

Government Must Prove Specific Interference With Targeted Tax-Related Proceedings For Tax Obstruction Charge

22 Mar 2018

IRS code makes it a crime under 26 U.S.C. sec. 7212(a) to “obstruct or impede, or endeavor to obstruct or impede, the due administration of” the Internal Revenue Code, either “corruptly or by force or threats of force.” The IRS investigated Carlo Marinello, and ultimately charged him with several violations of the tax code, including for tax obstruction under Section 7212(a). At trial, the trial court did not instruct the jury that it had to find that Marinello knew he was being investigated, and intended corruptly to interfere with that investigation. Marinello was convicted, and he appealed, arguing that the Government had to prove he interfered with a “pending IRS proceeding” to be guilty of tax obstruction. The Second Circuit disagreed. Resolving a split among the circuits, the Supreme Court, in a 7-2 opinion by Justice Breyer, reversed. Comparing the language of Section 7212(a) to the statute the Court examined in *United States v. Aguilar*, 515 U.S. 593 (1993), which prohibited obstruction of “the due administration of justice,” the majority held that the language in both cases required the Government to prove specific interference with targeted tax-related proceedings, or at least a nexus with the same, observing that to hold otherwise would convert almost any lesser tax-related offense into a felony tax obstruction charge. Justice Thomas, joined by Justice Alito, dissented, arguing that the statute as written permitted the Government to convict a person for tax obstruction of any kind, whether connected to a particular proceeding or otherwise. See the opinion in [Marinello v. United States](#).

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