Acock, Schlegel Architects, Inc. v. Thomas, 98 T. C. 358 (1992)

Voluntary provision of an affidavit to the government constitutes a waiver of the Fifth Amendment privilege against self-incrimination, and a nonparty cannot claim this privilege to avoid complying with a subpoena.

Summary

In Acock, Schlegel Architects, Inc. v. Thomas, the Tax Court addressed whether a nonparty accountant, David L. Thomas, could withhold an affidavit given to the IRS's Criminal Investigation Division (CID) from the petitioner corporation, Acock, Schlegel Architects, Inc. , on Fifth Amendment grounds. The court ruled that Thomas had waived his Fifth Amendment privilege by voluntarily providing the affidavit to the CID. The court also rejected Thomas's requests for a stay of proceedings and a protective order regarding the affidavit's use, finding he lacked standing and sufficient interest, respectively. This decision underscores the importance of understanding when the Fifth Amendment privilege is waived and the limits of nonparty rights in civil litigation involving parallel criminal investigations.

Facts

Acock, Schlegel Architects, Inc. faced tax deficiency cases for the years 1984-1986. The corporation sought records from its former accountant, David L. Thomas, including an affidavit he provided to the IRS's Criminal Investigation Division (CID) in September 1989. Thomas had terminated his relationship with the corporation after the IRS began examining its tax returns and had been informed he was a target of a CID investigation. Despite his deposition, Thomas refused to produce the affidavit, citing his Fifth Amendment right against self-incrimination.

Procedural History

The corporation served Thomas with subpoenae duces tecum in July 1990, demanding the affidavit. Thomas filed a motion to quash the subpoenae on July 24, 1990. After a deposition in January 1991 where Thomas invoked the Fifth Amendment, the corporation moved to compel compliance. At a January 30, 1991 hearing, the Tax Court considered the issues, with Thomas filing a renewed motion to quash in March 1991.

Issue(s)

1. Whether Thomas's Fifth Amendment privilege against self-incrimination would be violated if compelled to provide the affidavit to the petitioner.
2. Whether the court should grant a stay of proceedings on the petitioner's cases until any related criminal proceeding involving Thomas is concluded.
3. If Thomas must provide the affidavit, whether the court should grant a protective order restricting the petitioner's use and dissemination of the affidavit.

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Holding

1. No, because Thomas waived his Fifth Amendment privilege by voluntarily providing the affidavit to the CID.
2. No, because Thomas, as a nonparty, lacks standing to request a stay.
3. No, because Thomas does not have a sufficient interest to warrant a protective order.

Court's Reasoning

The court held that Thomas waived his Fifth Amendment privilege when he voluntarily provided the affidavit to the CID, as there was no element of compulsion involved. The court referenced Brown v. United States, affirming that voluntary disclosure waives the privilege. The court dismissed Thomas's argument that providing the affidavit to the petitioner could increase his risk of prosecution, noting that the government already possessed the affidavit. The court also rejected Thomas's request for a stay of proceedings due to his status as a nonparty, and his request for a protective order, as he lacked a sufficient interest in restricting the affidavit's use, especially since the government already had access to its contents.

Practical Implications

This decision clarifies that a voluntary waiver of the Fifth Amendment privilege occurs upon giving an affidavit to the government, affecting how attorneys must advise clients in similar situations. Practitioners should be cautious about the implications of voluntarily providing statements to government agencies, as these cannot be withheld from other parties in related civil proceedings. The ruling also highlights the limited rights of nonparties in civil litigation when facing parallel criminal investigations, impacting how attorneys handle discovery in such cases. Businesses should be aware that information given to the government can be accessed by other parties in related civil cases, influencing their compliance strategies during investigations. Subsequent cases, such as United States v. Kordel, have reinforced the principle that voluntary disclosures to the government do not support later Fifth Amendment claims in civil proceedings.

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