

Discussion

When a person whose liability is the subject of a third-party summons moves to quash the summons, "then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending." 26 U.S.C. § 7609(e)(1); see also United States v. Meyer, 808 F.2d 13041306 (8th Cir. 1987). On February 14, 2003, I issued a recommended decision on motions to quash summonses the IRS issued to various third-party record keepers to produce records pertaining Richard Thomas's alleged tax liability. Thomas v. United States, 254 F. Supp. 2d 174, 177 (D. Me. Feb. 14, 2003) (Kravchuk, Mag. J., Recommended Decision). Judge Singal accepted the recommended decision, which recommended the denial of Thomas's motions to quash. Id. (Apr. 14, 2003) (Singal, J., Order Affirming the Recommended Decision). The motions to quash were filed between September and November of 2002. 254 F. Supp. 2d at 177. The seven months between the filing of the motions to quash and the Court's order on the motions would not be a sufficient period of suspension to make count three of the indictment timely. However, Thomas appealed the Court's order to the Court of Appeals, which affirmed the Court's order on March 16, 2004, finding that Thomas's appeal was frivolous. Thomas v. United States, 93 Fed. Appx. 238 (1st Cir. 2004). The 11 months during which that appeal was pending continued the suspension of the limitation period for a sufficient amount of additional time to bring count three of the indictment well within the six-year limitation period.

Conclusion

For the reasons stated above, I RECOMMEND that the Court DENY the motion to dismiss count three of the indictment (Docket No. 38).

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, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge 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.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

August 2, 2006

Case title: USA v. THOMAS

Date Filed: 01/11/2006

Assigned to: JUDGE JOHN A.
WOODCOCK, JR

Defendant

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Pending Counts

26:7201.F - TAX EVASION 26:7201
(1-6)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

None

Disposition

Plaintiff

USA

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