



evidence for criminal proceedings against Mr. Stevenson. Mr. Stevenson contends that Congress has only authorized the IRS to use administrative summons for civil investigations and that their use for criminal investigations must be quashed. On July 25, 2006, Mr. Stevenson filed a "Petition to Quash" to accompany his previously filed memorandum, which raises the additional argument that the IRS had failed to give him reasonable notice of the subpoenas as required by statute.

Because Mr. Stevenson did not enclose a certificate of service with his memorandum, this Court ordered Mr. Stevenson to serve his petition on the named defendants and directed the United States to respond. On August 2, 2006, the United States moved to dismiss. The United States argued that Mr. Stevenson's petition fails for three reasons: because Mr. Stevenson has not validly served his petition upon the third-party financial institutions within the 20 day period required by 26 U.S.C. § 7609(b)(2)(B); because this Court lacks jurisdiction over two of the summonses that are directed to parties outside this district; and because Mr. Stevenson's motion fails to state a cognizable legal basis for quashing the summonses.

On November 6, 2006, this Court ordered both parties to submit supplemental evidence on certain issues raised by their briefing. Mr. Stevenson was ordered to provide evidence to support his claim that two of the subpoenaed financial

institutions, CitiMortgage and Blue Bell National Bank, have branches within this district. The IRS was ordered to provide evidence as to when it gave notice to Mr. Stevenson of the summonses as required by 26 U.S.C. § 7609(a). Both parties have now responded and the Motion to Quash is now ripe for decision.

The IRS has statutory authority to "examine any books, papers, records, or other data which may be relevant or material" to a particular tax inquiry and to issue summonses to third-parties who may have custody of financial information relevant to the inquiry. 26 U.S.C. § 7602(a). The procedure for a target of an investigation to object to a third-party summons is set out in 26 U.S.C. § 7609.

Section 7609 provides that the IRS is to give notice to the person whose records are sought within three days of the service of the summons and no later than the 23rd day before the day fixed in the summons for the examination of records.

§ 7609(a)(1). The person whose records are sought then has the right to begin a proceeding to quash the summons "not later than the 20th day after such notice is given," § 7609(b)(2)(A), but must give notice of the motion to quash to both the government and the third-party record keeper within the same 20-day period following notice of the summons, § 7609(b)(2)(B).

The IRS contends that the Court lacks jurisdiction over Mr. Stevenson's motion to quash because he did not properly serve

his motion upon the United States or the third party financial institutions as required by § 7609(b)(2)(B). The Court agrees, and because this first issue is dispositive, will not reach the other issues raised in the IRS's motion to dismiss.

Section 7609(b)(2)(B) requires that a party seeking to quash a summons must serve his or her motion, "not later than the close of the 20-day period referred to in subparagraph (A)." Subparagraph 7609(b)(2)(A) provides that the party whose records are requested has "the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2)." Subsection 7609(a) provides that notice of a summons must be mailed to the party whose records are sought within three days of the service of the summons upon a record-keeper. Subsection 7609(a)(2) provides that notice will be sufficient if served in accordance with § 7603 (allowing service by hand delivery in person or by leaving notice at a person's last and usual place of abode) or by certified or registered mail to a person's last known address. Taken together, these sections provide that the party seeking to quash a subpoena must serve a copy of his motion within 20 days of the IRS giving notice of its summons.

Failure to properly serve a motion to quash within this 20-day period is a jurisdictional defect that requires dismissal of the petition. Clay v. United States, 199 F.3d 876, 878 (6th

Cir. 1999) (upholding dismissal of motion to quash for lack of jurisdiction where plaintiff failed to serve the motion with in the 20-day period); Faber v. United States, 921 F.2d 1118, 1119 (10th Cir. 1990) (same); Stringer v. United States, 776 F.2d 274, 275 (11th Cir. 1985) (same); Ponsford v. United States, 771 F.2d 1305, 1309 (9th Cir. 1985) (same).

Here, the IRS has submitted copies of the certificates of service for the three summonses at issue, showing they were sent by certified or registered mail to Mr. Stevenson on May 31, 2006. Under 7609(b)(2)(B), Mr. Stevenson had 20 days to file and serve his motion to quash, or until June 20, 2006. Mr. Stevenson filed his motion to quash on June 16, 2006, but did not include any certificate of service. Although Mr. Stevenson states in his opposition to the motion to dismiss, filed October 27, 2006, that he served his motion upon the respondents, he does not state when service was made.

Mr. Stevenson bears the burden of establishing this Court's jurisdiction over his motion to quash. Hedges v. United States, 404 F.3d 744, 750 (3d Cir. 2005). Having provided no evidence that he served the three respondent financial institutions within the 20-day period required by § 7609(b)(2)(B), Mr. Stevenson has failed to meet that burden and his motion to quash must be dismissed.

Mr. Stevenson argues in his opposition to the motion to dismiss that he should be allowed to maintain this action because he served his motion to quash within the 120 day period given for service of original process in Rule 4(m) of the Federal Rules of Civil Procedure. This argument is misplaced. By its terms, Rule 4(m) governs the time for serving a "summons and complaint" to institute a civil action in federal court. Here, Mr. Stevenson did not file an ordinary civil complaint; he filed a motion to quash under § 7609, the exclusive means to challenge an IRS summons to a third party record keeper. See Faber, 921 F.2d at 1119 (describing § 7609 as a limited waiver of the United States' sovereign immunity to suit whose terms must be met for a taxpayer to quash an IRS summons). Mr. Stevenson, therefore, had to comply with the 20-day service requirement set out in § 7609(b)(2)(B), rather than the 120 day period set out in Rule 4. Because Mr. Stevenson did not comply with the 20-day requirement, his motion to quash must be dismissed.

An appropriate Order follows.

