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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

INTERNATIONAL AUTOMATED
SYSTEMS, INC.,

Petitioner

v.

UNITED STATES OF AMERICA,

Defendants

PETITION TO QUASH SUMMONSES

Case No. 2:16-cv-00370-JNP

Judge: Jill N. Parrish

PETITIONER, through their attorney, respectfully petitions this Court for an order quashing the Internal Revenue Service (“IRS”) third-party Summonses served on Bank of American Fork (“BOAF”), Zions Bank (“Zions”), and Wells Fargo (“WF”) in the matter of International Automated Systems Incorporated (“IAS”) for the period June 2012 through July 2013.

In support of this Petition, Petitioners allege as follows:

I. JURISDICTION

1. This is an action to quash a third-party Summonses brought under 26 U.S.C. Section (hereinafter referred to as “Section”) 7609(b)(2). Respondent is the United States of America. This Court has jurisdiction to hear and determine this proceeding under Section 7609(h)(1), 12 U.S.C. § 3416, and 28 U.S.C. § 1340.

2. BOAF, the summoned party, has offices in various counties in the State of Utah, and maintains its Utah registered agent's address at 33 E Main, American Fork, UT 84003, which is within the District of Utah. Accordingly, venue is proper with this Court under Section 7609(h)(1).

3. Zions, the summoned party, has offices in various counties in the State of Utah, and maintains its Utah registered agent's address at One S Main 2nd Floor, Salt Lake City, Utah 84113, which is within the District of Utah. Accordingly, venue is proper with this Court under Section 7609(h)(1).

4. WF, a summoned party, has offices in Salt Lake City, Utah and maintains its Utah registered agent's address at 10 E South Temple, Ste. 850, Salt Lake City, Utah 84133, which is within the District of Utah. Accordingly, venue is proper with this Court under Section 7609(h)(1).

5. This proceeding to quash was brought timely after Petitioners received notice of the Summons by receipt of the same from the IRS on April 26, 2016.

6. A copy of the Summonses is attached hereto as Exhibit A.

II. RELEVANT FACTS

7. IAS is a Utah corporation whose principle place of business is Delta, Utah.

8. The Internal Revenue Service commenced an examination of the IAS' income tax return for the period June 2012 through July 2013.

9. As a part of that examination the examiner, Joel Zielke, sent a summonses dated April 14, 2016 to BOAF, Zions, and WF, the same as is shown in Exhibit A, (the "Summonses") requesting the following:

Please produce for examination copies of signature cards, monthly bank statements, bank deposit slips, deposit items, credit memos, cancelled checks, and debit memos drawn on accounts which International Automated Systems (TIN # [redacted]) owns for the period June 2012 – July 2013.

10. The Summonses requires BOAF, Zions, and WF to produce the requested information by May 13, 2016 by appearance or in the alternative to mail the requested information to Mr. Zielke.

11. Neither the IRS, nor Mr. Zielke provided any type of notice of the Summons to the petitioners or any other potential account holders affected by the Summons prior to the issuance of the Summons.

III. ARGUMENT

12. The IRS' Summons must be quashed because the IRS did not issue the Summons in good faith, in that the IRS (1) already possesses the documents it has summonsed and is already seeking the information through summonses already issued, (2) has requested information that is impermissibly overly broad, and (3) has summonsed information that is not relevant to its examination of the taxpayers.

A. THE IRS ALREADY POSSESSES THE DOCUMENTS IT HAS SUMMONSED FROM ZIONS BANK

13. Under the *Powell* criteria, the IRS may not summon information it already possesses. *Powell*, 379 U.S. at 57–58.

14. If the IRS had a previous opportunity to examine the relevant records in detail and copy them, a court may infer that the IRS in fact possesses the records and quash the summons. See *United States v. Pritchard*, 438 F.2d 969 (5th Cir. 1971).

15. In this case the IRS summoned Zions in a related proceeding of a shareholder of IAS—Neldon Johnson.

16. In that previously issued summons sent to Zions from IRS the IRS requested the same information sought in the Summons issued to IAS.

17. The previous Zions Banks summons requested the same information from "...Neldon Johnson (TIN# [Redacted]) or Glenda Johnson (TIN # [Redacted]) either owns or is a signer...". IAS is included in that broad language.

18. No objection was made to that summons and information for IAS was sent to the IRS by Zions Bank.

19. To the extent information that it does produce is information that the IRS does not now already possess, such information will only be irrelevant and overbroad information of another taxpayer as discussed above. This is information that is not being sought reasonably.

20. Because the IRS already possesses the information it seeks that is relevant to its examination this Court should quash the Summons.

B. THE IRS IS ALREADY SEEKING THE DOCUMENTS FROM BANK OF AMERICAN FORK AND WELLS FARGO

21. As previously set forth above under the *Powell* criteria, the IRS may not summon information it already possesses. *Powell*, 379 U.S. at 57–58.

22. If the IRS had a previous opportunity to examine the relevant records in detail and copy them, a court may infer that the IRS in fact possesses the records and quash the summons. See *United States v. Pritchard*, 438 F.2d 969 (5th Cir. 1971).

23. In this case the IRS is already seeking the information through summonses already issued to BOAF and WF.

24. The IRS has also summonsed the same banks to receive information that the taxpayers did not possess.

25. Those summonses are the subject of Consolidated Case No. 2:15-cv-00742-JNP-PMW.

26. If the summonses in those matters are deemed by the Court there to be enforceable information for IAS will be produced as requested in those summonses rendering these Summonses unnecessary and moot.

