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## **U.S. Court of Appeals Rules IRS Cannot Apply Force Against a Tax Payer Without A Court Order**

### **Tax Payers Free To Ignore An IRS Summons**

*Queensbury, NY* – On January 25, 2005, the U.S. Court of Appeals for the Second Circuit held that taxpayers cannot be compelled by the IRS to turn over personal and private property to the IRS, absent a federal court order.

Quoting from the decision (*Schulz v. IRS*, case number 04-0196-cv), “...absent an effort to seek enforcement through a federal court, IRS summonses apply no force to taxpayers, and no consequence whatever can befall a taxpayer who refuses, ignores, or otherwise does not comply with an IRS summons until that summons is backed by a federal court order...[a taxpayer] cannot be held in contempt, arrested, detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the taxpayer's reasons, or lack of reasons for so refusing.”

Without declaring those provisions of the Code unconstitutional on their face, the court, in effect, nullified key enforcement provisions of the Internal Revenue Code, stripping the IRS of much of its power to compel compliance with its administrative demands for personal and private property. The court characterized IRS summonses issued under Section 7602 as mere “requests.”

The court went on to say that the federal courts are there to protect taxpayers from an “overreaching” IRS, and that the IRS must go through the federal courts before force can be applied on anyone by the IRS to turn over personal and private property to the IRS.

In addition, the Court held, in effect, that the enforcement language of Section 7604 of the Internal Revenue Code is unconstitutional. In plain language, Section 7604 directs federal District Court judges to issue orders, merely upon a request by the IRS, for the immediate arrest and incarceration of a tax payer “for contempt” for not complying with the demands of an IRS administrative summons/request.

Prior to the 2<sup>nd</sup> Circuit’s recent landmark decision, the common practice of compliant federal judges was to issue such orders, often without an evidentiary hearing or allowing the taxpayer, in an Article III Federal Court, to challenge IRS claims before being subjected to formal enforcement proceedings (liens, levies, wage garnishments, searches, property seizures, etc.). The result has been widespread and egregious abuse of its lawful authority by the IRS, and substantial injury to millions of tax payers.

“Does the Court’s decision mean that companies do not have to turn over a worker’s paycheck to the IRS simply because the IRS demanded it, and banks do not have to turn over to the IRS the contents of someone’s bank account merely because the IRS requested it?” asked Bob Schulz, the plaintiff in the case, and the Chairman of the We The People Foundation for Constitutional Education, Inc.

Schulz asked, “Does this mean that at least in the 2<sup>nd</sup> Circuit, no individual, no third party (such as an employer or a bank) need worry about being threatened and intimidated by the IRS for refusing to comply with an IRS demand for personal and private property? Isn’t the 2<sup>nd</sup> Circuit Court of Appeals stating, in clear language, that without an Article III Federal Court order, the IRS cannot apply force against a tax payer?”

“We would agree, the use of force by the IRS against the person or property of any tax payer without an evidentiary hearing and formal order issued by an Article III Federal Court, is a direct violation of the Privacy and Due Process clauses of the United States Constitution. It appears that the IRS has now been put on notice – they are not above the law.”

In 2003, Schulz, was served several IRS summonses ordering him to produce his books and records. Schulz, as plaintiff, immediately challenged the IRS in District Court on constitutional grounds, claiming that the summonses were issued without any *bona fide* authority in law and with the sole, deliberate intent to harass and intimidate as a result of the Foundation's high-profile activism questioning the lawful authority of the IRS to impose a direct, un-apportioned tax on labor.

Despite the clear language of an IRS summons which states, “**You are hereby summoned and required...**” and the threatening language of the federal tax statute at 26 USC 7604 (which governs enforcement of IRS summons), the 2<sup>nd</sup> Circuit Court of Appeals has effectively ruled that the language of the Internal Revenue Code, and the administrative and enforcement practices of the IRS and DOJ, must comply with the strict Due Process requirements of the United States Constitution, and that the IRS will not be allowed to continue its practice of serving summonses upon average tax payers with the intent of intimidating them into compliance.

Naturally, this Appellate decision directly leads to further questions regarding IRS's other day-to-day administrative practices where substantial constitutional “injuries” are, in fact, inflicted routinely upon citizens and businesses in the form of liens, levies, salary garnishments, property seizures, etc. -- all of which are administrative, agency actions taken without any judicial review or court order.

The 2<sup>nd</sup> Circuit’s decision also carries profound implications regarding the Foundation’s historic Right-to-Petition Lawsuit now underway in the D.C. Federal District. (*We The People, et al v. The United States, et al.*, Civ. No. 04-01211)

The IRS and DOJ, as defendants in the RTP lawsuit, have recently filed motions asserting that the government has “no obligation” to “listen to” or “respond to” the People’s First Amendment Petitions regarding the unlawful administrative and enforcement practices and the systemic abuse of power by the IRS and DOJ.

(more)

The 2<sup>nd</sup> Circuit's recent decision could potentially have a powerful positive effect on the RTP lawsuit, and the People's historic struggle to hold the IRS and our government leaders at every level, accountable to the law.

The Court's decision in the Schulz case is an historic and courageous first step in restoring constitutional order to the administration and enforcement of our nation's tax laws, and effectively puts the IRS and DOJ on notice that violations of tax payer's Due Process rights will no longer be tolerated.

To read the Second Circuit's decision, go to

**[www.GiveMeLiberty.org/rtplawsuit/courtfilings/2ndCirc-Decision-Jan-05.pdf](http://www.GiveMeLiberty.org/rtplawsuit/courtfilings/2ndCirc-Decision-Jan-05.pdf)**

To learn about the Right-to-Petition lawsuit and read the RTP legal research, go to

**[www.GiveMeLiberty.org/rtplawsuit/InfoCenter.htm](http://www.GiveMeLiberty.org/rtplawsuit/InfoCenter.htm)**

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