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23 DTR K-2

Virtual Currency

Government Considers Enforcement Action in Coinbase Case



By Allyson Versprille

The government is considering filing a petition to enforce an IRS summons on Coinbase Inc., according to a court document seeking postponement of a hearing on the company's efforts to seek relief and block the summons (*United States v. John Doe*, N.D. Cal., No. 3:16-cv-06658, *motion for continuance filed 2/3/17*).

Judge Jacqueline Scott Corley granted the Internal Revenue Service permission Nov. 30 for a "John Doe summons," to demand that Coinbase, a bitcoin trading and storage platform, produce records related to U.S. taxpayers without identifying individuals in an ascertainable group. The summons pertains to customers who conducted transactions in a convertible virtual currency between 2013 and 2015. Both Coinbase and attorney and bitcoin user Jeffrey K. Berns filed motions to intervene against the summons.

The IRS filed a stipulation and proposed order requesting continuance late Feb. 2 to postpone a Feb. 16 hearing on the motions to intervene.

"The United States seeks this continuance not for purposes of delay, but rather because the United States is considering filing a petition to enforce or taking other action with respect to the John Doe summons and if more time is provided a hearing on movants' motions may be avoided altogether, sparing the Court's judicial resources and the Parties' time and expense," the government said in the court document filed with the U.S. District Court for the Northern District of California.

Corely granted the IRS's request Feb. 3 and reset the motion hearings for March 23 at 9 a.m.

"We agreed to the government's request for an extension, which the Court has now granted, to provide the IRS with additional time to decide if it is going to file an enforcement proceeding to pursue the documents and information sought by the summons," Berns told Bloomberg BNA in an e-mailed statement. "Ideally, the IRS will use the time to review the points that we, and others, have raised concerning the overbroad nature of the summons and to reconsider whether it truly needs the materials that it is seeking from Coinbase."

The Justice Department Tax Division, which represents the IRS, declined to comment. Coinbase declined to provide a statement.

Four Factors

When enforcement of a summons becomes an issue in a federal court, the IRS bears the initial burden to make a prima facie showing on four elements, known as the *Powell* factors because they derive from the U.S. Supreme Court case *United States v. Powell*, Mary A. McNulty, a tax litigation partner at Thompson & Knight LLP, told Bloomberg BNA. A prima facie showing means the agency must provide sufficient evidence to support enforcement of the summons.

The four factors include: that the investigation will be conducted pursuant to a legitimate purpose; that the inquiry may be relevant to the purpose; that the information sought is not already within the agency's possession; and that the administrative steps required by the Internal Revenue Code have been followed.

"The taxpayer can succeed on a motion to quash either by disproving one of the four elements or by successfully challenging the summons on any appropriate ground, including showing that the summons was issued for an improper purpose or in bad faith," McNulty told Bloomberg BNA in a Feb. 3 e-mail.

Frank Agostino, the founder and president of Agostino & Associates PC, told Bloomberg BNA in an e-mail that once the government proves it meets the four factors, "I don't see any good faith basis for the intervenor to object to the Summons."

In original court filings, the IRS said it was imposing the summons because the agency had reason to believe that taxpayers who use virtual currency weren't always complying with the tax code.

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Snapshot

- DOJ, IRS move to push back Feb. 16 hearing
- If government decides to enforce summons, it must meet four *Powell* factors

For More Information

Text of the Feb. 2 court filing is at <http://src.bna.com/IXQ>.

Contact us at <http://www.bna.com/contact-us> or call 1-800-372-1033

ISSN 1522-8800

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