

IRS Agrees to Let Emails Remain Private – Except Sometimes!

The Internal Revenue Service has recently revealed they plan to review existing policies on obtaining taxpayer emails without a warrant.

According to the 2009 IRS employee handbook, the IRS said the Fourth Amendment does **not** protect emails because internet users do not “have a reasonable expectation of privacy in such communications”. However, they have now acknowledged that "respecting taxpayer rights and taxpayer privacy are cornerstone principles for the IRS."

The recent announcement by the IRS was in response to some controversial memos leaked from the agency and the contents of other documents released to the American Civil Liberties Union under the Freedom of Information Act. The leaked documents indicated emails were obtained without a warrant. Although a 2010 Court of Appeals holding said that government agencies need a probable cause warrant before obtaining taxpayer emails from internet service providers (*U.S. v. Warshak*), the IRS had not updated its policies on electronic communications to reflect that decision. Recently, IRS Acting Commissioner Steve Miller told the Senate Finance Committee that its email policy documents would be updated soon. Please see the full press release by the IRS below.

IRS Statement on Obtaining eMails

Where the IRS already has an active criminal investigation and seeks to obtain the content of emails from an Internet Service Provider, we obtain a court ordered search warrant. It is not the IRS policy to seek the content of emails from ISPs in civil cases. Respecting taxpayer rights and taxpayer privacy are cornerstone principles for the IRS. Our job is to administer the nation's tax laws, and we do so in a way that follows the law and treats taxpayers with respect. However, to resolve any remaining confusion surrounding this issue, the IRS is reviewing its policy and guidance and will make appropriate updates.

Yes, it's always comforting when our government chooses to eventually abide by the laws they make for everyone else. Hopefully, the tide will turn on government intrusion into taxpayer privacy.

At Large & Gilbert, when we handle tax audits, we make every attempt to curtail overly broad information requests by the IRS and we have systems in place to safeguard our electronic communications. We are also committed to keeping you up to date on the latest tax changes. If you have any questions, please contact:

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