

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

DIANE STEINIGER :  
 :  
 v. : CIVIL ACTION  
 :  
 UNITED STATES COMMISSIONER :  
 OF INTERNAL REVENUE : NO. 04-CV-4044

**SURRICK, J.**

**FEBRUARY 16, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is Petitioner Diane Steiniger's Petition to Quash Summons of Internal Revenue Service (Doc. No. 1) and Respondent United States Commissioner of Internal Revenue's<sup>1</sup> Motion for Summary Denial of the Petition to Quash & Summary Enforcement of Summons. (Doc. No. 4.) For the following reasons, Defendant's Motion will be granted and Petitioner's Motion will be denied.

**I. BACKGROUND**

On August 2, 2004, Bruce Uttermark, a Revenue Agent with the Small Business/Self Employed Division of the Internal Revenue Service ("IRS"), issued and served a summons to GMAC Mortgage, a corporation located at 100 Witmer Road, Horsham, PA.<sup>2</sup> (Uttermark Decl. ¶¶ 1, 4-5.) This summons was issued in the course of an investigation to determine Petitioner's federal tax liability for 2000, 2001, and 2002. (*Id.* ¶ 2; Doc. No. 4 Ex. 1.) According to Agent

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<sup>1</sup> In the Motion, Respondent identified itself as the "United States of America," rather than the United States Commissioner of Internal Revenue. (Doc. No. 4 at 1.)

<sup>2</sup> A copy of the summons was sent to Petitioner by certified mail. (Uttermark Decl. ¶¶ 6-7.)

Uttermark, based on information obtained during his investigation, Defendant has “conducted business with, by, or through GMAC Mortgage for the relevant years” under investigation. (Uttermark Decl. ¶ 3.) The summons directed GMAC Mortgage to produce for examination all books, papers, records, or other data related to Petitioner’s potential tax liability on August 26, 2004. (Doc. No. 4 Ex. 1.) GMAC Mortgage did not appear or produce any records in response to the summons. (Uttermark Decl. ¶ 8.)

Agent Uttermark declares that all administrative steps required by the Internal Revenue Code (“IRC”) were followed prior to issuance of the summons. (*Id.* ¶ 9.) Agent Uttermark also asserts that it is necessary to examine the books, records, papers, and other data sought in the summons to determine the correct amount of Petitioner’s tax liability, and states that these documents are not in the possession of the IRS. (*Id.* ¶ 8.) In addition, Agent Uttermark declares that the IRS has not made a recommendation to the United States Department of Justice (“DOJ”) for a grand jury investigation or criminal prosecution of Petitioner for the years under investigation, that the IRS is not delaying a recommendation to DOJ in order to collect more information, and that DOJ has not made any request under 26 U.S.C. § 6103(h)(3)(B) for the disclosure of Petitioner’s tax returns or return information. (*Id.* ¶ 11.)

On August 25, 2004, Petitioner filed the Petition to Quash Summons of Internal Revenue Service. (Doc. No. 1.) Respondent opposed granting the Petition (Doc. No. 2 at 4), and on January 25, 2005, filed its Motion for Summary Denial of Petition to Quash & Summary Enforcement of Summons. (Doc. No. 5.) As of this date, Petitioner has not submitted a response

to Respondent's Motion.<sup>3</sup>

## **I. DISCUSSION**

### **A. Petition to Quash Summons**

Under 26 U.S.C. § 7602, the IRS has broad authority to issue a summons to determine a taxpayer's liabilities. *See United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984) ("In order to encourage effective tax investigations, Congress has endowed the IRS with expansive information-gathering authority; § 7602 is the centerpiece of that congressional design."); *see also Codner v. United States*, 17 F.3d 1331, 1332 (10th Cir. 1994). Section 7602(a) authorizes the Commissioner of the IRS, as the Secretary of the Treasury's designee, to examine "any books, papers, records, or other data which may be relevant" to "the purpose of ascertaining the correctness of any return" or "determining the liability of any person for any internal revenue tax."<sup>4</sup> 26 U.S.C. §§ 7602(a), (a)(1) (2000). A separate section of the Internal Revenue Code, 26

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<sup>3</sup> Under Local Rule 7.1(c), any party opposing a motion must submit a response within fourteen (14) days after the motion's service. E.D. Pa. R. 7.1(c).