27. Because the IRS already seeking the information in another proceeding that is relevant to its examination this Court should quash the Summons.

C. THE SUMMONS IS IMPERMISSIBLY OVERBROAD

28. When summonses are too broad, indefinite, and/or burdensome they will be found to constitute an unreasonable search in violation of the Fourth Amendment of the United States Constitution. Additionally, 26 USC § 7603 limits the summons power of the IRS by requiring that the materials sought be described with “reasonable” certainty. Furthermore, a summons should not be broader than necessary to achieve its purpose. See *United States v. Powell*, 379 U.S. at 58; *United States v. Lewis*, 604 F. Supp. 1169 (E.D. La 1985); *United States v. Richards*, 479 F. Supp. 828, 833 (E.D. Va. 1979), *aff'd*, 631 F.2d 341 (4th Cir. 1980).

29. Respondent has requested documents that well exceed this standard.

30. This request will provide information that it is already seeking through a related examination of the taxpayers. The information now sought is redundant and therefore not relevant to the taxpayers’ examination.

31. Further, because the request is so inclusive it renders the request impermissibly vague and indefinite and ultimately amounts to an improper fishing expedition.

32. A document demand for “all information which would be necessary to enable a representative of the IRS to properly determine total income earned or sources of funds received” was considered overbroad and in violation of the Fourth Amendment. See also *United States v. Klir*, 47 AFTR2d 81-1399 (E.D. Tex. 1979), *aff'd* by unpub. order, 644 F.2d 33 (5th Cir. 1981),

wherein a case involving a similar provision, the court reasoned that because the respondents were forced to determine whether documents were relevant, it would be impossible to enforce the summons by a contempt proceeding.

33. The IRS may not conduct an unfettered “fishing expedition” through a person’s records, but “must identify with some precision the documents it wishes to inspect.” See *Dauphin Deposit Trust Co.*, 385 F.2d 129, 131 (3d Cir. 1967).

34. In testing for overbreadth, the question is not whether the summons calls for the production of a large volume of records. Instead, the questions are rather, first did the summons describe the requested documents in enough detail to inform the summoned party of exactly what is to be produced,¹ and, second, may the summoned records be relevant to the inquiry.²

35. In this case the summons fails both of these tests for being impermissibly overbroad. First the information requests takes an approach which contemplates receiving information already sought and that is not specifically identified.

36. Here the Respondent is seeking an “all records” type of request which is too broad under the *Powell* standard.

37. Because the summons is impermissibly overbroad it should be quashed.

D. THE INFORMATION SOUGHT IS NOT RELEVANT TO EXAMINATION

38. The Summons seeks irrelevant information because (1) the requested documents have no impact on the outcome of the examination; and (2) the requests lack any relevance to the underlying examination. See *Powell*, 379 U.S.at 57; *United States v. First Nat’l St. Bank of N.J.*, 616 F.2d 668 (3rd Cir. 1980).

¹ *United States v. Abrahams*, 905 F.2d at 1282, 1285

² *In the Matter of the Tax Liabilities of John Does v. United States*, 866 F.2d 1015, 1021 (8th Cir. 1989)

39. When the documents sought pursuant to a summons are not relevant to determining a taxpayer's tax liability courts will quash the issued summons. See generally, *United States v. Richards*, 631 F.2d 341 (4th Cir.1980) (affirming denial of enforcement because summoned information was not relevant to tax liability); *United States v. Coopers & Lybrand*, 550 F.2d 615 (10th Cir. 1977) (affirming denial of enforcement because demanded documents were not relevant), cited favorably by *US v. Goldman*, 637 F.2d 664 (9th Cir. 1980); *United States v. Matras*, 487 F.2d 1271 (8th Cir. 1973); *United States v. Theodore*, 479 F.2d 749, 755 (4th Cir. 1973); *United States v. Pritchard*, 438 F.2d 969 (5th Cir. 1971); *United States v. Dauphin Deposit Trust Co.*, 385 F.2d 129 (3rd Cir. 1967).

40. IAS is a publically traded company that is subject to reporting requirements of the reporting requirements of the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, and other regulatory rules and laws.

41. Information about IAS's financial statements, financial reports, and financial information are available publically because of these reporting requirements.

42. The IRS does not need the information requested in the Summonses to complete it examination as the information is available through less intrusive means.

43. For example, IAS's financial information can be found at the Securities and Exchange Commission's website: <https://www.sec.gov/edgar/searchedgar/companysearch.html>.

44. The information reported there must comply with strict regulations and is also regulated by the Securities and Exchange Commission.

45. The financial statements appearing there must be audited by a certified public accounting firm who is licensed by a state accounting board and who is registered with the Public

Company Accounting Oversight Board (an organization created by the Sarbanes-Oxley Act of 2002).

46. The certified public accounting firm is an independent firm with no interest in IAS and who is subject to strict laws and regulations.

47. Thus, the financial information reported there is specifically presented according to laws and regulations to provide the public confidence in the information published to make investment decisions.

48. In short, the financial information is reliable and regulated.

49. The information sought through the Summonses is not relevant does not provide anything that is necessary to complete the examination as reliable and regulated financial information is available from less intrusive sources.

50. Because the information sought by the Summons is irrelevant to determining the Johnsons' tax liability the Summonses should be quashed.

WHEREFORE, as set forth above, Petitioners respectfully requests this Court quash the IRS third-party Summonses served on BOAF, Zions, and WF in the matter of IAS for the period June 2012 through July 2013.

Respectfully submitted this 4th day of May, 2016.

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/s/ Paul W. Jones

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