UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States v. Rockwell International

United States v. Rockwell International, 897 F.2d 1255 (3d Cir. 1990) · Decided March 12, 1990

SUMMARY

IRS summons enforcement; tax accrual workpapers ("free reserve file"); relevance standard under 26 U.S.C. § 7602 must be measured by the IRS's overarching institutional purpose (investigating correctness of the entire return), not by a single agent's narrow statements. The district court erred by delegating the relevance determination to an independent accounting firm, as courts must retain ultimate decision-making authority. On remand, the district court must also make factual findings on whether the file is protected by attorney-client privilege or work product doctrine, including whether disclosure to outside auditors constituted waiver. Appellate jurisdiction upheld because the order was final.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Becker; Higginbotham; Nygaard
JURISDICTION	Federal
DECIDED	March 12, 1990
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Appeal from order of district court granting in part and denying in part petition to enforce IRS summons.
STANDARD OF REVIEW	For legal issues, de novo; for factual findings, clearly erroneous.
PRECEDENTIAL VALUE	Published
PARTIES	United States, Robert Hackett v. Rockwell International Corporation

TOPICS

tax · civil procedure · appellate procedure · evidence

PRACTICE AREAS

Tax · Civil Procedure

QUESTIONS PRESENTED

1. Whether the district court's order was final and appealable under 28 U.S.C. § 1291.
2. Whether the district court erred in limiting the scope of relevance to the Chattanooga plant closing rather than the entire 1983 tax return.
3. Whether the district court properly delegated the relevance determination to an independent accounting firm.
4. Whether the district court erred in rejecting the attorney-client privilege and work product doctrine without sufficient factual findings.

HOLDINGS

1. The district court's order was final and appealable because it was the court's last word on the matter, leaving nothing further for the court to do.
2. The district court erred by ignoring the overarching institutional purpose of the IRS and by making its decision solely on the basis of a single agent's statements. The proper test is whether the information is relevant to the IRS's investigation of the correctness of the entire 1983 return.
3. The district court's delegation of the relevancy determination to an independent auditor was unauthorized. The court must make the relevancy determination itself because IRS summonses can be enforced only by the courts.
4. The district court erred by failing to make requisite factual findings to support its rejection of the attorney-client privilege and work product doctrine. The case is remanded for findings on the nature of the documents, source of preparation, purpose, control, confidentiality, and waiver.

KEY QUOTATIONS

> *"The Fifth Circuit has ruled on the vulnerability of a tax contingency file to an IRS summons. In United States v. El Paso, 682 F.2d 530 (5th Cir.1982), the court entertained a motion to enforce a summons for the tax pool analysis and supporting memoranda (the equivalent of the free reserve file). The court held that the information in the file was relevant, Id. at 537, and that the file was not shielded by the attorney-client privilege, Id. at 539-41, or the work-product privilege, Id. at 542-44."* (1260)

> *"(a) Authority to summon, etc. — For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized— (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry."* (1261)

> *"show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and*

> *that the administrative steps required by the Code have been followed.”* (1262)

FACTUAL BACKGROUND

During an audit of Rockwell's 1983 tax return, the IRS discovered a memorandum indicating that Rockwell had understated its income by approximately $13 million due to improper reporting of a plant closing in Chattanooga, Tennessee. The IRS launched a joint civil/criminal investigation and issued a summons for Rockwell's free reserve file, which contains analyses of potential tax liabilities. Rockwell refused to produce the file, claiming it was irrelevant to the plant closing and protected by the attorney-client privilege and work product doctrine.

PROCEDURAL HISTORY

The IRS issued a summons to Rockwell for its free reserve file. Rockwell refused, and the government filed a petition to enforce in the district court. The district court ordered enforcement conditioned on review by an independent accounting firm. Both parties appealed.

DISPOSITION

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vacated_and_remanded
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REMAND INSTRUCTIONS

On remand, the district court shall determine the relevance of the free reserve file to the 1983 tax return as a whole, without limiting to the Chattanooga plant closing. If the file or portions thereof are found relevant, the court shall make specific factual findings on the attorney-client privilege and work product doctrine, including the nature of the documents, the source of preparation, the purpose of the file, control, confidentiality, and whether any privilege was waived by disclosure to outside auditors or the SEC.

CASES CITED

- United States v. Allee, 888 F.2d 208 (1st Cir. 1989)
- Reisman v. Caplin, 375 U.S. 440 (1964)
- Steinert v. United States, 571 F.2d 1105 (9th Cir. 1978)
- United States v. Author Servs., 804 F.2d 1520 (9th Cir. 1986)
- United States v. Barrett, 837 F.2d 1341 (5th Cir. 1988) (en banc)
- United States v. Zolin, 109 S.Ct. 2619 (1989)
- United States v. Powell, 379 U.S. 48 (1964)
- United States v. LaSalle Nat'l Bank, 437 U.S. 298 (1978)
- United States v. Bisceglia, 420 U.S. 141 (1975)
- United States v. Coopers & Lybrand, 550 F.2d 615 (10th Cir. 1977)
- United States v. El Paso Co., 682 F.2d 530 (5th Cir. 1982)
- United States v. Arthur Young & Co., 465 U.S. 805 (1984)

- United States v. Egenberg, 443 F.2d 512 (3d Cir. 1971)
- United States v. Harrington, 388 F.2d 520 (2d Cir. 1968)
- LaMura v. United States, 765 F.2d 974 (11th Cir. 1985)
- United States v. Southwestern Bank & Trust Co., 693 F.2d 994 (10th Cir. 1982)
- Gomez v. United States, 109 S.Ct. 2237 (1989)
- Donaldson v. United States, 400 U.S. 517 (1971)
- Upjohn Co. v. United States, 449 U.S. 383 (1981)
- United States v. Kovel, 296 F.2d 918 (2d Cir. 1961)
- United States v. Bump, 605 F.2d 548 (10th Cir. 1979)
- United States v. Davis, 636 F.2d 1028 (5th Cir. 1981)
- United States v. First State Bank, 691 F.2d 332 (7th Cir. 1982)
- United States v. Amerada Hess Corp., 619 F.2d 980 (3d Cir. 1980)
- In re Grand Jury Proceedings, 604 F.2d 798 (3d Cir. 1979)
- In re Grand Jury Investigation, 599 F.2d 1224 (3d Cir. 1979)

CITED IN

- United States v. Rockwell International, U.S. v. Rockwell Intern., 897 F.2d 1255, 1266 (3d Cir. 1990)