518 U.S. 213
116 S.Ct. 2106
135 L.Ed.2d 506
UNITED STATES, Petitioner,

v.

REORGANIZED CF & I FABRICATORS OF UTAH, INC., et al.

No. 95-325.
Supreme Court of the United States
Argued March 25, 1996.
Decided June 20, 1996.

Syllabus *

The Employee Retirement Income Security Act of 1974 obligated CF & I Steel Corporation and its subsidiaries (CF & I) to make certain annual funding contributions to pension plans they sponsored. The required contribution for the 1989 plan year totaled some $12.4 million, but CF & I failed to make the payment and petitioned the Bankruptcy Court for Chapter 11 reorganization. The Government filed, *inter alia,* a proof of claim for tax liability arising under § 4971(a) of the Internal Revenue Code, 26 U.S.C. § 4971(a), which imposes a 10 percent "tax" (of $1.24 million here) on any "accumulated funding deficiency" of plans such as CF & I's. The court allowed the claim but rejected the Government's argument that the claim was entitled to seventh priority as an "excise tax" under § 507(a)(7)(E) of the Bankruptcy Code, 11 U.S.C. § 507(a)(7)(E), finding instead that § 4971 created a penalty that was not in compensation for pecuniary loss. The Bankruptcy Court also subordinated the § 4971 claim to those of all other general unsecured creditors, on the supposed authority of the Bankruptcy Code's provision for equitable subordination, 11 U.S.C. § 510(c), and later approved a reorganization plan for CF & I giving lowest priority (and no money) to claims for noncompensatory penalties. The District Court and the Tenth Circuit affirmed.

Held:

1. The "tax" under § 4971(a) was not entitled to seventh priority as an "excise tax" under § 507(a)(7)(E), but instead is, for bankruptcy purposes, a penalty to be dealt with as an ordinary, unsecured claim. Pp. ___-___.

(a) Here and there in the Bankruptcy Code Congress has referred to the Internal Revenue Code or other federal statutes to define or explain particular terms. It is significant that Congress included no such reference in § 507(a)(7)(E), even though the Bankruptcy Code provides no definition of "excise," "tax," or "excise tax." This absence of any explicit connection between § 507(a)(7)(E) and § 4971 is all the more revealing in light of this Court's history of interpretive practice in determining whether a "tax" so called in the statute creating it is also a "tax" for the purposes of the bankruptcy laws. Pp. ___-___.

(b) That history reveals that characterizations in the Internal Revenue Code are not dispositive in the bankruptcy context. In every case in which the Court considered whether a particular exaction called a "tax" in the statute creating it was a tax for bankruptcy purposes, the Court looked behind the label and rested its answer directly on the operation of the provision. See, *e.g., United States v. New York,* 315 U.S. 510, 514-517, 62 S.Ct. 712, 714-716, 86 L.Ed. 998. Congress has given no statutory indication that it intended a different interpretive method for reading terms used in the Bankruptcy Act of 1978, *Midlantic Nat. Bank v. New Jersey Dept. of Environmental Protection,* 474 U.S. 494, 501, 106 S.Ct. 755, 759-760, 88 L.Ed.2d 859, and the Bankruptcy Code's specific references to the Internal Revenue Code indicates that no general cross-identity was intended. The Government suggests that the plain texts of § 4971 and § 507(a)(7)(E) resolve this case, but this approach is inconsistent with this Court's cases, which refused to rely on statutory terminology, and is unavailing on its own terms, because the Government disavows any suggestion that the use of the words "Excise Taxes" in the title of the chapter covering § 4971 or the word "tax" in § 4971(a) is dispositive as to whether § 4971(a) is a tax for purposes of § 507(a)(7)(E). The Government also seeks to rely on a statement from the legislative history that all taxes "generally considered or expressly treated as excises are covered by" § 507(a)(7)(E), but § 4971 does not call its exaction an excise tax, and the suggestion that taxes treated as excises are "excise tax[es]" begs the question whether the exaction is a tax to begin with. There is no basis, therefore, for avoiding the functional examination that the Court ordinarily employs. Pp. ___-___.

(c) The Court's cases in this area look to whether the purpose of an exaction is support of the government or punishment for an unlawful act. If the concept of a penalty means anything, it means punishment for an unlawful act or omission, and that is what this exaction is. The § 4971 exaction is imposed for violating a separate federal statute requiring the funding of pension plans, and thus has an obviously penal character. Pp. ___-___.

(d) The legislative history reflects the statute's punitive character. P. 2114.SC2S2. The subordination of the Government's § 4971 claim to those of the other general unsecured creditors pursuant to § 510(c) was error. Categorical reordering of priorities that takes place at the legislative level of consideration is beyond the scope of judicial authority to order equitable subordination under § 510(c). Pp. ___-____.

53 F.3d 1155, reversed and remanded.

SOUTER, J., delivered the opinion for a unanimous Court with respect to Part III, the opinion of the Court with respect to Parts I, II-A, II-B, and II-C, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined, and the opinion of the Court with respect to Part II-D, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, KENNEDY, GINSBURG, and BREYER, JJ., joined. THOMAS, J, filed an opinion concurring in part and dissenting in part.

Kent L. Jones, Washington, DC, for petitioner.

Steven Jack McCardell, Salt Lake City, UT, for respondents.

Justice SOUTER delivered the opinion of the Court.[**]

This case presents two questions affecting the priority of an unsecured claim in bankruptcy to collect an exaction under 26 U.S.C. § 4971(a), requiring a payment to the Internal Revenue Service equal to 10 percent of any accumulated funding deficiency of certain pension plans: first, whether the exaction is an "excise tax" for purposes of 11 U.S.C. § 507(a)(7)(E) (1988 ed.), [1] which at the time relevant here gave seventh priority to a claim for such a tax; and, second, whether principles of equitable subordination support a categorical rule placing § 4971 claims at a lower priority than unsecured claims generally. We hold that § 4971(a) does not create an excise tax within the meaning of § 507(a)(7)(E), but that categorical subordination of the Government's claim to those of other unsecured creditors was error.

I

The CF & I Steel Corporation and its nine subsidiaries (CF & I) sponsored two pension plans, with the consequence that CF & I was obligated by the Employee Retirement Income Security Act of 1974, 88 Stat. 935, 29 U.S.C. § 1001 *et seq.* (ERISA), to make certain annual minimum funding contributions to the plans based on the value of the benefits earned by its employees. See 29 U.S.C. § 1082; 26 U.S.C. § 412. The annual payments were due each September 15th for the preceding plan year, see 26 CFR § 11.412(c)-12(b) (1995), and on September 15, 1990, CF & I was required to pay a total of some $12.4 million for the year ending December 31, 1989. The day passed without any such payment, and on November 7, 1990, CF & I petitioned the United States Bankruptcy Court for the District of Utah for relief under Chapter 11 of the Bankruptcy Code, in an attempt at financial reorganization prompted in large part by the company's inability to fund the pension plans. *In re: CF & I Fabricators of Utah, Inc.,* 148 B.R. 332, 334 (Bkrtcy.D.Utah 1992).

In 1991, the IRS filed several proofs of claim for tax liabilities, one of which arose under 26 U.S.C. § 4971(a), imposing a 10 percent "tax" (of $1.24 million here) on any "accumulated funding deficiency" of certain pension plans. [2] The Government sought priority for the claim, either as an "excise tax" within the meaning of 11 U.S.C. § 507(a)(7)(E) (1988 ed.), or as a tax penalty in compensation for pecuniary loss under § 507(a)(7)(G). CF & I disputed each alternative, and by separate adversary complaint asked the Bankruptcy Court to subordinate the § 4971 claim to those of general unsecured creditors.

The Bankruptcy Court allowed the Government's claim under § 4971(a) but denied it any priority under § 507(a)(7), finding the liability neither an "excise tax" under § 507(a)(7)(E) nor a tax penalty in compensation for actual pecuniary loss under § 507(a)(7)(G). Instead, the court read § 4971 as creating a noncompensatory penalty, 148 B.R., at 340, and by subsequent order subordinated the claim to those of all other general unsecured creditors, on the supposed authority of the Bankruptcy Code's provision for equitable subordination, 11 U.S.C. § 510(c).

The Government appealed to the District Court for the District of Utah, pressing its excise tax theory and objecting to equitable subordination as improper in the absence of government misconduct. While that appeal was pending, CF & I presented the Bankruptcy Court with a reorganization plan that put the § 4971 claim in what the plan called Class 13, a special category giving lowest priority (and no money) to claims for nonpecuniary loss penalties; but it also provided that, if the court found subordination behind general unsecured claims to be inappropriate, the § 4971 claim would be ranked with them in what the reorganization plan called Class 12 (which would receive some funds). Appellees' Appendix in No. 94-4034 et al. (CA10), pp. 96-101, 137-141, 197-200. The United States objected, but the Bankruptcy Court affirmed the plan. The Government appealed this order as well, and the District Court affirmed both the denial of excise tax treatment and the subsequent subordination to general unsecured claims. App. to Pet. for Cert. A-11. The Tenth Circuit likewise affirmed. 53 F.3d 1155 (1995).

We granted certiorari, 516 U.S. ----, 116 S.Ct. 558, 133 L.Ed.2d 458 (1995), to resolve a conflict among the Circuits over whether § 4971(a) claims are excise taxes within the meaning of § 507(a)(7)(E), and whether such claims are categorically subject to equitable subordination under § 510(c). [3] We affirm on the first question but on the second vacate the judgment and remand.

No one denies that Congress could have included a provision in the Bankruptcy Code calling a § 4971 exaction an excise tax (thereby affording it the priority claimed by the Government); the only question is whether the exaction ought to be treated as a tax (and, if so, an excise) without some such dispositive direction.

A

Here and there in the Bankruptcy Code Congress has included specific directions that establish the significance for bankruptcy law of a term used elsewhere in the federal statutes. Some bankruptcy provisions deal specifically with subjects as identified by terms defined outside the Bankruptcy Code; 11 U.S.C. § 523(a)(13), for example, addresses "restitution issued under title 18, United States Code," and § 507(a)(1) refers to "any fees and charges assessed against the estate under chapter 123 of title 28." Other bankruptcy provisions directly adopt definitions contained in other statutes; thus §§ 761(5), (7), and (8) adopt the Commodity Exchange Act's definitions of "commodity option," "contract market," "contract of sale," and so on. Not surprisingly, there are places where the Bankruptcy Code makes referential use of the Internal Revenue Code, as 11 U.S.C. § 101(41)(C)(i) does in referring to "an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code," and as § 346(g)(1)(C) does in providing for recognition of a gain or loss "to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code."

It is significant, therefore, that Congress included no such refer ence in § 507(a)(7)(E), even though the Bankruptcy Code itself provides no definition of "excise," "tax," or "excise tax." This absence of any explicit connector between § 507(a)(7)(E) and § 4971 is all the more revealing in light of the following history of interpretive practice in determining whether a "tax" so called in the statute creating it is also a "tax" (as distinct from a debt or penalty) for the purpose of setting the priority of a claim under the bankruptcy laws.CCSBDB1S Although § 507(a)(7), giving seventh priority to several different kinds of taxes, was enacted as part of the Bankruptcy Act of 1978, 92 Stat. 2590 (1978 Act), a priority provision for taxes was nothing new. Section 64(a) of the Bankruptcy Act of 1898 (1898 Act), which governed (as frequently amended) until 1978, gave priority to "taxes legally due and owing by the bankrupt to the United States [or a] State, county, district, or municipality." 30 Stat. 544, 563. [4] On a number of occasions, this Court considered whether a particular exaction, whether or not called a "tax" in the statute creating it, was a tax for purposes of § 64(a), and in every one of those cases the Court looked behind the label placed on the exaction and rested its answer directly on the operation of the provision using the term in question.

The earliest such cases involved state taxes and are exemplified by *City of New York v. Feiring,* 313 U.S. 283, 61 S.Ct. 1028, 85 L.Ed. 1333 (1941). In considering whether a New York sales tax was a "tax" entitled to priority under § 64(a), the Court placed no weight on the "tax" label in the New York law, and looked to the state statute only "to ascertain whether its incidents are such as to constitute a tax within the meaning of § 64." *Id.,* at 285, 61 S.Ct., at 1029. *New Jersey v. Anderson,* 203 U.S. 483, 492, 27 S.Ct. 137, 140, 51 L.Ed. 284 (1906); *New York v. Jersawit,* 263 U.S. 493, 495-496, 44 S.Ct. 167, 167-168, 68 L.Ed. 405 (1924). The Court later followed the same course when a federal statute created the exaction. *United States v. New York,* 315 U.S. 510, 62 S.Ct. 712, 86 L.Ed. 998 (1942), the Court considered whether " 'tax[es]' " so called in two federal statutes, *id.,* at 512, n. 2, 62 S.Ct., at 713, n. 2, were entitled to priority as "taxes" under § 64(a). In each instance the decision turned on the actual effects of the exactions, *id.,* at 514-517, 62 S.Ct., at 714-716, with the Court citing *Feiring* and *Anderson* as authority for its enquiry. 315 U.S., at 514-516, 62 S.Ct., at 714-715. *United States v. Childs,* 266 U.S. 304, 309-310, 45 S.Ct. 110, 111, 69 L.Ed. 299 (1924); *United States v. Sotelo,* 436 U.S. 268, 275, 98 S.Ct. 1795, 1800, 56 L.Ed.2d 275 (1978) ("We . . . cannot agree with the Court of Appeals that the 'penalty' language of Internal Revenue Code § 6672 is dispositive of the status of respondent's debt under Bankruptcy Act § 17(a)(1)(e)"). [5]

Congress could, of course, have intended a different interpretive method for reading terms used in the Bankruptcy Code it created in 1978. But if it had so intended we would expect some statutory indication, *Midlantic Nat. Bank v. New Jersey Dept. of Environmental Protection,* 474 U.S. 494, 501, 106 S.Ct. 755, 759-760, 88 L.Ed.2d 859 (1986), whereas the most obvious statutory indicator is very much to the contrary: in the specific instances noted before, it would have been redundant for Congress to refer specifically to Internal Revenue Code definitions of given terms if such cross-identity were to be assumed or presumed, as a matter of interpretive course.

While the Government does not directly challenge the continuing vitality of the cases in the *Feiring* line, it seeks to sidestep them by arguing, first, that similarities between the plain texts of § 4971 and § 507(a)(7)(E) resolve this case. This approach, however, is inconsistent with *New York* and *Sotelo,* in each of which the Court refused to rely on the terminology used in the relevant tax and bankruptcy provisions. 6 The argument is also unavailing on its own terms, for even if we were to accept the proposition that comparable use of similar terms is dispositive, the Government's plain text argument still would fail.

The word "excise" appears nowhere in § 4971 (whereas, by contrast, 26 U.S.C. § 4401 explicitly states that it imposes "an excise tax"). And although there is one reference to "excise taxes" that applies to § 4971 in the title of the chapter covering that section ("Subtitle D--Miscellaneous Excise Taxes"), the Government disclaims any reliance on that caption. Tr. of Oral Arg. 14, 17-20; see also 26 U.S.C. § 7806(b) ("No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title"). Furthermore, though § 4971(a) does explicitly refer to its exaction as a "tax," the Government disavows any suggestion that this language is dispositive as to whether § 4971(a) is a tax for purposes of § 507(a)(7)(E); while § 4971(b) "impos[es] a tax equal to 100 percent of [the] accumulated funding deficiency to the extent not corrected," the Government says that this explicit language does not answer the question whether § 4971(b) is, in fact, a tax under § 507(a)(7)(E). Reply Brief for United States 13-14; Tr. of Oral Arg. 19-24. The Government's positions, then, undermine its suggestion that the statutes' texts standing together demonstrate that § 4971(a) imposes an excise tax.

The Government's second effort to avoid a *New York* and *Sotelo* interpretive enquiry relies on a statement from the legislative history of the 1978 Act, that "[a]ll Federal, State or local taxes generally considered or expressly treated as excises are covered by" § 507(a)(7)(E). 124 Cong. Rec. 32,416 (1978) (remarks of Rep. Edwards); *id.,* at 34,016 (remarks of Sen. DeConcini). But even taking this statement as authoritative, it would provide little support for the Government's position. Although the statement may mean that all exactions called 7 "excise taxes" should be covered by § 507(a)(7)(E), 8 § 4971 does not call its exaction an ex cise tax. And although the section occurs in a subtitle with a heading of "Miscellaneous Excise Taxes," the Government has disclaimed reliance on the subtitle heading as authority for its position in this case, recognizing the provision of 26 U.S.C. § 7806(b) that no inference of legislative construction should be drawn from the placement of a provision in the Internal Revenue Code. See *supra,* at __; Tr. of Oral Arg. 19. If, on the other hand, the statement in the legislative history is read more literally, its apparent upshot is that, among those exactions that are taxes, the ones that are expressly treated as excises are "excise tax[es]" within the meaning of § 507(a)(7)(E). But that proposition fails, of course, to answer the question whether the exaction is a tax to begin with.

In sum, we conclude that the 1978 Act reveals no congressional intent to reject generally the interpretive principle that characterizations in the Internal Revenue Code are not dispositive in the bankruptcy context, and no specific provision that would relieve us from making a functional examination of § 4971(a). We proceed to that examination.CCSCDB1S *Anderson* and *New York* applied the same test in determining whether an exaction was a tax under § 64(a), or a penalty or debt: "a tax is a pecuniary burden laid upon individuals or property for the purpose of supporting the Government." *Anderson,* 203 U.S., at 492, 27 S.Ct., at 140; *New York,* 315 U.S., at 515, 62 S.Ct., at 714-715; accord *Feiring,* 313 U.S., at 285, 61 S.Ct., at 1029 ("B 64 extends to those pecuniary burdens laid upon individuals or their property . . . for the purpose of defraying the expenses of government or of undertakings authorized by it"). Or, as the Court noted in a somewhat different context, "[a] tax is an enforced contribution to provide for the support of government; a penalty, as the word is here used, is an exaction imposed by statute as punishment for an unlawful act." *United States v. La Franca,* 282 U.S. 568, 572, 51 S.Ct. 278, 280, 75 L.Ed. 551 (1931).

We take *La Franca*'s statement of the distinction to be sufficient for the decision of this case; if the concept of penalty means anything, it means punishment for an unlawful act or omission, and a punishment for an unlawful omission is what this exaction is. Title 29 U.S.C. § 1082 requires a pension plan sponsor to fund potential plan liability according to a complex statutory formula, see also 26 U.S.C. § 412, and 26 U.S.C. § 4971(a) requires employers who maintain a pension plan to pay the Government 10 percent of any accumulated funding deficiency. If the employer fails to correct the deficiency before the earlier of a notice of deficiency under § 4971(a) or an assessment of the § 4971(a) exaction, the employer is obligated to pay an additional "tax" of 100 percent of the accumulated funding deficiency. § 4971(b). 9 The obviously penal character of these exactions is underscored by other provisions, including one giving the Pension Benefit Guaranty Corporation (PBGC) an entirely independent claim against the employer for "the total amount of the unfunded benefit liabilities," 29 U.S.C. § 1362(b)(1)(A), (a claim which in this case the PBGC has asserted and which is still pending, *Pension Benefit Guaranty Corp. v. Reorganized CF & I Fabricators of Utah, Inc.,* 179 B.R. 704 (N.D.Utah 1994)); see also §§ 1306-1307. We are, indeed, unable to find any provision in the statutory scheme that would cast the "tax" at issue here in anything but this punitive light.

D

The legislative history reflects the statute's punitive character:SU21S"The bill also provides new and more effective penalties where employers fail to meet the funding standards. In the past, an attempt has been made to enforce the relatively weak funding standards existing under present law by providing for immediate vesting of the employees' rights, to the extent funded, under plans which do not meet these standards. This procedure, however, has proved to be defective since it does not directly penalize those responsible for the underfunding. For this reason, the bill places the obligation for funding and the penalty for underfunding on the person on whom it belongs--namely, the employer." H.R.Rep. No. 93-807, p. 28 (1974) U.S.Code Cong. & Admin.News 1974, pp. 4670, 4694.DCSAccord, S.Rep. No. 93-383, p. 24 (1973). The Committee Reports also stated that, "[s]ince the employer remains liable for the contributions necessary to meet the funding standards even after the payment of the excise taxes, it is anticipated that few, if any, employers will willfully violate these standards." H.R.Rep. No. 93-807, *supra,* at 28; S.Rep. No. 93-383, *supra,* at 24-25.

Given the patently punitive function of § 4971, we conclude that § 4971 must be treated as imposing a penalty, not authorizing a tax. Accordingly, we hold that the "tax" under § 4971(a) was not entitled to seventh priority as an "excise tax" under § 507(a)(7)(E), but instead is, for bankruptcy purposes, a penalty to be dealt with as an ordinary, unsecured claim.CCSIIIDB1S Hence, the next question: whether the Court of Appeals improperly subordinated the Government's § 4971 claim to those of the other general unsecured creditors. Though we have rejected the argument that the § 4971 claim is for an "excise tax" within the meaning of § 507(a)(7)(E), both parties agree that the § 4971 claim is allowable on a nonpriority unsecured basis. 10 CF & I's reorganization plan did not lump all unsecured claims in one nonpriority class, however, but instead created four classes of unsecured creditors, only the first two of which would receive funds: Class 11 comprised small claims ($1,500 or less) grouped together for administrative convenience, see 11 U.S.C. § 1122(b); Class 12 comprised general unsecured claims (except for those assigned to other classes); Class 13 covered the § 4971 claim and some other (much smaller) subordinated penalty claims; and Class 14, claims between the CF & I Steel Corporation and its subsidiaries (all of which were bankrupt), the net value of which was zero. The plan provided, nonetheless, that if a court determined that a Class 13 claim should not be subordinated, or that the Class 13 claims should not be separately classified, the claim or claims w ould be placed in Class 12. Appellees' Appendix in No. 94-4034 et al. (CA 10), pp. 95-101, 137-141, 196-200.