<sup>4</sup> Section 7602(a) states:

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such

U.S.C. § 7609, permits a party who is entitled to notice of a summons “to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given.” *Id.* § 7609(b)(2)(A).

Petitioner asserts that the IRS summons should be quashed because, under 26 U.S.C. § 7602, she “is not a person ‘liable’ for any federal income tax nor ‘required to perform any act’ with respect to federal income tax.” (Doc. No. 1 ¶ 6D (citing 26 U.S.C. § 7602(a)(2))). In response, the United States argues that Petitioner’s objection is erroneous because § 7602 authorizes the IRS to issue a summons to ascertain whether an individual may have tax liability. (Doc. No. 4 at 4-7.) Respondent is correct. It is clear that under § 7602, the Commissioner may issue a summons “[f]or the purpose of . . . determining the liability of any person for any internal revenue tax . . . .” 26 U.S.C. § 7602(a) (2000) (emphasis added). The Supreme Court has held that “[t]his provision empowers the IRS to serve a summons on any person, without prior judicial approval, *if the information sought is necessary to ascertain that person’s tax liability.*” *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 311 (1985) (emphasis added). As long as the IRS acts in good faith, *United States v. Powell*, 379 U.S. 48, 57-58 (1964), it may issue a summons to inquire about any individual’s potential tax liability. In rejecting an identical argument, another court in this District stated:

[Petitioners’] first contention is that none of the provisions of 26 U.S.C. § 7602(a)(1)[, ](2) or (3) apply . . . . Specifically, petitioner . . . claims he is not subject to the provisions of § 7602(a)(2) because he is not liable for any federal

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inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

26 U.S.C. § 7602(a) (2000).

tax and is not a person required to perform any act with respect to any federal tax. This claim is without merit. The IRS is not required to establish tax liability prior to issuance of the summons. Rather the IRS has a statutory duty to inquire about persons who may be liable for payment of taxes. The assessment of a petitioner's tax liability is the precise issue for resolution.

*Amcon Int'l, Inc. v. United States*, Civ. A. Nos. 84-4940 et al., 1985 WL 1244, at \*1 (E.D. Pa. Mar. 29, 1985) (citations and footnote omitted). We are satisfied that Petitioner has not raised a valid objection to the summons.

### **B. Enforcement of Summons**

In its Motion, Respondent seeks to compel GMAC Mortgage's compliance with the summons. (Doc. No. 4.) The IRS is not required to "show probable cause to obtain enforcement of an administrative summons issued in connection with a domestic tax investigation" under § 7602. *United States v. Stuart* 489 U.S. 353, 359 (1989). Rather, Respondent need only demonstrate that the IRS acted in good faith in issuing the summons. *Id.* To establish a prima facie case of good faith for enforcement of the IRS summons, Respondent must show that: (1) the investigation is being conducted for a legitimate purpose; (2) the information sought is relevant to that purpose; (3) the information is not already in the possession of the IRS; and (4) the administrative steps required by the IRS have been followed. *Powell*, 379 U.S. at 57-58.

In addition, the summons must be issued prior to a recommendation to the Department of Justice for criminal prosecution. *United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 314 (1978); *Donaldson v. United States*, 400 U.S. 517, 536 (1971); *see also* 26 U.S.C. § 7602(d)(1) (2000) ("No summons may be issued under this title, and the Secretary [of the Treasury] may not begin any action . . . to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.").

“Once the IRS has made such a showing . . . it is entitled to an enforcement order unless the taxpayer can show that the IRS is attempting to abuse the court’s process.” *Stuart*, 489 U.S. at 360. An abuse of process would exist “if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.” *Id.* (quoting *Powell*, 379 U.S. at 58). The burden of proving abuse of process rests with the taxpayer. *Powell*, 379 U.S. at 58.

