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Supreme Court: Party Opposing an IRS Summons on Bad Faith Grounds May Examine IRS Officials Only Upon Showing a Plausible Inference of Improper Motive

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In some circumstances, the Internal Revenue Service (IRS) has authority to issue a summons to taxpayers and others to produce documents or give testimony relevant to determining tax liability. If the summoned parties fail to comply with the summons, the IRS may petition a federal district court to enforce the summons.

In a summons enforcement proceeding, the IRS must show, among other things, that it issued the summons in good faith. Once the IRS has made the requisite showing, the summoned party may then oppose the enforcement of the summons on any appropriate ground, including that the summons was not issued in good faith.

What, then, is the minimum a summoned party must show to be entitled to examine the IRS about its motive for issuing the summons?

The United States Supreme Court answered the question in *United States v. Clarke*, 573 U.S. ____ (2014), an opinion issued on June 19, 2014. It held that a summoned party's bare allegation that the IRS issued a summons in bad faith does not entitle the summoned party to examine IRS officials during the summons enforcement proceeding to determine if, in fact, the IRS issued the summons in bad faith. Rather, a summoned party could examine IRS officials ***only*** upon pointing to ***specific facts or circumstances plausibly raising an inference of bad faith***.

The Supreme Court sought to strike a balance between a summoned party's rights and the IRS's need to obtain information relevant to tax enforcement. Consequently, the Supreme Court concluded as follows:

> Naked allegations of improper purpose are not enough: The summoned party must offer some credible evidence supporting his charge. But circumstantial evidence can suffice to meet that burden; after all, direct evidence of another person's bad faith, at this threshold stage, will rarely if ever be available. And although bare assertion or conjecture is not enough, neither is a fleshed out case

> demanded: The summoned party need only make a showing of facts that give rise to a plausible inference of improper motive.

Thus, in order to examine IRS officials about the motive underlying the issuance of a summons, summoned parties will need to set forth sufficient credible allegations from which an improper motive can be inferred.

Takeaway:

Mere allegations of bad faith on behalf of the IRS will not suffice to provide summons recipients in a summons enforcement proceeding the right to question IRS officials about their reasons for issuing a summons. Rather, summons recipients have a right to conduct that examination only when they point to specific facts or circumstances plausibly raising an inference of bad faith. (The Supreme Court specifically declined to address whether a summons is issued in bad faith (i) if the Government moves to enforce it to gain an unfair advantage in Tax Court litigation, or (ii) if a taxpayer declines to extend a statute of limitations. “We state no view on those issues; they are not within the question presented for our review.”)

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Los Angeles lawyers:

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