When the Government challenged the proposal to subordinate its claim, the Bankruptcy Court confirmed the reorganization plan, App. to Pet. for Cert. A-31, and ordered that the § 4971 claim be "subordinated to the claims of all other general unsecured creditors of [CF & I] pursuant to 11 U.S.C. § 510(c)." *Id.,* at A-21. The District Court subsequently ruled that the § 4971 claim "should be equitably subordinated to the claims of the general creditors under Section 510(c)." *Id.,* at A-18. In the Tenth Circuit, the Government again contested subordination under § 510(c), which CF & I defended, even as it sought to sustain the Bankruptcy Court's result with two new, alternative arguments: first, that 11 U.S.C. § 1122(a), restricting a given class to substantially similar claims, prohibited placement of the § 4971 claim in Class 12, because of its dissimilarity to other unsecured claims; and second, that, because 11 U.S.C. § 1129(a)(7) authorizes creditors with impaired claims (*i.e.,* those getting less than full payment under the plan, like those in Class 12 here) to reject a plan that would give them less than they would get from a Chapter 7 liquidation, courts must have the power to assign a claim the same priority it would have in a Chapter 7 liquidation (in which a noncompensatory prepetition penalty claim would be subordinated, 11 U.S.C. § 726(a)(4)). The Court of Appeals addressed neither of these arguments, however, relying instead on the broad construction given § 510(c) *In re Virtual Network Servs. Corp.,* 902 F.2d 1246 (C.A.7 1990) (subordinating a claim otherwise entitled to priority under § 507(a)(7) to those of general unsecured creditors), and holding specifically that "section 510(c)(1) does not require a finding of claimant misconduct to subordinate nonpecuniary loss tax penalty claims." 53 F.3d, at 1159. The Court of Appeals took note of the Bankruptcy Court's finding that "[d]eclining to subordinate the IRS's penalty claim would harm innocent creditors rather than punish the debtor" and concluded that "the bankruptcy court correctly addressed the equities in this case." *Ibid.*

Nothing in the opinion of the Court of Appeals (or, for that matter, in the rulings of the Bankruptcy Court and the District Court) addresses the arguments that the Bankruptcy Court's result was sustainable without reliance on § 510(c). The court never suggested that either § 1122(a) or the Chapter 7 liquidation provisions were relevant. We thus necessarily review the subordination on the assumption that the Court of Appeals placed no reliance on the possibility that the Bankruptcy Code might permit the subordination on any basis except equitable subordination under § 510(c).DB1S So understood, the subordination was error. *United States v. Noland,* 517 U.S. ----, 116 S.Ct. 1524, 134 L.Ed.2d 748 (1996), we reversed a judgment said to rely on § 510(c) when the subordination turned on nothing other than the very characteristic that entitled the Government's claim to priority under §§ 507(a)(1) and 503(b)(1)(C). We held that the subordination fell beyond the scope of a court's authority under the doctrine of equitable subordination, because categorical subordination at the same level of generality assumed by Congress in establishing relative priorities among creditors was tantamount to a legislative act and therefore was outside the scope of any leeway under § 510(c) for judicial development of the equitable subordination doctrine. See *id.,* at ----, 116 S.Ct., at 1528. Of course it is true that *Noland* passed on the subordinatio n from a higher priority class to the residual category of general unsecured creditors at the end of the line, whereas here the subordination was imposed upon a disfavored subgroup within the residual category. But the principle of *Noland* has nothing to do with transfer between classes, as distinct from ranking within one of them. The principle is simply that categorical reordering of priorities that takes place at the legislative level of consideration is beyond the scope of judicial authority to order equitable subordination under § 510(c). The order in this case was as much a violation of that principle as *Noland*'s order was.

Without passing on the merits of CF & I's arguments that the § 4971 claim is not similar to the other unsecured claims and that courts dealing with Chapter 11 plans should be guided by Chapter 7 provisions, we vacate the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, concurring in part and dissenting in part.

I agree with the majority that the Bankruptcy Court improperly relied on 11 U.S.C. § 510(c) to subordinate the United States' claims, and I join Part III of the Court's opinion. I cannot agree, however, with the majority's determination that assessments under 26 U.S.C. § 4971(a) are not "excise taxes" within the meaning of 11 U.S.C. § 507(a)(7)(E) (1988 ed.). I would hold that every congressionally enacted tax that is generally considered an excise tax is entitled to bankruptcy priority under § 507(a)(7)(E).

Section 507(a)(7)(E) creates a bankruptcy priority for excise taxes. Congress, in enacting § 4971, purported to enact a tax, see 26 U.S.C. § 4971(a) ("[T]here is hereby imposed a tax . . . "), and the tax it enacted is properly considered an excise tax. *Commissioner v. Keystone Consol. Industries, Inc.*, 508 U.S. 152, 161, 113 S.Ct. 2006, 2012-2013, 124 L.Ed.2d 71 (1993) (stating, in dicta, that § 4971 imposes an excise tax). It is true that *New Jersey v. Anderson,* 203 U.S. 483, 27 S.Ct. 137, 51 L.Ed. 284 (1906), and its progeny held that whether a state assessment is entitled to bankruptcy priority as a tax is a federal question. See *id.,* at 492, 27 S.Ct., at 140; *New York v. Feiring,* 313 U.S. 283, 285, 61 S.Ct. 1028, 1029, 85 L.Ed. 1333 (1941). It is not appropriate, however, for federal courts to perform a similar inquiry into valid taxes passed by Congress, and the majority cites no case in which this Court has denied bankruptcy priority to a congressionally enacted tax. I respectfully dissent.

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

** Justice SCALIA joins all but Part II-D of this opinion.

1. Section 304(c) of the Bankruptcy Reform Act of 1994, 108 Stat. 4132, added a new seventh priority and moved the provision relevant here from seventh (B 507(a)(7)) to eighth priority (B 507(a)(8)), without altering any of the language germane to this case. The parties agree that this change from seventh to eighth priority does not affect this case because it arose under the pre-1994 Bankruptcy Code, and we accordingly refer to the provisio n in question as § 507(a)(7), to reflect its codification at the time in question.

2. The Government also filed a claim under § 4971(b), which imposes an exaction of 100 percent of the accumulated funding deficiency if the deficiency is not corrected before the notice of deficiency under § 4971(a) is mailed or the exaction under § 4971(a) is assessed. For the plan year ending December 31, 1989, the claimed tax liability under § 4971(b) was thus $12.4 million. In addition, the Government filed a claim for an accumulated funding deficiency for the plan year ending December 31, 1990, in the approximate amount of $25.6 million ($12.4 million for 1989 plus an additional deficiency of $13.2 million for 1990); the liability claimed under § 4971(a) for 1990 was therefore $2.56 million, and under § 4971(b) the full $25.6 million. The Bankruptcy Court disallowed all of these additional claims (for reasons not pertinent here), see *In re: CF & I Fabricators of Utah, Inc.,* 148 B.R. 332, 341 (Bkrtcy.Ct.C.D.Utah 1992), and the Government has not sought review of its ruling. Thus, though the Government filed four § 4971 claims in the Bankruptcy Court, we focus on the one at issue here, the § 4971(a) claim for the deficiency in the 1989 plan year.

3. Compare *In re Mansfield Tire & Rubber Co.,* 942 F.2d 1055 (C.A.6 1991), cert. denied *sub nom.,* 502 U.S. 1092, 112 S.Ct. 1165, 117 L.Ed.2d 412 (1992), with *In re Cassidy,* 983 F.2d 161 (C.A.10 1992); *In re C-T of Va., Inc.,* 977 F.2d 137 (C.A.4 1992).CCSIIDB1S The provisions for priorities among a bankrupt debtor's claimants are found in 11 U.S.C. § 507, subsection (a)(7) of which read, in relevant part, that seventh priority would be accorded to

"allowed unsecured claims of governmental units, only to the extent that such claims are for

. . . . .

"(E) an excise tax on

"(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

"(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition."

What the Government here claims to be an excise tax obligation arose under 26 U.S.C. § 4971(a), which provides that

"[f]or each taxable year of an employer who maintains a [pension] plan . . . there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year."

4. This provision was modified slightly between 1898 and 1978, most notably in 1938, when it was moved to § 64(a)(4) (and given fourth priority) and amended to apply to "taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof." 52 Stat. 874.

5. As the Court stated in a different context, "[a]lthough the statute . . . terms the money demanded as 'a further sum,' and does not describe it as a penalty, still the use of those words does not change the nature and character of the enactment. Congress may enact that such a provision shall not be considered as a penalty or in the nature of one, . . . and it is the duty of the court to be governed by such statutory direction, but the intrinsic nature of the provision remains, and, in the absence of any declaration by Congress affecting the manner in which the provision shall be treated, courts must decide the matter in accordance with their views of the nature of the act." *Helwig v. United States,* 188 U.S. 605, 612-613, 23 S.Ct. 427, 429-430, 47 L.Ed. 614 (1903).

6. Justice THOMAS's suggestion that no case "has denied bankruptcy priority to a congressionally enacted tax," *post,* at __, is true, but not on point. *United States v. New York,* 315 U.S. 510, 514-517, 62 S.Ct. 712, 714-716, 86 L.Ed. 998 (1942), employed the *Feiring-Anderson* analysis to the exactions at issue there; the Court did not rely on the label that Congress gave. *United States v. Sotelo,* 436 U.S. 268, 275, 98 S.Ct. 1795, 1800, 56 L.Ed.2d 275 (1978); *United States v. Childs,* 266 U.S. 304, 309-310, 45 S.Ct. 110, 111, 69 L.Ed. 299 (1924). The Court's conclusion that the exactions functioned as taxes does not change the fact that it employed a functional analysis.

7. Assuming that an exaction would not be "generally considered" an excise tax unless it would be reasonable to consider it such, the possible application of this first prong of the legislators' statement of intent is answered by the analysis of § 4971, below.

8. It should be noted, though, that such an interpretation may prove too much: the Government suggests that this statement from the legislative history does not affect the rule of construction that courts will look behind the denomination of state and local taxes, Reply Brief for United States 6, n. 4, but it is difficult to read that sentence as applying one rule for federal taxes and another for state and local ones.

9. The Government contends that § 4971(b) is more similar to a penalty than § 4971(a) is, because the Secretary of the Treasury can waive liability under the former but not the latter. The suggestion is that the Secretary can waive the imposition of the 100 percent tax, under ERISA § 3002(b), 88 Stat. 997, or can eliminate a violation by reducing the employer's funding requirement, see 26 U.S.C. § 412(d); see also 29 U.S.C. § 1083(a). But §§ 412(d) and 1083(a) provide for waiver of the minimum funding requirements, so their application would avoid a violation of either § 4971(a) or (b); there simply would be no "accumulated funding deficiency" for purposes of either § 4971(a) or (b). Thus the Government

is incorrect in suggesting that the Secretary has the ability to waive the exaction under § 4971(b) but not under § 4971(a).FC21SMore fundamentally, even if the Secretary could waive only § 4971(b), it is not clear why this would make any difference, as the exaction would still serve to reinforce a federal prohibition.

10. Compare § 57(j) of the 1898 Act, 30 Stat. 561 ("Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose").

43 L.Ed.2d 88
95 S.Ct. 915
420 U.S. 141
UNITED STATES et al., Petitioners,

v.

Richard V. BISCEGLIA.

No. 73—1245.
Argued Nov. 11 and 12, 1974.
Decided Feb. 19, 1975.

Syllabus

The Internal Revenue Service (IRS) held to have authority under §§ 7601 and 7602 of the Internal Revenue Code of 1954 to issue a 'John Doe' summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting the possibility of liability for unpaid taxes, in this instance a summons to respondent bank officer during an investigation to identify the person or persons who deposited 400 deteriorated $100 bills with the bank within the space of a few weeks. Pp. 148-151.

(a) That the summons was styled in a fictitious name is not a sufficient ground for denying enforcement. Pp. 148-149.

(b) The language of § 7601 permitting the IRS to investigate and inquire after 'all persons . . . who may be liable to pay any internal revenue tax . . .' and of § 7602 authorizing the summoning of 'any . . . person' for the taking of testimony and examination of books and witnesses that may be relevant for 'ascertaining the correctness of any return, . . . determining the liability of any person . . . or collecting any such liability . . .,' is inconsistent with an interpretation that would limit the issuance of summonses to investigations which have already focused upon a particular return, a particular named person, or a particular potential tax liability, and moreover such a reading of the summons power of the IRS ignores the agency's legitimate interest in large or unusual financial transactions, especially those involving cash. Pp. 149-150.

6 Cir., 486 F.2d 706, reversed and remanded.

Stuart A. Smith, Washington, D.C., for petitioners.

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William A. Watson, for respondent.

Mr. Chief Justice BURGER delivered the opinion of the Court.

We granted certiorari to resolve the question whether the Internal Revenue Service has statutory authority to issue a 'John Doe' summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting the possibility of liability for unpaid taxes.

I

On November 6 and 16, 1970, the Commercial Bank of Middlesboro, Ky., made two separate deposits with the Cincinnati Branch of the Federal Reserve Bank of Cleveland, each of which included $20,000 in $100 bills. The evidence is undisputed that the $100 bills were 'paper thin' and showed signs of severe disintegration which could have been caused by a long period of storage under abnormal conditions. As a result the bills were no longer suitable for circulation and they were destroyed by the Federal Reserve in accord with established procedures. Also in accord with regular Federal Reserve procedures, the Cincinnati Branch reported these facts to the Internal Revenue Service.

It is not disputed that a deposit of such a large amount of high denomination currency was out of the ordinary for the Commercial Bank of Middlesboro; for example, in the 11 months preceding the two $20,000 deposits in $100 bills, the Federal Reserve had received only 218 $100 bills from that bank. This fact, together with the

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uniformly unusual state of deterioration of the $40,000 in $100 bills, caused the Internal Revenue Service to suspect that the transactions relating to those deposits may not have been reported for tax purposes. An agent was therefore assigned to investigate the matter.

After interviewing some of the bank's employees, none of whom could provide him with information regarding the two $20,000 deposits, the agent issued a 'John Doe' summons directed to respondent, an executive vice president of the Commercial Bank of Middlesboro. The summons called for production of '(t)hose books and records which will provide information as to the person(s) or firm(s) which deposited, redeemed or otherwise gave to the Commercial Bank $100 bills which the Commercial Bank sent in two shipments of (200) two hundred each $100 bills U.S. Currency to the Cincinnati Branch of the Federal Reserve Bank on or about November 6, 1970 and November 16, 1970.' This, of course, was simply the initial step in an investigation which might lead to nothing or might reveal that there had been a failure to report money on which federal estate, gift, or income taxes were due.[1] Respondent, however, refused to comply with the summons even though he has not seriously argued that compliance would be unduly burdensome.

In due course, proceedings were commenced in the United States District Court for the Eastern District of

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Kentucky to enforce the summons. That court narrowed its scope to require production only of deposit slips showing cash deposits in the amount of $20,000 and deposit slips showing cash deposits of $5,000 or more which involved $100 bills, and restricted it to the period between October 16, 1970, and November 16, 1970. Respondent was ordered to comply with the summons as modified.

The Court of Appeals reversed, holding that § 7602 of the Internal Revenue Code of 1954, 26 U.S.C. § 7602, pursuant to which the summons had been issued, 'presupposes that the (Internal Revenue Service) has already identified the person in whom it is interested as a taxpayer before proceeding.' 486 F.2d 706, 710. We disagree, and reverse the judgment of the Court of Appeals.

II

The statutory framework for this case consists of §§ 7601 and 7602 of the Internal Revenue Code of 1954, which provide:

§ 7601. Canvass of districts for taxable persons and objects.

'(a) General rule.

'The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

§ 7602. Examination of books and witnesses.

'For the purpose of ascertaining the correctness of any return, making a return where none has been

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made, determining the liability of any person for any internal revenue tax . . . or collecting any such liability, the Secretary or his delegate 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 or his delegate may deem proper, to appear before the Secretary or his delegate 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.'

We begin examination of these sections against the familiar background that our tax structure is based on a system of self-reporting. There is legal compulsion, to be sure, but basically the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability. Nonetheless, it would be naive to ignore the reality that some persons attempt to outwit the system, and tax evaders are not readily identifiable. Thus, § 7601 gives the Internal Revenue Service a broad mandate to investigate and audit 'persons who may be liable' for taxes and § 7602 provides the power to 'examine any books, papers, records, or other data which may be relevant . . . (andto summon) any person having posses-

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sion . . . of books of account . . . relevant or material to such inquiry.' Of necessity, the investive authority so provided is not limited to situations in which there is probable cause, in the traditional sense, to believe that a violation of the tax laws exists. United States v. Powell, 379 U.S. 48, 85 S.Ct. 248, 13 L.Ed.2d 112 (1964). The purpose of the statutes is not to accuse, but to inquire. Although such investigations unquestionably involve some invasion of privacy, they are essential to our self-reporting system, and the alternatives could well involve far less agreeable invasions of house, business, and records.

We recognize that the authority vested in tax collectors may be abused, as all power is subject to abuse. However, the solution is not to restrict that authority so as to undermine the efficacy of the federal tax system, which seeks to assure that taxpayers pay what Congress has mandated and to prevent dishonest persons from escaping taxation thus shifting heavier burdens to honest taxpayers. Substantial protection is afforded by the provision that an Internal Revenue Service summons can be enforced only by the courts. 26 U.S.C. § 7604(b); Reisman v. Caplin, 375 U.S. 440, 84 S.Ct. 508, 11 L.Ed.2d 459 (1964). Once a summons is challenged it must be scrutinized by a court to determine whether it seeks information relevant to a legitimate investigative purpose and is not meant 'to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.' United States v. Powell, 379 U.S., at 58, 85 S.Ct., at 255, 13 L.Ed.2d 112. The cases show that the federal courts have taken seriously their obligation to apply this standard to fit particular situations, either by refusing enforcement or narrowing the scope of the summons. See, e.g., United States v. Matras, 487 F.2d 1271 (CA8 1973); United States v. Theodore, 479 F.2d 749, 755 (CA4 1973); United States v. Pritchard, 438 F.2d 969 (CA5 1971); United States v. Dauphin Deposit Trust

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Co., 385 F.2d 129 (CA3 1967). Indeed, the District Judge in this case viewed the demands of the summons as too broad and carefully narrowed them.

Finally, we note that the power to summon and inquire in cases such as the instant one is not unprecedented. For example, had respondent been brought before a grand jury under identical circumstances there can be little doubt that he would have been required to testify and produce records or be held in contempt. Blair v. United States, 250 U.S. 273, 39 S.Ct. 468, 63 L.Ed. 979 (1919), petitioners were summoned to appear before a grand jury. They refused to testify on the ground that the investigation exceeded the authority of the court and grand jury, despite the fact that it was not directed at them. Their subsequent contempt convictions were affirmed by this Court:

'(The witness) is not entitled to set limits to the investigation that the grand jury may conduct. . . . It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning.' Id., at 282, 39 S.Ct. 471.

The holding of Blair is not insignificant for our resolution of this case. In United States v. Powell, supra, Mr. Justice Harlan reviewed this Court's cases dealing with the subpoena power of federal enforcement agencies, and observed:

'(T)he Federal Trade Commission . . . 'has a power of inquisition, if one chooses to call it that,

which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.' While the power of the Commissioner of Internal Revenue derives from a different body of statutes, we do not think the analogies to other agency situations are without force when the scope of the Commissioner's power is called in question.' 379 U.S., at 57, 85 S.Ct., at 255, quoting United States v. Morton Salt Co., 338 U.S. 632, 642—644, 70 S.Ct. 357, 363, 94 L.Ed. 401 (1950).

III

Against this background, we turn to the question whether the summons issued to respondent, as modified by the District Court, was authorized by the Internal Revenue Code of 1954.[2] Of course, the mere fact that the summons was styled 'In the matter of the tax liability of John Doe' is not sufficient ground for denying enforcement. The use of such fictitious names is common in indictments, see, e.g., Baker v. United States, 115 F.2d 533 (CA8 1940), cert. denied, 312 U.S. 692, 61 S.Ct. 711, 85 L.Ed. 1128 (1941), and other types of compulsory process.

Indeed, the Courts of Appeals have regularly enforced Internal Revenue Service summonses which did not name a specific taxpayer who was under investigation. E.g., United States v. Carter, 489 F.2d 413 (CA5 1973); United States v. Turner, 480 F.2d 272, 279 (CA7 1973); Tillotson v.

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Boughner, 333 F.2d 515 (CA7), cert. denied, 379 U.S. 913, 85 S.Ct. 260, 13 L.Ed.2d 184 (1964). Respondent undertakes to distinguish these cases on the ground that they involved situations in which either a taxpayer was identified or a tax liability was known to exist as to an unidentified taxpayer. However, while they serve to suggest the almost infinite variety of factual situations in which a 'John Doe' summons may be necessary, it does not follow that these cases define the limits of the Internal Revenue Service's power to inquire concerning tax liability.

The first question is whether the words of the statute require the restrictive reading given them by the Court of Appeals. Section 7601 permits the Internal Revenue Service to investigate and inquire after 'all persons . . . who may be liable to pay any internal revenue tax . . ..' To aid in this investigative function, § 7602 authorizes the summoning of 'any . . . person' for the taking of testimony and examination of books which may be relevant for 'ascertaining the correctness of any return, . . . determining the liability of any person . . . or collecting any such liability . . ..' Plainly, this language is inconsistent with an interpretation that would limit the issuance of summonses to investigations which have already focused upon a particular return, a particular named person, or a particular potential tax liability.

Moreover, such a reading of the Internal Revenue Service's summons power ignores the fact that it has a legitimate interest in large or unusual financial transactions, especially those involving cash. The reasons for that interest are too numerous and too obvious to catalog. Indeed, Congress has recently determined that information regarding transactions with foreign financial institutions and transactions which involve large amounts of money is so likely to be useful to persons responsible for enforcing the tax laws that it must be reported by banks.

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California Bankers Assn. v. Shultz, 416 U.S. 21, 26 40, 94 S.Ct. 1494, 1500, 39 L.Ed.2d 812 (1974).