1. Prima Facie Case of Good Faith

Here, the IRS has met its burden of establishing a prima facie case that the summons to GMAC Mortgage was issued in good faith. First, the declaration of Agent Uttermark establishes that the summons was issued for a proper purpose: the investigation of Petitioner’s potential federal income tax liability for the years 2000, 2001, and 2002. (Uttermark Decl. ¶ 2.) Second, the information sought by the IRS is relevant to Agent Uttermark’s investigation because, according to Agent Uttermark, Petitioner has conducted business with, by, or through GMAC Mortgage for the relevant years. (*Id.* ¶ 3.) Third, Agent Uttermark declares that the GMAC Mortgage’s books, records, papers, or other data concerning Petitioner are not already in the constructive possession of the IRS. (*Id.* ¶ 10.) Finally, Agent Uttermark avers that all of the required administrative steps for the issuance and service of the summons were followed. (*Id.* ¶ 9.)

In addition, Agent Uttermark’s declaration establishes that no Justice Department referral is in effect with respect to Petitioner. Under the IRC, a Justice Department referral is in effect with respect to a person if the Secretary of the Treasury has recommended to the Attorney

General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or if a request is made pursuant to 26 U.S.C. § 6103(h)(3)(B) for the disclosure of any tax return or return information relating to the person. 26 U.S.C. § 7602(d)(2) (2000); *see also Stuart*, 489 U.S. at 362-63 (discussing the requirements of a Justice Department referral). The IRS also may not “circumvent this requirement by delaying such a recommendation in order to gather additional information.” *Stuart*, 489 U.S. at 363. Here, Agent Uttermark declares that the IRS has not recommended a grand jury investigation or criminal prosecution of Petitioner to the Justice Department for the years under investigation. (Uttermark Decl. ¶ 11.) In addition, he states that the IRS is not delaying such a recommendation to the Justice Department in order to collect additional information. (*Id.*) Agent Uttermark also declares that the Justice Department has not made any request under § 6103(h)(3)(B) for the disclosure of any tax return or tax information relating to Petitioner. (*Id.*) We therefore conclude that Respondent has presented a prima facie case of good faith issuance of the summons to GMAC Mortgage.

## 2. Abuse of Process

Since Respondent has established a prima facie case of good faith, the burden shifts to Petitioner to establish that the issuance of the summons was an abuse of process. *Stuart*, 489 U.S. at 360; *Powell*, 379 U.S. at 58. Petitioner alleges that the summons to GMAC Mortgage constitutes an abuse of process because she is “not a person ‘liable’ for any federal income tax nor ‘required to perform any act’ with respect to any federal income tax,” and the requirements of § 7602 therefore do not apply to her. (Doc. No. 1 ¶ 6(D), (G).) As discussed above, this argument must be rejected because § 7602 authorizes the IRS to issue a summons to investigate

and determine a taxpayer's potential federal income tax liability, so long as the summons is made in good faith. Thus, the issuance of the summons to GMAC Mortgage does not constitute an abuse of process.

An appropriate Order follows.

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

DIANE STEINIGER	:	
	:	CIVIL ACTION
v.	:	
	:	
UNITED STATES COMMISSIONER	:	NO. 04-CV-4044
OF INTERNAL REVENUE	:	

**ORDER**

AND NOW, this 16<sup>th</sup> day of February, 2005, upon consideration of Petitioner Diane Steiniger's Petition to Quash Summons of Internal Revenue Service (Doc. No. 1), Respondent's Motion for Summary Denial of the Petition to Quash & Summary Enforcement of the Summons (Doc. No. 4), and all documents filed in support and opposition thereof, it is hereby ORDERED that:

1. The Petition to Quash Summons of Internal Revenue Service (Doc. No. 1, 04-CV-4044) is DENIED; and
2. Respondent's Motion for Summary Denial of Petition to Quash & Summary Enforcement of Summons (Doc. No. 4, 04-CV-4044) is GRANTED; and
3. GMAC Mortgage is ORDERED to comply with the IRS's summons within twenty (20) days of the date of this Order.

IT IS SO ORDERED.

BY THE COURT:

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R. Barclay Surrick, Judge