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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PHILIP DONALD STAMBAUGH and ECCO ALICE WHIPPLE STAMBAUGH,  <div style="text-align: right; padding-right: 20px;">Petitioners,</div>	CASE NO. 08cv1941-IEG(WMc)  Order Granting Government's Motion to Dismiss Petition to Quash IRS Summons [Doc. No. 5]
vs.	
UNITED STATES,  <div style="text-align: right; padding-right: 20px;">Respondent.</div>	

Petitioners Philip Donald Stambaugh and Ecco Alice Whipple Stambaugh petition the Court for an order quashing an administrative summons issued by the Internal Revenue Service and served upon third party record keepers Jackson National Life Insurance Company, Dreher Law Firm, and Lennar Associates Management, LLC. The summonses were issued by the IRS in furtherance of its investigation of Petitioners' income tax liability for the 2004 tax year.

Respondent has filed a motion to dismiss the petition, arguing the Court lacks subject matter jurisdiction because the petition was not filed within 20-days after notice was given as required by 26 U.S.C. § 7609(b)(2).<sup>1</sup> Petitioners have filed an opposition to the motion to dismiss

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<sup>1</sup>Respondent also argues that this Court lacks jurisdiction as to two of the summonses because the summoned parties are not located within this District. See 26 U.S.C. § 7609(h)(1) (vesting jurisdiction for action to quash in the "district court for the district within which the person to be summoned resides or is found"). Because the Court concludes the petition was not filed within the 20-day jurisdiction time period of § 7609(b)(2), the Court need not address this alternative argument.

1 and Respondent has filed a reply.

2 Upon review, the Court finds the motion appropriate for submission without oral argument  
3 and the January 12, 2009 hearing is VACATED. Respondent's motion to dismiss is GRANTED.

4 ***Background***

5 The IRS is conducting an examination regarding Petitioners' federal income tax liability  
6 for the 2004 tax year. [Declaration of IRS Revenue Agent Lorraine Arellano ("Arellano Decl."), ¶  
7 3.] As part of its investigation, on September 15, 2008, Revenue Agent Arellano issued third-  
8 party summonses to Lennar Associates Management, LLC, Jackson National Life Insurance  
9 Company, and Dreher Law Firm. [Arellano Decl., ¶¶ 4-9, Exhibits A-C.] In accordance with 26  
10 U.S.C. § 7609, the Revenue Agent sent notice of the summonses to Petitioners' last known address  
11 via certified mail on September 15, 2008. [Arellano Decl., ¶10, Exhibit D.]

12 Petitioners filed their motion to quash the administrative summonses on October 21, 2008.  
13 Respondent filed a motion to dismiss the petition on November 17, 2008.

14 ***Discussion***

15 Respondent moves to dismiss the petition under Fed. R. Civ. P. 12(b)(1) for lack of  
16 jurisdiction. The United States is immune from suit unless there is a valid waiver of sovereign  
17 immunity. Valdez v. United States, 56 F.3d 1177, 1179 (9<sup>th</sup> Cir. 1995). Section 7609(b) is the  
18 exclusive method by which a taxpayer can challenge a summons issued by the IRS to a third-party  
19 recordkeeper. Ponsford, 771 F.2d 1305, 1309 (9<sup>th</sup> Cir. 1985). The procedures for filing a petition  
20 to quash are set forth in § 7609(b) as follows:

21 (A) In general. – Notwithstanding any other law or rule of law, any person who is entitled  
22 to notice of a summons under subsection (a) shall have the right to begin a proceeding to  
23 quash such summons not later than the 20<sup>th</sup> day after the day such notice is given in the  
manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to  
compel compliance with the summons.