It would seem elementary that no meaningful investigation of such events could be conducted if the identity of the persons involved must first be ascertained, and that is not always an easy task. Fiduciaries and other agents are understandably reluctant to disclose information regarding their principals, as respondent was in this case. Moreover, if criminal activity is afoot the persons involved may well have used aliases or taken other measures to cover their tracks. Thus, if the Internal Revenue Service is unable to issue a summons to determine the identity of such persons, the broad inquiry authorized by § 7601 will be frustrated in this class of cases. Settled principles of statutory interpretation require that we avoid such a result absent unambiguous directions from Congress. NLRB v. Lion Oil Co., 352 U.S. 282, 288, 77 S.Ct. 330, 1 L.Ed.2d 331 (1957); United States v. American Trucking Assns., 310 U.S. 534, 542—544, 60

S.Ct. 1059, 1063, 84 L.Ed. 1345 (1940). No such congressional purpose is discernible in this case.

We hold that the Internal Revenue Service was acting within its statutory authority in issuing a summons to respondent for the purpose of identifying the person or persons who deposited 400 decrepit $100 bills with the Commercial Bank of Middlesboro within the space of a few weeks. Further investigation may well reveal that such person or persons have a perfectly innocent explanation for the transactions. It is not unknown for taxpayers to hide large amounts of currency in odd places out of a fear of banks. But on this record the deposits were extraordinary, and no meaningful inquiry can be made until respondent complies with the summons as modified by the District Court.

We do not mean to suggest by this holding that respondent's fears that the § 7602 summons power could be used to conduct 'fishing expeditions' into the private affairs

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of bank depositors are trivial. However, as we have observed in a similar context:

"That the power may be abused, is no ground for denying its existence. It is a limited power, and should be kept within its proper bounds; and, when these are exceeded, a jurisdictional question is presented which is cognizable in the courts." McGrain v. Daugherty, 273 U.S. 135, 166, 47 S.Ct. 319, 326, 71 L.Ed. 580 (1927), quoting People ex rel. McDonald v. Keeler, 99 N.Y. 463, 482, 2 N.E. 615, 626 (1885).

So here, Congress has provided protection from arbitrary or capricious action by placing the federal courts between the Government and the person summoned. The District Court in this case conscientiously discharged its duty to see that a legitimate investigation was being conducted and that the summons was no broader than necessary to achieve its purpose.

The judgment of the Court of Appeals is reversed and the cause is remanded to it with directions to affirm the order of the District Court.

It is so ordered.

Judgment of Court of Appeals reversed and cause remanded with directions.

Mr. Justice BLACKMUN, with whom Mr. Justice POWELL joins, concurring.

I join the Court's opinion and its judgment, and add this word only to emphasize the narrowness of the issue at stake here. We decide today that the Internal Revenue Service has statutory authority to issue a summons to a bank in order to ascertain the identity of a person whose transactions with that bank strongly suggest liability for unpaid taxes. Under the circumstances here, there was an overwhelming probability, if not a certitude, that one individual or entity was responsible for the deposits. The uniformly deteriorated condition of the currency and the amount, combined with other unusual aspects, gave the Service good reason, and indeed, the duty to investigate. The Service's suspicion as to possible liability was more than plausible.* The summons was closely scrutinized and appropriately narrowed in scope by the United States District Court.

The summons, in short, was issued pursuant to a genuine investigation. The Service was not engaged in researching some general problem; its mission was not exploratory. The distinction between an investigative and a more general exploratory purpose has been stressed appropriately by federal courts, see, e.g., United States v. Humble Oil & Refining Co., 488 F.2d 953, 958 (CA5 1974), pet. for cert. pending, No. 73—1827; United States v. Armour, 376 F.Supp. 318 (Conn.1974), and that distinction is important to our decision here.

We need not decide in this case whether the Service has statutory authority to issue a 'John Doe' summons where neither a particular taxpayer nor an ascertainable group of taxpayers is under investigation. At most, we hold that the Service is not always required to state a taxpayer's name in order to obtain enforcement of its summons, and that under the circumstances of this case it is definitely not required to do so. We do not decide that a 'John Doe' summons is always enforceable where the name of an individual is lacking and the Service's purpose is other than investigative.

Upon this understanding, I join the Court's opinion.

Mr. Justice STEWART, with whom Mr. Justice DOUGLAS joins, dissenting.

The Court today says that it 'recogniz(es) that the authority vested in tax collectors may be abused,' ante,

at 146, but it is nonetheless unable to find any statutory limitation upon that authority. The only 'protection' from abuse that Congress has provided, it says, is 'placing the federal courts between the Government and the person summoned,' ante, p. 151. But that, of course, is no protection at all, unless the federal courts are provided with a measurable standard when asked to enforce a summons. I agree with the Court of Appeals that Congress has provided such a standard, and that the standard was not met in this case. Accordingly, I respectfully dissent from the opinion and judgment of the Court.

Congress has carefully restricted the summons power to certain rather precisely delineated purposes:

'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.' 26 U.S.C. § 7602.

This provision speaks in the singular—referring to 'the correctness of any return' and to 'the liability of any person.' The delineated purposes are jointly denominated an 'inquiry' concerning 'the person liable for tax or required to perform the act,' and the summons is designed to facilitate the '(e)xamination of books and witnesses' which 'may be relevant or material to such inquiry.' 26 U.S.C. § 7602(1), (2), and (3). This language indicates unmistakably that the summons power is a tool for the investigation of particular taxpayers.

By contrast, the general duties of the IRS are vastly broader than its summons authority. For instance, § 7601 mandates a '(c)anvass of districts for taxable persons and objects.' Unlike § 7602, the canvassing pro-

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vision speaks broadly and in the plural, instructing Treasury Department officials

'to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.' (Emphasis added.)

Virtually all 'persons' or 'objects' in this country 'may,' of course, have federal tax problems. Every day the economy generates thousands of sales, loans, gifts, purchases, leases, deposits, mergers, wills, and the like which—because of their size or complexity—suggest the possibility of tax problems for somebody. Our economy is 'tax relevant' in almost every detail. Accordingly, if a summons could issue for any material conceivably relevant to 'taxation'—that is, relevant to the general duties of the IRS—the Service could use the summons power as a broad research device. The Service could use that power methodically to force disclosure of whole categories of transactions and closely monitor the operations of myriad segments of the economy on the theory that the information thereby accumulated might facilitate the assessment and collection of some kind of a federal tax from somebody. Cf. United States v. Humble Oil & Refining Co., 5 Cir., 488 F.2d 953. And the Court's opinion today seems to authorize exactly that.

But Congress has provided otherwise. The Congress has recognized that information concerning certain classes of transactions is of peculiar importance to the sound administration of the tax system, but the legislative solution has not been the conferral of a limitless summons power. Instead, various special-purpose statutes have been written to require the reporting or disclosure of particular kinds of transactions. E.g., 26 U.S.C. §§ 6049,

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6051—6053, 31 U.S.C. §§ 1081—1083, 1101, and 1121—1122, and 31 U.S.C. §§ 1141—1143 (1970 ed., Supp. III). Meanwhile, the scope of the summons power itself has been kept narrow. Congress has never made that power coextensive with the Service's broad and general canvassing duties set out in § 7601. Instead, the summons power has always been restricted to the particular purposes of individual investigation, delineated in § 7602.[1]

Thus, a financial or economic transaction is not subject to disclosure through summons merely because it is large or unusual or generally 'tax relevant'—but only when the summoned information is reasonably pertinent to an ongoing investigation of somebody's tax status. This restriction checks possible abuses of the summons power in two rather obvious ways. First, it guards against an

overbroad summons by allowing the enforcing court to prune away those demands which are not relevant to the particular, ongoing investigation. See, e.g., First Nat. Bank of Mobile v. United States, 5 Cir., 160 F.2d 532, 533—535. Second, the restriction altogether prohibits a summons which is wholly unconnected with an investigation.

The Court today completely obliterates the historic distinction between the general duties of the IRS, summarized in § 7601, and the limited purposes for which a summons may issue, specified in § 7602. Relying heavily on § 7601, and noting that the IRS 'has a legitimate interest in large or unusual financial transactions, especially those involving cash,' ante, at 149, the Court approves enforcement of a summons having no investigative predicate. The sole premise for this summons was the Service's theory that the deposit of old wornout $100 bills was a sufficiently unusual and interesting transaction to justify compulsory disclosure of the identities of all the large-amount depositors at the respondent's bank over a one-month period.[2] That the summons was not incident to an ongoing, particularized investigation, but was merely a shot in the dark to see if one might be warranted, was freely conceded by the IRS agent who served the summons.[3]

The Court's opinion thus approves a breathtaking expansion of the summons power: There are obviously thousands of transactions occurring daily throughout the country which, on their face, suggest the possibility of tax complications for the unknown parties involved. These transactions will now be subject to forced disclosure at the whim of any IRS agent, so long only as he is acting in 'good faith.' Ante, at 146.

This is a sharp and dangerous detour from the settled course of precedent. The decision of the Court of Appeals in this case has been explicitly accepted as sound by the Courts of Appeals of two other Circuits. United States v. Berkowitz, 488 F.2d 1235, 1236 (CA3), and United States v. Humble Oil & Refining Co., 488 F.2d 953, 960 (CA5), pet. for cert. pending, No. 73—1827. No federal court has disagreed with it.

The federal courts have always scrutinized with particular care any IRS summons directed to a 'third party,' i.e., to a party other than the taxpayer under investigation. See, e.g., United States v. Humble Oil & Refining Co., supra, at 963; Venn v. United States, 5 Cir., 400 F.2d 207, 211—212; United States v. Harrington, 2 Cir., 388 F.2d 520, 523. When, as here, the third-party summons does not identify the party under investigation, a presumption naturally arises that the summons is not genuinely investigative but merely exploratory—a device for general research or for the hit-or-miss monitoring of 'unusual' transactions. Unless this presumption is rebutted by the Service, the courts have denied enforcement.

Thus, the IRS was not permitted to summon from a bank the names and addressed of all beneficiaries of cer-

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tain types of trust arrangements merely on the theory that these arrangements were unusual in form or size. Mays v. Davis, 3 Cir., 7 F.Supp. 596. Nor could the Service force a company to disclose the identity of whole classes of its oil land lessees merely on the theory that oil lessees commonly have tax problems. United States v. Humble Oil & Refining Co., supra. See also McDonough v. Lambert, 1 Cir., 94 F.2d 838; First Nat. Bank of Mobile v. United States, 160 F.2d at 533—535; Teamsters v. United States, 9 Cir., 240 F.2d 387, 390.

On the other hand, enforcement has been granted where the Service has been able to demonstrate that the John Doe summons was issued incident to an ongoing and particularized investigation. Thus, enforcement was granted of summonses seeking to identify the clients of those tax-return-preparation firms which prior investigation had shown to be less than honest or accurate in the preparation of sample returns. United States v. Theodore, 4 Cir., 479 F.2d 749; United States v. Turner, 7 Cir., 480 F.2d 272; United States v. Berkowitz, supra; United States v. Carter, 5 Cir., 489 F.2d 413. Similarly, enforcement was granted of summonses directed to an attorney, and his bank, seeking to identify the client for whom the attorney had mailed to the IRS a large, anonymous check, purporting to satisfy an outstanding tax deficiency of the client. Tillotson v. Boughner, 7 Cir., 333 F.2d 515; Schulze v. Rayunec, 7 Cir., 350 F.2d 666. Like the prior investigative work in the tax-return- preparer cases, the receipt of the mysterious check established the predicate of a particularized investigation which was necessary, under § 7602, to the enforcement of a summons. In each case, the Service had already proceeded to the point where the unknown individual's tax liability had become a reasonable possibility, rather than a matter of sheer speculation.

Today's decision shatters this long line of precedent.

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For this summons, there was absolutely no investigative predicate. The sole indication of this John Doe's tax liability was the unusual character of the deposit transaction itself. Any private economic transaction is now fair game for forced disclosure, if any IRS agent happens in good faith to want it disclosed. This new rule simply disregards the language of § 7602 and the body of established case law construing it.

The Court's attempt to justify this extraordinary departure from established law is hardly persuasive. The Court first notes that a witness may not refuse testimony to a grand jury merely because the grand jury has not yet specified the 'identity of the offender,' ante, at 147, quoting Blair v. United States, 250 U.S. 273, 282, 39 S.Ct. 468, 471, 63 L.Ed. 979. This is true but irrelevant. The IRS is not a grand jury. It is a creature not of the Constitution but of legislation and is thus peculiarly subject to legislative constraints. In re Groban, 352 U.S. 330, 346, 77 S.Ct. 510, 520, 1 L.Ed.2d 376 (Black, J., dissenting). It is true that the Court drew an analogy between an IRS summons and a grand jury subpoena United States v. Powell, 379 U.S. 48, 57, 85 S.Ct.

248, 254, 13 L.Ed.2d 112, but this was merely to emphasize that an IRS summons does not require the support of 'probable cause' to suspect tax fraud when the summons is issued incident to an ongoing, individualized investigation of an identified party. A major premise of Powell was that an extrastatutory 'probable cause' requirement was unnecessary in view of the 'legitimate purpose' requirements already specified in § 7602, 379 U.S., at 56—57, 85 S.Ct., at 254—255.

The Court next suggests that this expansion of the summons power is innocuous, at least on the facts of this case, because the Bank Secrecy Act of 1970[4] itself com-

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pels banks to disclose the identity of certain cash depositors. Ante, at 149-150. Aside from the fact that the summons at issue here forces disclosure of some deposits not covered by the Act and its attendant regulations,[5] the argument has a more basic flaw. If the summons authority of § 7602 allows preinvestigative inquiry into any large or unusual bank deposit, the 1970 Act was largely redundant. The IRS could have saved Congress months of hearings and debates by simply directing § 7602 summonses on a regular basis to the Nation's banks, demanding the identities of their large cash depositors. California Bankers Assn. v. Shultz, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812, we gave extended consideration to the complex constitutional issues raised by the 1970 Act; some of those issues—e.g., whether and to what extent bank depositors have Fourth Amendment and Fifth Amendment rights to the secrecy of their domestic deposits—were left unresolved by the Court's opinion, 416 U.S., at 67—75, 94 S.Ct., at 1520—1524. If the disclosure requirements in the 1970 Act were already encompassed within the Service's summons power, one must wonder why the Court labored so long and carefully in Shultz.

Finally, the Court suggests that respect for the plain language of § 7602 would 'undermine the efficacy of the federal tax system, which seeks to assure that taxpayers pay what Congress has mandated and prevents dishonest persons from escaping taxation and thus shifting heavier burdens to honest taxpayers.' Ante, at 146. But the federal courts have applied the strictures of § 7602, and its predecessors, for many decades without occasioning these

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dire effects. If such a danger exists, Congress can deal with it. But until Congress changes the provision of § 7602, it is our duty to apply the statute as it is written.

I would affirm the judgment of the Court of Appeals.

1. The Internal Revenue Service agent testified:

'Q. What possible tax effect could this have on the taxpayer if he is determined?

'A. Well, it could be anything from nothing at all, a simple explanation, or it could be that this is money that has been secreted away for a period of time as a means of avoiding the tax.

'Q. Then you really have not reached first base yet, is that correct?

'A. That's correct.'

2. Respondent also argues that, even if the summons issued in this case was authorized by statute, it violates the Fourth Amendment. This contention was not passed upon by the Court of Appeals. In any event, as narrowed by the District Court the summons is at least as specific as the reporting requirements which were upheld against a Fourth Amendment challenge by banks California Bankers Assn. v. Shultz, 416 U.S. 21, 63—70, 94 S.Ct. 1494, 1508, 39 L.Ed.2d 812 (1974).

* The Service may not have reached 'first base,' see ante, at 143, n. 1, but it had been at bat before, and it knew both the game and the ball park well.

1. The canvassing duties and the summons power have always been found in separate and distinct statutory provisions. The spatial proximity of the two contemporary provisions is utterly without legal significance. 26 U.S.C. § 7806(b). The general mandate to canvass and inquire, now found in § 7601, is derived from § 3172 of the Revised Statutes of 1874. Donaldson v. United States, 400 U.S. 517, 523—524, 91 S.Ct. 534, 538, 27 L.Ed.2d 580. The summons power, however, has different historical roots. Section 7602, enacted in 1954, was meant to consolidate and carry forward several prior statutes, with 'no material change from existing law.' H.R.Rep.No.1337, 83d Cong., 2d Sess., A536; S.Rep.No.1622, 83d Cong., 2d Sess., 617, U.S.Code Cong. & Admin.News, pp. 4584, 5268. The relevant prior statutes were §§ 3614 and 3615(a)—(c) of the Internal Revenue Code of 1939. See Table II of the 1954 Code, 68A Stat. 969. Section 3614 granted the summons power to the Commissioner 'for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made.' Sections 3615(a)—(c) granted the summons power to 'collectors' and provided that a 'summons may be issued' whenever 'any person' refuses to make a return or makes a false or fraudulent return. Thus, like the present § 7602, these earlier provisions clearly limited use of the summons power to the investigation of particular taxpayers.

2. The summons here used a scattershot technique to learn the identity of the unknown depositor. Rather than merely asking bank officials who the depositor was, the IRS required production of all deposit slips exceeding specified amounts that had been filled out during the period when the suspect deposits were, presumably, made. Thus, enforcement of the summons, even as redrafted by the District Court, will doubtlessly apprise the IRS of the identities of many bank depositors other than the one who submitted the old and wornout $100 bills.

3. He testified at the enforcement hearing:

'Q. What possible tax effect could this have on the taxpayer if he is determined?

'A. Well, it could be anything from nothing at all, a simple explanation, or it could be that this is money that has been secreted away for a period of time as a means of avoiding the tax.

'Q. Then you really have not reached first base yet, is that correct?

'A. That's correct.'

4. Pub.L. 91—508, 84 Stat. 1114, 12 U.S.C. §§ 1730d, 1829b, 1951—1959, and 31 U.S.C. §§ 1051—1062, 1081—1083, 1101—1105, 1121 1122. California Bankers Assn. v. Shultz, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812.

5. As limited by the District Court, the summons calls for production of deposit slips showing cash deposits in the amount of $20,000 and deposit slips showing cash deposits of $5,000 or more involving $100 bills, for deposits made between October 16 and November 16, 1970. Current regulations under the Bank Secrecy Act require reporting only with respect to cash transactions exceeding $10,000. 31 CFR § 103.22 (1974).

United States v. Bisceglia

No. 73-1245

Argued November 11-12, 1974

Decided February 19, 1975

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CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Syllabus

The Internal Revenue Service (IRS) *held* to have authority under §§ 7601 and 7602 of the Internal Revenue Code of 1954 to issue a "John Doe" summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting the possibility of liability for unpaid taxes, in this instance, a summons to respondent bank officer during an investigation to identify the person or persons who deposited 400 deteriorated 0 bills with the bank within the space of a few weeks. P P. 148-151.

(a) That the summons was styled in a fictitious name is not a sufficient ground for denying enforcement. P P. 148-149.

(b) The language of § 7601 permitting the IRS to investigate and inquire after "all persons . . . who may be liable to pay any internal revenue tax . . ." and of § 7602 authorizing the summoning of "any person" for the taking of testimony and examination of books and witnesses that may be relevant for "ascertaining the correctness of any return, . . . determining the liability of any person . . . or collecting any such liability . . . " is inconsistent with an interpretation that would limit the issuance of summonses to investigations which have already focused upon a particular return, a particular named person, or a particular potential tax liability, and, moreover, such a reading of the summons power of the IRS ignores the agency's legitimate interest in large or unusual financial transactions, especially those involving cash. P P. 149-150.

486 F.2d 706, reversed and remanded.

BURGER, C.J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. BLACKMUN, J., filed a concurring opinion, in which POWELL, J., joined, *post,* P. 151. STEWART, J., filed a dissenting opinion, in which DOUGLAS, J., joined, *post,* P. 152.

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MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve the question whether the Internal Revenue Service has statutory authority to issue a "John Doe" summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting the possibility of liability for unpaid taxes.

I

On November 6 and 16, 1970, the Commercial Bank of Middlesboro, Ky., made two separate deposits with the Cincinnati Branch of the Federal Reserve Bank of Cleveland, each of which included ,000 in 0 bills. The evidence is undisputed that the 0 bills were "paper thin," and showed signs of severe disintegration which could have been caused by a long period of storage under abnormal conditions. As a result, the bills were no longer suitable for circulation, and they were destroyed by the Federal Reserve in accord with established procedures. Also in accord with regular Federal Reserve procedures, the Cincinnati Branch reported these facts to the Internal Revenue Service.

It is not disputed that a deposit of such a large amount of high denomination currency was out of the ordinary for the Commercial Bank of Middlesboro; for example, in the 11 months preceding the two ,000 deposits in 0 bills, the Federal Reserve had received only 218 0 bills from that bank. This fact, together with the

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uniformly unusual state of deterioration of the ,000 in 0 bills, caused the Internal Revenue Service to suspect that the transactions relating to those deposits may not have been reported for tax purposes. An agent was therefore assigned to investigate the matter.

After interviewing some of the bank's employees, none of whom could provide him with information regarding the two ,000 deposits, the agent issued a "John Doe" summons directed to respondent, an executive vice-president of the Commercial Bank of Middlesboro. The summons called for production of

"[t]hose books and records which will provide information as to the person(s) or firm(s) which deposited, redeemed or otherwise gave to the Commercial Bank 0 bills U.S. Currency which the Commercial Bank sent in two shipments of (200) two hundred each 0 bills to the Cincinnati Branch of the Federal Reserve Bank on or about November 6, 1970, and November 16, 1970."

This, of course, was simply the initial step in an investigation which might lead to nothing or might have revealed that there had been a failure to report money on which federal estate, gift, or income taxes were due. [Footnote 1] Respondent, however, refused to comply with the summons even though he has not seriously argued that compliance would be unduly burdensome.

In due course, proceedings were commenced in the United States District Court for the Eastern District of

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Kentucky to enforce the summons. That court narrowed its scope to require production only of deposit slips showing cash deposits in the amount of $.20,000 and deposit slips showing cash deposits of ,000 or more which involved 0 bills, and restricted it to the period between October 16, 1970, and November 16, 1970. Respondent was ordered to comply with the summons as modified.

