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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Joseph D. Meyer,
Petitioner,
v.
United States of America; Internal Revenue
Service; and Nancy Phipps, Revenue
Agent,
Respondents.

No. MC16-0088-PHX DGC

ORDER

Petitioner Joseph D. Meyer filed a motion to quash a third party summons issued by the Internal Revenue Service and Revenue Agent Nancy J. Phipps. Doc. 1. Respondents – the IRS, Phipps, and the United States of America – replied, seeking denial of Petitioner’s motion, and filed their own motion to dismiss the IRS and Phipps as parties. Doc. 5. The issues are fully briefed. Docs. 1, 5, 11, 12. No party has requested oral argument. For the reasons set forth below, the Court will deny Petitioner’s motion to quash and grant Respondents’ motion to dismiss.¹

I. Background.

Petitioner has not filed income tax returns for the years 2013, 2014, and 2015.

¹ Respondents seek “summary denial” of Petitioner’s motion to quash under Rule 56, but fail to develop that argument. Their submission is in fact a motion to dismiss and a response to Petitioner’s motion to quash, and the Court will treat it as such.

1 Doc. 6, ¶ 3. Phipps, a Revenue Agent for the IRS, was assigned to determine if Petitioner
2 had tax liability for those years. *Id.*, ¶ 2. Phipps contacted Petitioner on
3 August 26, 2016, and provided him with letters and publications about the IRS audit
4 process. *Id.*, ¶¶ 4-6. One of these publications, “Publication 1, Your Rights as a
5 Taxpayer,” stated: “we sometimes talk with other persons if we need information that you
6 have been unable to provide, or to verify information we have received.” *Id.*, ¶¶ 7, 10.
7 Petitioner did not attend a scheduled meeting with Phipps on September 7, 2016, and by
8 September 18, 2016, Petitioner had not rescheduled the meeting, responded to Phipps’
9 correspondence, or provided requested documents. *Id.*, ¶¶ 11-13.

10 On September 19, 2016, Phipps issued a third-party summons to Wells Fargo
11 Bank, N.A., seeking Petitioner’s bank records from 2013, 2014, and 2015. *Id.*, ¶¶ 14, 20.
12 Phipps also sent Petitioner a copy of the summons and a notice informing him of his right
13 to file a petition to quash, which he received on September 21, 2016. *Id.*, ¶¶ 17-19.
14 Phipps received electronic access to the responsive documents from Wells Fargo on
15 October 6, 2016, but she has not accessed them pending resolution of Petitioner’s motion.
16 *Id.*, ¶¶ 21-22.

17 **II. Analysis.**

18 Before the Court addresses the merits of Petitioner’s motion, the Court will first
19 decide whether the IRS and Phipps are proper respondents.

20 **A. Agent Phipps and the Internal Revenue Service.**

21 Respondents argue that Petitioner fails to state a claim against the IRS and Phipps
22 because the United States is the only proper party to this petition. Doc. 5 at 8. Petitioner
23 asserts various claims under 26 U.S.C. § 7602 against the IRS and Phipps in her official
24 capacity² as Revenue Agent, and contends that the Court has jurisdiction pursuant to
25 §§ 7609(b)(2)(A) and (h)(1). Doc. 1 at 1, 3-6. But Petitioner’s “basis for jurisdiction, 26
26 U.S.C. § 7609(b), does not authorize a suit against the IRS in its own name.” *Kasian v.*

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28 ² Nothing in Petitioner’s motion leads the Court to read his claims as against
Phipps in her personal capacity. Petitioner only refers to Phipps by her official title and
only challenges her conduct as an IRS Revenue Agent. Doc. 1.

1 IRS, No. CV10–1462–PHX–JAT, 2010 WL 5103099, at *1 (D. Ariz. Dec. 9, 2010). And
2 “[a] suit against IRS employees in their official capacity is essentially a suit against the
3 United States.” *Id.* (quoting *Gilbert v. DaGrossa*, 756 F.2d 1455, 1460 (9th Cir. 1985)).
4 *See also Luke v. Abbott*, No. SA CV96–176 GLT (EEX), 1996 WL 33518028, at *8 (C.
5 D. Cal. Dec. 4, 1996) (citing *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985), and
6 dismissing government employee sued in official capacity as a “redundant party” when
7 government entity was also sued).

8 Petitioner does not state why the IRS is a proper party in light of this authority,
9 and asserts that Phipps is properly named only because she issued the summons and
10 allegedly failed to follow proper procedures. Doc. 11 at 4. The IRS is an improper
11 respondent and Phipps is a redundant party. *See Kasian*, 2010 WL 5103099, at *1; *Luke*,
12 1996 WL 3351802, at *8. The Court will dismiss Petitioner’s motion to quash as to the
13 IRS and Phipps.

14 **B. The Summons is Sufficient and Was Properly Issued.**

15 Petitioner argues that the summons was not issued in good faith (Doc 1., ¶¶ 7-9);
16 that it violates state and federal laws (*id.*, ¶ 10); and that the summons is deficient. The
17 Court disagrees.

18 When the propriety of a summons is at issue, “[t]he IRS has the initial burden of
19 proving that the summons: (1) is issued for a legitimate purpose; (2) seeks information
20 relevant to the purpose; (3) seeks information not already within the IRS’s possession;
21 and (4) satisfies all of the administrative steps required by the Internal Revenue Code.”
22 *United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993) (citing *United States v.*
23 *Powell*, 379 U.S. 48, 57-58 (1964)). “The government’s burden is a slight one, and may
24 be satisfied by a declaration from the investigating agent that the *Powell* requirements
25 have been met. Once the prima facie case is made, a ‘heavy’ burden falls upon the
26 taxpayer to show an abuse of process, or the lack of institutional good faith.” *Id.*
27 (citations omitted).

