

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ILLINOIS  
 EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 04 C 7403
	)	
WILLIAM J. BENSON, individually and	)	Judge Der-Yeghiayan
d/b/a Constitutional Research Associates,	)	
	)	
Defendant.	)	
_____	)	

**UNITED STATES’ BRIEF IN OPPOSITION TO  
 MOTION TO QUASH IRS ADMINISTRATIVE SUMMONS**

On December 17, 2007, this Court issued its Memorandum Opinion (Doc. 106) granting summary judgment to the United States on its claim for a permanent injunction barring the defendant, William J. Benson, from promoting or selling his “Reliance Defense Package” and “16<sup>th</sup> Amendment Reliance Package,” which promote the bogus argument that taxpayers are not required to file income tax returns or pay federal taxes because the Sixteenth Amendment was never ratified. The Permanent Injunction (Doc. 116) was entered on January 10, 2008, and Benson filed his notice of appeal (Doc. 139) on February 9, 2008.

After filing his notice of appeal, Benson moved to quash an IRS administrative summons that seeks the identities of the purchasers of his “Reliance Defense Package” and “16<sup>th</sup> Amendment Reliance Package.” The motion to quash should be denied because (1) Benson, as the person with respect to whose liability the summons was issued, is precluded from bringing a motion to quash the summons under section 7609 of the Internal Revenue Code (26 U.S.C.); and (2) the filing of the notice of appeal divested this Court of jurisdiction over this civil action.

## ARGUMENT

### **THIS COURT LACKS JURISDICTION OVER DEFENDANT'S MOTION TO QUASH AN IRS ADMINISTRATIVE SUMMONS**

#### **A. Introduction**

It is well established that the United States is immune from suit except to the extent that Congress has enacted legislation that waives such immunity.<sup>1</sup> It is also well established that such a waiver “cannot be implied but must be unequivocally expressed.”<sup>2</sup> After filing his notice of appeal from the permanent injunction entered against him, Benson filed a petition seeking to quash a summons issued to him in connection with the IRS investigation into his liability for penalties under section 6700 of the Internal Revenue Code (26 U.S.C.) (“IRC”). But Congress has not authorized such a suit by Benson (*i.e.*, it has not waived the United States' immunity from suit for this purpose), and the District Court accordingly lacks subject matter jurisdiction over Benson's motion to quash. Furthermore, because the filing of the notice of appeal divested this Court of jurisdiction over this action (except with respect to the enforcement of the permanent injunction), Benson's motion to quash the IRS summons issued to him should be denied.

#### **B. Benson cannot move to quash a summons that was issued to him**

Neither Benson's motion to quash (Doc. 144) or the memorandum of law (Doc. 145) submitted in support of his motion to quash the IRS summons served on him on February 14,

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<sup>1</sup> *United States v. Dalm*, 494 U.S. 596, 608 (1990); *United States v. Testan*, 424 U.S. 392, 399 (1976); *United States v. Sherwood*, 312 U.S. 584, 586 (1941).

<sup>2</sup> *United States v. Testan*, 424 U.S. at 399 (quoting *United States v. King*, 395 U.S. 1, 4 (1969)).

2008, identifies the jurisdictional basis for his motion. Sections 7602 through 7609 of the Internal Revenue Code govern the procedure applicable to the issuance, compliance, enforcement and challenges of IRS administrative summonses.<sup>3</sup> Section 7602 is a broad grant of authority that applies to all summonses issued as part of an investigation of tax liability.<sup>4</sup> Section 7609 is a detailed description of the procedures which apply to, and the rights created by, the issuance of a special category of IRS summonses, namely, a third-party summons.<sup>5</sup> Under IRC § 7609(b)(2), one who is entitled to notice of the issuance of a third-party summons under IRC § 7609(a)(1) may bring a petition to quash the summons.<sup>6</sup>

Section 7609(b)(2) of the Code, which allows a proceeding to quash an IRS summons to be brought against the United States, constitutes a waiver of sovereign immunity.<sup>7</sup> Like all waivers of sovereign immunity, however, it must be strictly construed.<sup>8</sup> Section 7609(c) defines the types of summonses that can be challenged under section 7609(b)(2) and expressly excepts certain summonses. As relevant here, section 7609(b)(2) does not apply to any IRS summons

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<sup>3</sup> IRC §§ 7602-7609.

<sup>4</sup> See *United States v. Euge*, 444 U.S. 707, 714 (1980); *United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984).

