

SUMMONS & SUMMONS ENFORCEMENT: HYPOTHETICALS

Oscar Grouch is a CPA and co-owner of a CPA firm, which, besides the two owners, employs 10 return preparers. One of Oscar's long-term clients is Bert. Oscar worked with Bert for almost 30 years, preparing tax returns for both Bert and a number of his businesses. Over the years, Oscar's and Bert's relationship evolved beyond tax return preparations. Oscar also assists Bert with tax planning, structuring business entities, and acting as a sounding board for Bert's ideas on potential business ventures and investments. Oscar does not process payroll for any of Bert's entities; payroll is processed through ADP.

Oscar's firm prepares the following tax returns in connection with Bert:

1. Joint tax returns for Bert and his spouse, Cookie;
2. Individual tax returns for two of Bert's children;
3. Partnership returns for Bert and his partner Ernie's hot tub retail and maintenance business, Rubber Duck, LLC;
4. S-corporation returns for Bert & Ernie Homes, Inc., a construction business;
5. S-corporation returns for Cookie's candy store, Cookie's Sweets, Inc., of which Cookie is a 65% owner, Bert is a 20% owner, and the remaining 15% is owned by Bert and Cookie's friend, Gordon; and
6. S-corporation returns for Sesame Street, Inc., of which Bert owns 40%, Ernie owns 30%, Gordon owns 10%, and the remaining 20% is equally divided between Bert's and Ernie's children. The only asset of Sesame Street, Inc. is a 30% ownership stake in the Snuffy Fund, a private equity fund. Oscar is involved with the private equity firm that manages the Snuffy Fund; Oscar maintains the Fund's books and records and had brought this investment to Bert in the first place.
7. Oscar also prepares personal tax returns for Ernie and for a number of Ernie's businesses, which are not related to Bert.

Hypo 1

One day, Bert brings to Oscar a letter that he received from the IRS. The letter notifies Oscar and Cookie that the IRS is commencing an examination of their tax returns for the last 3 years. Attached to the letter is Form 4564, Information Document Request, which asks Bert for all the tax information relating to his tax returns, including tax information relating to Bert's business interests.

Is Bert required to respond and provide the requested information?

Hypo 2

As the examination of Bert's returns was proceeding, Bert retained Mr. Big Bird, Esq. to represent him before the IRS. Mr. Big Bird's advised Bert to produce the documents in response to the IDR relating to Bert's personal returns, including K-1s. However, Bert did not produce any other information relating to the tax reporting of the entities in which he had an ownership interest. The IRS served Bert with a summons for all information relating to Bert's businesses.

What are Bert's obligations in connection with the summons?

Hypo 3

The IRS next issued a summons to Oscar. The summons instructed Oscar to appear for an interview and, for the relevant years, to provide the following:

1. All information including any communication with Bert;
2. All information relating to Bert's tax return preparation;
3. All information relating to the tax return preparation of returns for Bert's businesses; and
4. Any other relevant information.

Questions:

1. Are there any defenses to this summons and, if so, who must raise these defenses?
2. Are there any privilege considerations?
3. Are the communications in connection with the examination responsive to the summons?
4. Is Oscar required to provide tax return information for the businesses that Bert owns with other partners if the summons is issued in connection with Bert's personal returns?
5. Is Oscar obligated to answer questions relating to the tax return preparation of business returns?
6. Does Mr. Big Bird have a right to attend Oscar's interview?

Hypo 4

The IRS also issued a summons to Cookie for an interview. At the interview, she is asked about Bert's construction business. She is aware that a number of Bert & Ernie Home Inc.'s employees are paid off the books.

1. Is Cookie required to provide that information to the IRS?
2. Does it make a difference whether Cookie learned this information from Bert alone or from overhearing Bert and Ernie discussing this issue?
3. Can Mr. Big Bird represent Cookie at the interview?

Hypo 5

Unbeknownst to Bert and Oscar, Gordon had been using Cookie Sweets, Inc. to launder money derived from Gordon's cabbage patch kids smuggling operation. While Cookie does not know the details of Gordon's operations, she is aware that her store is laundering funds for Gordon. Cookie is also asked about Cookie Sweets, Inc. at the interview.

1. Is Cookie required to respond to these questions?
2. Can Mr. Big Bird still represent Cookie at the interview?

Hypo 6

Bert received a grand jury subpoena in connection with Gordon's cabbage patch kids smuggling operation. The letter attached to the subpoena instructed Bert not to disclose to Gordon or anyone else the substance of the subpoena or to discuss being subpoenaed with anyone other than his legal team.

1. Is Bert legally obligated to follow these instructions?