

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

STEPHEN S. KNEPP	:	MISC. ACTION
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
COMMISSIONER OF THE INTERNAL	:	
REVENUE AND ELSIEA CHIN,	:	
REVENUE AGENT	:	NO. 98-MC-93

MEMORANDUM ORDER

Presently before the court are petitioner Knepp's Petition to Quash Summonses issued by the Internal Revenue Service, petitioner's Request for Hearing and the government's Motion for Summary Denial of Petition to Quash and for Summary Enforcement of IRS Summonses.

Petitioner challenges IRS summonses issued on June 11, 1998 to National Penn Bank in Boyertown, Pennsylvania and Diamond Credit Union in Pottstown, Pennsylvania, directing them to provide to the IRS information pertaining to accounts maintained by petitioner for the years 1993 through 1996.

Petitioner argues that the IRS lacks the legal authority to compel the financial institutions to turn over the requested information. Petitioner cites several cases for the proposition that "neither the statute or regulations are complete without the other." Petitioner argues that if 26 U.S.C. § 7602, the statute which authorizes the IRS to issue summonses, has no accompanying regulation, the statute is then without force because there would be no regulation with which to read the

statute. Petitioner misreads the cases on which he relies. They simply stand for the proposition that when there is a regulation, the regulation and the statute must be read together. They clearly do not mean that a statute without an accompanying regulation is ineffective.

Section 7602 confers upon the IRS broad authority to cause summonses to be issued to "any person having possession, custody, or care of books of account containing entries related to the business of the person liable for tax . . . or any other person the Secretary may deem proper . . . to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material" to determine a taxpayer's correct tax liability. This includes employees of banks and other financial institutions in which taxpayers maintain accounts. See, e.g., Moutevelis v. United States, 727 F.2d 313, 314 (3d Cir. 1984).

The government may seek compliance with a summons in the course of opposing a motion to quash. See 26 U.S.C. § 7609. The uncontroverted factual averments of the IRS agent who caused the summonses to be issued clearly establish a prima facie case for enforcement. The agent's affidavit shows that: the summonses were issued for a proper purpose; the information being sought may be relevant to that purpose; the information being sought is not already in the possession of the IRS; and, the IRS

has followed the administrative steps required by statute with respect to issuance and service of the summonses. See, e.g., United States v. Powell, 379 U.S. 48, 57-58 (1964); Federal Deposit Ins. Co. v. Wentz, 55 F.3d 905, 908 (3d Cir. 1995).

In the face of such a prima facie case, the petitioner must show that the IRS had no valid purpose for causing the summonses to be issued or that enforcement would be an abuse of the court's process. See, e.g., Powell, 379 U.S. at 58; Wentz, 55 F.3d at 908. As the petition and response suggest no material issue of fact as to either of these possibilities, petitioner's request for a hearing will be denied. See, Moutevelis, 727 F.2d at 315. For the same reason, petitioner's Motion to Quash will be denied and the government's Motion for Summary Denial of Petition to Quash and for Summary Enforcement will be granted.

ACCORDINGLY, this day of August, 1998, **IT IS HEREBY ORDERED** that petitioner's Request for Hearing (Doc. #7) is **DENIED**, petitioner's Petition to Quash Summonses (Doc. #1) is **DENIED** and the government's Motion for Summary Denial of Petition to Quash and For Summary Enforcement of IRS Summonses (Doc. #8) is **GRANTED**.

BY THE COURT:

JAY C. WALDMAN, J.