

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:04-cv-07403
	)	
Plaintiff,	)	Judge Samuel Der-Yeghiayan
	)	
v.	)	
	)	
WILLIAM J. BENSON,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT AND APPLICANT INTERVENORS’  
MOTION TO QUASH IRS ADMINISTRATIVE SUMMONS**

Come now Defendant, William J. Benson (hereinafter “Benson”), and Applicant Intervenor, by and through their undersigned attorney of record, who move this Court for an order quashing an Internal Revenue Service Administrative Summons. In support of said motion, the following showing is made:

1. The complaint filed by the United States sought an injunctive order compelling Benson to produce the names, addresses, social security numbers, telephone numbers and e-mail addresses of the persons to whom Benson gave or sold, directly or indirectly, “The Reliance Defense Package.” (Doc. 1, pp. 7-8).

2. Not being satisfied with the length of time the Court was taking in ruling on the United States’ motion for summary judgment, the United States sought to obtain the information by discovery. (Doc. 64).

3. Benson notified the Court that the Criminal Investigation Division was interested in Benson, and therefore Benson would be exercising his right to remain silent regarding the discovery wanted by the United States. (Doc. 66).

4. On April 19, 2007, during a telephonic status conference, the Court suggested, in light of Benson's assertion of his right to remain silent, the United States seek an order of immunity. In making said suggestion, the Court implicitly recognized the propriety of Benson's Fifth Amendment assertion. (See Doc. 70).

5. On July 2, 2007, John Doe I, John Doe II and Jane Roe filed a motion for leave to intervene (Doc. 74) and together with Benson, a motion for a protective order (Doc. 77), together with an extensive memorandum of law (Doc. 80) detailing why the requested information was protected from disclosure under the First Amendment to the Constitution of the United States of America.

6. On August 20, 2007, the United States filed a motion for an order of immunity (Doc. 88), and filed an exact duplicate motion for an order of immunity on August 27, 2007 (Doc. 93).

7. On December 17, 2007, this Court entered its Minute Entry (Doc. 105) and Memorandum Opinion (Doc. 106) specifically denying the United States' request for the names, addresses, social security numbers, telephone numbers and e-mail addresses of the persons to whom Benson gave or sold, directly or indirectly, "The Reliance Defense Packages."

8. At the same time, the Court denied, as moot, the motions to intervene, for a protective order, and for immunity. (Doc. 106, p. 21).

9. On January 11, 2008, the United States filed its motion to alter or amend the judgment (Doc. 119), asking the Court to order Benson to supply the requested information.

10. On January 13, 2008, Benson and Applicant Intervenors filed their opposition to the United States motion to alter or amend (Doc. 127).

11. On January 16, 2008, the Court denied the United States motion to alter or amend the judgment.

12. On February 14, 2008, the Internal Revenue Service, the real party in interest in this litigation, issued an administrative summons directing Benson to provide to it the identical information it had requested in the complaint. A copy of the summons is attached hereto as Exhibit A.

13. Having fully litigated the issue of whether the Internal Revenue Service is entitled to the requested information, which litigation involved the identical parties, the question of whether the Internal Revenue Service is entitled to the requested information has been conclusively determined against it. Further review of the Court's order is not now available to the Internal Revenue Service; it is barred by the doctrine of *res judicata*. See *Jagla v. BMO Financial Group*, 248 Fed.Appx. 74, 744-745 (7th Cir. 2007).

14. The decision by this Court is now final; any relief to which the Internal Revenue Service may be entitled is upon appeal to the United States Court of Appeals for the Seventh Circuit. To date, the Internal Revenue Service has not filed a notice of appeal.

15. Furthermore, it clearly appearing on the face of the record before this Court that the Criminal Investigation Division has an interest in Benson; that there are allegations that Benson has not filed tax returns; and that this Court has stated: 1) "the undisputed facts unquestionably show that Benson unlawfully interfered with the enforcement of IRS laws" (Doc. 106, p. 15); 2) the injunction is necessary to prevent Benson "from inciting others to violate tax laws" (Doc. 106, p. 17), and 3) "[n]or should Benson's customers, who the Government itself depicts as victims, be branded as potential co-conspirators with Benson and tax cheats" (Doc.

106, p. 19-20), Benson has a substantial and real hazard of self-incrimination by producing the summonsed information. The potential crimes for which Benson may be prosecuted are 26 U.S.C. §§ 7201, 7203, 7212, and 18 U.S.C. § 371.

16. The requested production of documents is, therefore, protected by Benson's exercise of his Fifth Amendment right to remain silent, which privilege Benson has asserted in this litigation, and continues to assert here. *See Doe v. United States*, 487 U.S. 201, 209 (1988); *United States v. Grable*, 98 F.3d 251 (6th Cir. 1996)(holding Fifth Amendment applies to IRS summons cases.)

17. The information requested is also protected by the First Amendment to the Constitution of the United States of America. *See Bread v. City of Alenandria, La*, 341 U.S. 622, 628 (1951); *King v. Federal Bureau of Prisons*, 415 F.3d 634, 638 (7th Cir. 2005)(Posner, J.); *Lamont v. Postmaster General of the United States*, 381 U.S. 301, 307 (1965); *Roberts v. United States Jaycees*, 468 U.S. 609. 617-18 (1989); and *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); and Doc. 80. In granting summary judgment, the Court did not address the First Amendment rights of the Applicant Intervenors; the issuance of the IRS administrative summons again raise the Applicant Intervenors' rights.

WHEREFORE, Benson and Applicant Intervenors move this Court for an order quashing the administrative summons issued on February 14, 2008.

Dated: February 21, 2008.

/s/ Jeffrey A. Dickstein  
Jeffrey A. Dickstein  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney for the Plaintiff, Robert D. Metcalfe.

/s/ Jeffrey A. Dickstein