



## Scope of IRS powers tops Supreme Court's busy docket of arguments and opinions

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The Supreme Court will issue at least one opinion this week while it weighs a packed docket of cases, including a request by the IRS to allow its agents to secretly obtain financial records without the need to notify account holders.

Wednesday will mark the day when the nine justices consider *Polselli v. IRS*, which is expected to have sweeping implications for Fourth Amendment right protections against unreasonable searches and seizures as it pertains to the federal tax collecting agency. This case comes just months after the Inflation Reduction Act passed by Congress last year injected \$45 billion to ramp up the agency's tax enforcement efforts.

*Polselli* seeks to settle a disagreement among lower courts over an exception in a section of law governing IRS authority. The case surrounds whether the agency's investigation of an individual allows it to peer into the accounts of third-party recordkeepers without informing those parties and without providing a chance to challenge their investigation in court.

Several outside parties, including the U.S. Chamber of Commerce, argue the agency cannot exercise enforcement to this extent, according to a brief, which states, "Many businesses have a far greater need for these protections because their records contain the privileged or confidential information of their customers or clients."

The case itself originated from an IRS agent that suspected a delinquent taxpayer, Remo Polselli, allegedly concealed his assets tied to bank accounts held in his spouse's name. The agent subsequently issued summonses to Hanna K. Polselli's bank and the banks for two law firms Remo had used for services in the past.

The IRS, with the backing of President Joe Biden's Justice Department, contends that "nothing in the Internal Revenue Code requires that the government make a formal assessment against a taxpayer before issuing a summons to locate assets that may be available to satisfy his liability."

Outside groups, including the American Civil Liberties Union, Cato Institute, and the Institute for Justice, issued briefs to the high court warning about delivering an outcome favorable to the IRS.

A favorable ruling for the agency would grant "effectively unfettered power to seek the complete financial records of anyone with even a tenuous connection to a delinquent taxpayer," the Institute for Justice wrote in its brief.

It's unclear which side of the argument the nine justices will land on this dispute. Still, the Supreme Court has already rendered one ruling that effectively limited the agency's authority this year.

In *Bittner v. United States*, the justices ruled 5-4 to limit the ability of the IRS to assess penalties for failure to file reports disclosing foreign bank accounts, resulting in overturning a \$2.72 million fine the agency imposed on businessman Alexandru Bittner, a dual U.S.-Romanian citizen who said the maximum fine he should face for filing late reports pursuant to the Bank Secrecy Act should be \$50,000.

On Monday, the high court will hear *United States v. Hansen*, a First Amendment case surrounding a scam that falsely promoted adult adoptions as a pathway to U.S. citizenship. They will also hear *Amgen v. Sanofi*, a question about which factors a patent applicant must show to prove that the invention would enable a "skilled artisan" to make and use it.

Tuesday is an opinions issuance day in which the justices will release one or more decisions from a case argued this term. They will also hear *Lora v. United States*, a case determining whether federal criminal sentencing laws should force a New York man convicted of a drug trafficking-related murder to be sentenced consecutively rather than concurrently. Another case that day is *Smith v. United States*, deciding whether an acquittal or a new trial is the proper remedy when an appeals court finds a defendant was convicted in the wrong court.

Finally, the case on Wednesday ahead of *Polselli* is *Samia v. United States*, a Sixth Amendment question on whether prosecutors violated that right when they admitted a confession from one of the namesake's co-defendants that was redacted to conceal the defendant's name.