Couple Win Suit, Intensify IRS Data Battle

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Susan B. Long and her husband, Philip H., of Bellevue, Wash., on May 2 won a unanimous decision in the 9th Circuit U.S. Court of Appeals at San Francisco. This "freedom of information" decision is so important that, on July 6, the Internal Revenue Service asked for a rehearing by the full court.

Three days later Stephen K. Strong, Seattle lawyer for the Longs, filed a motion to strike down "the numerous false assertions of fact" stated in the rehearing petition. The motion and petition now are under consideration by the court.

Trouble started when Sue and Phil, as the Longs are widely known, invoked the Freedom of Information Act, asking IRS officials in Washington to let them examine all the information IRS had compiled in Phases 2, 3 and 4 of its Taxpayer Compliance Measurement Program, launched in 1962. TCMP is a continuing series of statistical studies on a national scale designed to measure the level of compliance by American taxpayers with federal tax laws.

When IRS officials flatly refused to let the Longs see any part of the TCMP documents, Sue and Phil hauled them into the U.S. District Court in Seattle.

As a result of this suit, they won access to TCMP statistics. But District Judge Walter T. McGovern held that IRS could not be compelled, under Freedom of Information, to disclose computer tapes and check sheets on which the statistics are based.

McGovern's primary reason for so holding was this: IRS officials had submitted to him sworn statements explaining that all of the tapes contained individual taxpayer identities, all of which would have to be removed by IRS before the Longs could see the tapes. The judge concluded that removal of the identification would be too burdensome.

It looked as if IRS had won the case. But Sue later was amazed to discover that the sworn statements of the IRS officials were false.

The truth is the original tapes made by IRS did contain taxpayer identities. But IRS had routinely and regularly made copies without such identifying information, and these copies were secretly in IRS's possession when the Longs were asking for the tapes.

Sue and Phil appealed to the 9th Circuit Court of Appeals, where Sue lost no time in revealing the truth. She demonstrated what the Longs always had emphasized — that they did not want to identify taxpayers.

She made it crystal clear that she and Phil would very seldom need to see check sheets, which did contain taxpayer identity information. She explained that it would be very easy for IRS to remove such identity data in the few instances when they might call for particular check sheets.

Not surprisingly, the three-judge circuit court reversed the district judge's decision and remanded the case to McGovern for appropriate action. Circuit Judge Anthony M. Kennedy's opinion doesn't mention the false affidavits. But, Sue said, the proof is in the record for anyone who wants to check.

Apparently irritated, the circuit court left no room for IRS officials to wriggle through the net. The court held that, even if it had been necessary for IRS to remove taxpayer identity information from the tapes, this would not have been sufficient ground for withholding the tapes and check sheets.

Sue and Phil Long are formidable foes. This is the ninth time they have beaten IRS in freedom of information cases, and it's the first time they've been represented by counsel.

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