28 The IRS has made a prima facie case that the summons was proper. Phipps stated

1 that she issued the summons for Petitioner’s banking records as part of her investigation
2 into Petitioner’s income and potential tax liability. Doc. 5 at 11; Doc. 6-2, ¶¶ 2, 9-10.
3 Phipps stated that the IRS does not have these records. Doc. 5 at 12; Doc. 6-2, ¶¶ 9-10.
4 And Phipps stated that she complied with all administrative steps required by the Internal
5 Revenue Code in issuing the summons. Doc. 5 at 12; Doc. 6-2, ¶ 20. The “heavy”
6 burden now shifts to Petitioner to show bad faith. *See Dynavac*, 6 F.3d at 1414.

7 Petitioner makes two arguments. Doc. 1, ¶¶ 7-9; Doc. 11 at 1-4. First, citing
8 § 7602(c)(1)-(2), Petitioner argues the IRS failed to “provide [him with] advance notice
9 that contact with any of these third parties [was] to be made and failed to periodically
10 provide Petitioner with a record of persons contacted[.]” Doc. 1, ¶ 7. To the contrary,
11 Petitioner received notice in the materials provided by Phipps that the IRS might contact
12 third parties for information. Doc. 6, ¶¶ 7, 10; Doc. 12 at 2-3. Pursuant to § 7609(a),
13 Phipps notified Petitioner of the summons within three days of service on Wells Fargo.
14 *See* § 7609(a); Doc. 5 at 12. Section 7602(c)(2) does not add a second notice requirement
15 when the IRS is already required to and does notify under a different section. 26 C.F.R.
16 §§ 301.7602-2(d)(2) (“Pre-contact notice under this section need not be provided to a
17 taxpayer for third-party contacts of which advance notice has otherwise been provided to
18 the taxpayer pursuant to another statute, regulation or administrative procedure.”), (e)(3)
19 (same), (e)(4) (Example 4); Doc. 12 at 3.

20 Petitioner also seems to argue that, because the IRS has not made “a statement that
21 no other person(s) were contacted by the IRS,” the IRS may not have complied with its
22 notice requirements regarding other third party contacts. Doc. 11 at 3. But Petitioner
23 does not allege what particular party or parties the IRS contacted, and does not dispute
24 that he received notice of the summons to Wells Fargo. *Id.* at 2; Doc. 12 at 2.

25 Second, Petitioner contends that the summons was issued “while a referral for
26 criminal prosecution to the Department of Justice [was] pending, which was made by the
27 IRS in violation of Section 7602(d)(2)(A)” in order to gather information against him and
28 harass him. Doc. 1, ¶¶ 8-9. But “[t]he IRS has not referred Petitioner to the United

1 States Department of Justice within the meaning of 26 U.S.C. § 7602(d) for the years
2 2013, 2014, and 2015[.]” Doc. 5 at 7, 13. In an ongoing civil case in Minnesota, the IRS
3 is seeking “to reduce to judgment Petitioner’s tax liabilities for tax years 2002 and
4 2009[.]” but that case is unrelated to years 2013, 2014, and 2015 and the summons at
5 issue here. *Id.* at 13; *see* § 7602(d)(2)(A)(i).

6 Petitioner also argues the summons violates “the banking and constitutional
7 [p]rivacy [l]aws of the United States . . . and the constitutional privacy laws of the State
8 of Arizona” and requests \$1,000 for each violation. Doc. 1, ¶¶ 4, 10. But Petitioner does
9 not cite any relevant authority, and § 7602 specifically permits the IRS to issue
10 summonses as it has done here. *Id.*, ¶ 10; Doc. 5 at 13; § 7602.

11 Petitioner contends that the summons is “on its face . . . deficient in that there is no
12 evidence that the summons was issued in aid of the collection of a tax assessment.”
13 Doc. 1, ¶ 11. But Phipps stated that she sought banking records for 2013, 2014, and
14 2015 because those were the years at issue in her investigation into Petitioner’s potential
15 tax liability, and banking records may be relevant in determining income tax liability.
16 Doc. 6, ¶¶ 14, 20.

17 **III. Conclusion.**

18 The United States satisfies the *Powell* factors, and Petitioner’s other arguments do
19 not meet his heavy burden to establish that the Wells Fargo summons was improper or
20 deficient. Accordingly, the Court will deny the motion to quash.

21 The Court will also deny Petitioner’s request for a court order requiring the IRS to
22 turn over all summonses and document requests it has issued, and all records that were or
23 will be obtained in the course of its investigation. Doc. 1, ¶¶ 2-3. Petitioner’s request
24 merely restates what the IRS is already required to do, and there is no evidence the IRS
25 has not or will not comply with its own administrative regulations.

26 **IT IS ORDERED:**

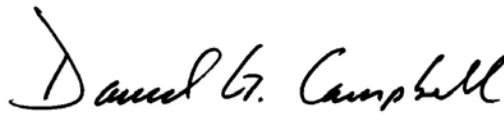
- 27 1. Petitioner’s motion (Doc. 1) to quash the third party summons is **denied**.
- 28 2. Respondents’ motion (Doc. 4) to dismiss the Internal Revenue Service and

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Revenue Agent Phipps is **granted**.

3. The Clerk shall terminate this action.

Dated this 24th day of March, 2017.



David G. Campbell
United States District Judge