

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MICHAEL FRAGALE ,</b>	:	
<b>Petitioner,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>UNITED STATES OF AMERICA,</b>	:	<b>No. 04-1086</b>
<b>Respondent.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**May 27, 2004**

Presently before the Court is Respondent's motion to dismiss the petition to quash the summons of the Internal Revenue Service for lack of subject matter jurisdiction. For the reasons set forth below, Respondent's motion is granted.

On February 13, 2004, the Internal Revenue Service ("IRS") served a summons on Petitioner's former attorney, Scott G. Mayhart, seeking records pertaining to Petitioner's financial transactions in connection with an investigation of Petitioner's federal income tax liability for the years 2000, 2001, and 2002. (Keiper Decl. ¶¶ 2-3.) On February 17, 2004, Special Agent Joseph C. Keiper sent Petitioner notice of the service of the summons via certified mail. (*Id.* ¶ 4.) Special Agent Keiper subsequently received a completed certified mail receipt signed by Petitioner and dated February 19, 2004. (*Id.* ¶ 5.) On March 15, 2004, Petitioner Michael Fragale brought this action by filing a petition to quash the summons.

Section 7609(b) of the Internal Revenue Code sets forth the procedural framework governing enforcement of summonses issued to third-party recordkeepers, such as banks, securities brokers, and attorneys, and proceedings to quash such summonses. 26 U.S.C. §§ 7603(b)(2), 7609(b) (2004). Pursuant to section 7609(b), the summoned third-party recordkeeper must comply with the summons unless the taxpayer begins a proceeding to quash the summons not later than twenty days after

receiving notice of the service of the summons. 26 U.S.C. § 7609(b)(2)(A). A district court for the district within which the summoned third-party recordkeeper resides or is found has jurisdiction to hear and determine any proceeding brought under subsection (b)(2). A district court, however, does not have jurisdiction under subsection (b)(2) if the procedural prerequisites of this section are not met. *Berman v. United States*, 264 F.3d 16, 19 (1st Cir. 2001) (holding court is without jurisdiction to hear motion to quash under section 7609 if not filed within twenty days from date that notice is mailed); *Faber v. United States*, 921 F.2d 1118, 1119 (10th Cir. 1990) (“[A] petition to quash a third party summons that is filed more than twenty days after the mailing of the summons by the IRS must be dismissed for lack of jurisdiction.”); *Stringer v. United States*, 776 F.2d 274, 275-76 (11th Cir. 1985) (same); *Ponsford v. United States*, 771 F.2d 1305, 1309 (9th Cir. 1985) (same); *Sommers v. United States*, Civ. A. No. 97-7299, 1998 U.S. Dist. LEXIS 1366, at \*7 n.3 (E.D. Pa. Jan. 19, 1998) (characterizing § 7209(b)’s timely filing requirement as jurisdictional); *Grisham v. United States*, 578 F. Supp. 73, 74 (S.D.N.Y. 1983) (same); *see also Clay v. United States*, 199 F.3d 876, 880 (6th Cir. 1999) (holding twenty-day period for filing petition to quash is jurisdictional and Federal Rule of Civil Procedure 6(e) does not operate to provide additional three days for filing of petition to quash where notice is sent by first class mail). Thus, failure to file a petition within twenty days from the date of notice deprives a district court of jurisdiction to decide the petition to quash.

In the present case, Special Agent Keiper timely sent notice of the third-party summons to Petitioner via certified mail on February 17, 2004. 26 U.S.C. § 7609(a). Twenty-seven days later, on March 15, 2004, Petitioner filed his petition to quash. Because the petition is untimely, this Court is without jurisdiction. Accordingly, Respondent’s motion to dismiss for lack of subject jurisdiction is granted. An appropriate Order follows.

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	:	
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	:	
<b>UNITED STATES OF AMERICA,</b>	:	<b>No. 04-1086</b>
<b>Respondent.</b>	:	

**ORDER**

**AND NOW**, this 27<sup>th</sup> day of **May2004** , upon consideration of Respondent's Motion to Dismiss Petition to Quash Summons, it is hereby **ORDERED** that:

1. Respondent's Motion to Dismiss Petition to Quash Summons (Document. No. 4) is **GRANTED** and the petition is **DISMISSED**.
2. The Clerk of Court is directed to close this case for statistical purposes.

**BY THE COURT:**

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**Berle M. Schiller, J.**