

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

RICHARD J. THOMAS,)	
)	
Petitioner,)	
)	
v.)	Civil No. 03-MC-31-B-W
)	
UNITED STATES OF)	
AMERICA,)	
)	
Respondent)	

RECOMMENDED DECISION

Following this Court’s Order of April 14, 2003, affirming my prior Recommended Decision denying Thomas’s various motions to quash IRS summonses, see Thomas v. United States, 254 F. Supp. 2d 174 (D. Me. 2003) (magistrate judge’s recommendation, affirmed over objection), the Government proceeded to serve a number of additional summonses as an apparent result of information gleaned from documents obtained from Bangor Savings Bank. Thomas has now filed a Petition to Quash IRS summons (Docket No. 1), an Amended Petition to Quash Third Party Summonses and Additional Summonses (Docket No. 3) and a second Amended Petition to Quash Third Party Summons and Additional Summonses (Docket No. 4) seeking to quash, as best I can determine, the following eight summonses that have been served by the IRS in the wake of the prior ruling:

- (1) July 17, 2003, summons served on McTeague Higbee MacAdam Case & Cohen;
- (2) July 23, 20003, summons served on Bishop Hazen Martin, Church of Jesus Christ of Latter Day Saints;
- (3) August 25, 2003, summons served upon David H. Simonds, Esq.;

- (4) August 25, 2003, summons served upon the Law Office of Theodore Curtis, Jr.;
- (5) August 25, 2003, summons served upon Lowry & Associates Attorneys;
- (6) August 25, 2003, summons served upon Means Investment Company;
- (7) August 25, 2003, summons served upon Roy Beardsley Williams & Granger; and
- (8) August 25, 2003, summons served upon Vafiades Brountas & Kominsky.

The IRS has filed its own motion to dismiss the Petition to quash, (Docket No. 5), as it relates to the IRS summons to the Church of Latter Day Saints based upon a claim of lack of subject matter jurisdiction. I now recommend that the Court **GRANT** the IRS's motion to dismiss because the Church of Jesus Christ of Latter Day Saints is not a "third-party recordkeeper" pursuant to 26 U.S.C. §§ 7603 and 7609(c)(2)(E) and Thomas lacks standing to pursue a motion to quash that might be brought on any other basis by the Church itself. See Thomas, 254 F. Supp. 2d at 181-82.

I likewise recommend that the Court **DENY** the motions to quash as to the other seven summonses. To the extent that Thomas is resurrecting the same arguments that he previously made regarding the first round of summonses, my prior recommendation is unchanged. To the extent that Thomas is arguing that his appeal of that prior decision should stay this court's hand regarding these new summonses, I note that there has never been a stay of the prior order and the IRS was certainly free to proceed with its investigation. Furthermore, in order to obtain a stay of this Court's prior order, Thomas probably would have had to meet the standard set forth in U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC, 262 F.Supp. 2d 1 (D.Me. 2003)(citing Morgan v. Kerrigan, 523 F.2d 917, 920 (1st Cir. 1975)). Because Thomas never applied for a stay, the court has had no reason to consider whether or not he would be able to meet the standard for such injunctive relief. At least one other court has viewed these issues

regarding the enforcement/quashing of IRS summonses as in the nature of injunctive relief and therefore governed by Rule 62 (a) (c), Federal Rules of Civil Procedure. United States v. Puckett, 573 F.Supp. 713, 716 (E.D. Tenn. 1981). I see no reason why these summonses now issued by the IRS should be quashed because an appeal of the earlier matter is still pending.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection. Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

September 30, 2003

/s/ Margaret J. Kravchuk
United States Magistrate Judge

**U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 1:03-mc-00031-JAW
Internal Use Only**

THOMAS v. USA

Assigned to: JUDGE JOHN A. WOODCOCK JR

Referred to:

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause:

Date Filed: 07/29/03

Jury Demand:

Nature of Suit:

Jurisdiction:

Plaintiff

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V.

Defendant

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