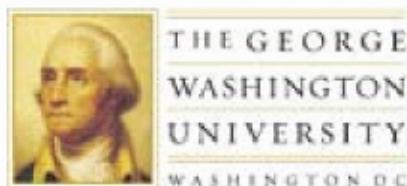


The Burger Court Opinion Writing Database

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,

7.51

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

[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),¹ 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;² and

¹ 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."

² 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 Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

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

[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),¹ 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;² and

¹ 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."

² 26 U. S. C. § 6212 provides in relevant part:

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

WB

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

[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),¹ 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;² and

¹ 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."

² 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

WJS

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

From: Mr. Justice Blackmun

Circulated: 3/3/76

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-744

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

[March —, 1976]

MR. JUSTICE BLACKMUN, dissenting.

I would have thought that when the Commissioner of Internal Revenue, on December 21, 1973, provided respondent Shapiro with supplements to the responses to the interrogatories, at that time, if not before, he surely satisfied and met all that was required to bring the Anti-Injunction Act, 26 U. S. C. § 7421 (a), and the principle of *Enochs v. Williams Packing & Navigation Co.*, 370 U. S. 1 (1962), into full and effective application. It would follow that the District Court's dismissal of the complaint at that point was entirely proper and should have been affirmed.

Given, however, the result the Court very recently reached in *Laing v. United States*, — U. S. — (1976), the decision today, shored up by what seems to me to be the inapposite cases cited in its eleventh footnote, *ante*, p. 14, is not unexpected. I am far from certain that the Court is correct, and I am confused by the Court's failure even to cite *Bob Jones University v. Simon*, 416 U. S. 725 (1974), and *Commissioner v. "Americans United," Inc.*, 416 U. S. 752 (1974), two cases heavily relied upon by the Commissioner here and, I think, of some significance. I observe only that, with *Laing* and the present decision, the Court now has traveled a long way down the road that emasculates the Anti-Injunction Act, and down the

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