The Court of Appeals reversed, holding that § 7602 of the Internal Revenue Code of 1954, 26 U.S.C. § 7602, pursuant to which the summons had been issued,

"presupposes that the [Internal Revenue Service] has already identified the person in whom it is interested as a taxpayer before proceeding."

486 F.2d 706, 710. We disagree, and reverse the judgment of the Court of Appeals.

II

The statutory framework for this case consists of §§ 7601 and 7602 of the Internal Revenue Code of 1954, which provide:

"Section 7601. Canvass of districts for taxable persons and objects."

"(a) General rule."

"The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed."

"Section 7602. Examination of books and witnesses."

"For the purpose of ascertaining the correctness of any return, making a return where none has been

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made, determining the liability of any person for any internal revenue tax . . . or collecting any such liability, the Secretary or his delegate 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 or his delegate may deem proper, to appear before the

Secretary or his delegate 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."

We begin examination of these sections against the familiar background that our tax structure is based on a system of self-reporting. There is legal compulsion, to be sure, but basically the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability. Nonetheless, it would be naive to ignore the reality that some persons attempt to outwit the system, and tax evaders are not readily identifiable. Thus, § 7601 gives the Internal Revenue Service a broad mandate to investigate and audit "persons who my be liable" for taxes and § 7602 provides the power to

"examine any books, papers, records, or other data which may be relevant . . . [and to summon] any person having possession

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. . . of books of account . . . relevant or material to such inquiry."

Of necessity, the investigative authority so provided is not limited to situations in which there is probable cause, in the traditional sense, to believe that a violation of the tax laws exists. *United States v. Powell,* 379 U. S. 48 (1964). The purpose of the statutes is not to accuse, but to inquire. Although such investigations unquestionably involve some invasion of privacy, they are essential to our self-reporting system, and the alternatives could well involve far less agreeable invasions of house, business, and records.

We recognize that the authority vested in tax collectors may be abused, as all power is subject to abuse. However, the solution is not to restrict that authority so as to undermine the efficacy of the federal tax system, which seeks to assure that taxpayers pay what Congress has mandated and to prevent dishonest persons from escaping taxation thus shifting heavier burdens to honest taxpayers. Substantial protection is afforded by the provision that an Internal Revenue Service summons can be enforced only by the courts. 26 U.S.C. § 7604(b); *Reisman v. Caplin,* 375 U. S. 440 (1964). Once a summons is challenged, it must be scrutinized by a court to determine whether it seeks information relevant to a legitimate investigative purpose and is not meant

"to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation."

United States v. Powell, supra, at 379 U. S. 58. The cases show that the federal courts have taken seriously their obligation to apply this standard to fit particular situations, either by refusing enforcement or narrowing the scope of the summons. *See, e.g., United States v. Matras,* 487 F.2d 1271 (CA8 1973); *United States v. Theodore,* 479 F.2d 749, 755 (CA4 1973); *United States v. Pritchard,* 438 F.2d 969 (CA5 1971); *United States v. Dauphin Deposit Trust*

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Co., 385 F.2d 129 (CA3 1967). Indeed, the District Judge in this case viewed the demands of the summons as too broad and carefully narrowed them.

Finally, we note that the power to summon and inquire in cases such as the instant one is not unprecedented. For example, had respondent been brought before a grand jury under identical circumstances, there can be little doubt that he would have been required to testify and produce records or be held in contempt. In *Blair v. United States,* 250 U. S. 273 (1919), petitioners were summoned to appear before a grand jury. They refused to testify on the ground that the investigation exceeded the authority of the court and grand jury, despite the fact that it was not directed at them. Their subsequent contempt convictions were affirmed by this Court:

"[The witness] is not entitled to set limits to the investigation that the grand jury may conduct. . . . It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning."

Id. at 250 U. S. 282.

The holding of *Blair* is not insignificant for our resolution of this case. In *United States v. Powell, supra,* Mr. Justice Harlan reviewed this Court's cases dealing with the subpoena power of federal enforcement agencies, and observed:

"[T]he Federal Trade Commission . . ."

"has a power of inquisition, if one chooses to call it that,

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which is not derived from the Judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence, but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not."

"While the power of the Commissioner of Internal Revenue derives from a different body of statutes, we do not think the analogies to other agency situations are without force when the scope of the Commissioner's power is called in question."

379 U.S. at 57, quoting *United States v. Morton Salt Co.,* 338 U. S. 632, 642-643 (1950).

III

Against this background, we turn to the question whether the summons issued to respondent, as modified by the District Court, was authorized by the Internal Revenue Code of 1954. [Footnote 2] Of course, the mere fact that the summons was styled "In the matter of the tax liability of John Doe" is not sufficient ground for denying enforcement. The use of such fictitious names is common in indictments, *see, e.g., Baker v. United States,* 115 F.2d 533 (CA8 1940), *cert. denied,* 312 U.S. 692 (1941), and other types of compulsory process. Indeed, the Courts of Appeals have regularly enforced Internal Revenue Service summonses which did not name a specific taxpayer who was under investigation. *E.g., United States v. Carter,* 489 F.2d 413 (CA5 1973); *United States v. Turner,* 480 F.2d 272, 279 (CA7 1973); *Tillotson v.*

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Boughner, 333 F.2d 515 (CA7), *cert. denied,* 379 U.S. 913 (1964). Respondent undertakes to distinguish these cases on the ground that they involved situations in which either a taxpayer was identified or a tax liability was known to exist as to an unidentified taxpayer. However while they serve to suggest the almost infinite variety of factual situations in which a "John Doe" summons may be necessary, it does not follow that these cases define the limits of the Internal Revenue Service's power to inquire concerning tax liability.

The first question is whether the words of the statute require the restrictive reading given them by the Court of Appeals. Section 7601 permits the Internal Revenue Service to investigate and inquire after "all persons . . . who may be liable to pay any internal revenue tax. . . ." To aid in this investigative function, § 7602 authorizes the summoning of "any . . . person" for the taking of testimony and examination of books which may be relevant for "ascertaining the correctness of any return, . . . determining the liability of any person . . . or collecting any such liability. . . ." Plainly, this language is inconsistent with an interpretation that would limit the issuance of summonses to investigations which have already focused upon a particular return, a particular named person, or a particular potential tax liability.

Moreover, such a reading of the Internal Revenue Service's summons power ignores the fact that it has a legitimate interest in large or unusual financial transactions, especially those involving cash. The reasons for that interest are too numerous and too obvious to catalog. Indeed, Congress has recently determined that information regarding transactions with foreign financial institutions and transactions which involve large amounts of money is so likely to be useful to persons responsible for enforcing the tax laws that it must be reported by banks.

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See generally California Bankers Assn. v. Shultz, 416 U. S. 21, 26-40 (1974).

It would seem elementary that no meaningful investigation of such events could be conducted if the identity of the persons involved must first be ascertained, and that is not always an easy task. Fiduciaries and other agents are understandably reluctant to disclose information regarding their principals, as respondent was in this case. Moreover, if criminal activity is afoot, the persons involved may well have used aliases or taken other measures to cover their tracks. Thus, if the Internal Revenue Service is unable to issue a summons to determine the identity of such persons, the broad inquiry authorized by § 7601 will be frustrated in this class of cases. Settled principles of statutory interpretation require that we avoid such a result absent unambiguous directions from Congress. *See NLRB v. Lion Oil Co.,* 352 U. S. 282, 288 (1957); *United States v. American Trucking Assns.,* 310 U. S. 534, 542-544 (1940). No such congressional purpose is discernible in this case.

We hold that the Internal Revenue Service was acting within its statutory authority in issuing a summons to respondent for the purpose of identifying the person or persons who deposited 400 decrepit 0 bills with the Commercial Bank of Middlesboro within the space of a few weeks. Further investigation may well reveal that such person or persons have a perfectly innocent explanation for the transactions. It is not unknown for taxpayers to hide large amounts of currency in odd places out of a fear of banks. But, on this record, the deposits were extraordinary, and no meaningful inquiry can be made until respondent complies with the summons as modified by the District Court.

We do not mean to suggest by this holding that respondent's fears that the § 7602 summons power could be used to conduct "fishing expeditions" into the private affairs

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of bank depositors are trivial. However, as we have observed in a similar context:

"'That the power may be abused is no ground for denying its existence. It is a limited power, and should be kept within its proper bounds, and, when these are exceeded, a jurisdictional question is presented which is cognizable in the courts.'"

McGrain v. Daugherty, 273 U. S. 135, 166 (1927), quoting *People ex rel. McDonald v. Keeler,* 99 N.Y. 43, 482 (1885). So here, Congress has provided protection from arbitrary or capricious action by placing the federal courts between the Government and the person summoned. The District Court in this case conscientiously discharged its duty to see that a legitimate investigation was being conducted and that the summons was no broader than necessary to achieve its purpose.

The judgment of the Court of Appeals is reversed and the cause is remanded to it with directions to affirm the order of the District Court.

It is so ordered.

[Footnote 1]

The Internal Revenue Service agent testified:

"Q. What possible tax effect could this have on the taxpayer if he is determined?"

"A. Well, it could be anything from nothing at all, a simple explanation, or it could be that this is money that has been secreted away for a period of time as a means of avoiding the tax."

"Q. Then you really have not reached first base yet, is that correct?"

"A. That's correct."

[Footnote 2]

Respondent also argues that, even if the summons issued in this case was authorized by statute, it violates the Fourth Amendment. This contention was not passed upon by the Court of Appeals. In any event, as narrowed by the District Court, the summons is at least as specific as the reporting requirements which were upheld against a Fourth Amendment challenge by banks in *California Bankers Assn. v. Shultz,* 416 U. S. 21, 63-70 (1974).

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE POWELL joins, concurring.

I join the Court's opinion and its judgment, and add this word only to emphasize the narrowness of the issue at stake here. We decide today that the Internal Revenue Service has statutory authority to issue a summons to a bank in order to ascertain the identity of a person whose transactions with that bank strongly suggest liability for unpaid taxes. Under the circumstances here, there was an overwhelming probability, if not a certitude, that one individual or entity was responsible for the deposits. The uniformly deteriorated condition of the currency and the amount, combined with other unusual

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aspects, gave the Service good reason, and, indeed, the duty to investigate. The Service's suspicion as to possible liability was more than plausible. * The summons was closely scrutinized and appropriately narrowed in scope by the United States District Court.

The summons, in short, was issued pursuant to a genuine investigation. The Service was not engaged in researching some general problem; its mission was not exploratory. The distinction between an investigative and a more general exploratory purpose has been stressed appropriately by federal courts, *see, e.g., United States v. Humble Oil & Refining Co.,* 488 F.2d 953, 958 (CA5 1974), *pet. for cert. pending,* No. 73-1827; *United States v. Armour,* 376 F.Supp. 318 (Conn.174), and that distinction is important to our decision here.

We need not decide in this case whether the Service has statutory authority to issue a "John Doe" summons where neither a particular taxpayer nor an ascertainable group of taxpayers is under investigation. At most, we hold that the Service is not always required to state a taxpayer's name in order to obtain enforcement of its summons, and that, under the circumstances of this case. it is definitely not required to do so. We do not decide that a "John Doe" summons is always enforceable where the name of an individual is lacking and the Service's purpose is other than investigative.

Upon this understanding, I join the Court's opinion.

* The Service may not have reached "first base," *see ante* at 420 U. S. 143 n. 1, but it had been at bat before, and it knew both the game and the ball park well.

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The Court today says that it "recogniz[es] that the authority vested in tax collectors may be abused," *ante*

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at 420 U. S. 146, but it is nonetheless unable to find any statutory limitation upon that authority. The only "protection" from abuse that Congress has provided, it says, is "placing the federal courts between the Government and the person summoned," *ante* at 420 U. S. 151. But that, of course, is no protection at all, unless the federal courts are provided with a measurable standard when asked to enforce a summons. I agree with the Court of Appeals that Congress has provided such a standard, and that the standard was not met in this case. Accordingly, I respectfully dissent from the opinion and judgment of the Court.

Congress has carefully restricted the summons power to certain rather precisely delineated purposes:

"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."

26 U.S.C.§ 7602. This provision speaks in the singular -- referring to "the correctness of any return" and to "the liability of any person." The delineated purposes are jointly denominated an "inquiry" concerning "the person liable for tax or required to perform the act," and the summons is designed to facilitate the "[e]xamination of books and witnesses" which "may be relevant or material to such inquiry." 26 U.S.C. § 7602(1), (2), and (3). This language indicates unmistakably that the summons power is a tool for the investigation of particular taxpayers.

By contrast, the general duties of the IRS are vastly broader than its summons authority. For instance, § 7601 mandates a"[c]anvass of districts for taxable persons and objects." Unlike § 7602, the canvassing provision

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speaks broadly and in the plural, instructing Treasury Department officials

"to proceed, from time to time, through each internal revenue district and inquire after and concerning *all persons* therein who *may be liable* to pay any internal revenue tax, and *all persons* owning or having the care and management of *any objects* with respect to which any tax is imposed."

(Emphasis added.)

Virtually all "persons" or "objects" in this country "may," of course, have federal tax problems. Every day, the economy generates thousands of sales, loans, gift, purchases, leases, deposits, mergers, wills, and the like which -- because of their size or complexity -- suggest the possibility of tax problems for somebody. Our economy is "tax relevant" in almost every detail. Accordingly, if a summons could issue for any material conceivably relevant to "taxation" -- that is, relevant to the general duties of the IRS -- the Service could use the summons power as a broad research device. The Service could use that power methodically to force disclosure of whole categories of transactions and closely monitor the operations of myriad segments of the economy on the theory that the information thereby accumulated might facilitate the assessment and collection of some kind of a federal tax from somebody. *Cf. United States v. Humble Oil & Refining Co.,* 488 F.2d 953. And the Court's opinion today seems to authorize exactly that.

But Congress has provided otherwise. The Congress has recognized that information concerning certain classes of transactions is of peculiar importance to the sound administration of the tax system, but the legislative solution has not been the conferral of a limitless summons power. Instead, various special purpose statutes have been written to require the reporting or disclosure of particular kinds of transactions. *E.g.,* 26 U.S.C. §§ 6049,

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6051-6053, 31 U.S.C. §§ 1081-1083, 1101, and 1121-1122, and 31 U.S.C. § § 1141-1143 (1970 ed., Supp. III). Meanwhile, the scope of the summons power itself has been kept narrow. Congress has never made that power coextensive with the Service's broad and general canvassing duties set out in § 7601. Instead, the summons power has always been restricted to the particular purposes of individual investigation, delineated in § 7602. [Footnote 2/1]

Thus, a financial or economic transaction is not subject to disclosure through summons merely because it is large or unusual or generally "tax relevant" -- but only when the summoned information is reasonably pertinent to an ongoing investigation of somebody's tax status. This restriction checks possible abuses of the summons power in two rather obvious ways. First, it guards against an

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overbroad summons by allowing the enforcing court to prune away those demands which are not relevant to the particular, ongoing investigation. *See, e.g., First Nat. Bank of Mobile v. United States,* 160 F.2d 532, 533-535. Second, the restriction altogether prohibits a summons which is wholly unconnected with such an investigation.

The Court today completely obliterates the historic distinction between the general duties of the IRS, summarized in 7601, and the limited purposes for which a summons may issue, specified in § 7602. Relying heavily on § 7601, and noting that the IRS "has a legitimate interest in large or unusual financial transactions, especially those involving cash," *ante* at 420 U. S. 149, the Court approves enforcement of a summons having no investigative predicate. The sole premise for this summons was the Service's theory that the deposit of old worn-out 0 bills was a sufficiently unusual and interesting transaction to justify compulsory disclosure of the identities of all the large amount depositors at the respondent's bank over a one-month period. [Footnote 2/2] That the summons was not incident to an ongoing, particularized investigation, but was merely a shot in the dark to see if one might be warranted, was freely conceded by the IRS agent who served the summons. [Footnote 2/3]

The Court's opinion thus approves a breathtaking expansion of the summons power: there are obviously thousands of transactions occurring daily throughout the country which, on their face, suggest the possibility of tax complications for the unknown parties involved. These transactions will now be subject to forced disclosure at the whim of any IRS agent, so long only as he is acting in "good faith." *Ante* at 420 U. S. 146.

This is a sharp and dangerous detour from the settled course of precedent. The decision of the Court of Appeals in this case has been explicitly accepted as sound by the Courts of Appeals of two other Circuits. *See United States v. Berkowitz,* 488 F.2d 1235, 1236 (CA3), and *United States v. Humble Oil & Refining Co.,* 488 F.2d 953, 960 (CA5), *cert. pending,* No. 73-1827. No federal court has disagreed with it.

The federal courts have always scrutinized with particular care any IRS summons directed to a "third party," *i.e.,* to a party other than the taxpayer under investigation. *See, e.g., United States v. Humble Oil & Refining Co., supra,* at 63; *Venn v. United States,* 400 F.2d 207, 211-212; *United States v. Harrington,* 388 F.2d 520, 523. When, as here, the third-party summons does not identify the party under investigation, a presumption naturally arises that the summons is not genuinely investigative, but merely exploratory -- a device for general research or for the hit-or-miss monitoring of "unusual" transactions. Unless this presumption is rebutted by the Service, the courts have denied enforcement.

Thus, the IRS was not permitted to summon from a bank the names and addresses of all beneficiaries of certain

types of trust arrangements merely on the theory that these arrangements were unusual in form or size. *Mays v. Davis,* 7 F.Supp. 596. Nor could the Service force a company to disclose the identity of whole classes of its oil land lessees merely on the theory that oil lessees commonly have tax problems. *United States v. Humble Oil & Refining Co., supra. See also McDonough v. Lambert,* 94 F.2d 838; *First Nat. Bank of Mobile v. United States,* 160 F.2d at 533-535; *Teamsters v. United States,* 240 F.2d 387, 390.

On the other hand, enforcement has been granted where the Service has been able to demonstrate that the John Doe summons was issued incident to an ongoing and particularized investigation. Thus, enforcement was granted of summonses seeking to identify the clients of those tax return preparation firms which prior investigation had shown to be less than honest or accurate in the preparation of sample returns. *United States v. Theodore,* 479 F.2d 749; *United States v. Turner,* 480 F.2d 272; *United States v. Berkowitz, supra; United States v. Carter,* 489 F.2d 413. Similarly, enforcement was granted of summonses directed to an attorney, and his bank, seeking to identify the client for whom the attorney had mailed to the IRS a large, anonymous check, purporting to satisfy an outstanding tax deficiency of the client. *Tillotson v. Boughner,* 333 F.2d 515; *Schulze v. Rayunec,* 350 F.2d 666. Like the prior investigative work in the tax return preparer cases, the receipt of the mysterious check established the predicate of a particularized investigation which was necessary, under § 7602, to the enforcement of a summons. In each case, the Service had already proceeded to the point where the unknown individual's tax liability had become a reasonable possibility, rather than a matter of sheer speculation.

Today's decision shatters this long line of precedent.

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For this summons, there was absolutely no investigative predicate. The sole indication of this John Doe's tax liability was the unusual character of the deposit transaction itself. Any private economic transaction is now fair game for forced disclosure, if any IRS agent happens in good faith to want it disclosed. This new rule simply disregards the language of § 7602 and the body of established case law construing it.

The Court's attempt to justify this extraordinary departure from established law is hardly persuasive. The Court first notes that a witness may not refuse testimony to a grand jury merely because the grand jury has not yet specified the "identity of the offender," *ante* at 420 U. S. 147, quoting *Blair v. United States,* 250 U. S. 273, 282. This is true but irrelevant. The IRS is not a grand jury. It is a creature not of the Constitution, but of legislation, and is thus peculiarly subject to legislative constraints. *See In re Groban,* 352 U. S. 330, 346 (Black, J., dissenting). It is true that the Court drew an analogy between an IRS summons and a grand jury subpoena in *United States v. Powell,* 379 U. S. 48, 57, but this was merely to emphasize that an IRS summons does not require the support of "probable cause" to suspect tax fraud when the summon is issued incident to an ongoing individualized investigation of an identified party. A major premise of *Powell* was that an extra-statutory "probable cause" requirement was unnecessary in view of the "legitimate purpose" requirements already specified in § 7602, 379 U.S. at 56-57.

The Court next suggests that this expansion of the summons power is innocuous, at least on the facts of this case, because the Bank Secrecy Act of 1970 [Footnote 2/4] itself compels

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banks to disclose the identity of certain cash depositors. *Ante* at 420 U. S. 149-150. Aside from the fact that the summons at issue here forces disclosure of some deposits not covered by the Act and its attendant regulations, [Footnote 2/5] the argument has a more basic flaw. If the summons authority of § 7602 allows pre-investigative inquiry into any large or unusual bank deposit, the 1970 Act was largely redundant. The IRS could have saved Congress months of hearings and debates by simply directing § 7602 summonses on a regular basis to the Nation's banks, demanding the identities of their large cash depositors. In *California Bankers Assn. v. Shultz,* 416

U. S. 21, we gave extended consideration to the complex constitutional issues raised by the 1970 Act; some of those issues -- *e.g.,* whether and to what extent bank depositors have Fourth Amendment and Fifth Amendment rights to the secrecy of their domestic deposits -- were left unresolved by the Court's opinion, 416 U.S. at 67-75. If the disclosure requirements in the 1970 Act were already encompassed within the Service's summons power, one must wonder why the Court labored so long and carefully in *Shultz.*

Finally, the Court suggests that respect for the plain language of § 7602 would

"undermine the efficacy of the federal tax system, which seeks to assure that taxpayers pay what Congress has mandated and prevents dishonest persons from escaping taxation, and thus shifting heavier burdens to honest taxpayers."

Ante at 420 U. S. 146. But the federal courts have applied the strictures of § 7602, and its predecessors, for many decades without occasioning these

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dire effects. If such a danger exists, Congress can deal with it. But until Congress changes the provision of § 7602, it is our duty to apply the statute as it is written. I would affirm the judgment of the Court of Appeals.

