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Tenth Circuit Reinforces Plain Meaning Rule in IRS Church Audit Protections Case

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Taxpayers and the Internal Revenue Service (IRS) frequently disagree over the meaning of tax statutes and regulations. In *God's Storehouse Topeka Church v. United States*, 2024 U.S. App. LEXIS 8478, 98 F.4th 990 (10th Cir. 2024), the U.S. Court of Appeals for the Tenth Circuit relied on the "plain meaning" approach to statutory interpretation. The court held that special audit procedures in I.R.C. Section 7611 designed to protect churches' First Amendment rights do not constrain the IRS's power to obtain records via third-party summonses in investigating churches. Because it found the statute's text unambiguous, the Court declined to consider the statute's purpose and legislative history in ruling for the IRS.

Case Background

Founded by Richard Kloos and his wife in 2009, God's Storehouse Topeka Church (God's Storehouse or church), a self-declared church, operates a thrift store with a small space inside that serves as a coffee shop. In 2020, during a successful run for state senate, Kloos' campaign purchased yard signs that highlighted his association with the church.

In 2021, the IRS investigated its concerns that God's Storehouse was a thrift store and not a church, improperly intervened in a political campaign, had unrelated business activities subject to tax, and had unpaid employment taxes. After the church objected to the IRS's request for its bank statements, the IRS summonsed Kaw Valley Bank pursuant to I.R.C. Section 7609, seeking bank records for all accounts in the church's name.

The church filed a petition in federal district court to quash the summons alleging that the IRS failed to satisfy procedures in I.R.C. Section 7611, the Church Audit Procedures Act, restricting church tax inquiries and examinations. In particular, the church asserted that the IRS official who approved the inquiry did not qualify as an "appropriate high-level Treasury official" for purposes of I.R.C. Section 7611(a)(2). The district court denied the petition, concluding a third-party summons is not subject to I.R.C. Section 7611, and regardless, the IRS complied with the statute.

Background on IRS Summons Authority and Church Audits

Congress authorizes and requires the IRS "to make inquiries, determinations, and assessments of all taxes" imposed by the Internal

Revenue Code. 26 U.S.C. Section 6201(a). The IRS has “broad latitude” to issue summonses to ascertain the correctness of any return, make a return where none has been made, determine a person's tax liability, or collect tax owed. See *United States v. Clarke*, 573 U.S. 248, 250 (2014) (citing I.R.C. Section 7602(a)).

The IRS regularly issues summons pursuant to I.R.C. Section 7609 to obtain documents held by third parties in connection with an IRS audit. Courts assess whether the IRS properly issued a summons using four factors identified in United States v. Powell, 379 U.S. 48, 57-58 (1965), including whether: (1) the investigation has a legitimate purpose; (2) the inquiry is relevant to that purpose; (3) the information sought is not already within the IRS's possession; and (4) the IRS has followed all required administrative steps. The IRS may meet its burden through a simple affidavit from the IRS agent.

In 1984, Congress passed the Church Audit Procedures Act, 26 U.S.C. Section 7611, to afford churches heightened protections in the audit context while balancing the IRS's ability to investigate church tax avoidance schemes. The statute requires written approval by an “appropriate high-level Treasury official [who] reasonably believes” the organization may not be a church or may otherwise be subject to tax. The IRS may examine church records only “to the extent necessary to determine the liability for, and the amount of, any tax … .” “Church records” means all “corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors.” Church records does not include “records acquired … pursuant to a summons to which Section 7609 applies.”

God's Storehouse argued that when the IRS issues a third-party summons in a church tax examination, it must satisfy the *Powell* factors and I.R.C. Section 7611's scope and approval requirements. God's Storehouse argued it would jeopardize churches' First Amendment rights to allow the IRS to obtain a church's financial statements from a third party without first commencing a valid church tax inquiry and proving the documents are necessary to the IRS inquiry.

Tenth Circuit Decision

On appeal, the Tenth Circuit affirmed the district court's refusal to quash the summons. The court began by stating that, “'As in all cases of statutory construction'” its “'foremost duty is to ascertain the congressional intent and give effect to the legislative will.'” (quoting *Ribas v. Mukasey*, 545 F.3d 922, 929 (10th Cir. 2008)). To determine Congress' intent, the court said it looks first to the statute's language. Id. When the statute's meaning is clear, the literal language controls and it is unnecessary and improper to resort to legislative history. (Citing *United States v. Saenz-Gomez*, 472 F.3d 791, 794 (10th Cir. 2007)).

Applying this axiom, the court found the statute's “plain language … makes clear Section 7609 third-party summonses are not church tax inquiries or examinations.” In particular, the summons was not a “church tax inquiry” because it was made to a bank, not a church. And the summons did not

seek “church records” because it requested the bank's records, not the church's. Regardless, the court noted Section 7611(h)(4)(B)'s definition of “church records” excepts records acquired through a third-party summons. The court observed the Ninth Circuit similarly interpreted the issue in *United States v. C.E. Hobbs Foundation for Religious Training & Education*, 7 F.3d 169, 171 (9th Cir. 1993).

Also noteworthy, the court rejected the church's “extra-textual” argument that the IRS's interpretation would defeat I.R.C. Section 7611's purpose of protecting churches from abusive IRS investigations. In the court's view, not requiring the IRS to satisfy Section 7611's scope and approval requirement before issuing a third-party summons will not diminish churches' rights. Whether the statute strikes the right balance between protecting churches and allowing the IRS to perform its investigative duties is a matter for Congress, not the court, the court added.

In sum, as a result of this decision, in the Tenth Circuit, the IRS does not have to satisfy the requirements in Section 7611 to issue a third-party summons, even where the summons is part of the IRS's investigation of a church.

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