a), (b), title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2299, 2761, 2778; Pub. L. 100–647, title I, §§1015(*l)(*1), (2), 1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3571, 3572, 3576, 3577; Pub. L. 104–168, title X, §1001(a), July 30, 1996, 110 Stat. 1467; Pub. L. 105–206, title III, §3415(a)–(c), July 22, 1998, 112 Stat. 755; Pub. L. 109–135, title IV, §408(a), Dec. 21, 2005, 119 Stat. 2635.)

APPENDIX I

I.R.C. § 7610 provides:

Fees and costs for witnesses

(a) In general

The Secretary shall by regulations establish the rates and conditions under which payment may be made of—

(1) fees and mileage to persons who are summoned to appear before the Secretary, and

(2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions

No payment may be made under paragraph (2) of subsection (a) if—

(1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or

(2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies

This section applies with respect to any summons authorized under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602.

(Added Pub. L. 94–455, title XII, §1205(a), Oct. 4, 1976, 90 Stat. 1699; amended Pub. L. 95–599, title V, §505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577.)