[Footnote 2/1]

The canvassing duties and the summons power have always been found in separate and distinct statutory provisions. The spatial proximity of the two contemporary provisions is utterly without legal significance. 26 U.S.C. § 7806(b). The general mandate to canvass and inquire, now found in § 7601, is derived from § 3172 of the Revised Statutes of 1874. *See Donaldson v. United States,* 400 U. S. 517, 523-524. The summons power, however, has different historical roots. Section 7602, enacted in 1954, was meant to consolidate and carry forward several prior statutes, with "no material change from existing law." H.R.Rep. No. 1337, 83d Cong., 2d Sess., A436; S.Rep. No. 1622, 83d Cong., 2d Sess., 617. The relevant prior statutes were §§ 3614 and 3615(a)-(c) of the Internal Revenue Code of 1939. *See* Table II of the 1954 Code, 68A Stat. 969. Section 3614 granted the summons power to the Commissioner "for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made." Sections 3615(a)-(c) granted the summons power to "collectors" and provided that a "summons may be issued" whenever "any person" refuses to make a return or makes a false or fraudulent return. Thus, like the present § 7602, these earlier provisions clearly limited use of the summons power to the investigation of particular taxpayers.

[Footnote 2/2]

The summons here used a scattershot technique to learn the identity of the unknown depositor. Rather than merely asking bank officials who the depositor was, the IRS required production of all deposit slips exceeding specified amounts that had been filled out during the period when the suspect deposits were, presumably, made. Thus, enforcement of the summons, even as redrafted by the District Court, will doubtlessly apprise the IRS of the identities of many bank depositors other than the one who submitted the old and worn-out 0 bills.

[Footnote 2/3]

He testified at the enforcement hearing:

"Q. What possible tax effect could this have on the taxpayer if he is determined?"

"A. Well, it could be anything from nothing at all, a simple explanation, or it could be that this is money that has been secreted away for a period of time as a means of avoiding the tax."

"* * * *"

"Q. Then you really have not reached first base yet, is that correct?"

"A. That's correct."

[Footnote 2/4]

Pub.L. 91-508, 84 Stat.1114, 12 U.S.C.§§ 1730d, 1829b, 1951-1959, and 31 U.S.C. §§ 1051-1062, 1081-1083, 1101-1105, 1121-1122. *See California Bankers Assn. v. Shultz,* 416 U. S. 21.

[Footnote 2/5]

As limited by the District Court, the summons calls for production of deposit slips showing cash deposits in the amount of ,000 and deposit slips showing cash deposits of ,000 or more involving 0 bills for deposits made between October 16 and November 16, 1970. Current regulations under the Bank Secrecy Act require reporting only with respect to cash transactions exceeding ,000. 31 CFR § 103.22 (1974).

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96 S.Ct. 473
46 L.Ed.2d 416
James Burnett McKay LAING, Petitioner,

v.

UNITED STATES et al. UNITED STATES et al., Petitioners, v. Elizabeth Jane HALL.

Nos. 73-1808 and 74-75.
Argued Jan. 21, 1975.
Reargued Oct. 15, 1975.
Decided Jan. 13, 1976.
Syllabus

These cases involve two income-tax payers whose taxable years were terminated by the Internal Revenue Service (IRS) prior to their normal expiration dates pursuant to the jeopardy-termination provisions of § 6851(a)(1) of the Internal Revenue Code of 1954 (Code), which allow the IRS immediately to terminate a taxpayer's taxable period when it finds that the taxpayer intends to commit any act tending to prejudice or render ineffectual the collection of his income tax for the current or preceding taxable year. Under § 6851 the tax is due immediately upon termination, and upon such termination the taxpayer's taxable year comes to a close. In each case, after the taxpayer failed to file a return or pay the tax assessed as demanded, the IRS levied upon and seized property of the taxpayer without having sent a notice of deficiency to the taxpayer, a jurisdictional prerequisite to a taxpayer's suit in the Tax Court for redetermination of his tax liability, and without having followed the other procedures mandated by § 6861 et seq. of the Code for the assessment and collection of a deficiency whose collection is in jeopardy. The Government contends that such procedures are inapplicable to a tax liability arising after a § 6851 termination because such liability is not a "deficiency" within the meaning of § 6211(a) of the Code, where the term is defined as the amount of the tax imposed less any amount that may have been reported by the taxpayer on his return. In No. 73-1808 the District Court held that a deficiency notice is not required when a taxable period is terminated pursuant to § 6851(a)(1), and dismissed the taxpayer's suit for injunctive and declaratory relief on the ground, inter alia, that it was prohibited by the Anti-Injunction Act, § 7421(a) of the Code, and the Court of Appeals affirmed. In No. 74-75 the District Court granted the taxpayer injunctive relief, holding that the Anti-Injunction Act was inapplicable because of the IRS's failure to follow the pro-

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cedures of § 6861 et seq., and the Court of Appeals affirmed. Held: Based on the plain language of the statutory provisions at issue, their place in the legislative scheme, and their legislative history, the tax owing, but not reported, at the time of a § 6851 termination is a deficiency whose assessment and collection is subject to the procedures of § 6861 et seq., and hence because the District Director in each case failed to comply with these requirements, the taxpayers' suits were not barred by the Anti-Injunction Act. Pp. 169-185.

(a) Under the statutory definition of § 6211(a), the tax owing and unreported after a jeopardy termination, which in these cases, as in most § 6851 terminations, is the full tax due, is clearly a deficiency, there being nothing in the definition to suggest that a deficiency can arise only at the conclusion of a 12-month taxable year and it being sufficient that the taxable period in question has come to an end and the tax in question is due and unreported. Pp. 173-175.

(b) To deny a taxpayer subjected to a jeopardy termination the opportunity to litigate his tax liability in the Tax Court, as would be the case under the Government's view that the unreported tax due after a jeopardy termination is not a deficiency and that hence a deficiency notice is not required, would be out of keeping with the thrust of the Code, which generally allows income-tax payers access to that court. Pp. 176-177.

(c) The jeopardy-assessment and jeopardy-termination provisions have long been treated in a closely parallel fashion, and there is nothing in the early codification of such provisions to suggest the contrary. Pp. 177-183.

No. 73-1808, 496 F.2d 853, reversed and remanded; No. 74-75, 6 Cir., 493 F.2d 1211, affirmed.

Joseph S. Oteri, Boston, Mass., for James Burnett McKay Laing. Stuart A. Smith, Washington, D. C., for the United States and others, by Donald M. Heavrin, Louisville, Ky., for Elizabeth Jane Hall.

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Mr. Justice MARSHALL delivered the opinion of the Court.

These companion cases involve two taxpayers whose taxable years were terminated by the Internal Revenue Service (IRS) prior to their normal expiration date pursuant to the jeopardy termination provisions of § 6851(a)(1) of the Internal Revenue Code of 1954 (Code), 26 U.S.C. § 6851(a)(1).[1] Section 6851(a)(1) allows the IRS immediately to terminate a taxpayer's taxable period when it finds that the taxpayer intends to do any act tending to prejudice or render ineffectual the collection of his income tax for the current or preceding tax-

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able year. Upon termination the tax is immediately owing and, after notice, the IRS may, and usually does, levy upon the taxpayer's property under § 6331(a) of the Code, 26 U.S.C. § 6331(a), to assure payment.

We must decide whether the IRS, when assessing and collecting the unreported tax due after the termination of a taxpayer's taxable period, must follow the procedures mandated by § 6861 et seq. of the Code, 26 U.S.C. § 6861 et seq., for the assessment and collection of a deficiency whose collection is in jeopardy.[2] The answer, as we shall see, depends on whether the unreported tax due upon such a termination is a "deficiency" as defined in § 6211(a) of the Code, 26 U.S.C. § 6211(a) (1970 ed. and Supp. IV). The Government argues that the tax liability that arises after a § 6851 termination cannot be a "deficiency," and that the procedures for the assessment and collection of deficiencies in jeopardy are therefore inapplicable. We reject this argument. We agree with the taxpayers that any tax owing, but unreported, after a § 6851 termination is a deficiency, and that the assessment of that deficiency is subject to the provisions of § 6861 et seq. We reverse in No. 73-1808 and affirm in No. 74-75.

I

A. No. 73-1808, Laing v. United States. Petitioner James Burnett McKay Laing is a citizen of New Zea-

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land. He entered the United States from Canada on a temporary visitor's visa on May 31, 1972. On the following June 24, Mr. Laing and two companions sought to enter Canada from Vermont but were refused entry by Canadian officials. As they turned back, they were detained by United States customs authorities at Derby, Vt. Upon a search of the vehicle in which the three were traveling, the customs officers discovered in the engine compartment a suitcase containing more than $300,000 in United States currency. The IRS District Director found that petitioner Laing and his companions were in the process of placing assets beyond the reach of the Government by removing them from the United States, thereby tending to prejudice or render ineffectual the collection of their income tax.[3] He declared the taxable periods of petitioner and his companions immediately terminated under § 6851(a). An assessment of $310,000 against each was orally asserted for the period from January 1 through June 24, 1972. The assessment against Mr. Laing was subsequently abated to the amount of $195,985.55 when a formal letter-notice of termination and demand for payment and the filing of a return were sent. Mr. Laing received no deficiency notice under § 6861(b) and no specific information about how the amount of the tax was determined.[4]

After Mr. Laing and his companions refused to pay the tax, the IRS seized the currency that had been found

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in the vehicle. A portion thereof was applied to the tax assessed against Mr. Laing.[5]

On July 15, petitioner, filed suit against the United States, the Commissioner of Internal Revenue, the District Director, and the Chief of the Collection Division, District of Vermont, in the United States District Court for the District of Vermont. He asserted the absence of a notice of deficiency, which he claimed was required under § 6861(b), and he challenged as violative of due process both the provisions of the levy and distraint statute, § 6331(a), and the actions of the IRS in seizing and retaining the currency "without any finding of a substantial or probable nexus between that money and taxable income." App. in No. 73-1808, p. 20.[6]

The District Court, relying on its controlling court's decision Irving v. Gray, 479 F.2d 20 (CA2 1973), held that a notice of deficiency is not required when a taxable period is terminated pursuant to § 6851(a)(1), and dismissed the suit as prohibited by the Federal Anti-Injunction Act, § 7421(a) of the Code, 26 U.S.C. § 7421(a), and as within the plain wording of the exception to the Declaratory Judgment Act, 28 U.S.C. § 2201, for a controversy with respect to federal taxes. 364 F.Supp. 469 (1973).

Adhering to its earlier ruling in Irving, the Second Circuit affirmed per curiam. 496 F.2d 853 (1974). It expressly declined to follow the Sixth Circuit's decision Rambo v. United States, 492 F.2d 1060 (1974).[7] These rulings of the Second Circuit, and one of the

Seventh Circuit, Williamson v. United States, 31 A.F.T.R.2d 73-800 (1971), appeared to be in conflict with holdings by other Courts of Appeals, Rambo v. United States, supra ; Hall v. United States, 493 F.2d 1211 (CA6 1974), and Clark v. Campbell, 501 F.2d 108 (CA5 1974).[8] Suggesting that the conflict was irreconcilable and noting that some 70 pending cases in the federal courts depended on its resolution, the Solicitor General did not oppose Mr. Laing's petition for certiorari. We granted certiorari to resolve the conflict.[9] 419 U.S. 824, 95 S.Ct. 39, 42 L.Ed.2d 47 (1974).

B. No. 74-75, United States v. Hall. Respondent Elizabeth Jane Hall is a resident of Shelbyville, Ky. After the arrest of her husband in Texas on drug-related charges, Kentucky state troopers obtained a warrant and searched respondent's home on January 31, 1973. They found controlled substances there. The next day the Acting District Director notified respondent Hall by letter that he found her "involved in illicit drug activities, thereby tending to prejudice or render ineffectual collection of income tax for the period 1-1-73 thru 1-30-73." App. in No. 74-75, p. 11. Citing § 6851, the Acting Director declared respondent's taxable period for the first 30 days of 1973 "immediately terminated" and her income tax for that period "immediately due and payable." Ibid. He further informed respondent that a tax in the amount of $52,680.25 for the period "will be immediately assessed" and that "(d) emand for immediate payment of the full amount of this tax is hereby made." Ibid. A return for the terminated period, pursuant to § 443(a)(3) of the Code, 26 U.S.C. § 443

(a)(3), was requested but not filed. The formal assessment was made on February 1. As was the case with Mr. Laing, Mrs. Hall received no deficiency notice under § 6861(b) and no specific information about how the amount of the tax had been determined.

Respondent was unable to pay the tax so assessed. Therefore, the IRS, acting pursuant to § 6331, levied upon and seized respondent's 1970 Volkswagen and offered it for sale.[10]

Respondent Hall instituted suit on February 13 in the United States District Court for the Western District of Kentucky, seeking injunctive relief and compensatory and punitive damages. The court issued an order temporarily restraining the IRS from selling the automobile and from seizing any more of respondent's property. Thereafter, relying upon Schreck v. United States, 301 F.Supp. 1265 (D.Md.1969), the court held that the Federal Anti-Injunction Act, § 7421(a), was inapplicable because of the IRS's failure to follow the procedures of § 6861 et seq. The court ordered the return of respondent's automobile upon her posting a bond in the amount of its fair market value. [11] It issued a preliminary injunction restraining the defendants (the United States, the Acting District Director, the Group Supervisor of Internal Revenue, and a lieutenant of the Kentucky State Police) "from harassing or intimidating (respondent) in any manner including but not limited to trespassing on, seizing or levying upon any of her property of whatever nature, be it rental property or not." Pet. for Cert. in No. 74-75, p. 5a.

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On appeal, the United States Court of Appeals for the Sixth Circuit affirmed per curiam, 493 F.2d 1211 (1974), relying upon its opinion and decision in Rambo v. United States, supra, decided one month earlier. In Rambo the court had held that the failure of the IRS to issue a deficiency notice for a terminated taxable period, and the consequent unavailability of a remedy in the United States Tax Court, entitled the taxpayer to injunctive relief. Because of the conflict, indicated above, we also granted certiorari in Mrs. Hall's case. 419 U.S. 824, 95 S.Ct. 40, 42 L.Ed.2d 47 (1974).

II

In these cases, the taxpayers seek the protection of certain procedural safeguards that the Government claims were not intended to apply to jeopardy terminations. Specifically, the taxpayers argue that the procedures mandated by § 6861 et seq. for assessing and collecting deficiencies whose collection is in jeopardy also govern assessments of taxes owing, but not reported, after the termination of a taxpayer's taxable period under § 6851. Resolution of this claim requires analysis of the interplay between these two basic jeopardy provisions § 6851, the jeopardy-termination provision, and § 6861, the jeopardy-assessment provision.

The initial workings of the jeopardy-termination provision, which essentially permits the shortening of a taxable year, are not in dispute. When the District Director determines that the conditions of § 6851(a) are met generally, that the taxpayer is preparing to do something that will endanger the collection of his taxes [12] the District Director may declare the taxpayer's

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current tax year terminated. The tax for the shortened period and any unpaid tax for the preceding year become due and payable immediately, § 6851(a), and the taxpayer must file a return for the shortened year. § 443(a) (3).

The disagreement between the taxpayers and the Government focuses on the applicability of the jeopardy-assessment procedures of § 6861 et seq. to the assessment [13] and collection of taxes that become due upon a § 6851 termination. Section 6861(a) provides for the immediate assessment of a deficiency, as defined in § 6211(a), whenever the assessment or collection of the deficiency would be "jeopardized by delay." By allowing an immediate assessment, § 6861(a) provides an exception to the general rule barring an assessment until the taxpayer has been sent a notice of deficiency and has been afforded an opportunity to seek resolution of his tax liability in the Tax Court.[14] Certain procedural safeguards are provided, however, to the taxpayer whose deficiency is as-

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sessed immediately under § 6861(a). Within 60 days after the jeopardy assessment, the District Director must send the taxpayer a notice of deficiency, § 6861(b), which enables the taxpayer to file a petition with the Tax Court for a redetermination of the deficiency, 26 U.S.C. § 6213(a) (1970 ed., Supp. IV). The taxpayer can stay the collection of the amount assessed by posting an equivalent bond, § 6863(a). Any property seized for the collection of the tax cannot be sold until a notice of deficiency is issued and the taxpayer is afforded an opportunity to file a petition in the Tax Court. If the taxpayer does seek a redetermination of the deficiency in the Tax Court, the prohibition against sale extends until the Tax Court decision becomes final. § 6863(b)(3)(A).[15]

The taxpayers view the provisions of § 6861 et seq. as complementary to those of § 6851. They contend that to the extent the tax owing upon a jeopardy termination has not been reported, it is a "deficiency" as that term is defined in § 6211(a) and used in § 6861(a), and that the deficiency, being of necessity one whose assessment or collection is in jeopardy,[16] must be assessed and collected in accordance with the procedures of § 6861 et seq.

Under the Government's view, on the other hand, §§ 6851 and 6861 are aimed at distinct problems and have no bearing on each other. "Section 6851," according to the Government, "advances the date when

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taxes are due and payable, while Section 6861 advances the time for collection of taxes which are already overdue (i. e., already owing for a prior, normally expiring taxable year)." Brief for United States 10. The validity of this distinction rests on the Government's claim that a deficiency can arise only with respect to a nonterminated taxable year, so that no deficiency can be created by a § 6851 termination. If there is no deficiency to assess, of course, the provisions of § 6861 et seq. cannot apply.

Thus, under the Government's reading of the Code, the procedures for assessment and collection of a tax owing, but not reported, after the termination of a taxable period are not governed by § 6861 et seq.[17] The Government argues that, with the single exception of the bond provision of § 6851(e), the taxpayer's only remedy upon a jeopardy termination is to pay the tax, file for a refund, and, if the refund is refused, bring suit in the district

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court or the Court of Claims. See 28 U.S.C. § 1346(a)(1). Since the IRS has up to six months to act on a request for a refund, the taxpayer, under the Government's theory, may have to wait up to half a year before gaining access to any judicial forum. See 26 U.S.C. §§ 6532(a), 7422(a) (1970 ed. and Supp. IV).

The Government does not seriously challenge the taxpayers' conclusion that if the termination of their taxable periods created a deficiency whose assessment or collection was in jeopardy, the assessments and collections in these cases should have been pursuant to the procedures of § 6861 et seq. The question, then, is whether the tax owing, but not reported, upon a jeopardy termination is a deficiency within the meaning of § 6211(a).

III

In essence, a deficiency as defined in the Code is the amount of tax imposed less any amount that may have been reported by the taxpayer on his return. [18] § 6211

(a). Where there has been no tax return filed, the deficiency is the amount of tax due. Treas. Reg. § 301.6211-1(a), 26 CFR § 301.6211-1(a) (1975). As we have seen, upon terminating a taxpayer's taxable year under § 6851, the District Director makes a demand for the payment of the unpaid tax for the terminated period and for the preceding taxable year. The taxpayer is then required to file a return for the truncated taxable year. § 443(a)(3). The amount due, of course, must be determined according to ordinary tax principles, as applied to the abbreviated reporting period. The amount properly assessed upon a § 6851 termination is thus the amount of tax imposed under the Code for the preceding year and the terminated short year, less any amount that may already have been paid. To the extent this sum has not been reported by the taxpayer on a return, it fits precisely the statutory definition of a deficiency.[19]

The Government resists this conclusion by reading the definition of "deficiency" restrictively to include only those taxes due at the end of a full taxable year when a return has been or should have been made. It argues that a "deficiency" cannot be determined before the close of a taxable year. Of course, we agree with the Govern-

ment that a deficiency does not arise until the tax is actually due and the taxable year is complete. The fact is, however, that under § 6851 the tax is due immediately upon termination. Moreover, upon a § 6851 termination, the taxpayer's taxable year has come to a close. Sanzogno v. Commissioner, 60 T.C. 321, 325 (1973).[20] Section 441(b)(3) defines as a "taxable year" the terminated taxable period on which a return is due under § 443(a)(3). See also § 7701(a)(23). Under the statutory definition of § 6211(a), the tax owing and unreported after a jeopardy termination, which in these cases and in most § 6851 terminations is the full tax due, is clearly a deficiency. We see nothing in the definition to suggest that a deficiency can arise only at the conclusion of a 12-month taxable year; it is sufficient that the taxable period in question has come to an end and the tax in question is due and unreported.[21]

Besides conflicting with the plain language of the Code provisions directly before us, the Government's position in these cases would, for no discernible purpose, isolate the taxpayer subjected to a jeopardy termination from most other income-tax payers. If the unreported tax due after a jeopardy termination is not a deficiency, the IRS need not issue the taxpayer a deficiency notice and accord him access to the Tax Court for a redetermination of his tax. Denial of an opportunity to litigate in the Tax Court is out of keeping with the thrust of the Code, which generally allows income-tax payers access to that court. Where exceptions are intended, the Code is explicit on the matter. See, e. g., § 6871(b). Denying a Tax Court forum to a particular class of taxpayers is sufficiently anomalous that an intention to do so should not be imputed to Congress when the statute does not expressly so provide. This is particularly so in view of the Government's concession that the jeopardy-assessment procedures of § 6861 et seq. are sufficient to protect its interests, and that providing taxpayers with the

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limited protections of those procedures would not impair the collection of the revenues.[22]

IV

While the plain language of the provisions at issue here and their place in the legislative scheme suggest that the unreported tax due upon a § 6851 termination is a deficiency and that the deficiency, its collection being in jeopardy, must be assessed and collected according to the procedures of § 6861 et seq., the Government attempts to undercut this conclusion by pointing to the legislative history of the several provisions at issue in this case. We are unpersuaded. The jeopardy-assessment and jeopardy-termination provisions have long been treated in a closely parallel fashion, and nothing that the Government points to in the early codification suggests the contrary.

As the Government points out, the Revenue Act of 1918 (1918 Act) contained a termination provision, § 250(g), 40 Stat. 1084, that was very similar to the present § 6851. Under the 1918 statute all assessments were made under the authority of Rev.Stat. § 3182 [23] and the taxpayer could attack an assessment only by paying the amount claimed and bringing suit for a refund in district court. Since there was no way for the taxpayer to contest assessments prior to payment, the Government had no need for any expedited jeopardy-assessment procedure

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such as is now authorized in § 6861.[24] When a termination was made under § 250(g), the tax assessment and collection thus proceeded exactly as in any other case the taxpayer had to pay first and litigate later.

