

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1792
Conference Calendar

UNITED STATES OF AMERICA,
and J.L. WARREN,

Petitioners-Appellees,

versus

THELMA MCCOY,

Respondent-Appellant.

- - - - -
Appeals from the United States District Court
for the Northern District of Texas
USDC No. 91-CV-0008-C
- - - - -

August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Thelma McCoy appeals the district court's denial of her request for an in camera review of documents requested in an IRS summons. McCoy argues that the court abused its discretion because an in camera inspection of the documents would have verified that she was entitled to invoke her Fifth Amendment privilege.

Because McCoy did not timely assert her Fifth Amendment defense, the district court did not abuse its discretion in denying her request for an in camera inspection. A taxpayer must

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

raise a defense to production of documents during the enforcement phase of the proceedings. She cannot wait until a contempt hearing to raise a Fifth Amendment privilege. United States v. Rylander, 460 U.S. 752, 761, 103 S.Ct. 1548, 75 L.Ed.2d 521 (1983); accord, United States v. Sorrells, 877 F.2d 346, 348-50, 352 n.8 (5th Cir. 1989).

Even were McCoy's attempted invocation of the privilege timely, she made no more than a "blanket refusal," insufficient to raise the privilege. A taxpayer who wishes to invoke the privilege, must present himself and his records for questioning and, as to each question and each record, raise the privilege during the enforcement stage of the proceedings. United States v. Roundtree, 420 F.2d 845, 852 (5th Cir. 1969). McCoy failed to do so.

AFFIRMED.