



employees to the corporation's counsel to enable the corporation to seek legal advice from counsel and memoranda or notes on interviews with these employees are protected from disclosure by the attorney-client privilege. §§301.7602-1, 301.7604-1. (Secs. 7602, 7604; '86 Code.)

Upjohn Co., 449 U.S., Ct. D. 2003, 1981-1 C.B. 591.

474.2 Collateral estoppel; loss disallowed in prior year. Taxpayer relitigated a decision based solely on the grounds of failure to prove he entered into a transaction involving the sale of his mother's house primarily for profit. The Commissioner relied upon the principle of stare decisis rather than the defense of collateral estoppel to foreclose consideration of the additional evidence. *Held*, the additional evidence was material and established a profit motive. The prior decision did not constitute a judicial determination of identical ultimate fact, so the principle of stare decisis is inapplicable; the defense of collateral estoppel was not available as it must be raised in pleadings or by motion. (Sec. 165, '86 Code.)

Theodore B. Jefferson, 50 T.C. 963, Acq. in result, 1969-1 C.B. 21.

474.3 Estoppel. A family partnership was formed in 1943 between a husband and wife and two trusts created by them for their children. The Commissioner was upheld in litigation denying the trusts recognition as partners for the years 1943 through 1948. *Held*, taxpayers were not collaterally estopped from litigating the same question for 1952 and 1953, since new facts were presented and the controlling legal principles were altered by section 340 of the Revenue Act of 1951. (Secs. 191, 3797, '39 Code; Secs. 704, 7701, '86 Code.)

Jack Smith, 32 T.C. 1261, Acq., 1960-2 C.B. 7.

474.4 Estoppel; prior litigation by affiliate. The taxpayer was the parent of a subsidiary which was the successor in interest of another subsidiary corporation which had previously litigated before the Tax Court the question of the overstatement of its closing inventory for 1942. The taxpayer filed a consolidated return in which it deducted the loss resulting from the liquidation of the subsidiary's inventory. *Held*, the Commissioner was collaterally estopped from again questioning the inventory. (Sec. 7453, '86 Code.)

Seaboard Commercial Corp., 38 T.C. 1034, Acq., 1958-2 C.B. 7.

474.5 Estoppel; redetermination of fraud. A taxpayer is not collaterally estopped to deny a determination of additions to tax for fraud despite a prior conviction for criminal fraud. (Secs. 145, 293, '39 Code; Sec. 6653, 7201, '86 Code.)

Meyer J. Safra, 30 T.C. 1026, Nonacq., 1962-2 C.B. 7.

474.6 Evidence; attorney-client privilege. Communications made to an attorney by a client that relies on the attorney's discretion as to what communications should be further transmitted to a third party are confidential and thereby inadmissible as evidence. (Sec. 7453, '86 Code.)

Robert M. Brittingham, 57 T.C. 91, Acq., 1971-2 C.B. 2.

474.7 Evidence; electronic eavesdropping without warrant. Testimony of government agents relating conversations of a defendant, convicted of narcotics violations, obtained without a warrant through electronic eavesdropping by means of a transmitter worn by an informant in meeting with the defendant is permissible as evidence under the Fourth Amendment. (Sec. 4705, '86 Code.)

White, 401 U.S. 745, Ct. D. 1946, 1971-1 C.B. 380.

474.8 Evidence; illegally obtained by police. An assessment of wagering excise taxes, based in substantial part on evidence illegally obtained by

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(See also: Criminal prosecutions)

474.1 Attorney-client privilege; communications, memoranda or notes. Communications by a corporation's officers and certain other

city police, was not subject to exclusion under the Fourth Amendment; the exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign.

Janis, 428 U.S. 433, Ct. D. 1980, 1976-2 C.B. 615.

474.9 Evidence; wagering tax returns. The rule in the *Marchetti* and *Grosso* cases that the Fifth Amendment is a defense for failure to comply with the wagering tax provisions may not be applied retroactively to overturn a conviction in which the defendants wagering tax returns were introduced into evidence. (Sec. 7201, '86 Code.)

Mackey, 401 U.S. 667, Ct. D. 1945, 1971-1 C.B. 409.

474.10 Injunction and declaratory judgment; tax-exempt status. An action for declaratory judgment and injunctive relief, to enjoin the Service to reinstate a letter ruling that a nonprofit educational organization qualifies for tax-exempt status and that contributions to the organization will constitute charitable deductions, is barred by the prohibition in section 7421 against suits restraining the assessment or collection of any tax. (Sec. 7421, '86 Code.)

"Americans United" Inc., 416 U.S. 752, Ct. D. 1963, 1974-2 C.B. 401.

474.11 Injunction prohibiting assessment and collection. A court may not, prior to the assessment and collection of any tax, enjoin the Revenue Service from revoking a ruling letter declaring that an organization qualifies for tax-exempt status and from withdrawing advance assurance to donors that contributions to the organization will constitute charitable deductions. (Sec. 7421, '86 Code.)

