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N.H. judge tosses suit to block IRS from seizing taxpayers' crypto records

Alison Frankel

(Reuters) - U.S. District Judge Joseph DiClerico of Concord, New Hampshire, ruled on Tuesday in *Harper v. Internal Revenue Service* that the U.S. government's sovereign immunity bars claims that the IRS breached a taxpayer's constitutional rights when it obtained records of his cryptocurrency transactions from the crypto exchange Coinbase.

James Harper, represented by the New Civil Liberties Alliance (NCLA), deposited bitcoin he received as income from his consulting work into his Coinbase account in 2013 and 2014, according to Tuesday's opinion. He subsequently liquidated his accounts in 2015 and 2016. Harper alleged that he declared all requisite cryptocurrency transactions in his tax returns between 2013 and 2016, but the IRS nevertheless filed an administrative summons in 2016 to obtain his records from Coinbase. Coinbase opposed enforcement of the summons but was ordered to comply with a narrowed version in 2017 ([2017 WL 5890052](#)).

In his 2020 lawsuit against the IRS, its commission and other IRS officials, Harper alleged that the government violated his rights under the Fourth and Fifth Amendments. He sought money damages and an injunction requiring the IRS to expunge his financial records and barring the commission from future seizures of financial records from crypto exchanges.

Harper countered the government's assertion of sovereign immunity by citing 1971's [Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics](#) (403 U.S. 388) for his damages claims and the Administrative Procedure Act for his demands for injunctive relief.

Judge DiClerico said *Bivens* does not permit claims against government employees in their official capacity. And though Harper's suit also named John Doe defendants as individuals, the judge said his theory would extend *Bivens* to the new context of the federal government's power to assess and collect taxes. The judge declined to do so, citing the obstacles Congress has already put in the way of plaintiffs trying to interfere with taxation.

In the same spirit, DiClerico ruled that Harper's injunctive and declaratory claims were barred by the Anti-Injunction Act, which prohibits plaintiffs from suing to restrain tax collection. Harper argued, among other things, that his case wasn't about tax collection but about his financial records, and that he has already paid taxes on his cryptocurrency transactions. But the judge noted that Harper's complaint alleged that the IRS has said he may have additional tax liability. "Therefore, Harper's argument that his proposed injunction and declaratory judgment are not aimed at restraining the assessment or collection of taxes is incorrect," the judge ruled.

NCLA's Caleb Kruckenberg said in an email statement that Harper will appeal the "legally unjustifiable" ruling. "The district court's incorrect decision would ensure that no matter how many constitutional rights IRS violates, Americans have no hope of holding the agency accountable," the statement said. "Today's decision would mean that IRS is immune from its wrongdoing in every conceivable circumstance."

The case is *Harper v. Internal Revenue Service*, No. 1:20-CV-00771 in the District of New Hampshire.

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---- **Index References** ----

Company: COINBASE INC

News Subject: (Income Taxation (1IC82); Judicial Cases & Rulings (1JU36); Legal (1LE33); Liability (1LI55); Tax Law (1TA64); Taxation (1TA10))

Industry: (Accounting, Consulting & Legal Services (1AC73))

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