



U.S. Supreme Court: Government Went Too Far in Tax Obstruction Prosecution

The U.S. Supreme Court today barred the government from prosecuting taxpayers for obstructing the administration of the Internal Revenue Code, unless it can show they acted in response to a pending or reasonably foreseeable IRS proceeding. In *Marinello v. United States*, the Court addressed the so-called "Omnibus Clause" of Section 7212(a) of the Internal Revenue Code, which provides for a felony charge when any person "corruptly ... obstructs or impedes, or endeavors to obstruct or impede, the due administration" of the Internal Revenue Code. The government had charged that a taxpayer who paid expenses in cash, did not maintain tax records, and kept a second set of books violated Section 7212 (a).

Reversing the Second Circuit, the Supreme Court, in a 7–2 opinion, held that to secure a conviction under the Omnibus Clause, the government must show that: (i) "there is 'nexus' between the defendant's conduct and a particular administrative proceeding"; and (ii) a "proceeding was pending at the time the defendant engaged in the obstructive conduct or, at the least, was then reasonably foreseeable by the defendant."

Justice Breyer, writing for the majority, also rejected the government's position that "corruptly" merely requires proof that a defendant acted with "specific intent to obtain an unlawful advantage." The Court equated the term "corruptly" with the requirement under other criminal tax statutes that the government prove that the defendant acted "willfully"—a heightened *mens rea* standard for establishing culpability.

The Supreme Court resolved a long-standing split among the circuits, rejecting the view held by the majority of the federal circuits that the Omnibus Clause criminalizes conduct even in the absence of an IRS proceeding. Judge Dennis Jacobs, writing in dissent to the Second Circuit, warned that an overly broad view of the Omnibus Clause may result in "prosecutorial abuse that the Supreme Court has repeatedly curtailed." The Supreme Court echoed Judge Jacobs's concerns, finding that the Omnibus Clause is "not ... a 'catchall' for every violation that interferes with what the government describes as the 'continuous, ubiquitous, and universally known' administration of the Internal Revenue Code." As the Court stated, "[j]ust because a taxpayer knows that the IRS will review her tax return every year does not transform every violation of the Tax Code into an obstruction charge."

For further discussion, please see [here](#).

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