

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA.,

Petitioner,

v.

Case No. 8:11-MC-00046-T-24AEP

**THOMAS ROUSE, as President of
SUPERIOR BOATS, INC.,**

Respondent.

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REPORT AND RECOMMENDATION

Before the Court is the United States' Petition to Enforce Internal Revenue Service Summons (Dkt. No. 1), requesting that the Court enter an order directing the Defendant, Thomas Rouse, as President of Superior Boats, Inc., to comply with the December 6, 2010 Summons (Dkt. No. 1 Ex. 2) and turn over certain electronic backup files for the 2008 and 2009 tax years. On April 20, 2011, the Court entered an Order to Show Cause (Dkt. No. 2) as to why the Defendant should not be compelled to comply with the December 6, 2010 Summons, and directed that the parties appear before the Court on June 27, 2011. Mr. Rouse filed a Written Response to the Petition to Enforce Internal Revenue Service Summons (Dkt. No. 4), and the parties appeared before the Court on June 27, 2011, at which the Defendant argued that I.R.C. § 6001 and I.R.C. § 7602 do not empower the I.R.S. to compel the Defendant to provide certain electronic backup files as requested in the December 6, 2010 Summons. The matter is properly before the Court pursuant to I.R.C. §§ 7402(b) and 7604(a).

I.R.C. § 6001 states:

§ 6001 Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053©, and copies of statements furnished by employees under section 6053(a).

26 U.S.C. § 6001 (1982). After a review of § 6001, the Court finds that the statute empowers the I.R.S. to require that certain records be maintained by a taxpayer, but the Court does question whether the statute confers to the I.R.S. the independent and unilateral authority to inspect a taxpayer's records. *See United States v. Mobil Corporation*, 543 F.Supp. 507, 519 (N.D.Texas 1981) ("The IRS does not have authority under Section 6001 to unilaterally inspect Mobil's records concerning its employees' tax withholding"). Thus, in this regard, the Defendant may be correct in that the December 6, 2010 Summons, which notes that "[t]he authority to request QuickBooks electronic books and records to the tax returns is IRC § 6001," is not accurate. (Dkt. No. 1 Ex. 2 at 5.) However, the Court need not address the issue as to whether Section 6001 confers the I.R.S. with the authority to seek the disputed records, since the I.R.S. issued a summons in this matter. Specifically, the summons in this matter was issued pursuant to I.R.C.

§ 7602, which provision, confers to the I.R.S. the authority to summon production of tax records.¹

Specifically, I.R.C. § 7602 states:

(a) Authority to summon, etc.—For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

26 U.S.C. § 7602 (1998). In order to establish a prima facie case for enforcement, the government must show: (1) that the investigation will be conducted pursuant to a legitimate purpose; (2) that the inquiry may be relevant to that purpose; (3) that the information sought is not already within the IRS' possession and (4) that the administrative steps required by the Internal Revenue Code have been followed. *United States v. Powell*, 379 U.S. 48, 57-58, 85 S.Ct. 248, 13 L.Ed.2d 112 (1964); *see also, e.g., United States v. Morse*, 532 F.3d 1130 (11th Cir.2008); *United States v. Leventhal*, 961 F.2d 936, 939 (11th Cir.1992). Here, the I.R.S. appears to have met these good faith requirements, and the Defendant does not object on these grounds. Instead, the Defendant merely argues that the I.R.S. does not have the statutory

¹ The United States submits that the I.R.S. attached to the December 6, 2010 Summons copies of I.R.C. § 7602 for the taxpayer's benefit.

authority to issue a summons requesting the electronic backup files at issue. A plain reading of § 7602 reveals that the I.R.S. may “examine any books, papers, records, or other data which may be relevant or material to such inquiry” 26 U.S.C. § 7602(a)(1) (1998) (emphasis added). The Court finds that “other data” under § 7602 includes the electronic backup files at issue, and thus, the summons is appropriate.

Accordingly, and after due consideration, the Court recommends that the United States’ Petition to Enforce Internal Revenue Service Summons (Dkt. No. 1) be **GRANTED**, and the Defendant shall have until **July 27, 2011** to produce, and turn over to Revenue Agent Gary Shepard, the information requested under paragraphs 2-4 of the December 6, 2010 Summons.

IT IS SO REPORTED at Tampa, Florida, this 27th day of June, 2011.



ANTHONY E. PORCELLI
United States Magistrate Judge

NOTICE TO PARTIES

Failure to file and serve written objections to the proposed findings and recommendations contained in this report within fourteen (14) days from the date it is served on the parties shall bar an aggrieved party from a *de novo* determination by the District Court of issues covered in the report, and shall bar the party from attacking on appeal factual findings in the report accepted or adopted on appeal by the District Court except upon grounds of plain error or manifest injustice.

28 U.S.C. § 636(b)(1)(C); Local Rule 6.02; *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982)
(en banc).

Copies furnished to:

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