Bob Jones University, 416 U.S. 725, Ct. D. 1962, 1974-1 C.B. 354.

474.12 Injunction prohibiting assessment and collection; withholding. A court may not enjoin the Revenue Service from enforcing the withholding provisions of section 3402 against an employer, a religious corporation, that in response to the employees' request ceased withholding from the employees' salaries a percentage of the required withholding which the employees, who wish to bear witness to their religious beliefs, contend represents the percentage of the Federal budget allocated to military expenditures. (Secs. 3402, 7421; '86 Code.)

American Friends Service Committee, 419 U.S. 7, Ct. D. 1968, 1975-1 C.B. 377.

474.13 Injunction prohibiting collection of taxes. A corporation alleging nonliability for social security and unemployment taxes could not maintain a suit enjoining collection of the taxes merely because it would suffer irreparable injury. Such a suit may be maintained only when it is clearly shown at the time of the suit the Government under the most liberal view of the law and the facts has no chance of ultimately prevailing. (Sec. 7421, '86 Code.)

Williams Packing and Navigation Co., 370 U.S. 1, Ct. D. 1874, 1962-2 C.B. 349.

474.14 Injunction prohibiting collection of taxes; jeopardy assessment. The Service must disclose the factual basis for a jeopardy assessment to a taxpayer who has filed suit for injunction against the collection of the tax and would suffer irreparable injury if the assessment were not restrained. (Sec. 7421, '86 Code.)

Shapiro, 424 U.S. 614, Ct. D. 1974, 1976-1 C.B. 399.

474.15 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of sec-

tion 6621 as added by Pub. L. 93-625. §§301.6332-1, 301.6601-1, 301.6602-1, 301.6611-1, 301.7426-1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '86 Code.)

Rev. Rul. 75-58, 1975-1 C.B. 374.

474.16 Judicial enforcement of summons; examination of records. A District Court's finding that summonses issued by a special agent to a taxpayer's bank were "solely for the purpose of unearthing evidence of criminal conduct" was not sufficient to establish that the summonses were not issued in good faith under section 7602 and, therefore, not enforceable. §301.7602-1, 301.7604-1. (Secs. 7602, 7604; '86 Code.)

LaSalle National Bank, 437 U.S. 298, Ct. D. 1994, 1978-2 C.B. 336.

474.17 Judicial enforcement of summons; former employer's records. A taxpayer having no significantly protectable interest in a former employer's records has no right to intervene in a proceeding to enforce summonses issued to produce the records to aid an investigation before recommendation for criminal prosecution. §§301.7602-1, 301.7604-1. (Secs. 7602, 7604; '86 Code.)

Donaldson, f.k.a. Sweet, 400 U.S. 517, Ct. D. 1942, 1971-1 C.B. 416.

474.18 Limitation period; Armed Forces; combat zone. The last date for the timely performance of the acts enumerated in section 7508, relating to an individual serving in a combat zone, is determined by adding to the time to be disregarded under section 7508 the time which remained for the performance of such acts at the time the individual entered the combat zone. §1.6072-1. (Secs. 6072, 7508; '86 Code.)

Rev. Rul. 76-425, 1976-2 C.B. 447.

474.19 Limitation period; refund proceedings. Where a claim for refund is disallowed by means other than a registered notice of disallowance mailed to the taxpayer, unless the taxpayer has filed a written waiver of the requirement that he be mailed such registered notice of disallowance, an agreement to suspend the running of the statute of limitations for purposes of a suit based on the claim is not necessary. §301.6532-1. (Sec. 6532, '86 Code.)

Rev. Rul. 56-381, 1956-2 C.B. 953.

474.20 Limitation period; refund proceedings. District Directors may not enter into agreements to extend the two-year period of limitations prescribed by section 6532(a)(1) for commencing a refund suit after such two-year period has expired. §301.6532-1. (Sec. 6532, '86 Code.)

Rev. Rul. 71-57, 1971-1 C.B. 405.

474.21 Payment of entire tax before suit for refund. A taxpayer must pay the entire amount of an income tax deficiency before he may challenge the correctness of such deficiency by a suit for refund. The legislative history of 28 U.S.C. section 1346(a)(1), which confers jurisdiction upon the U.S. District Courts over civil suits against the U.S. to recover any sum, shows that it was not intended to effect any change in the principle of requiring full payment as a condition precedent to suit. On rehearing, the Supreme Court affirmed its position. (Sec. 7422, '86 Code.)

Flora, 357 U.S. 63, 362 U.S. 145, Ct. D. 1827, 1958-2 C.B. 895; Ct. D. 1844, 1960-1 C.B. 660.

474.22 Private litigation; production of records and testimony of Service personnel. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Revenue Service in litigation in which the Federal Government is not a party. Rev. Proc. 66-43 superseded. §§301.6103(a)-2, 301.9000-1. (Secs. 6103, 7213; '86 Code.)

Rev. Proc. 734, 1973-1 C.B. 752.