In the Revenue Act of 1921 (1921 Act), 42 Stat. 227, Congress added both a special procedure for prepayment challenges to assessments and an exception to that procedure. The special procedure made available, under certain circumstances, a limited administrative remedy within the Bureau of Internal Revenue (predecessor to the IRS) by which taxpayers could question assessments before paying the taxes assessed. § 250(d) of the 1921 Act, 42 Stat. 266. The Commissioner could, however,

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pretermit that procedure if he believed that collection of the revenues might be jeopardized by delay. This exception, contained in a proviso to § 250(d), was the precursor of § 6861. Since the proviso limited the availability of the administrative remedy to cases where collection of the taxes due would not be "jeopardized by such delay," the remedy was necessarily inapplicable to cases in which a § 250(g) termination was made. As of 1921, then, the nascent prepayment remedy was available to ordinary taxpayers but not to taxpayers in either jeopardy situation where the tax year had been terminated pursuant to § 250(g), or where the full tax year had run and the Commissioner had determined that the collection of the tax would be jeopardized under the proviso to § 250(d).

The Government, however, relies heavily on the 1921 Act, claiming that "(t)he key to an understanding of the term 'deficiency' lies" therein. Brief for United States 42. It relies on a reference to the term "deficiency" in § 250(b), which set out the procedure for handling underpayments after returns had been filed:

"If the amount already paid is less than that which should have been paid, the difference, to the extent not covered by any credits due to the taxpayer under section 252 (hereinafter called 'deficiency') . . . shall be paid upon notice and demand by the collector." 40 Stat. 265.

This "hereinafter" reference was permanently eliminated when the Act was revised in the Revenue Act of 1924 (1924 Act) and the word "deficiency" precisely defined in much the same way as it is today. Nonetheless, the Government persists in viewing the reference in the 1921 Act as an authoritative definition of "deficiency." Since the reference related only to money owed after a return had been filed and examined, the Govern-

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ment argues that Congress in 1921 did not consider the amount assessed pursuant to a jeopardy termination which often must be assessed before a return is filed to be a "deficiency." This supposed limitation in the 1921 Act continues, in the Government's view, to this day. We disagree with the Government's analysis.

To understand the use of the word "deficiency" in the 1921 Act, it is necessary to begin with the 1918 Act where the term first appeared. In the 1918 statute the term was not formally defined but appeared in various provisions dealing with underpayments and overpayments of tax, referring to the difference between the amount due and the amount already paid. "Deficiency" was used synonymously with the word "understatement," and it is clear from the context that neither word was being used as a term of art. In the 1921 Act, the 1918 language was left largely unchanged, except that after the reference to the difference between the amount paid and the amount due, Congress added the parenthetical expression "(hereinafter called 'deficiency')," and from that point on replaced all references to "understatement" with the word "deficiency." From the context, it is evident that the "hereinafter" parenthetical term was not intended as a restrictive definition of deficiency, but merely as an indication that throughout the subsection the word would be used as shorthand for the difference between the amount paid and the amount that should have been paid. [25] We thus find nothing in the informal use of the term "deficiency" in the 1921 Act to limit our construc-

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tion of the precise definition in § 6211(a) of the present Code.

In 1924 Congress made a number of important changes in the jeopardy-assessment scheme. The termination section, § 282, 43 Stat. 302, remained basically the same as it had been in § 250(g) of the 1921 Act, but taxpayers' prepayment remedies and the jeopardy-assessment provision were substantially altered. Section 274(a) of the 1924 Act, 43 Stat. 297, provided that if, "in the case of any taxpayer, the Commissioner determine(d) that there is a deficiency" in the tax imposed by the Act, the Commissioner was required to mail a notice of deficiency to the taxpayer. Within 60 days of mailing of the notice, and prior to payment of the deficiency, the taxpayer was entitled to file an appeal with the Board of Tax Appeals, an agency independent of the Bureau of Internal Revenue. The only exception to this statutory provision permitting general access to the Board of Tax Appeals was that for a jeopardy assessment. The jeopardy-assessment provision, § 274(d), permitted the Commissioner to assess and collect a deficiency immediately, bypassing various procedures set out in § 274(a) for the ordinary assessment and collection of deficiencies. Even in the jeopardy-assessment situation, however, the taxpayer could gain access to the Board of Tax Appeals by posting a bond. § 279(a).

Section 273 of the 1924 Act defined "deficiency," much as it is now defined, as the amount by which the tax due exceeds the tax shown on the taxpayer's return, or, "if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency." § 273(2). In cases in which no return was filed and no amount had previously been assessed or collected, § 273(2) in effect defined a "deficiency" simply as the amount

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of tax due. Since § 282 the termination provision provided that at the time of termination the Commissioner would demand "immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid . . .," and that the tax demanded would become "immediately due and payable," the tax "due and payable" at the time of the termination notice, to the extent unreported, would appear to fit the definition of "deficiency" in § 273(2). This being so, the Government's assertion that under the 1924 Act, § 282 terminations were not subject to the procedures of § 274(d) is incorrect, and much of the force of its argument from the history of the statute is lost.

With the amendments made by the Revenue Act of 1926, c. 27, 44 Stat. 9, the statutory provisions relevant to these cases took essentially their present form. The jurisdiction of the Board of Tax Appeals (subsequently renamed the Tax Court) was broadened, in part by granting taxpayers subjected to jeopardy assessments a means of having their assessment redetermined by the Board without having to post bond as had previously been required. Under the new jeopardy-assessment procedures, the Commissioner could immediately assess the deficiency, but in addition to a demand for payment, he was required to send a notice of deficiency, § 279(b), which allowed the jeopardy taxpayer immediate access to the Board of Tax Appeals. § 274(a). As in the 1924 Act, there was no indication that taxpayers subjected to a jeopardy termination would not then be assessed under the jeopardy-assessment procedures to the extent a deficiency was owing, and thereby allowed to follow the same route to the Board of Tax Appeals that was available to other jeopardy taxpayers.

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In sum, to the extent that it sheds any light on the question at all, the legislative history seems to help the taxpayers rather than the Government. In the course of the development of a prepayment remedy and a jeopardy exception to that remedy between 1918 and 1926, taxpayers subjected to jeopardy terminations and those subjected to jeopardy assessments for nonterminated taxable years were consistently treated alike. In 1921, when the administrative remedy was first created, neither those subjected to a jeopardy assessment for a nonterminated year nor those subjected to a termination could avail themselves of that remedy. In 1924, those terminated and those subjected to jeopardy assessments for nonterminated years were similarly denied access to the Board of Tax Appeals, unless they filed a bond in the amount of the claim. And in 1926, when the scheme assumed its current form, there was no indication that Congress intended for the first time to treat the two groups separately by granting direct access to the Board of Tax Appeals to those subjected to a jeopardy assessment for a nonterminated year, but denying it to those subjected to an assessment following a jeopardy termination.

V

Based on the plain language of the statutory provisions, their place in the legislative scheme, and the legislative history, we agree with the taxpayers' reading of the pertinent sections of the Code.[26] Under that reading, the

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tax owing, but not reported, at the time of a § 6851 termination is a deficiency whose assessment and collection are subject to the procedures of § 6861 et seq. Section 6861(b) requires a notice of deficiency to be mailed to a taxpayer within 60 days after the jeopardy assessment. Section 6863 bars the offering for sale of property seized until the taxpayer has had an opportunity to litigate in the Tax Court. Because the District Director failed to comply with these requirements in these cases, the taxpayers' suits were not barred by the Anti-Injunction Act,[27] § 7421(a) of the Code. The judgment of the

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United States Court of Appeals for the Sixth Circuit in No. 74-75 is affirmed. The judgment of the United States Court of Appeals for the Second Circuit in No. 73-1808 is reversed, and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

Affirmed in No. 74-75; Reversed and remanded in No. 73-1808.

Mr. Justice STEVENS took no part in the consideration or decision of these cases.

Mr. Justice BRENNAN, concurring.

I join the Court's opinion, and the statutory construction that makes unnecessary the Court's addressing the claims of Mr. Laing and Mrs. Hall that they were denied

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procedural due process secured by the Fifth Amendment. Decision of that question is therefore expressly reserved, ante, at 184 n. 26. I write only to state my views of the considerations raised by the due process claim.

The Court's construction of the relevant statutes permits the IRS to seize a taxpayer's assets upon a finding by the Commissioner in compliance with § 6851(a)(1). No hearing is required, judicial or administrative, prior to the seizure. But it cannot be gainsaid that the risk of erroneous determinations by the Commissioner with consequent possibility of irreparable injury to a taxpayer is very real. This suffices to bring due process requirements into play.

The "root requirement" of the Due Process Clause is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971) (emphasis in original). See, e. g., Bell v. Burson, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). The precise timing and attributes of the due process requirement, however, depend upon accommodating the competing interests involved. Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 739, 42 L.Ed.2d 725 (1975); Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972); Cafeteria Workers v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961).

Governmental seizures without a prior hearing have been sustained where (1) the seizure is necessary to protect an important governmental or public interest, (2) there is a "special need for very prompt action," and

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(3) "the standards of a narrowly drawn statute" require that an official determine that the particular seizure is both necessary and justified. Fuentes v. Shevin, 407 U.S. 67, 91, 92 S.Ct. 1983, 2000, 32 L.Ed.2d 556 (1972). Seizures pursuant to jeopardy assessments are clearly necessary to protect important governmental interests and there is a "special need for very prompt action." But § 6851(a)(1), although requiring an official determination that the particular seizure is both necessary and justified, nevertheless falls short, in my view, of meeting due

process requirements. This is because present law denies an affected taxpayer access to any forum for review of jeopardy assessments for up to 60 days.

In Goss v. Lopez, supra, the Court held that notice and hearing must follow a deprivation "as soon as practicable." 419 U.S., at 582-583, 95 S.Ct., at 740. The Louisiana statute upheld Mitchell v. W. T. Grant Co., 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974), entitled debtors whose assets had been seized to a hearing immediately following seizure and to invalidation of the seizure unless the creditor could prove the basis for the seizure, id., at 606, 94 S.Ct. at 1899. In contrast, a Georgia garnishment statute was invalidated for want of any opportunity "for an early hearing at which the creditor would be required to demonstrate at least probable cause for the garnishment." North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 607, 95 S.Ct. 719, 723, 42 L.Ed.2d 751 (1975). Thus, the governing due process principle obliges the IRS to provide a prompt hearing at which the IRS must prove "at least probable cause" for its claim.

But present law requires that taxpayers wait up to 60 days before challenging jeopardy assessments by filing suit in the Tax Court. However expeditiously the Tax Court handles the claim, that court is not required to decide the merits within any specified time, and no provision is made for a prompt preliminary evaluation of

the basis for the assessment. In my view, such delay would be constitutionally permissible only if there were some overriding governmental interest at stake, and the IRS suggested none in either of these cases.* But even if delay in judicial review on the merits were justifiable, due process would at least require some supporting rationale for denying taxpayers the opportunity for a prompt preliminary determination by an unbiased tribunal on the validity of the basis for the assessment. Again, none was offered in either of these cases.

Mr. Justice BLACKMUN, with whom THE CHIEF JUSTICE and Mr. Justice REHNQUIST join, dissenting.

Every experienced tax practitioner is aware of the problems of tax collection and tax evasion, and of the frequent need for prompt action on the part of those having responsibility for the protection of the revenues. Every experienced tax practitioner also knows that our Internal Revenue Code is a structured and complicated instrument perhaps too complex that deserves careful and historical analysis when, as here, longstanding provisions of that Code are challenged.

The Court in these two cases today gives every evidence of pursuing a quest for what it seems to regard as a desirable or necessary symmetry and, in my view, and

most unfortunately, indulges in a faulty analysis of the Code's structure and misinterprets the historical development of the statutes. It is led astray, I fear, by the emotional appeal of the facts in Mrs. Hall's case, involving, as it does, her husband's arrest on drug-related charges [1] and the seizure by the Internal Revenue Service of Mrs. Hall's Volkswagen automobile. I have little doubt that if Mr. Laing's case had come here alone and unfettered by the coincidental appearance of Mrs. Hall's case, the Court would have denied certiorari to Mr. Laing out of hand or, if not, would readily have affirmed. But Mr. Laing's case did not arrive alone. Thus the "equities" and the extremes of Mrs. Hall's case, with their sad overtones, tend to counterbalance, and now have overbalanced, the lack of "equity" in Mr. Laing's case. The result is that the Internal Revenue Service is deprived of a weapon it has long possessed under the Code and of a device it obviously needs in combatting questionable tax practices and tax evasion by those who do not pay their rightful taxes and who thereby increase the burden of those who do.

It is unfortunate, of course, that the issues are imbedded in a complicated and detailed tax code. Correct analysis, I submit, demands conclusions opposite to those reached by the Court today. I therefore dissent.

I

For an understanding of the purport and reach of § 6851(a)(1), an examination of the statutory structure of which it is a part is indicated.

A. The customary deficiency procedure. This is prescribed by Subchapter B of Chapter 63 of the Code under the heading "Assessment." The term "deficiency" is defined in § 6211(a), 26 U.S.C. § 6211(a)

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(1970 ed. and Supp. IV), essentially as the excess of the tax imposed by the Code over the amount of tax shown on the taxpayer's return as filed. If, however, the taxpayer files no return, or shows no tax on the return he does file, the deficiency is the amount of the tax imposed by the Code. Treas.Reg. § 301.6211-1(a), 26 CFR § 301.6211-1(a) (1975).

Once the Commissioner determines that a deficiency exists, he "is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail." 26 U.S.C. § 6212(a) (1970 ed., Supp. IV). Under § 6213(a) (1970 ed., Supp. IV), the taxpayer, within 90 days after the mailing of that notice, may file a petition with the United States Tax Court for a redetermination of the deficiency. During this period and, if a petition is filed with the Tax Court, until that court's decision has become final the Commissioner, with one exception hereinafter noted, is precluded from assessing the deficiency, from making a levy, and from proceeding in court for its collection. Any such move on the part of the Internal Revenue Service during that time "may be enjoined by a proceeding in the proper court." Section 6213(a) expressly, makes the Anti-Injunction Act, § 7421(a), inapplicable under those circumstances.

The sole exception to this preclusion of the Service during the customary deficiency procedure is also set forth explicitly in § 6213(a). It is that the preclusion is not effective with respect to a jeopardy assessment under § 6861. No like exception, or reference, however, is made with respect to § 6851, the statute that empowers the Commissioner to terminate the taxpayer's taxable period when collection of the tax may be in jeopardy.

B. The termination-of-the-taxable-period statute. This is the above-mentioned, and critical, § 6851, subsection (a)(1) of which is set forth in n. 1 of the Court's

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opinion, ante, p. 163. The statute constitutes the entire Part I of Subchapter A (Jeopardy) of Chapter 70 of the Code.

Our income tax system is primarily a self-reporting and self-assessment one. It is "based upon voluntary assessment and payment, not upon distraint." Flora v. United States, 362 U.S. 145, 176, 80 S.Ct. 630, 647, 4 L.Ed.2d 623 (1960). Helvering v. Mitchell, 303 U.S. 391, 399, 58 S.Ct. 630, 633, 82 L.Ed. 917 (1938); Treas. Reg. § 601.103(a), 26 CFR § 601.103(a) (1975). Congress, nonetheless, early recognized that there would be instances where the Service must take immediate affirmative action in order to safeguard the collection of a tax.[2] Section 6851(a)(1) fulfills this congressional concern and permits the District Director, see Treas. Reg. § 1.6851-1(a), 26 CFR § 1.6851-1(a) (1975), to terminate the taxable period if he finds that the taxpayer designs an act tending to prejudice or render ineffectual the collection of income tax for the current or the preceding tax year.[3] When this is done, notice of the termination must be given the taxpayer together with a demand for immediate payment of the tax for the taxable period so terminated. The tax thereupon becomes immediately due and payable.[4]

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Section 6851, standing alone, however, is not sufficient for a collection procedure because it does not contain its own assessment authority. The statute provides simply for the termination of the taxable period prematurely, and the authority must be found elsewhere in the statutory scheme.[5]

That assessment authority is granted by § 6201(a) of the Code, 26 U.S.C. § 6201(a).[6] This empowers the Commissioner "to make . . . assessments of all taxes . . . imposed by this title." An assessment is made by recording the liability of the taxpayer in the Service's books of account. § 6203. If, after demand, the taxpayer fails to pay, the Commissioner may invoke § 6321, which provides that the amount shall be a lien in favor of the United States upon the property of the taxpayer. The Service has power, after 10 days' notice and demand in a nonjeopardy situation, to collect the tax by levy and distraint. § 6331 (1970 ed. and Supp. IV).

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Section 6851(b) permits the Service to reopen the terminated taxable period each time the taxpayer is found to have received income within the current taxable year but since the termination. Similarly, the taxpayer himself may reopen the terminated period if he files "a true and accurate return." Under § 6851(e), the taxpayer may avoid early collection by furnishing a bond to insure the timely making of a return and the payment of the tax.

Nowhere in these several subsections of § 6851 does the word "deficiency" appear. The section contains no words of authorization or requirement that the Commissioner issue a notice of deficiency. Seemingly, once the tax is made immediately due by termination of the taxable period, the Commissioner may exercise his general assessment authority and proceed forthwith to collect through lien, levy, and distraint.

C. The jeopardy-assessment statute. This, so far as income, estate, and gift taxes are concerned, all of which require returns, is § 6861 of the Code, 26 U.S.C. § 6861.[7] It and the three succeeding sections constitute Part II (Jeopardy Assessments) of Subchapter A (Jeopardy) of Chapter 70 of the Code. Section 6861, like § 6851(a), is designed to achieve collection under exigent circumstances.

Section 6861 is invoked only after the date upon which the tax for the full year is due. This stands in contrast

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to § 6851(a), which permits premature termination of the taxable period. In other words, § 6851(a) serves to advance the time when a tax becomes due and payable, whereas § 6861 serves to advance the time for collection of a tax already due. Jeopardy to collection lies in the background of both situations and triggers the invocation of either statute.

In sharp contrast with § 6851(a), § 6861(a) refers specifically to a "deficiency," as that term is defined in § 6211. The further reference in § 6861(a) to § 6213(a) is of significance. Section 6213(a), as has been noted, provides for the filing by the taxpayer with the Tax Court of a petition for redetermination of the deficiency. By its reference to § 6213(a), § 6861(a) thus authorizes a jeopardy assessment, despite the available path for the taxpayer to the Tax Court and despite the presence of the otherwise operative preclusion provisions of § 6213(a). Also, it confirms that a jeopardy assessment made under § 6861(a) is reviewable in the Tax Court. That this is so is convincingly demonstrated by the additional fact that § 6861(b) provides that if a jeopardy assessment is made before the mailing of any notice of deficiency, the Commissioner shall mail a notice within 60 days after the making of the assessment. Thus, although the Service in such a jeopardy situation is not restrained from immediate levy and collection, the taxpayer is nevertheless assured his relatively prompt access to the Tax Court for redetermination of the deficiency. In addition, under § 6863(a), 26 U.S.C. § 6863(a), the taxpayer may post a proper bond and thereby stay collection. And, absent specified exigent circumstances, sale of property seized for collection is not to be effected during the period of Tax Court review. § 6863(b)(3).

D. The Federal Anti-Injunction Act. This statute,

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s 7421(a), generally prohibits suits to restrain assessment or collection of tax. It reads:

"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."

The statute had its origin over a century ago in § 10 of the Revenue Act of Mar. 2, 1867, 14 Stat. 475.[8] See Rev.Stat. § 3224. It was enacted to prevent in the federal system the type of injunctive suits that had plagued tax collections by the States. The Court has recognized the congressional concern underlying the statute, namely, that if courts were to exercise injunctive power with respect to the collection of taxes, the Government's very existence could be threatened. Cheatham v. United States, 92 U.S. 85, 89, 23 L.Ed. 561 (1876); State Railroad Tax Cases, 92 U.S. 575, 613, 23 L.Ed. 663 (1876); Snyder v. Marks, 109 U.S. 189, 193-194, 3 S.Ct. 157, 159-160, 27 L.Ed. 901 (1883); Bob Jones University v. Simon, 416 U.S. 725, 736-737, 94 S.Ct. 2038, 2046, 40 L.Ed.2d 496 (1974). The statute has been uniformly applied to bar suits before collection except in certain specific and delimited circumstances.

The first exception to the statute's bar is spelled out in the initial words of § 7421(a) itself: the Act does not preclude injunctive suits within the contemplation of §§ 6212(a) and (c) and 6213(a). These sections, as has been seen, concern situations where a notice of deficiency is required and where jurisdiction of the United States Tax Court is thereby afforded.

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The second exception is also spelled out in the prefatory words of § 7421(a): the Act does not apply to an injunctive suit within the contemplation of § 7426(a) and (b)(1), 26 U.S.C. § 7426(a) and (b)(1). These sections, however, concern a civil action instituted by a person other than the taxpayer, such as a person claiming a prior lien, and have no possible application here. See Bob Jones University v. Simon, 416 U.S., at 731-732, 94 S.Ct., at 2043, n. 6.

The third exception is of judicial origin. The Court, in Enochs v. Williams Packing Co., 370 U.S. 1, 7, 82 S.Ct. 1125, 1129, 8 L.Ed.2d 292 (1962), observed that "if it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and . . . the attempted collection may be enjoined if equity jurisdiction otherwise exists." This obviously is a very narrow exception and is subject to a twofold test: a clear indication that the Government cannot prevail, and the presence of an equity consideration in the sense of threat of irreparable injury for which there is no adequate legal remedy. The Court recently reaffirmed the Williams Packing exception in Bob Jones University v. Simon, supra, and in Commissioner v. "Americans United" Inc., 416 U.S. 752, 94 S.Ct. 2053, 40 L.Ed.2d 518 (1974). It noted that a somewhat different attitude had been evident in the 1930's. See Miller v. Standard Nut Margarine Co., 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed. 422 (1932), and Allen v. Regents of University System of Georgia, 304 U.S. 439, 58 S.Ct. 980, 82 L.Ed. 1448 (1938).