<sup>5</sup> IRC § 7609(a)(1); *Barmes v. United States*, 199 F.3d 386, 388 (7<sup>th</sup> Cir. 1999) (“[a]s a general rule, § 7609 requires the IRS to serve anyone whose financial records are sought in a third-party summons with a notice copy of the summons.”).

<sup>6</sup> *Barmes v. United States*, 199 F.3d at 388.

<sup>7</sup> See *Stringer v. United States*, 776 F.2d 274, 275 (11<sup>th</sup> Cir. 1985).

<sup>8</sup> See *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981); *Soriano v. United States*, 352 U.S. 270 (1957).

“served on the person with respect to whom the summons is issued.”<sup>9</sup>

It is undisputed that the IRS summons in question was issued to Benson himself in connection with the IRS investigation into defendant’s liability for penalties under IRC § 6700.<sup>10</sup> Because Benson is the summoned party, *i.e.*, the person with respect to whose liability the summons is issued, sovereign immunity applies and this Court lacks subject matter jurisdiction over Benson’s motion to quash, which should be denied.<sup>11</sup>

**C. The notice of appeal divested this Court of jurisdiction over this case**

Benson’s motion to quash the IRS summons should also be denied because of the notice

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<sup>9</sup> IRC § 7609(c)(2)(A).

<sup>10</sup> Section 6700 of the Internal Revenue Code provides for the assessment of a penalty against any person who, in connection with organizing or selling “a partnership or other entity,” “an investment plan or arrangement,” or “any other plan or arrangement,” makes or furnishes a statement about the tax consequences of participating which he knows, or has reason to know, is false or fraudulent as to any material matter, *See, e.g. United States v. White*, 769 F.2d 511, 514-15 (8th Cir. 1985); *United States v. Buttorff*, 761 F.2d 1056, 1059-63 (5<sup>th</sup> Cir. 1985); *United States v. Savoie*, 594 F. Supp. 678, 680-82 (W.D. La. 1984). Because this Court has already determined that Benson engaged in conduct subject to penalty under IRC § 6700 when he sold his “Reliance Defense Package” and “16<sup>th</sup> Amendment Reliance Package,” Benson is liable for the monetary penalty imposed by IRC § 6700. As the Court declined to order Benson, as part of the permanent injunction under IRC § 7402(a), to turn over a customer list, the IRS is attempting to ascertain the precise number of the Reliance Defense Packages and 16<sup>th</sup> Amendment Reliance Packages that Benson sold in order to properly assess IRC § 6700 penalties against him.

<sup>11</sup> The courts have given IRC § 7609(c)(2)(A) its plain meaning and have interpreted it to bar a petition to quash brought by either the summoned party or a person identified in the IRS summons whenever the summoned party is the person with respect to whose liability the summons is issued. *See, e.g., Abraham v. United States*, 740 F.2d 2 (2<sup>nd</sup> Cir. 1984) (petition to quash dismissed for lack of subject matter jurisdiction where summonses fell within the exception to the notice requirement of IRC § 7609(a)(1); *Strong v. United States*, 57 F. Supp.2d 908, 915 (N.D. Cal. 1999) (taxpayers had “no right to notice or to contest their own summonses through a petition to quash, the government has not waived its sovereign immunity and this Court lacks subject matter jurisdiction”); *Smith v. United States*, 592 F. Supp. 753, 755 (D. Conn. 1984).

of appeal that he filed on February 9, 2008, with respect to the permanent injunction entered against him. Once Benson filed his notice of appeal, this Court lost jurisdiction over this action for an injunction.<sup>12</sup> Benson's motion to quash, which represents an attempt to litigate a separate legal issue, cannot be brought in the instant case and should be denied.

**CONCLUSION**

For the foregoing reasons, the motion to quash the IRS administrative summons issued to the defendant, William J. Benson, should be denied.

Respectfully submitted this 22<sup>nd</sup> day of February, 2008.

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<sup>12</sup> See *Salton, Inc. v. Philips Domestic Appliances and Personal Care B.V.*, 391 F.3d 871, 873 (7<sup>th</sup> Cir. 2004) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); and *Grube v. Lau Industries, Inc.*, 257 F.3d 723, 731 (7<sup>th</sup> Cir. 2001).

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2008, I electronically filed the foregoing **UNITED STATES' BRIEF IN OPPOSITION TO MOTION TO QUASH IRS ADMINISTRATIVE SUMMONS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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