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IRS Can Freeze Your Assets Over Taxes, Just Like Neymar's

Soccer star Neymar da Silva Santos, Jr., is just “Neymar” to millions of soccer fans. In 2013, the now 23-year old moved from Brazil’s Santos football team to Barcelona in Spain. But his taxes are being questioned. This isn’t some audit by mail. A Brazilian Judge froze roughly \$48 million in accounts and assets, not just Neymar’s but family members’ too.

It is tax hardball the Judge said was to keep Neymar and his family from transferring funds and hiding income. The court froze assets worth 150% of what they estimate Neymar might owe including penalties and fines. Does the IRS do this? Sometimes, yes.



Barcelona's Brazilian forward Neymar da Silva Santos Junior gestures during the Spanish league football match FC Barcelona vs UD Las Palmas at the Camp Nou stadium in Barcelona on September 26, 2015. (Photo credit: JOSEP LAGO/AFP/Getty Images)

For example, when “Girls Gone Wild” creator Joe Francis had tax problems, the IRS locked onto \$22 million in brokerage accounts. So-called jeopardy assessments are used when the delay associated with ordinary

IRS procedures would jeopardize or endanger the collection of the tax. A jeopardy assessment is an extraordinary measure, intended for exigent circumstances. Yet some people say that a jeopardy assessment is like drawing a gun in a fist fight, threatening a taxpayer's constitutional due process rights.

Joe Francis made those arguments, but the judge denied his request to reverse the jeopardy assessments the IRS issued on his accounts at Morgan Stanley and UBS. The IRS said that Francis owed \$23 million in taxes, penalties and interest for 2001, 2002, and 2003. Eventually Francis resolved his tax problems, although legal disputes seem to follow him.

Fortunately, IRS jeopardy assessments are rare. In fact, the IRS can make a jeopardy assessment—essentially, an immediate seizure—only if it believes that is the only way to preserve assets for satisfaction of tax obligations. And yet it is worrisome that the IRS does make mistakes with liens, levies, and assessments. For example, [Dionne Warwick proved IRS tax liens can be wrong](#). Even the summons process can be challenged.

In [United States v. Clarke](#), the U.S. Supreme Court ruled unanimously that taxpayers have a right to challenge IRS summons enforcement proceedings when they can show the IRS might have issued the summons in bad faith. In 2010, Michael Clarke of Florida accused the IRS of issuing a summons as payback for resisting an audit. Clarke wanted to question the IRS Agent in court about the targeting, but the IRS refused. The Supreme Court gave Mr. Clarke the right to seek an evidentiary hearing about the motives of IRS officials.

The IRS says evidentiary hearings are fishing expeditions. But rogue IRS agents or not, the power of the IRS is legendary. Under the law, the IRS can issue a summons for information when a taxpayer refuses to provide it voluntarily. If the taxpayer ignores an IRS summons, the IRS gets a court order. Judges routinely rubber-stamp such requests, enforcing summonses without evidentiary hearings. Mr. Clarke claimed the IRS improperly issued summonses as payback. He wanted to question an IRS agent why the summonses were issued and how they related to a \$17 million tax bill. For a unanimous Court, Justice Kagan, said that:

⁶ [T]he taxpayer is entitled to examine an IRS agent when he can point to specific facts and circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose are not enough: The taxpayer must offer some credible evidence supporting his charge. But circumstantial evidence can suffice to

meet that burden; after all, direct evidence of another person's bad faith, at this threshold stage, will rarely if ever be available. And although bare assertion or conjecture is not enough, neither is a fleshed out case demanded: The taxpayer need only make a showing of facts that give rise to a plausible inference of improper motive. That standard will ensure inquiry where the facts and circumstances make inquiry appropriate, without turning every summons dispute into a fishing expedition for official wrongdoing."

The IRS was unsuccessful in getting a blanket rule saying that the IRS could not be questioned. Still, the Supreme Court says that IRS agents cannot be forced to undergo evidentiary hearings based on bare allegations of improper purpose

The IRS has a hard job to do and generally does it well and fairly. But that is precisely why this is so important. The power of the IRS is imposing. In general, the IRS can get the courts to order taxpayers to produce information. But sometimes the IRS is wrong. Sometimes it is worth going to court, even over the production of documents. After all, sometimes documents can be the whole battle.

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