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SCOTUS Opinion: Anti-Injunction Act Does Not Limit Challenge To IRS Reporting Requirement

17 May 2021

The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. sec. 7421(a). In IRS Notice 2016-66, the IRS required taxpayers to report information about certain insurance agreements, with civil tax penalties and criminal prosecution available in case of noncompliance. CIC Services, LLC filed suit, arguing that the Notice violated the Administrative Procedure Act and requesting an injunction from the district court setting the Notice aside. The district court and the Sixth Circuit held that the Anti-Injunction Act precluded CIC's suit since the Notice included a potential tax penalty.

The Court, in a unanimous decision by Justice Kagan, reversed, holding that an action to enjoin the reporting of information is not the same as one that seeks to enjoin the assessment or collection of a tax, even though that information might help the IRS collect future tax revenue. The presence of potential criminal liability further convinced the majority that it was appropriate for CIC to file its suit now to enjoin the Notice rather than wait until it had been adjudged criminally liable for violating that Notice. Justice Sotomayor submitted a concurrence arguing that the result "might be different if CIC Services were a taxpayer instead of a tax advisor." Justice Kavanaugh also filed a concurrence emphasizing that the Anti-Injunction Act's limitation should only focus on the immediate object of the suit, and not any potential effects of that suit.

A link to the decision in *CIC Services, LLC v. IRS* is here:
https://www.supremecourt.gov/opinions/20pdf/19-930_d1o3.pdf

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TAGGED: Administrative Procedure Act, Anti-Injunction Act, 26 U.S.C. sec. 7421(a), CIC Services LLC v. IRS