

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY**

RONALD WEINLAND)	CIVIL ACTION
)	
PETITIONER)	NO. _____
)	
VS.)	
)	
UNITED STATES OF AMERICA)	
)	
RESPONDENT)	

MOTION OF NONPARTY, RONALD WEINLAND, TO QUASH SUMMONS

Comes now the Petitioner, Ronald Weinland (“Weinland”) by and through his undersigned counsel, and moves this honorable Court to quash twelve (12) administrative summonses issued by Susan Palmisano, Internal Revenue Service, Special Agent, to the following entities: Citibank, N.A.; Chase Bank, USA, N.A.; Huntington Bank; Charter One; PNC Bank; National City Bank; Citibank S.D.; American Express; Wachovia Bank; JP Morgan Chase Bank; Fifth Third Bank; and Bank of Kentucky. As grounds for this motion, Weinland states as follows:

As the taxpayer under investigation, Weinland is entitled to file this Motion to Quash to assert his rights with respect to the summons. *See*, 26 U. S. C. § 7609(b)(2)(a).

Weinland seeks to quash the summonses by asserting objections to the summonses with respect to the documents sought.

ARGUMENT

Weinland contends that: (a) the summonses are defective because the face of the summonses and the attached document list refer to the 2008 tax year, the filing of which is not yet required until April 15, 2009. Due to this discrepancy, the summonses are overbroad. In

addition, the Government has failed to allege sufficient details to show how the documents sought “may be” relevant to the stated purpose of the summonses.

(b) the summonses are for an improper purpose and clearly overbroad in that, the face of the summonses refer *only* to Ronald Weinland; however the attached document list requests “all records relative to financial transactions with Ronald Weinland and the Church of God and Laura Weinland.” Specifically, the attached document list requires the Third-Party record keepers to provide documents relating to The Church of God and Laura Weinland who are not under investigation. The only proper purpose for which such summonses are issued is to assist the IRS in the investigation and establishment of a tax liability. The use of summonses to “fish” for assets and to aid in collection is not a proper purpose and such summonses must not be enforced.

MEMORANDUM OF LAW

In order to obtain enforcement of a summons, the Government must establish that the summons (1) is for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is already not within the IRS’s possession; and (4) satisfies all administrative steps of the Internal Revenue Code . *United States v. Powell*, 379 U.S. 48, 57-58 (1964). Weinland does not dispute the applicable legal standard; he contends that the Government has failed to satisfy this standard.

First, the summonses are defective, in that they list the tax years under investigation as 2004 through current yet the summonses request documents relating to 2008, a tax year for which a filing is not yet required. This discrepancy creates an ambiguity as to the scope of the summonses which renders it unenforceable and overbroad. A summons must be specific in the description of the documents sought. For example, the Internal Revenue Manual (while only advisory) (IRM) 25.5.1-1(3)(10-31-2006), in General Instructions for Preparation of a Summons

states that all periods involved in the examinations or investigations should be “specifically stated.” By requesting tax year 2008 records when an investigation cannot yet be initiated statutorily as a return is not yet required, the IRS is clearly overstepping its boundaries and is allowing overbroad summonses to be issued which are not relevant to the review of Weinland’s individual 2004, 2005, 2006 or 2007 tax returns.

Lastly, the summonses are for an improper purpose and overbroad in that the summonses are seeking the location of assets for collection and are seeking documents regarding The Church of God and Laura Weinland who are not under criminal investigation, rather than its stated purpose of the determination of Weinland’s tax liability for the years in question.

WHEREFORE Petitioner, Ronald Weinland, prays that this Court grant his motion to quash the summonses issued to various financial institutions found in Exhibits A through L attached hereto, based upon the objections stated above.

Respectfully Submitted,

/s/ Joy L. Hall, Esq.
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Counsel for Petitioner, Ronald Weinland

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed via the Court’s electronic notification system on the 29th day of July, 2008.

I hereby certify that copies of the foregoing was served by regular U.S. certified mail, postage prepaid this 29th day of July, 2008 upon:

Special Agent Susan Palmisano
Internal Revenue Service

[REDACTED]
[REDACTED]

Custodian of Records of Wachovia Securities, LLC
Attn: Subpoenas & Garnishments
10750 Wheat First Dr.
WS 1010
Glen Allen, VA 23060

Records Custodian for Citibank, N.A.
Subpoena Compliance Unit
701 East 60th Street, North
P.O. Box 6034
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Sioux Falls, SD 57117-6034

Records Custodian for Chase Bank USA
National Subpoena Processing
7610 W. Washington Street
Mail Code IN 1-4054
Indianapolis, IN 46231

Teresa Erlenbach
Huntington Bank
EA4Q34
7 Easton Oval
Columbus, OH 43219

Records Custodian for American Express
200 Vesey St.
New York, NY 10285

Records Custodian for Charter One
144 East Front Street
Perrysburg, OH 43551

Records Custodian of PNC Bank
PNC Firstside Center
500 First Avenue
Mail Stop P7-PFSC02F
Pittsburg, PA 15219

Records Custodian of National City Bank
4100 West 150th Street
Locator #01-6151
Cleveland, OH 44135

Records Custodian of Fifth Third Bank
5050 Kingsley Drive
Legal Entry/Subpoena 1M0C2Q
Cincinnati, OH 45263

The Bank of Kentucky
Attn: Patti McDermott
1065 Burlington Pike
Florence, KY 41042

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