

Jeffrey T. Maehr, Pure Health Systems, LLC, and other entities owned or controlled by Jeffrey T. Maehr, in connection with the tax years 2004, 2005, and 2006. (Sothen Decl. ¶4.)

On April 25, 2008, Jeffrey Maehr filed a petition to quash the summons. In the petition, Maehr appears to argue that the Internal Revenue Code is not the law and that the issuing of the summons was an unconstitutional violation of the Fourth Amendment search warrant requirement. Both of these types of arguments have long been rejected. Furthermore, the summons seeks records and information that may be relevant to the investigation of Jeffrey Maehr, seeks information not in the possession of the Internal Revenue Service, and the summons was issued after all of the material administrative steps required by the law were carried out. In addition, no "Justice Department referral" is in effect with respect to Maehr. Should the Court deny the petition to quash and summarily enforce the summons issued to Capital One Bank?

STATEMENT

1. Introduction. This proceeding is brought pursuant to 26 U.S.C. §§ 7402(b) and 7604(a) to judicially enforce an administrative summons of the Internal Revenue Service. Petitioner Jeffrey Maehr filed a petition to quash the summons. The United States files this response and motion seeking to enforce the summons issued to and served upon Capital One Bank. The summons directed Capital One Bank to give testimony and to produce for examination on May 2, 2008, books, papers, records, or other data as described in the summons. The summons requested information pertaining to Jeffrey Maehr, Pure Health Systems, LLC, and other entities owned or controlled by Jeffrey T. Maehr in connection with the tax years 2004, 2005, and 2006, as more fully described on the summons.

2. The background facts.

a. Parties and other principal actors. The respondent in this action is the United States. William Sothen is a duly commissioned revenue agent employed in Small Business/Self Employed Compliance, Internal Revenue Service with a post of duty in Durango, Colorado. (Sothen Decl. ¶ 1.)

Petitioner, Jeffrey Maehr, is an individual residing in Pagosa Springs, Colorado. (Sothen Decl. ¶ 3.)

Capital One Bank has the following mailing address: P.O. Box 85032, Richmond, VA 23285. (Sothen Decl. ¶ 5.)

b. The investigation of Jeffrey Maehr. In his capacity as revenue agent, Sothen is conducting an investigation concerning the Federal income tax liabilities of Jeffrey Maehr for tax years 2003, 2004, 2005, and 2006. (Sothen Decl. ¶ 2.) The purpose of the investigation is to determine the true and correct amounts of all income received by Maehr during the years 2003, 2004, 2005 and 2006 and the correct income tax liability for those years. (Sothen Decl. ¶ 2.)

c. The summons issued to and served upon Capital One Bank. In furtherance of the investigation of Maehr, and in accordance with 26 U.S.C. § 7602, on April 7, 2008, Sothen issued an administrative summons, Internal Revenue Service Form 2039, to Capital One Bank. (Sothen Decl. ¶ 4.) The summons directed the custodian of records from the bank to give testimony and to produce for examination on May 2, 2008, books, papers, records, or other data as described in the summons. (*Id.*) The summons requested information pertaining to Jeffrey T. Maehr, Pure Health Systems, LLC, and other entities owned or controlled by Jeffrey T. Maehr, in connection with the tax years 2004, 2005, and 2006, as more fully described on the summons.

Sothen served the summons on Capital One Bank, on April 7, 2008, by certified mail to the following address: P.O. Box 85032, Richmond, VA 23285. (Sothen Decl. ¶ 5.)

d. Capital One Bank's response to the summons. Capital One Bank failed to appear in response to the summons. (Sothen Decl. ¶ 7.)

e. The continuing need for the summoned testimony and documents. It is necessary to obtain the testimony and to examine the books, records, papers, or other data sought by the summons directed to Capital One Bank in order to determine the true and correct amounts of all income received by Maehr during the years 2003, 2004, 2005, and 2006. (Sothen Decl. ¶ 9.)

SUMMARY OF THE ARGUMENT

In his petition to quash summons, Maehr raises numerous frivolous arguments in support of his motion to quash; however, in order to obtain enforcement of an Internal Revenue Service summons, the United States need only establish four elements. These are: (1) that the summons was issued for a proper purpose; (2) that the information sought may be relevant to that purpose; (3) that the information being sought is not already in the possession of the Internal Revenue Service; and (4) that the administrative steps required by law with respect to the issuance and service of a summons have been followed. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964). In this case, all four of these elements have been demonstrated by the Declaration of William Sothen. Although petitioner references the four elements (Pet. pp. 9-10, ¶ 1), he does not provide any arguments demonstrating that the United States failed to meet the Powell requirements. Therefore, a *prima facie* case for enforcement of the summons has been established.

ARGUMENT

I. THE COURT SHOULD DENY THE PETITION TO QUASH SUMMONS

A. 26 U.S.C. § 7602 GOVERNS THE ISSUANCE OF ADMINISTRATIVE SUMMONS

Although the majority of petitioner's arguments are vague, he generally appears to advance the contention that the Internal Revenue Code is not the law and that the Internal Revenue Service does not have jurisdiction over him. These arguments are frivolous.

"The authority to tax has always been an inherent power given to Congress, *see McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 416, 4 L.Ed. 579 (1819), and with that authority must also go the power to enforce the collection of such taxes." *U.S. v. McMullen*, 755 F.2d 65, 67 (6th Cir.1984) *citing* *United States v. Drefke*, 707 F.2d 978, 981 (8th Cir.1983). Congress, in turn, has given an extraordinarily broad mandate to the Internal Revenue Service to enforce the internal revenue laws and related statutes, which direct (not just permit) the Service to inquire about all persons who may be liable to pay any internal revenue tax. *See United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 308 (1978); 26 U.S.C. § 7601(a).

The "broad mandate" given to the Service includes the authority to issue summonses under § 26 U.S.C. § 7602, which "authorizes the IRS to summon certain persons and data '[f]or the purpose of . . . determining the liability of any person for any internal revenue tax.'" *United States v. Norwood*, 420 F.3d 888, 892 (8th Cir. 2005). In *United States v. Powell*, the Supreme Court analogized this summons power to the subpoena power of other government agencies, noting that the inquiry is not limited by "forecasts of the probable result of the investigation," and that the Government "can investigate merely on suspicion that the law is being violated, or

even just because it wants assurance that it is not.” Powell, 379 U.S. at 57 (citations omitted).

The Supreme Court has observed that Congress intentionally gave the Service broad authority when it enacted § 7602:

In order to encourage effective tax investigations, Congress has endowed the IRS with expansive information-gathering authority; § 7602 is the centerpiece of that congressional design. As we noted in United States v. Bisceglia, 420 U.S. 141, 146 (1975): “The purpose of [§ 7602] is not to accuse but to inquire. Although such investigations unquestionably involve some invasion of privacy, they are essential to our self-reporting system, and the alternatives could well involve far less agreeable invasions of house, business, and records.”

United States v. Arthur Young & Co., 465 U.S. 805, 816 (1984). Under section 7602, “the government is entitled even to information that has only ‘*potential*’ relevance’ to the investigation.” United States v. Rockwell Int’l, 897 F.2d 1255, 1263 (3rd Cir. 1990) *quoting* Arthur Young & Co., 465 U.S. 805, 814 (1984). The applicable standard is whether the information sought “ ‘might throw light upon the correctness of the return.’ ” Rockwell Int’l, 897 F.2d at 1263 *citing* United States v. Egenberg, 443 F.2d 512, 515 (3d Cir. 1971) (quoting United States v. Harrington, 388 F.2d 520, 524 (2d Cir.1968)); *see also* LaMura v. United States, 765 F.2d 974, 981 (11th Cir.1985); United States v. Southwestern Bank & Trust Co., 693 F.2d 994, 996 (10th Cir.1982).

In this case, the Service is investigating the federal income tax liability of Jeffrey Maehr for the years 2003 through 2006. Maehr did not file returns for any of the years in question. (Sothen Decl. ¶ 2.) The summons issued to Capital One Bank requested information that will potentially assist the Service in determining the true and correct amounts of all income received by Maehr during the years in question. Accordingly, Maehr’s arguments should be rejected and

his petition to quash should be denied.

B. THE FOURTH AMENDMENT DOES NOT APPLY TO ADMINISTRATIVE SUMMONS

Maehr also argues that his Fourth Amendment rights are violated without due process or due cause. (Pet. p.9, ¶ j.) It is well settled that the Internal Revenue Service need not establish probable cause in order to obtain enforcement of a summons. United States v. Powell, 379 U.S. 48, 51 (1964); United States v. Richards, 431 F.Supp. 249, 252 (E.D.Va. 1977). Further, the Fourth Amendment rights of a taxpayer are not involved when a summons is issued to a third party. Donaldson v. United States, 400 U.S. 517, 522 (1971) (Internal Revenue summons directed to third party does not trench upon any interests protected by the Fourth Amendment). A summons directed to a third party bank or credit union does not violate the Fourth Amendment rights of a depositor under investigation because the records belong to the financial institution and not to the depositor. U.S. v. Aquinas College Credit Union, 635 F.2d 887, 888 (6th Cir. 1980) *citing* United States v. Miller, 425 U.S. 435, 440-444 (1976). “[W]hen a person communicates information to a third party even on the understanding that the communication is confidential, he cannot object if the third party conveys that information or records thereof to law enforcement authorities.” S.E.C. v. Jerry T. O’Brien, Inc., 467 U.S. 735, 743 (1984) *citing* Miller, 425 U.S. at 443. Accordingly, Maehr’s Fourth Amendment rights are not implicated by the issuance of the summons to Capital One Bank.

II.

**THE COURT SHOULD
SUMMARILY ENFORCE THE SUMMONS**

The standards for enforcement of Internal Revenue Service administrative summons are well established. To demonstrate a *prima facie* case for enforcement, the United States only need

show: (1) that the summons was issued for a proper purpose; (2) that the information sought may be relevant to that purpose; (3) that the information being sought is not already in the possession of the Internal Revenue Service; and (4) that the administrative steps required by law with respect to the issuance and service of the summons have been followed. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964); *Conner v. United States*, 434 F.3d 676, 680 (4th Cir. 2006). Upon establishment of the four elements of the *prima facie* case, the United States is entitled to enforcement of the summons. *United States v. Stuart*, 489 U.S. 353, 353-54 (1989).

The declaration of Revenue Agent Sothen establishes all of the requisite elements for enforcement of the summons issued to Capital One Bank. First, the Sothen declaration establishes that the summons was issued for a proper purpose, *i.e.*, an investigation concerning the Federal income tax liabilities of Jeffrey Maehr for the years 2003, 2004, 2005, and 2006. (Sothen Decl. ¶ 2.)

Second, the information sought by the summons is relevant to Revenue Agent Sothen's investigation. (Sothen Decl. ¶¶ 4, 9.) More specifically, it is necessary to obtain the testimony and to examine the books, records, papers, or other data sought by the summons directed to Capital One Bank in order to determine the true and correct amounts of all income received by Maehr during the years 2003, 2004, 2005, and 2006. (Sothen Decl. ¶9.)

As for the third requirement— that the Internal Revenue Service not already be in possession of the summoned data – Revenue Agent Sothen states that the books, records, papers, or other data that were sought by the summons are not in the possession of the Internal Revenue Service. (Sothen Decl. ¶ 10.) Moreover, because Capital One Bank failed to appear in response

to the summons (Sothen Decl. ¶7), the Internal Revenue Service does not have in its possession the testimony demanded by the summons.

Finally, all of the material administrative steps for the issuance and service of the summons were followed. (Sothen Decl. ¶8.) Section 7609 requires that notice of a third-party summons, accompanied by a copy of the third-party summons, must be served on any person identified in the summons. *See* 26 U.S.C. § 7609 (a)(1). Section 7609 also provides that the notice to the person identified in the summons shall be given within 3 days on which service is made, but no later than the 23rd day before the day fixed for compliance. 26 U.S.C. § 7609(a)(1). Such notice is sufficient if the notice is mailed by certified or registered mail to the last known address of such person. 26 U.S.C. § 7609(a)(2). In this case, Revenue Agent Sothen served, by certified mail, an attested copy of the summons on Jeffrey Maehr, on April 7, 2008, the same day he issued the summons to Capital One Bank. (Decl. ¶¶ 5, 6 and Exhibits 1, 2 and 3). Accordingly, the material requirements set forth in 26 U.S.C. §7609 have been met.

Thus, the United States has established a *prima facie* case for enforcement of the summons issued to and served upon Capital One Bank.

CONCLUSION

It is the position of the United States that Court ought to grant the motion to deny petition to quash and summarily enforce summons.

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Respectfully submitted,

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