474.23 Self-incrimination; accountant's records; summons to attorney. A taxpayer's rights under the Fourth and Fifth Amendments are not violated by the enforcement of a summons compelling an attorney to produce an accountant's potentially incriminating records that were given to the attorney by the taxpayer. §301.7604-1. (Sec. 7604, '86 Code.)

Fisher, 425 U.S. 391, Ct. D. 1977, 1976-1 C.B. 411.

474.24 Self-incrimination; taxpayer records; summons to accountant. A taxpayer cannot claim immunity under the Fourth or Fifth Amendment to prevent an accountant from complying with the Government's summons to produce business records given him to prepare the taxpayer's tax returns. §301.7604-1. (Secs. 7402, 7604; '86 Code.)

Couch, 409 U.S. 322, Ct. D. 1955, 1973-1 C.B. 609.

474.25 Summary proceeding; rights in distrainted property. A Federal District Court has no jurisdiction to determine, in a summary proceeding, the respective rights of the parties in property of a taxpayer seized by the Government for delinquent taxes; petitioner, a third party claimant, could have its claim to the distrainted property adjudicated in a plenary, but not in a summary, proceeding. §301.6331-1. (Sec. 6331, '86 Code.)

New Hampshire Fire Insurance Co., 362 U.S. 404, Ct. D. 1846, 1960-1 C.B. 629.

474.26 Summons; contempt proceeding; self-incrimination. The Court of Appeals was incorrect both in its view of the relationship between an enforcement proceeding against a tax payer and a subsequent contempt proceeding, and its view of the effect of the taxpayer's claim of Fifth Amendment privilege on the burden of production at the contempt hearing. (Sec. 7602, '86 Code.)

Rylander, 460 U.S.--, Ct. D. 2016, 1983-1 C.B. 359.

474.27 Summons; injunctive relief from enforcement; examination of taxpayer's records. The Commissioner issued summonses to an accounting firm employed by the attorneys of a taxpayer, directing the firm to produce records pertaining to the taxpayer. The attorneys sought injunctive relief from the enforcement of the summonses, claiming that the summonses were void because the records were work product in trial preparation and the production of the records would require the taxpayer to incriminate himself and deprive him of counsel. Denial of the injunction was upheld because the legal remedy provided by the Code works no injustice, suffers no constitutional invalidity, and provides full opportunity for judicial review before any coercive sanctions may be imposed. §§301.7602-1, 301.7604-1. (Secs. 7210, 7402, 7602, 7604; '86 Code.)

Reisman, 375 U.S. 440, Ct. D. 1887, 1964-1 (Part 1) C.B. 517.

474.28 Summons; judicial enforcement; examination of taxpayer's records. The Government need not show probable cause to suspect fraud where it seeks to obtain judicial enforcement of an order for examination of a taxpayer's records unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abuse of process. This question must be predicated on more than the fact of re-examination and the running of the statute of limitations on ordinary tax liability. §§301.7604-1, 301.7605-1. (Secs. 7402, 7604, 7605; '86 Code.)

Powell, 379 U.S. 48, Ct. D. 1891, 1965-1 C.B. 547; Ryan, 379 U.S. 61, Ct. D. 1892, 1965-1 C.B. 552.

474.29 Tax-exempt status of hospitals; challenged by third persons. Indigent individuals and organizations representing the interests of low-in-

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come members in obtaining hospital care and services lack standing in a suit challenging Rev. Rul. 69-545 holding that the charitable status of a non-profit hospital does not require that, to the extent of its ability, it care for patients unable to pay for services rendered.

Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, Ct. D. 1979, 1976-2 C.B. 609.

474.30 Temporary injunction; transfer of funds from foreign branch of domestic bank. A U.S. District Court has jurisdiction to issue a temporary injunction, pending service of process on a foreign corporation and an adjudication of the substantive tax issues on the merits, enjoining a domestic bank from transferring any property or rights to property held by it at any branch office within or without the U.S. for the account of a foreign corporation against which jeopardy assessments have been made. (Sec. 7402, '86 Code.)

First National City Bank, 379 U.S. 378, Ct. D. 1895, 1965-2 C.B. 457.

474.31 Waiver of restrictions on assessment. A waiver of the restrictions on assessment and collection of a deficiency is valid so as to permit an assessment made pursuant to such waiver and to permit the collection of such assessed deficiency by suit, even though the waiver was executed prior to the issuance of a statutory notice of deficiency (90-day letter) and even though a 90-day letter was never issued. §39.272-1. (Secs. 272, 292, '39 Code; Secs. 6213, 6601, '86 Code.)

Price, 361 U.S. 304, Ct. D. 1842, 1960-1 C.B. 701.

474.32 Withdrawal of right to institute suit. A taxpayer may not waive his right to institute suit with respect to a disallowed claim for refund in order to expedite the treatment of the action taken on the claim as a determination. §39.3801(a)(1)-4. (Sec. 3801, '39 Code; Sec. 1311, '86 Code.)

Rev. Rul. 55-340, 1955-1 C.B. 558.