

# The Burger Court Opinion Writing Database

## *Commissioner v. Shapiro*

424 U.S. 614 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

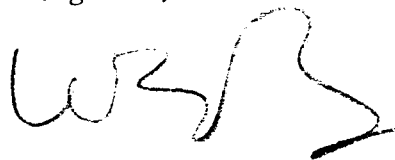
March 4, 1976

Re: 74-744 - CIR v. Shapiro

Dear Byron:

I join your opinion circulated February 19.

Regards,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 29, 1976

RE: No. 74-744 Commissioner of Internal Revenue v.  
Samuel Shapiro et ux.

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543 ✓

CHAMBERS OF  
JUSTICE POTTER STEWART

February 9, 1976

74-744 -- Commissioner v. Shapiro

Dear Byron,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

PS,  
✓

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 1-28-76

Recirculated: \_\_\_\_\_

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-744

Commissioner of Internal Revenue, Petitioner,	} On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.
v.	
Samuel Shapiro et ux.	

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions relating to the scope of the Internal Revenue Code's Anti-Injunction Act, 26 U. S. C. § 7421 (a),<sup>1</sup> in the context of a summary seizure of a taxpayer's assets pursuant to a jeopardy assessment. 26 U. S. C. §§ 6861, 6331, 6213.

## I

Normally, the Internal Revenue Service may not "assess" a tax or collect it, by levying on or otherwise seizing a taxpayer's assets, until the taxpayer has had an opportunity to exhaust his administrative remedies, which include an opportunity to litigate his tax liability fully in the Tax Court, 26 U. S. C. §§ 6212, 6213;<sup>2</sup> and

<sup>1</sup> 26 U. S. C. § 7421 provides in full:

"(a) [as amended by Sec. 110 (c), Federal Tax Lien Act of 1966, P. L. 89-719, 80 Stat. 1125] Tax.—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

<sup>2</sup> 26 U. S. C. § 6212 provides in relevant part:

"(a) [as amended by Sec. 89 (b), Technical Amendments Act

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 18, 1976

Re: No. 74-744 - Commissioner of Internal  
Revenue v. Shapiro

---

Dear Lewis:

I appreciate your January 29 suggestion in this case. It is surely a valid issue, but I would prefer postponing its resolution until we have concrete facts, findings and lower court judgments to help out.

Sincerely,



Mr. Justice Powell

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 5, 14, 17, 18

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Thurgood  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Burger  
Mr. Justice Rehnquist  
Mr. Justice Souter

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 2-19-76

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-744

Commissioner of Internal Revenue, Petitioner,	} On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
v.	
Samuel Shapiro et ux.	

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions relating to the scope of the Internal Revenue Code's Anti-Injunction Act, 26 U. S. C. § 7421 (a),<sup>1</sup> in the context of a summary seizure of a taxpayer's assets pursuant to a jeopardy assessment. 26 U. S. C. §§ 6861, 6331, 6213.

## I

Normally, the Internal Revenue Service may not "assess" a tax or collect it, by levying on or otherwise seizing a taxpayer's assets, until the taxpayer has had an opportunity to exhaust his administrative remedies, which include an opportunity to litigate his tax liability fully in the Tax Court, 26 U. S. C. §§ 6212, 6213;<sup>2</sup> and

<sup>1</sup> 26 U. S. C. § 7421 provides in full:

"(a) [as amended by Sec. 110 (c), Federal Tax Lien Act of 1966, P. L. 89-719, 80 Stat. 1125] Tax.—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

<sup>2</sup> 26 U. S. C. § 6212 provides in relevant part:

"(a) [as amended by Sec. 89 (b), Technical Amendments Act

WD

✓

5, 19

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 3-5-76

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-744

Commissioner of Internal Revenue, Petitioner,	} On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.
<i>v.</i>	
Samuel Shapiro et ux.	

[March 8, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions relating to the scope of the Internal Revenue Code's Anti-Injunction Act, 26 U. S. C. § 7421 (a),<sup>1</sup> in the context of a summary seizure of a taxpayer's assets pursuant to a jeopardy assessment. 26 U. S. C. §§ 6861, 6331, 6213.

## I

Normally, the Internal Revenue Service may not "assess" a tax or collect it, by levying on or otherwise seizing a taxpayer's assets, until the taxpayer has had an opportunity to exhaust his administrative remedies, which include an opportunity to litigate his tax liability fully in the Tax Court, 26 U. S. C. §§ 6212, 6213;<sup>2</sup> and

<sup>1</sup> 26 U. S. C. § 7421 provides in full:

"(a) [as amended by Sec. 110 (c), Federal Tax Lien Act of 1966, P. L. 89-719, 80 Stat. 1125] Tax.—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

<sup>2</sup> 26 U. S. C. § 6212 provides in relevant part:

"(a) [as amended by Sec. 89 (b), Technical Amendments Act



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 19, 1976

Re: No. 74-744 -- Commissioner of Internal Revenue v.  
Samuel Shapiro

Dear Byron:

Please join me.

Sincerely,

*T.M.*

T. M.

Mr. Justice White

cc: The Conference

WB



January 29, 1976

No. 74-744 Commissioner v. Shapiro

Dear Byron:

I am happy to join your opinion in the above case.

There is, however, one point that I hope you will consider. It relates to the extent of the burden on the IRS where its information is derived from an informer. At page 17, you state that "affidavits are sufficient so long as they disclose basic facts . . . ." A substantial percentage of IRS assessments (as was true in this case) probably are based on information from informers. In a criminal case, the Government has to demonstrate the reliability of the informer. I do not think the IRS should be compelled to prove reliability when it merely seeks to avoid an injunction. I would think that the reliability of the informer, relied upon by IRS for information in its affidavit, should be assumed for this purpose. Otherwise, a good deal of harassment and delay could result.

If you agree with this, perhaps a clarifying footnote could be added.

Sincerely,

Mr. Justice White

LFP/gg

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 29, 1976

No. 74-744 Commissioner v. Shapiro

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

CC: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 3, 1976

Re: Commissioner of Internal Revenue v. Shapiro

74-744

Dear Harry:

Please join me in your dissenting opinion in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference