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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

INTERNATIONAL AUTOMATED SYSTEMS, INC. Petitioner, v. UNITED STATES OF AMERICA, Defendants.	)	Case No. 2:16-cv-00370-JNP UNITED STATES' REPLY MEMEORANDUM

The United States, by and through its undersigned counsel, hereby submits this memorandum in reply to the Petitioner's Memorandum In Opposition To Respondent's Motion To Summarily Deny Petitions To Quash Summonses And Counter-Petitions For Enforcement Of The Summonses ("Opposition"). At issue are summonses issued to Wells Fargo Bank, Zions Bank, and Bank of American Fork. As set forth in the United States' motion, to obtain enforcement of a summons, the Government need only make a "minimal" initial showing (1) that the summons was issued in good faith, i.e., that the investigation will be conducted pursuant to a legitimate purpose; (2) that the information sought may be relevant to that purpose; (3) that the

information sought is not already within the Commissioner's possession; and (4) that the administrative steps required by the Internal Revenue Code have been followed. *United States v. Powell*, 379 U.S. 48, 57-58 (1964). In addition, the Government must show that no Justice Department referral is in effect with respect to such person. 26 U.S.C. § 7602(d).

The government's burden of satisfying the Powell requirements is a "slight one" that can be satisfied by introducing a sworn declaration of the revenue agent who issued the summons that the Powell requirements have been met. *United States v. Balanced Financial Management, Inc*., 769 F.2d 1440, 1443 (10 Cir. 1985); *see also Fortney v. United States*, 59 F.3d 117, 120 (9th Cir.1995). In this case, Revenue Agent Zielke's Declaration establishes that the summonses at issue met all requirements of law and were issued in accordance with the four elements set forth in Powell. Once the Government establishes its prima facie case, the burden of proof shifts to the taxpayer. The taxpayer bears a "heavy burden" of showing an abuse of process or the lack of institutional good faith. *Anaya v. United States*, 815 F.2d 1373, 1377 (10th Cir. 1987); *United States v. Balanced Financial Management, Inc.*, *supra*. In meeting this burden, neither "[l]egal conclusions [nor] mere memoranda of law will … suffice." *Villarreal v. United States*, 523 Fed. Appx. 419, 423 (10th Cir. 2013); *Balanced Fin. Mgmt*., 769 F.2d at 1444. Instead, the Plaintiffs "must factually oppose the Government's allegations by affidavit." Id., *Hanna v. United States*, 647 F.Supp. 590, 593-4 (D. Utah 1986). The Petitioner has failed to meet this burden. The Petitioner has only submitted a memorandun of law with conclusory, unsubstantiated allegations. Therefore, the Court should deny the petition to quash and enforce the summonses.

ARGUMENT

A. The Summonses Were Issued for a Legitimate Purpose

In its Opposition, the IAS alleges that the third-party summonses were not issued for a proper purpose. IAS alleges that because its balance sheet for its tax year ending June 30, 2013 shows that it had no revenue and incurred expenses in the amount of $1,592,363, there is no reason for the IRS to examine this tax year and therefore the examination is not for a legitimate purpose. However, Congress has conferred upon the Secretary of the Treasury the responsibility to make accurate determinations of tax liabilities and has given him broad authority to conduct investigations for that purpose. Section 6201, 26 U.S.C., charges the Commissioner of Internal Revenue, as the Secretary's delegate, with the duty "to make the inquiries, determinations, and assessments of all taxes" imposed by the Internal Revenue Code. *See also* I.R.C. § 7601; *Donaldson v. United States*, 400 U.S. 517, 523–524 (1971); *United States v. McAnlis*, 721 F.2d 334, 336 (11th Cir. 1983); *United States v. Harris*, 628 F.2d 875, 879 (5th Cir. 1980). As set forth in the Declaration of Joel Zielke, the purpose of the examination of IAS' for the tax year ending June 30, 2013 is not only verifying IAS' income but also, verifying the amount and nature of IAS' expenditures to determine what deductions IAS is entitled to claim. *See* Declaration of Joel Zielke (Zielke Decl.) (Doc. 8), ¶6. As set forth above, IAS has claimed expenses of $1,592,363. The summonsed documents, such as cancelled checks, will assist in determining whether the expenses were deductible. The summons power is the means provided by Congress to allow the Commissioner to discharge this investigative responsibility. Section 7602, 26 U.S.C., authorizes the Commissioner, "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, . . . [or] determining the liability of any person for any internal revenue tax, . . . [t]o examine any books, papers, records or other data

which may be relevant or material to such inquiry" and to summon any person to appear and produce such documents and to give relevant testimony. *See Crystal v. United States*, 172 F.3d 1141, 1143–1144 (9th Cir. 1999). Therefore, the summonses were issued for a legitimate purpose.

Additionally, IAS alleges that the summonses were issued improperly and were only issued to harass or put pressure on IAS with regard to another suit pending in this Court which seeks injunctive relief. IAS has failed to set forth any facts in support of these allegations. IAS has failed to set forth any facts with regard to the other suit or how an investigation and determination of IAS' federal tax liabilities for the tax year ending June 30, 2013 would have any impact on this other suit. IAS' conclusory allegations are insufficient to support its burden to show an abuse of process or the lack of institutional good faith. *See Villarreal v. United States*, 524 Fed. Appx. 419, 423 ((10th Cir. 2013) (allegations of a "harassment campaign" are conclusory and thus insufficient to meet Mr. Villarreal's burden).

B. The Records Are Relevant to the Purpose of the Investigation

In their Opposition, IAS maintains that the United States fails to meet the second element of the *Powell* test because the summonses do not seek relevant information since "IAS does not plausibly have an income tax liability" and "it had no revenue from operations and its expenses are over $1.5 million dollars for the period at issue here." *See* Opposition, p. 4-5. This is a continuation of IAS' argument that the summonses were not issued for a legitimate purpose. As set forth above, Congress has conferred upon the Secretary of the Treasury the responsibility to make accurate determinations of tax liabilities and has given him broad authority to conduct investigations for that purpose. *See* 26 U.S.C. §6201.

The Supreme Court has held that the information sought by the IRS only needs to be potentially relevant, and not actually relevant. *United States v. Arthur Young & Co.*, 465 U.S. 805, 813-814 (1984). Information is deemed relevant where it "might have thrown light upon the correctness of [the taxpayer's] return." *See id.* at 813 n.11 (noting that standard "appears to be widely accepted among the Courts of Appeals"). The Tenth Circuit has held that the IRS may issue a summons for items of even potential relevance to an ongoing investigation. *Villarreal v. United States*, 524 Fed. Appx. at 423. The summonses at issue in this case meet that standard. In this case, the IRS is examining the tax liability of IAS for the tax year ending June 30, 2013. IAS claims that it had no revenue and incurred expenses exceeding $1.5 million during this period. The banking records sought by the summonses may demonstrate the date, amount and source of deposits made into IAS' bank accounts for the tax year ending June 30, 2013, which is relevant to determining whether IAS had any revenue for this period. *See* Zielke Decl., ¶11. The bank records may also demonstrate the date, amount, and nature of expenditures made from those bank accounts during IAS' tax year ending June 30, 2013, which is relevant in the examination of IAS' claimed expenditures in the amount of $1.5 million and the deductibility of those expenditures for this period. *Id*. Therefore, the summoned documents may be relevant to the purpose of the examination. *See Sylvestre v. United States*, 978 F.2d 25, 27 (1st Cir. 1992) (records of financial institutions are relevant to purpose of determining possible income tax liability), *cert denied*, 507 U.S. 994 (1993).

IAS also maintains that the summonses are over broad. A summons is not overbroad if it describes information sought with "reasonable certainty." I.R.C. § 7603(a)(1). An overbroad summons is a summons that does not advise the summoned party what is required of him with sufficient specificity to permit him to respond adequately to the summons and where

enforcement would constitute an unreasonable search in violation of the Fourth Amendment. *United States v. Wyatt*, 637 F.2d 293, 302 n.16 (5th Cir. 1981). The summonses in this case are not overbroad because they describe the requested documents with sufficient specificity to allow each of the banks to produce them. The summonses directed the banks to produce "copies of signature cards, monthly bank statements, bank deposits slips, deposit items, credit memos, cancelled checks, and debit memos drawn on accounts which International Automated Systems, Inc (TIN #xx-xxx7580) owns for the period June 2012-July 2013." *See* Zielke Decl., ¶7. Thus, IAS' allegation that the summonses are over broad has no merit and should be denied.

C. The United States Is Not Seeking Enforcment Of Documents That Are Already In Its Possession

IAS has alleged that the summonses at issue are unnecessary because they seek information that is already being sought in separate summonses. This argument is without merit. As set forth in detail in the United States' Motion, although pursuant to the prior summonses on Zions Bank and Bank of American Fork with regard to Neldon Johnson and Glenda Johnson's 2012 tax year, the IRS received bank records for the period from June 2012 through January 2013, on accounts of IAS for which the Johnsons were signatories, the IRS did not receive any bank records of IAS for the period from February 2013 through July 2013. Zielke Decl., ¶9. In addition, the IRS did not receive any Zions Bank or Bank of American Fork records for IAS for which the Johnsons are not signatories. *Id.* Therefore, the United States does not seek enforcement of the summonses to Zions Bank and Bank of American Fork with regard to the bank records of IAS for which Neldon and Glenda Johnson are signatories for the period from June 30, 2012 through January 30, 2013. However, the United States does seek enforcement of the summonses with regard to the bank records for which Neldon and Glenda Johnson are signatories for the period from February 2013 through July 2013 and for any other accounts of

IAS at Zions Bank and Bank of American Fork for which the Johnsons are not signatories. The IRS did not possess any of the information or documents requested in the summons to Wells Fargo Bank. Zielke Decl., ¶ 10. Thus, the summonses are not duplicative because the summonses seek bank documents for a period not covered by the previous summonses and for bank records for IAS' accounts for which the Johnsons are not signatories. Moreover, the IRS does not have any bank records with regard to the summons issued to Wells Fargo Bank. Therefore, the Petitioner's argument should be denied.

D. All Administrative Steps Have Been Satisfied

Next, the Plaintiffs allege that the IRS has failed to follow all the administrative steps required by the Internal Revenue Code because the summonses contain a typographical error in in the period section on the top of the summonses which lists the period as "Fiscal year ending June 30, 3013." This is a frivolous argument since the body of the summonses, which sets forth the documents requested by the summonses, clearly set forth the correct date: "Please produce for examination copies of signature cards, monthly bank statements, bank deposits slips, deposit items, credit memos, cancelled checks, and debit memos drawn on accounts which International Automated Systems, Inc. (TIN #xx-xxx7580) owns for the period June 2012-July 2013." *See* Exhibits 3, 4, and 5 attached to Zielke Decl. Thus, since there is no confusion with regard to the time period for which the bank records are being sought and the inclusion of "3013" is an obvious typographical error, the Petitioner's argument should be denied.

CONCLUSION

As set above, and in the United States' Motion To Summarily Deny Petition to Quash Summonses And Counter-Petition For Enforcement of the Summonses, IAS has not met its burden to show that the summonses should be quashed. Accordingly, the petition should be

summarily denied and the summonses should be enforced as set forth in the United States' Motion To Summarily Deny Petition To Quash Summonses And Counter-Petition for Enforcement Of The Summonses.

Respectfully submitted this 8th day of August, 2016.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' REPLY MEMORANDUM has been made this 8th day of August, 2016, via the Court's CM/ECF system to:

Paul W. Jones, Esq.
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And by US Mail, postage prepaid to:

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