There is no question, of course, that the present suits instituted by petitioner Laing and respondent Hall are actions to restrain the collection or enforcement of tax, within the meaning of § 7421(a). These parties, however, do not contend that the Williams Packing exception is applicable to their respective cases. I necessarily agree that the exception affords Mr. Laing and

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Mrs. Hall no avenue of relief, for there is no indication in the records that on the merits the Government under no circumstances could prevail.[9]

II

This review of the statutory structure clearly reveals the following:

1. The congressionally intended normal procedure is to allow the taxpayer, if he desires it, some "breathing space" prior to exaction of the additional tax that is claimed. The avenue provided to accomplish this result is the route to the Tax Court where the issues, factual and legal, may be resolved prior to collection. This avoids the necessity of the taxpayer's disgorgement of funds, to his current financial detriment, even though he might ultimately prevail and recoup by refund all or a substantial part of the amount he pays. The choices the taxpayer makes, and the risks he assumes, by this route, include the forgoing of trial of the factual issues by a jury, having his trial before a specialist judge not assigned to the taxpayer's local district, and the accruing of interest on any deficiency ultimately redetermined, § 6601(a), 26 U.S.C. § 6601(a) (1970 ed., Supp. IV). If he selects the other route, that is, payment of the asserted deficiency, filing claim for refund, and suit, the taxpayer (if he chooses the district court rather than the Court of Claims) has his case tried before a United States district judge of his own district, with a jury available,

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and it is the Government, not the taxpayer, that bears the burden of accruing interest, § 6611, 26 U.S.C. § 6611 (1970 ed., Supp. IV).

2. Despite this available avenue of litigation in the Tax Court before payment, and its use by the taxpayer after a notice of deficiency is issued, the Commissioner nonetheless may assess and collect, subject to the taxpayer's fulfillment of prescribed conditions, in a jeopardy situation. § 6861. This enables the Government to protect the revenues, but at the same time the path to the Tax Court is preserved for the taxpayer.

3. Jeopardy collection power is also vested in the Commissioner during the taxpayer's taxable period before his tax for the year can be determined. § 6851(a). This, too, protects the revenues.

4. Both § 6861 and § 6851 are directed to critical and exigent circumstances. In this respect, neither statute is a part of the normal assessment and collection process. The one, § 6861, the "ordinary" jeopardy-assessment provision, operates within that usual procedure and while it is underway. The other, § 6851, however, operates separate and apart from that procedure and, indeed, inasmuch as the taxable year is not at an end, or a return for it is not yet overdue, before that procedure can get underway at all.

5. It would seem to follow, then, that §§ 6861 and 6851, although they are similar in character and although both are directed at emergency situations, are separate and distinct. Of the two, § 6851 is the more extreme and perilous, for its impact comes in midstream, that is, during

the taxable year rather than after its close and a return for it has been filed. Ludwig Littauer & Co. v. Commissioner, 37 B.T.A. 840, 842 (1938) (reviewed by the Board).

6. Because § 6851 is concerned with the situation prior to the overdue date for the filing of the year's return, that

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is, with premature termination of a taxable period, at a time when the computation of the tax for the full year cannot be made or not yet has been made, it is clear that no deficiency as such can be ascertained, that no notice of deficiency can be issued, and that none is required. These terms and concepts have no sensible application and relationship to the § 6851 procedure.

III

The foregoing analysis and conclusion that a notice of deficiency is not required when a taxable period is prematurely terminated under § 6851, despite the Court's disavowal, is confirmed by the legislative history. This history demonstrates that §§ 6851 and 6861, although now consecutively placed in the present Code, are discrete and independent provisions, with the consequences that assessment authority for a termination under § 6851 does not derive from § 6861, as the taxpayers here assert and the Court is now led to believe, and that assessment following termination of a taxable period was not intended to be subject to review by the Tax Court.

As is often the case in tax matters, the successive Revenue Acts primarily present the pertinent legislative history.

The provision allowing premature termination of a taxable period where collection was feared jeopardized first appeared as § 250(g) of the Revenue Act of 1918, 40 Stat. 1084.[10] The language of § 250(g) ob-

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viously comports substantially with the language of the current § 6851(a). An assessment for a terminated period was made under the general assessment authority provided by Rev.Stat. § 3182. Judicial review at that time could be obtained only after payment of the tax and by way of a refund suit in the United States district court or in the Court of Claims. Rev.Stat. § 3226. See 28 U.S.C. § 1346(a)(1).

Section 6861, on the other hand, evolved independently and initially with the Revenue Act of 1921. It was born as a proviso to § 250(d) of that Act. 42 Stat. 266. Section 250(d) established an administrative appeal procedure for resolution of taxpayer disputes; assessment of a deficiency could not be made pending final decision on the administrative appeal. This deferral, however, was not compelled where the Commissioner determined that collection was in jeopardy; when he so determined, assessment could be made immediately. Despite this introduction by the 1921 Act of the administrative appeal procedure, § 250(g) of the 1918 Act, providing for termination of the taxable period, was continued as

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s 250(g) of the 1921 Act, 42 Stat. 267, without any change material here and without reference to the newly established administrative appeal procedure. See S.Rep. No. 275, 67th Cong., 1st Sess., 20-21 (1921). And the assessment authority continued to be provided only by Rev.Stat. § 3182.

Congress soon recognized that taxpayers might not be convinced of the impartiality of an administrative appeal within the then Bureau of Internal Revenue. Accordingly, by § 900 of the Revenue Act of 1924, 43 Stat. 336, the Board of Tax Appeals was created as an independent agency in the Executive Branch. The taxpayer, prior to payment of his tax, could obtain a review in the Board whenever the Commissioner disagreed with the amount of tax reported. See H.R.Rep. No. 179, 68th Cong., 1st Sess., 7-8 (1924). The Board, however, was given only limited jurisdiction; it was confined to deficiencies in income, estate, and gift taxes and to claims for abatement of deficiencies. Revenue Act of 1924, §§ 900(e), 274, 279, 308, 312, and 324, 43 Stat. 337, 297, 300, 308, 310, and 316. Review of the Commissioner's termination of a taxable period, however, was not cognizable before the Board. Under § 282 of the 1924 Act, 43 Stat. 302, the taxpayer whose taxable period was terminated could avoid immediate collection only by furnishing security that he would make a timely return and pay the tax when due.

The 1924 Act also introduced a more precise definition of the term "deficiency" to supplant the definition contained in the 1921 Act.[11] The new definition, contained in the 1924 Act's § 273(1) and (2), 43 Stat. 296, is virtually identical to the present definition in § 6211(a)

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of the 1954 Code and in Treas.Reg. § 301.6211-1, 26 CFR § 301.6211-1 (1975). The committee reports described this new definition in terms that indicate that a deficiency could not be determined until the time for filing the return had arrived, that is, until a date after the close of the taxable year. See H.R.Rep. No. 179, 68th Cong., 1st Sess., 24 (1924); S.Rep. No. 398, 68th Cong., 1st Sess., 30 (1924). There was nothing indicating that the Congress intended that the definition of "deficiency" was to encompass the amount declared due and payable upon the termination of a taxable period. The exception for the situation where collection after the close of the taxable year and after the passing of the due date for the filing of the return would be jeopardized by delay, however, was carried forward to the Board review created by the 1924 Act, and the Commissioner could immediately assess and collect notwithstanding the taxpayer's ability to go to the Board. Revenue Act of 1924, §§ 274(d) and 279, 43 Stat. 297 and 300.

The Revenue Act of 1926, 44 Stat. 9, filled some interstices of Board jurisdiction. Direct appeal of Board decisions to the then circuit courts of appeals was provided. § 1001(a), 44 Stat. 109. The Board was given jurisdiction to determine that the taxpayer had overpaid his tax as well as to determine that a deficiency existed. The definition of "deficiency" remained the same. §

273, 44 Stat. 55. Thus, the taxpayer whose taxable period was prematurely terminated still could not go to the Board.

The Revenue Acts following the 1926 Act, until and including the Internal Revenue Code of 1939, 53 Stat. pt. 1, effected no significant change in the termination or jeopardy-assessment provisions or in the jurisdiction of the Board of Tax Appeals.

The 1954 Code culminated the legislative development of §§ 6861 and 6851 and provided the current section

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designations. Two minor changes were made in the statutes that are pertinent here, but neither altered the jurisdictional framework of the Tax Court which, by § 504 of the Revenue Act of 1942, 56 Stat. 957, had supplanted the Board of Tax Appeals. The first was the amendment of the termination statute, § 6851, by the addition of its present subsection (b). This permitted the reopening of the terminated taxable period either by the Commissioner or by the taxpayer. See Treas.Reg. §§ 1.6851-1(b) and (c), 26 CFR §§ 1.6851-1(b) and (c) (1975); H.R.Rep. No. 1337, 83d Cong., 2d Sess., A421 (1954); S.Rep. No. 1622, 83d Cong., 2d Sess., 597 (1954). The second change was the addition of § 6863(b)(3) to authorize a stay of the sale of property seized after a jeopardy assessment under § 6861 pending decision by the Tax Court. No similar stay was made explicitly available with respect to the termination provisions of § 6851.

This legislative history particularly reinforces two aspects of the conclusions, drawn above, upon analysis of only the language of the presently effective statutes:

The first is the inescapable fact that the assessment authority for an amount made "immediately due and payable" under § 6851(a) is not § 6861 but is the general authority granted by § 6201. Indeed, during the time the Revenue Act of 1918 was in effect, that is, until the Revenue Act of 1921 was adopted, only § 6851's predecessor was in existence; the predecessor of § 6861 had not yet appeared. Thus, I disagree with the suggestions contained Clark v. Campbell, 501 F.2d 108, 121 (CA5 1974), Rambo v. United States, 492 F.2d 1060, 1064 (CA6 1974), and Schreck v. United States, 301 F.Supp. 1265, 1273 (D.Md.1969), that the placement of § 6861 in the Code immediately following § 6851 served to establish a new procedure mandatory for a proceeding under § 6851. That approach is expressly

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foreclosed, in any event, by § 7806(b) of the 1954 Code, 26 U.S.C. § 7806(b), providing that no inference shall be drawn by reason of the location or grouping of any particular section or portion of the tax title of the Code. United States v. Ryder, 110 U.S. 729, 740, 4 S.Ct. 196, 201, 28 L.Ed. 308 (1884); Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289, 309 n. 12, 95 S.Ct. 2336, 2350, 45 L.Ed.2d 191 (1975). The Commissioner's power to terminate a taxable period under § 6851 and then to assess under § 6201 is not at all dependent upon § 6861, and there is no basis for the incorporation of the notice-of-deficiency requirement of § 6861(b) into § 6851.

Not only do §§ 6851 and 6861 have separate and independent origins and dates of birth, but their legislative developments in subsequent years are distinctly different. Dealing with jeopardy situations in disparate ways, the statutes should be considered as independent and not as one provision tied to the requirements of the other.

Secondly, the legislative evolution of the two sections and the creation of the Board of Tax Appeals demonstrate that an amount assessed pursuant to a § 6851 termination is not a "deficiency" within the meaning of § 6211. A glance at the 1921 Act reveals the establishment and existence of the administrative appeal which was the predecessor of the later independent review in the Board of Tax Appeals. Section 250(b) of that Act defined "deficiency" as the difference between "the amount already paid" and "that which should have been paid." When a taxable year is prematurely terminated, the tax "which should have been paid" is indeterminable because none was required to have been paid by that time. Thus, the deficiency concept was inapplicable to an assessment made for a terminated period. No notice of deficiency would be issued for the period, and the administrative appeal under the 1921 Act would not be available.

Exactly the same analysis applies to the definition of "deficiency" under the 1954 Code. Prior to the end of the taxable year neither the Commissioner nor the taxpayer is able to ascertain the tax imposed by the Code. A "deficiency" cannot be determined before the close of a taxable year. The requirement that a notice of deficiency be issued, therefore, does not apply to a § 6851(a) termination of a taxable period.[12]

I therefore conclude that the Commissioner is not required to issue a notice of deficiency to a taxpayer whose taxable period is terminated pursuant to the provisions of § 6851(a) of the Code. The statutory scheme does not require this, and the legislative history demonstrates that an assessment pursuant to a termination does not give rise to a "deficiency." From this it follows that, as a statutory matter, the Anti-Injunction Act, § 7421(a) of the Code, bars the suits by petitioner Laing and respondent Hall to enjoin the assessment and collection of taxes for their respective terminated taxable periods. This conclusion, of course, is not an end to the cases, for there remain the question of remedy available to persons in their position and the constitutional issue that is thereby raised.

IV

The courts that have arrived at a result contrary to the one I reach on the statutory issue have sug-

gested that this result would produce "significant constitutional problems." Rambo v. United States, 492 F.2d, at 1064-1065. See also Schreck v. United States, 301 F.Supp., at 1281. This constitutional reservation has been prompted by the concern that if a notice of deficiency is not required for a terminated taxable period, the taxpayer does not have the benefit of immediate access to the Tax Court.

To be sure, as has been noted above, Tax Court jurisdiction to determine liability prior to payment is predicated upon the existence of a "deficiency," within the meaning of § 6211(a), and upon the Commissioner's formal issuance of a notice of deficiency pursuant to § 6212(a). As a result, notices of deficiency have been described as " 'tickets to the tax court.' " Corbett v. Frank, 293 F.2d 501, 502 (CA9 1961). Mason v. Commissioner of Internal Revenue, 210 F.2d 388 (CA5 1954). But this lack of access to the Tax Court by the taxpayer who finds himself in a terminated taxable period situation does not mean that he is without effective judicial remedy to challenge the Commissioner's action. Lack of access to the Tax Court does not equate with a denial of Fifth Amendment due process if due process is otherwise available. And it is at once apparent that the taxpayer has a variety of remedies to test the validity of the Commissioner's action:

First, a refund suit is possible. Once there is a seizure of any property of the taxpayer in satisfaction of the assessment for the terminated period, the taxpayer may file a claim for refund either by filing the formal claim (Form 843) or by making a short-period return and showing an amount due that is less than the amount seized. Rogan v. Mertens, 153 F.2d 937 (CA9 1946). See also Treas.Reg. § 301.6402-3(a)(1), 26 CFR § 301.6402-3(a)(1) (1975). The Commissioner, of course, has

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up to six months to process the claim. §§ 6532(a) and 7422(a) of the Code, 26 U.S.C. §§ 6532(a) and 7422(a). Immediately upon denial of the claim, or upon the expiration of six months with no action by the Commissioner,[13] the taxpayer may commence suit for refund in the district court or in the Court of Claims. See 28 U.S.C. § 1346(a)(1). The jurisdiction of these courts over a refund suit does not depend upon the existence of a formally asserted "deficiency," as does the jurisdiction of the Tax Court.

Second, the taxpayer subject to a § 6851 termination may await the end of his taxable year and then file a full-year return and claim an overpayment and refund and in due course seek relief in court. Irving v. Gray, 479 F.2d 20 (CA2 1973).

Third, the taxpayer again may await the end of the taxable year and file a full-year return. The Commissioner may then determine that additional tax is due and, if so, the statutory definition of a "deficiency" will be met and a notice of deficiency will issue. When this happens, the taxpayer is in a position to seek a redetermination in the Tax Court, contesting the additional tax so asserted or claiming an overpayment for the year.

Although a taxpayer whose taxable period is terminated thus may not gain immediate access to the Tax Court, he does have available appropriately prompt avenues of relief principally in the district court or in the Court of Claims. There is, of course, no constitutional

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requirement that every tax dispute be adjudicable in the Tax Court. In fact, that court's jurisdiction is limited to income, estate, and gift taxes.

It must be made clear that, whether the taxpayer whose taxable period has been terminated files a short-period refund claim or one for a full taxable year, he still may sue for refund even if the value of the property seized is less than the amount of the assessment made against him. There is no requirement in this situation that he pay the full amount of the assessment before he may claim and sue for a refund.

At this point, Flora v. United States, 357 U.S. 63, 78 S.Ct. 1079, 2 L.Ed.2d 1165 (1958), on rehearing, 362 U.S. 145, 80 S.Ct. 630, 4 L.Ed.2d 623 (1960), deserves comment. In that case the Court held that a federal district court does not have jurisdiction of an action for refund of a part payment made by a taxpayer on an assessment. It ruled that the taxpayer must pay the full amount of the assessment before he may challenge its validity in the court action. Payment of the entire deficiency thus was made a prerequisite to the refund suit. The ruling, however, was tied directly to the jurisdiction of the Tax Court where litigation prior to payment of the tax was the usual order of the day. 362 U.S., at 158-163, 80 S.Ct., at 637-640. The holding thus kept clear and distinct the line between Tax Court jurisdiction and district court jurisdiction. The Court said specifically:

"A word should also be said about the argument that requiring taxpayers to pay the full assessments before bringing suits will subject some of them to great hardship. This contention seems to ignore entirely the right of the taxpayer to appeal the deficiency to the Tax Court without paying a cent." Id., at 175, 80 S.Ct., at 646.

This passage demonstrates that the full-payment rule applies only where a deficiency has been noticed, that is,

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only where the taxpayer has access to the Tax Court for redetermination prior to payment. This is the thrust of the ruling in Flora, which was concerned with the possibility, otherwise, of splitting actions between, and overlapping jurisdiction of, the Tax Court and the district court. Id., at 163, 165-167, 176, 80 S.Ct., at 640, 641-642, 646. Where, as here, in these terminated period situations, there is no deficiency and no consequent right of access to the Tax Court, there is and can be no requirement of full payment in order to institute a refund suit. The taxpayer may sue for his refund even if he is unable to pay the full amount demanded upon the termination of his taxable period. Irving v. Gray, 479 F.2d, at 24-25, n. 6; Lewis v. Sandler, 498 F.2d 395, 400 (CA4 1974).

I recognize that on occasion the refund procedure may cause some hardship for the terminated taxpayer whose entire assets may be seized and who may be required to wait as long as six months before filing his refund suit. Indeed, this hardship was one of the reasons for establishing the Board of Tax Appeals as a prepayment forum in the first place. See H.R.Rep. No. 179, 68th Cong., 1st Sess., 7 (1924); S.Rep. No. 398, 68th Cong., 1st Sess., 8 (1924).[14] It is obvious, of course, that when one tax-

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payer dishonestly evades his share of the tax burden, that share is shifted to all those who comply with the law. This balance of "hardship" doubtless was in the minds of those who formulated the statutory structure.

It has long been established, moreover, that there is no constitutional requirement for a prepayment forum to adjudicate a dispute over the collection of a tax. Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 595-596, 51 S.Ct. 608, 611, 75 L.Ed. 1289 (1931). There, in an opinion by Mr. Justice Brandeis, the Court unanimously held that the taxing authorities may lawfully seize property for payment of taxes in summary proceedings prior to an adjudication of liability where "adequate opportunity is afforded for a later judicial determination of the legal rights." Id., at 595, 51 S.Ct., at 611. Fuentes v. Shevin, 407 U.S. 67, 91-92, 92 S.Ct. 1983, 1999-1920, 32 L.Ed.2d 556, and n. 24 (1972).

In Phillips the Court noted the availability of two alternative mechanisms for judicial review in that particular situation: a refund action, or immediate redetermination of liability by the Board of Tax Appeals. In response, however, to a complaint by the taxpayer there that if the Board remedy were sought, collection would not be stayed unless a bond were filed, Mr. Justice Brandeis dismissed the contention with the observation:

"(I)t has already been shown that the right of the United States to exact immediate payment and to

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relegate the taxpayer to a suit for recovery is paramount. The privilege of delaying payment pending immediate judicial review, by filing a bond, was granted by the sovereign as a matter of grace solely for the convenience of the taxpayer." 283 U.S., at 599-600, 51 S.Ct., at 612.

Thus, the Court made clear that a prepayment forum was not a requirement of due process. I see no reason whatsoever to depart from that rule in these cases, where the taxpayer may file an action for refund after at most six months from the seizure of his assets or other action taken by the IRS under § 6851.

Accordingly, I dissent. I would affirm the judgment of the United States Court of Appeals for the Second Circuit in No. 73-1808, and I would reverse the judgment of the United States Court of Appeals for the Sixth Circuit in No. 74-75 and remand that case to the United States District Court for the Western District of Kentucky with directions to dismiss the complaint.

1. Section 6851(a)(1) provides:

"If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy."

2. Section 6861(a) provides for the immediate assessment of deficiencies whose assessment or collection would otherwise be in jeopardy:

"If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof."

3. The Code provides that a § 6851 termination will be ordered by "the Secretary or his delegate," § 6851(a). The Regulations provide that the District Director is in all cases authorized to make the required findings and order the termination. Treas.Reg. § 1.6851-1(a)(1), 26 CFR § 1.6851-1(a)(1) (1975).

4. A deficiency notice is of import primarily because it is a jurisdictional prerequisite to a taxpayer's suit in the Tax Court for redetermination of his tax liability. See infra, at 171.

5. Petitioner Laing has not denied ownership of the currency. Tr. of Oral Arg. 64; Tr. of Oral Rearg. 48.

6. Petitioner Laing also has filed suit for refund in the United States District Court for the District of Vermont. Trial is being delayed, pursuant to stipulation of the parties, pending our decision in the present case.

7. Rambo is before us as No. 73-2005, cert. pending.

8. Cert. pending, sub nom. United States v. Clark, No. 74-722.

9. The developing conflict among the federal courts was recognized Willits v. Richardson, 497 F.2d 240, 246 n. 4 (CA5 1974), and Jones v. Commissioner, 62 T.C. 1, 2-3 (1974).

10. Counsel for respondent Hall asserted that the IRS also "seized $57 from her bank account," and that it would, or did, seize her paycheck. Tr. of Oral Arg. 46. Counsel also stated that $77 was later refunded to Mrs. Hall. Id., at 57. We are not advised how the latter amount was computed.

