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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9
10 Barry Knudsen,

11 Petitioner,

12 v.

13 United States of America; and Gregory
14 Allison,

15 Respondents.

No. MC-13-00021-PHX-GMS

ORDER

16 Pending before the Court is Respondent the United States of America's (the
17 "United States") Motion to Dismiss the Petition to Quash the Internal Revenue Service's
18 ("IRS") Third Party Summons. (Doc. 3.) For the following reasons, the Motion is
19 granted.

20 **BACKGROUND**

21 This case arises from the collection and investigation of Petitioner Barry
22 Knudsen's 2008 federal income tax liabilities. On March 8, 2013, Revenue Officer
23 Gregory Allison issued a summons to American Express Merchant Services, located in
24 Phoenix, Arizona, seeking certain documents relating to Knudsen. (Doc. 1 ¶ 7.) On
25 March 29, 2013, Knudsen filed a Motion to Quash the Third Party Summons (Doc. 1) in
26 this Court, alleging that the issuance of the summons was improper because the IRS had
27 failed to give him timely notice as required by statute (*Id.* ¶¶ 8–9) and because of other
28 deficiencies.

1 On June 20, 2013, the United States filed the instant Motion to Dismiss Plaintiff's
2 Motion to Quash. (Doc. 3.) On July 29, 2013, this Court issued an order directing
3 Knudsen to respond to Defendant's Motion by August 12, 2013. (Doc. 4.) Plaintiff failed
4 to file a response.

5 ANALYSIS

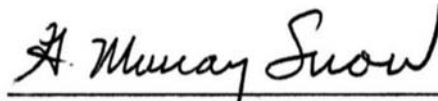
6 The government moves to dismiss the petition under Fed. R. Civ. P. 12(b)(1) for
7 lack of subject matter jurisdiction. The United States is immune from suit unless that suit
8 falls within a valid waiver of sovereign immunity. *Valdez v. United States*, 56 F.3d 1177,
9 1179 (9th Cir. 1995). The United States has waived its sovereign immunity with respect
10 to certain actions to quash an IRS summons under 26 U.S.C. § 7609(b). Only those
11 individuals who are entitled to receive notice of a summons under that statute have
12 standing to move to quash that summons. *Viewtech, Inc. v. United States*, 653 F.3d 1102,
13 1104 (9th Cir. 2011)

14 Section 7609(a) outlines particular notice requirements for third-party summonses.
15 26 U.S.C. § 7609(a). Section 7609(c) lists several exceptions to these notice
16 requirements. These exceptions include that the notice requirement does not apply to
17 third-party summonses issued in aid of the collection of "an assessment made or
18 judgment rendered against the person with respect to whose liability the summons is
19 issued" or the "liability at law or in equity of any transferee or fiduciary of [such a]
20 person." 26 U.S.C. 7609(c)(2)(D). The Ninth Circuit has construed these exceptions to
21 state that a third party need not receive notice that the IRS has summonsed the third
22 party's records when that third party is "the assessed taxpayer, a fiduciary or transferee of
23 the taxpayer, or the assessed taxpayer had 'some legal interest or title in the object of the
24 summons.'" *Viewtech, Inc.*, 653 F.3d at 1105 (quoting *Ip v. United States*, 205 F.3d
25 1168, 1175 (9th Cir. 2000)).

26 Here, Knudsen is the assessed taxpayer. As such, he was not entitled to receive
27 notice of the summons and thus lacks standing to bring this action to quash the summons.
28 Therefore,

1 **IT IS ORDERED** that the United States' Motion to Dismiss the Motion to Quash
2 (Doc. 3) is **granted**. The Clerk of Court is directed to terminate this action and enter
3 judgment accordingly.

4 Dated this 6th day of November, 2013.

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8 G. Murray Snow
9 United States District Judge
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