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FREEDOM OF INFORMATION

Martin v. Internal Revenue Service, 857 F.2d 722

Martin filed suit under the Freedom of Information Act to compel the Internal Revenue Service (I.R.S.) to disclose the tax protests filed by three other individuals who participated with him in pass-through corporate and partnership entities. These protests concerned proposed adjustments to the returns of these three individuals based on prior I.R.S. adjustments to the informational returns of the pass-through entities. Martin's avowed purpose was to use the protests of these three individuals to prepare his own response to the I.R.S. The district court ordered the I.R.S. to disclose the protests to Martin. Reversed.

The I.R.S. audited the returns of a limited partnership, a general partnership, and a subchapter S corporation in which Martin and three other individuals all had interests. A copy of the revenue agent's report was sent to all four individuals. The I.R.S. then audited and sought adjustments in the individual tax returns of Martin and his three partners.

Section 6103(e) of the Internal Revenue Code (26 U.S.C.), allows partners and shareholders to obtain the returns and tax information of the partnerships and corporations in which they have a material interest. Citing this section, Martin sought access to the protests made by those who participated with him in the pass-through entities. The Tenth Circuit held that such disclosure was not mandated by § 6103(e), since the information sought related not to the pass-through entities, but to the tax returns of other individuals.

DeSalvo v. Internal Revenue Service, 861 F.2d 1217

Appellant, subject of a federal tax investigation, requested under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 all records maintained by the Internal Revenue Service (I.R.S.) pertaining to him and the names of third parties whose tax returns were contained in his file. The I.R.S. refused. The trial court held that FOIA did not apply to DeSalvo's request, concluding that the Internal Revenue Code (IRC) § 6013 is the sole standard governing disclosure of tax return information. The court limited its review to whether the I.R.S. abused its discretion, concluding that it did not.

The Tenth Circuit reversed and remanded the decision to withhold DeSalvo's own return information, holding that the FOIA and IRC § 6103 both apply and the FOIA's requirement of *de novo* review must be provided. The court affirmed summary judgement on the request for disclosure of the third party names.