24 Pursuant to subsection (b)(2)(A), the petition to quash must be filed within 20 days after  
25 notice of the summons is given to the taxpayer. This 20-day period is jurisdictional, and the court  
26 must dismiss a petition not filed within that time period. Ponsford, 771 F.2d at 1309; Clay v.  
27 United States, 199 F.3d 876, 879 (6<sup>th</sup> Cir. 1999); Faber v. United States, 921 F.2d 1118, 1119 (10<sup>th</sup>  
28 Cir. 1990). Petitioners filed their petition to quash on October 21, 2008, 36 days after the

1 government sent notice of the summons to them by certified mail at their last known address on  
2 September 15, 2008. Thus, on its face, the petition appears untimely.

3 In opposition to the government’s motion to dismiss, Petitioners argue the 20-day time  
4 period under § 7609(b)(2)(A) did not begin to run until they received notice of the summonses on  
5 October 7, 2008.<sup>2</sup> The 20-day time period under § 7609(b)(2)(A), however, begins to run on the  
6 date that notice of the summons is *mailed* to the taxpayer, not the date on which it is received.  
7 Berman v. United States, 264 F.3d 16, 18-19 (1<sup>st</sup> Cir. 2001); Clay, 199 F.3d at 878; Stringer v.  
8 United States, 776 F.2d 274, 275-76 (11<sup>th</sup> Cir. 1985); 26 C.F.R. § 301.7609-4(b)(2) (requiring that  
9 proceeding to quash a summons be instituted “not later than the 20<sup>th</sup> day following the day the  
10 notice of the summons was served on or mailed to such person”). Section 7609(a)(2) provides that  
11 notice given to a taxpayer is “sufficient” if it “is mailed by certified or registered mail to the last  
12 known address of such person, or, in the absence of a last known address, is left with the person  
13 summoned.” That subsection further provides that notice is “sufficient” upon such mailing “even  
14 if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.”  
15 This language evidences an intent to relieve the government of the obligation to provide actual  
16 notice to the taxpayer. Berman, 264 F.3d at 19.

17 The 20-day time period within which Petitioners could have filed a petition to quash under  
18 § 7609 began to run on September 15, 2008, the date the IRS sent the notice to them by certified  
19 mail. Their petition to quash, filed 36 days later on October 21, 2008, was untimely. There has  
20 been no waiver of sovereign immunity, and the petition to quash must be dismissed.<sup>3</sup>

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22 <sup>2</sup>Although Petitioners argue they did not get notice until October 7, 2008, the certified mail  
23 receipts show Petitioners received the notices on October 6, 2008. [Arellano Decl., Exhibit D.]

24 <sup>3</sup>In opposition to the motion to dismiss, Petitioners raise many arguments regarding why  
25 the IRS and this Court lacks jurisdiction over them. However, Congress has imposed a tax on the  
26 taxable income of every individual, whether married or single, as well as upon estates and trusts.  
27 26 U.S.C. § 1(a) - (e). Congress has also granted the Secretary of the Treasury broad authority to  
28 discover and enforce individual income tax assessments. 26 U.S.C. § 7601 *et seq.* The Ninth  
29 Circuit has found that the payment of federal income taxes is not voluntary. In re Becraft, 885  
30 F.2d 547, 548 (9<sup>th</sup> Cir. 1989) (noting that the court “need comment on the patent absurdity and  
31 frivolity” of respondent’s argument that the Constitution does not authorize Congress to  
32 implement an individual income tax); see also Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9<sup>th</sup>  
33 Cir. 1988) (rejecting taxpayer’s arguments that payment of taxes is voluntary and that income tax  
34 violates the Constitution).

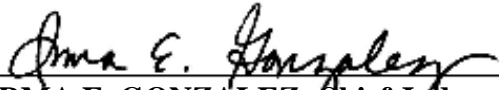
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Conclusion

For the reasons set forth herein, the Court GRANTS Respondent's motion to dismiss and dismisses the Petition, terminating this case.

**IT IS SO ORDERED.**

**DATED: January 5, 2009**

  
IRMA E. GONZALEZ, Chief Judge  
United States District Court