11. A corporate surety bond in the amount of $1,650 was duly filed.

12. The precise findings required are: (1) that the taxpayer designs quickly to depart from the United States or to remove his property therefrom; or (2) that he intends to conceal himself or his property therein; or (3) that he is about to do any other act tending to prejudice or render wholly or partly ineffectual proceedings to collect income tax for the current or preceding year. § 6851(a). See n. 1, supra.

13. The "assessment," essentially a bookkeeping notation, is made when the Secretary or his delegate establishes an account against the taxpayer on the tax rolls. 26 U.S.C. § 6203. In both of the cases at bar, the assessments were made immediately upon termination of the taxpayers' taxable years.

In the past, the Government has argued that § 6851 contained its own assessment authority, Schreck v. United States, 301 F.Supp. 1265 (D.Md.1969), but it has since abandoned that position, Lisner v. McCanless, 356 F.Supp. 398, 401 (D.Ariz.1973), and it does not press the point here. Cf. n. 17, infra.

14. A tax deficiency whose collection is not in jeopardy is collected according to the procedures of §§ 6211-6216 of the Code, 26 U.S.C. §§ 6211-6216 (1970 ed. and Supp. IV). Under § 6213(a), the taxpayer ordinarily has 90 days after mailing of his deficiency notice in which to file his claim with the Tax Court.

15. The rule against sale of the taxpayer's property has three limited exceptions: the property can be sold (1) if the taxpayer consents to the sale; (2) if the expenses of maintenance of the property will greatly reduce the net proceeds of its sale; or (3) if the property is perishable. §§ 6863(b)(3)(B), 6336.

16. This follows because the findings necessary to terminate a taxable year under § 6851 will always justify a finding that the assessment of the taxes owed will be "jeopardized by delay." See nn. 1 and 2, supra.

17. Since it does not view the termination as creating a deficiency, the Government would apply neither the ordinary nor the jeopardy deficiency assessment procedures. Under the Government's approach, the taxes due upon a jeopardy termination are simply assessed under the general assessment section of the Code, § 6201, 26 U.S.C. § 6201 (1970 ed. and Supp. IV).

The Government further argues that the power to assess jeopardy terminations is derived solely from the general assessment section. While the taxpayers argue that the power to assess jeopardy terminations comes from the jeopardy-assessment provision, § 6861, rather than the general assessment provision, § 6201, we need not resolve that question here. Even if the Government is correct that the assessment power comes from § 6201, the procedural rules of § 6861 et seq. govern, on their face, when the assessment is of a deficiency whose collection is in jeopardy. See n. 2, supra. Likewise, the procedural rules of §§ 6211-6216 govern assessments empowered by § 6201 when the assessment is of a deficiency whose collection is not in jeopardy. See n. 14, supra, and accompanying text. Cf. n. 13, supra.

18. A deficiency is defined as follows:

"(a) In general.

"For purposes of this title in the case of income, estate and gift taxes and excise taxes, imposed by subtitles A and B, chapters 42 and 43, the term 'deficiency' means the amount by which the tax imposed by subtitle A or B or chapter 42 or 43, exceeds the excess of

"(1) the sum of

"(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

"(B) the amounts previously assessed (or collected without assessment) as a deficiency, over

"(2) the amount of rebates, as defined in subsection (b)(2), made." 26 U.S.C. § 6211(a) (1970 ed. and Supp. IV).

See also Treas. Reg. § 301.6211-1(a), 26 CFR § 301.6211-1(a) (1975). Thus a deficiency does not include all taxes owed by a taxpayer, but only those that are both owed and not reported. Cf. n. 19, infra.

19. To the extent the tax owing upon a jeopardy termination has been reported by the taxpayer either because it was reported for the preceding year, or because the taxpayer immediately filed a § 443 return no deficiency is created, even if the taxes reported have not yet been paid. See n. 18, supra. Of course, the procedures for assessing deficiencies whose collection is in jeopardy, § 6861 et seq., would not apply to such monies. The taxpayer has conceded owing the taxes he has reported, and those taxes, if unpaid, may be directly obtained by levy without according any prepayment access to the Tax Court. The levy provision, § 6331, contains provisions for the expedited collection of taxes owing in jeopardy situations.

20. The broad dictum to the contrary in the Board of Tax Appeals' 1938 opinion Ludwig Littauer & Co. v. Commissioner, 37 B.T.A. 840, 842, upon which the Government in part relies, was apparently rejected by the Tax Court in the Sanzogno opinion. The majority recognized in Sanzogno that "(i)t is possible that our holding is in some conflict with the rationale of our opinion in Ludwig Littauer & Co.," 60 T.C., at 325 n. 2, and Judge Simpson wrote separately to suggest that the earlier precedent should have been given its formal burial then and there. In a subsequent § 6851 case, Jones v. Commissioner, 62 T.C. 1 (1974), the Tax Court avoided the broad rationale of Littauer and instead held simply that a termination letter was not a deficiency notice and that without a deficiency notice a taxpayer cannot litigate his claim in the Tax Court.

21. See 9 J. Mertens, Law of Federal Income Taxation § 49.130 (J. Malone rev. 1971); Odell, Assessments: What are they Ordinary? Immediate? Jeopardy?, 2 N.Y.U. 31st Inst. on Fed. Tax. 1495, 1520, 1522 (1973).

The Government argues that a deficiency cannot be created by a jeopardy termination because a notice of deficiency for a terminated year would make no sense. This is so, it is argued, because the year is not really over and may be reopened pursuant to § 6851(b). Brief for United States 24-25. The Government ignores the effect of a § 6851 termination: for the taxpayer the "taxable year" is complete and taxes are immediately owing for that short year. §§ 441(b)(3), 443(a)(3), 6851. The deficiency for that period can easily be computed under § 6211 and notice of that deficiency issued. If the short year is thereafter reopened and again terminated, a new notice of deficiency can, and under our view of § 6861 et seq. must, be issued. § 6861(b).

The Government's argument, Brief for United States 25-26, that Tax Court jurisdiction in the case of a terminated year that is subject to reopening is inappropriate must likewise fail. We see no reason why the Tax Court, applying normal tax principles should be less capable of determining the tax owing for the short year than the district court or Court of Claims, which, under the Government's theory, would make that determination. See also § 6861(c).

22. The Government repeatedly conceded at oral argument that adoption of the taxpayers' theory would result in no significant injury to the Government other than the loss of some of the cases now pending in the lower courts. Tr. of Oral Arg. 9-10, 18, 21, 23, 24, 28, 30. This concession completely rebuts the dissent's claim that our decision today deprives the IRS "of a device it obviously needs in combatting questionable tax practices . . . ." Post, at 189..

23. That statute was almost identical to § 6201 of the present Code.

24. The jeopardy-assessment procedure, as is indicated, supra, at p. 170, is an exception to the normal deficiency-assessment mechanism, which allows a taxpayer the prepayment remedy of withholding the taxes claimed by the Government until after a final judicial determination of liability. Of course, under the 1918 Act a taxpayer who sought to place in jeopardy collection of his taxes could be forestalled under the jeopardy-termination provision of § 250(g), which enabled the IRS to declare immediately owing the tax for the present or previous taxable year. That the jeopardy-assessment procedures, born of necessity to reconcile the prepayment remedy with the occasional need for expedited collections of taxes, did not exist to govern assessments after jeopardy terminations under the 1918 Act does not mean, of course, that the procedures, once formulated, were not intended to cover assessments of deficiencies created by jeopardy terminations as well as all other jeopardy assessments.

The Government suggests that the power to assess jeopardy terminations cannot derive from the jeopardy-assessment section because the jeopardy-termination provision existed in the 1918 Act before any provision was made for jeopardy assessments. Brief for United States 40-42.

Since in our view the source of the power to assess jeopardy terminations is irrelevant in determining whether the procedures for jeopardy assessments apply to assessments after jeopardy terminations, see n. 17, supra, this argument is of no consequence.

25. Examination of the entire text of § 250, including the termination provision, § 250(g), strongly suggests that in the 1921 Act the word "deficiency" was used in its colloquial sense to mean the amount of tax remaining unpaid at the time the tax was due, and that no significance was attached to whether a return had been filed at that time.

26. As a final reason for adopting their construction of the Code, the taxpayers argue that the Government's reading would violate the Due Process Clause of the Fifth Amendment. The basis for this claim is that under the assessment procedures of § 6861 et seq. the taxpayer is guaranteed access to the Tax Court within 60 days, while under the procedures suggested by the Government the taxpayer in a termination case could be denied access to a judicial forum for up to six months. See supra, at 173. Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931). Moreover, the taxpayers argue, under the procedures of § 6861 et seq. the property seized may not be sold until after a final determination by the Tax Court, § 6863, while under the Government's theory the property seized in a jeopardy termination may be immediately subject to sale. Because we agree with the taxpayers' construction of the Code, we need not decide whether the procedures available under the Government's theory would, in fact, violate the Constitution.

The taxpayers do not question here, and we do not consider whether, even if the jeopardy-assessment procedures of § 6861 et seq. are followed, due process demands that the taxpayer in a jeopardy-assessment situation be afforded a prompt post-assessment hearing at which the Government must make some preliminary showing in support of the assessment. North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 607, 95 S.Ct. 719, 722, 42 L.Ed.2d 751 (1975); Mitchell v. W. T. Grant Co., 416 U.S. 600, 610-611, 94 S.Ct. 1895, 1901-1902, 40 L.Ed.2d 406 (1974); Fuentes v. Shevin, 407 U.S. 67, 72, 92 S.Ct. 1983, 1990, 32 L.Ed.2d 556 (1972).

27. The Anti-Injunction Act generally bars suits to enjoin the assessment or collection of taxes. But § 7421(a) is subject to several exceptions, one pertinent here: it does not forbid suits to enjoin the assessment of a deficiency, or a levy or proceeding in court for its collection, if the taxpayer has not been mailed a notice of deficiency and afforded an opportunity to secure a final Tax Court determination. § 6213(a). On the other hand, this exception to the Anti-Injunction Act does not apply to jeopardy assessments made "as . . . provided in" § 6861. Thus jeopardy assessments ordinarily may not be enjoined. When, however, the IRS fails to follow the procedures of § 6861 et seq., as in these cases, it is not assessing "as . . . provided in" § 6861, and the § 6861 exception to § 6213(a) is inapplicable. In such cases, § 6213(a)'s exception to the Anti-Injunction Act becomes operative, and a suit to enjoin the collection of the jeopardy deficiency may be brought.

In No. 73-1808, petitioner Laing brought suit approximately three weeks after the jeopardy termination and assessment. Since the IRS has up to 60 days after a jeopardy assessment to mail the notice of deficiency, § 6861(b), no action had yet been taken that was not in conformity with the jeopardy-assessment procedures, and the suit could properly have been dismissed at that time as barred by the Anti-Injunction Act. When 60 days passed without the mailing of a notice of deficiency, however, petitioner amended his complaint to include this violation of the procedures of § 6861. App. in No. 73-1808, p. 19. At that time the IRS was violating the required procedures, the Anti-Injunction Act bar was no longer applicable, and the District Court had jurisdiction to determine petitioner's claim. Accordingly, its dismissal of Laing's action was improper.

Respondent Hall in No. 74-75 likewise brought suit before the 60-day grace period had expired (although the 60-day period subsequently lapsed without the issuance of the required notice of deficiency). Mrs. Hall alleged, however, that the IRS was offering her automobile for sale before issuing her a notice of deficiency and affording her the opportunity to litigate in the Tax Court, an action that violated § 6863. Since the offering for sale was not in conformity with the jeopardy-assessment procedures of § 6861 et seq., the Anti-Injunction Act bar was inapplicable, and the levy and subsequent sale could properly be enjoined under § 6213(a).

* The dissenting opinion would require no justification for even a six-month delay, apparently on the view that tax seizures are somehow different from other deprivations for due process purposes. I am aware of no precedent drawing that distinction. Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931), concerned a procedure that offered taxpayers an alternative of seeking a

prompt determination before the Board of Tax Appeals, the predecessor to the Tax Court, before payment and without posting any bond. Id., at 598, 51 S.Ct., at 612. The bond referred to in the dissenting opinion, post, at 210-211, was required pending review in the court of appeals of the Board of Tax Appeals' decision.

1. Mr. Hall evidently was convicted. Tr. of Oral Arg. 45.

2. See n. 10, infra.

3. The reference in the statute to the "preceding taxable year" enables the Commissioner to exercise the termination power after the close of the preceding year but prior to the filing of the return for that year. See, e. g., Irving v. Gray, 479 F.2d 20, 25 (CA2 1973); United States v. Johansson, 62-1 U.S.T.C. 83197 (S.D.Fla.1961), aff'd in part and remanded, 336 F.2d 809 (CA5 1964).

4. A return for a taxable period terminated under § 6851(a), and called for by § 443(a)(3), is to be distinguished, despite the confusing use of the term "taxable year" in § 443(a)(3), from a return for what is a true and self-constituted short period of the kind to which § 443(a)(1) and (2) relate, that is, the interim period occasioned by a change in the taxpayer's annual accounting period, or when the taxpayer is in existence during only part of the entire taxable year.

5. The Government, on at least one occasion in the past has contended that § 6851 did contain its own assessment authority. Schreck v. United States, 301 F.Supp. 1265, 1276 (D.Md.1969). In the present cases, however, the Government states that the statute does not go so far. Brief for United States 20.

6. Section 6201(a) reads in pertinent part:

"The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law."

Respondent Hall suggests that § 6201(a) by its terms is confined to taxes paid by stamp. I read the statute otherwise, for I regard the reference to payment effected "by stamp" as exclusive, rather than restrictive, of the assessment power.

7. Section 6861(a) reads:

"If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof."

8. "That section nineteen (of the Act of July 13, 1866, 14 Stat. 152) is hereby amended by adding the following thereto: 'And no suit for the purpose of restraining the assessment or collection of tax shall be maintained in any court.' "

9. I do not foreclose the possibility that in some case the Service's action in terminating a taxable period would come within the Williams Packing exception if the termination were so fictitious and without foundation that under no circumstances could the Government prevail on the merits. This view was taken by the Fifth Circuit in Willits v. Richardson, 497 F.2d 240 (1974). See generally Note, Use of I.R.C. Section 6851: Exaction in the Guise of a Tax?, 6 Loyola U.L.J. 139, 151-158 (1975).

10. "If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer terminated at the end of the calendar month then last past and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any action or suit brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design."

The presence of § 250(g) so soon after the inception of the modern federal income tax in 1913, see the Sixteenth Amendment and the Tariff Act of Oct. 3, 1913, § II, 38 Stat. 166, discloses Congress' early and continuing concern with tax evasion.

11. Section 250(b) of the Revenue Act of 1921, 42 Stat. 265, had defined "deficiency" as the difference between "the amount already paid" and "that which should have been paid."

12. The Tax Court itself consistently has denied jurisdiction on its part over a period terminated under § 6851(a), and has done so on the ground that the termination results in "but a provisional statement of the amount which must be presently paid as a protection against the impossibility of collection." Ludwig Littauer & Co. v. Commissioner, 37 B.T.A. 840, 842 (1938) (reviewed by the Board). Puritan Church The Church of America v. Commissioner, 10 T.C.M. 485, 494 (1951), aff'd, 93 U.S.App.D.C. 129, 209 F.2d 306 (1953), cert. denied, 347 U.S. 975, 74 S.Ct. 787, 98 L.Ed. 1115 (1954); Jones v. Commissioner, 62 T.C. 1 (1974). Page v. Commissioner of Internal Revenue, 297 F.2d 733 (CA8 1962).

13. The six-month period, of course, is the maximum, not the minimum. Petitioner Laing, in fact, filed a claim for refund on March 1, 1973. It was denied just eight days later, on March 9. He was then in a position to sue and did so. Brief for Petitioner Laing 34 n. 11; Brief for United States 7 n. 4.

The maximum six months' wait, in order to accommodate the administrative operation, surely is not per se unconstitutional. Dodge v. Osborn, 240 U.S. 118, 122, 36 S.Ct. 275, 276, 60 L.Ed. 557 (1916).

14. I have no hesitancy in recognizing that there is a possibility of abuse in the jeopardy-assessment system. See Note, Narcotics Offenders and the Internal Revenue Code: Sheathing the Section 6851 Sword, 28 Vand.L.Rev. 363 (1975); Note, Jeopardy Terminations Under Section 6851: The Taxpayer's Rights and Remedies, 60 Iowa L.Rev. 644 (1975); Silver, Terminating the Taxpayer's Taxable Year: How IRS Uses it Against Narcotics Suspects, 40 J. of Tax. 110 (1974); Note, Jeopardy Assessment: The Sovereign's Stranglehold, 55 Geo.L.J. 701 (1967); Willits v. Richardson, 497 F.2d 240, 246 (CA5 1974). But this possibility is also present with respect to a jeopardy assessment under § 6861. And it is present, too, perhaps with even greater force, in those tax situations (excise, FICA, etc.) where jurisdiction of the Tax Court does not exist and the taxpayer has no ability to litigate prior to payment or seizure. These differing degrees of tax comfort, in my view, do not render the system, or parts of it, unconstitutional. Prior to 1924, as has been pointed out, there was no prepayment forum at all.

I do not condone abuse in tax collection. The records of these two cases do not convincingly demonstrate abuse, although Mrs. Hall's situation, as it developed after the initial critical moves by the Service, makes one wonder. I have no such concern whatsoever about Mr. Laing. In any event, abuse is subject to rectification otherwise, and the Congress and the courts surely will not be unsympathetic. Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

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78-1 USTC P 16,284
NORDBY SUPPLY COMPANY, Appellee,
v.
UNITED STATES of America, Appellant.
No. 77-2059.
United States Court of Appeals,
Ninth Circuit.
April 10, 1978.

Gilbert E. Andrews, Washington, D. C., for appellant.

Charles E. Watts, Seattle, Wash., for appellee.

Appeal from the United States District Court for the Western District of Washington.

Before BROWNING, GOODWIN, and KENNEDY, Circuit Judges.

PER CURIAM:

The United States appeals from a judgment in favor of the Nordby Supply Co. (Nordby), finding Nordby entitled to a refund of $2,714.25 for taxes paid. We reverse and remand.

Nordby imported and sold fishing lures under the trade name "Husky". The lures were packaged without hooks in groups of ten. Each package was marked "Designed and Sold for Commercial Fishing Only". In all other respects, the lures were identical to lures used in recreational fishing. Commercial fishermen purchased 80% Of these lures.

Nordby paid the excise tax imposed on importers and manufacturers of fishing lures under Int.Rev.Code § 4161(a), and sued for a refund. The district court held that the tax applied to sport fishing equipment

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only, and not to commercial fishing equipment, and awarded Nordby a refund of 80% Of the tax paid.

The language of § 4161(a) does not distinguish between sport fishing and commercial fishing. But the district court cited three reasons for distinguishing the two kinds of fishermen for tax purposes. First, the court pointed out that § 4161(a) is in a subchapter of the Code labeled "recreational equipment" and a part entitled "sporting goods". Second, the court believed that Congress did not intend to tax lures used in commercial fishing. And, finally, the court asserted that the Commissioner's own Regulations, 26 C.F.R. § 48.4161(a)-1, supported the nontaxation of commercial fishing equipment.

The Internal Revenue Code itself provides that nothing is to be inferred from the grouping or indexing of any particular section, 26 U.S.C. § 7806(b), and this court has held that the title of a statute cannot limit the plain meaning of its text. Pike v. United States, 340 F.2d 487 (9th Cir. 1965). Therefore, the fact that § 4161(a) is located in that part of the Code dealing with "recreational equipment" and "sporting goods" is of little significance.

Unlike the district court, we do not find the legislative history unambiguous. This excise tax was originally enacted in 1917 to raise revenue for World War I. 40 Stat. 300. At that time a large number of sporting goods were taxed, including croquet balls, badminton racquets, and billiard cues. In 1965, as part of the Excise Tax Reduction Act, 79 Stat. 136, Congress repealed the tax on all of these goods except for fishing equipment. The committee report states that "(t)he 10 percent manufacturers' excise tax on fishing equipment is continued because revenues equivalent to the tax on these items are distributed under the provisions of Public Law 681, 81st Congress, to aid the States in fish restoration, and management in respect of fish having a material value for sport and recreation." 1965 U.S.Code Cong. & Admin.News p. 1672. While the revenues raised by the tax are clearly intended to benefit recreational fishermen, there is no reason to believe that commercial fishermen do not also benefit from conservation programs, nor to believe that Congress intended to exempt commercial fishermen from sharing the cost of these programs. The legislative history does suggest that Congress originally intended to tax sporting equipment, but the history of the partial repeal proves nothing about a preference for commercial over sport fishermen.

The district court's theory that the Regulations support such an interpretation is based on a misunderstanding. The Regulation, § 48.4161(a)-1, does speak consistently in terms of the sport of fishing. The particular sentence quoted by the district court, however, is taken out of context. [1] The Regulation is exempting from tax those articles which are nominally fishing gear, but are actually toys or novelties and not suitable for actual fishing use.

There is no dispute that the lures here can be used, and are in fact sometimes used, for sport fishing. They are therefore sporting goods. The fact that the ultimate consumer may use the lures for commercial purposes does not change their character as sporting goods. Commerce-Pacific, Inc. v. United States, 278 F.2d 651, 653 (9th Cir.), cert. denied, 364 U.S. 872, 81 S.Ct. 115, 5 L.Ed.2d 94 (1960). The tax is imposed on the manufacturer or importer. In most cases the manufacturer will not know, when the tax is imposed, whether the ultimate consumer will use the goods for commercial or recreational purposes, or both. To hold that the imposition of the tax on the manufacturer depends on the character

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of the use by the ultimate consumer would cause great and unnecessary difficulties in tax collection. We decline to create these difficulties and we do not think that Congress intended to do so.

Reversed and remanded.

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1 The last two sentences of § 48.4161(a)-1(a) read as follows:

" * * * Furthermore, the tax applies only to those specified articles of fishing equipment that are designed or constructed for use in the sport of fishing. Accordingly, the tax does not apply to those articles which, although nominally articles that are specified in section 4161(a), are in the nature of toys or novelties that merely simulate articles of a type referred to in section 4161(a), and are not designed or constructed for practical use in the sport of fishing."

The district court quoted only the first sentence.