

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 09-cv-02891-CMA

HOLLYWOOD SERVICES, INC.,

Petitioner,

v.

INTERNAL REVENUE SERVICE,

Respondent.

ORDER GRANTING MOTION TO DISMISS

The matter is before the Court on the “United States’ Motion to Dismiss Pursuant to Rule 12(b)(1) and (5),” filed on March 4, 2010. (Doc. # 4.) Twenty-seven days have since passed but Plaintiff has not responded.¹

The Government moves to dismiss on three grounds: (1) sovereign immunity; (2) improper representation by a non-attorney; and (3) insufficient service of process. (Doc. # 4 at 1-2.) Because the Government has not waived its sovereign immunity, the Court finds that it does not have jurisdiction. Therefore, the Court grants the Government’s motion.

¹ D.C.COLO.L.Civ.R 7.1(C) provides in part that “[t]he responding party shall have 21 days after the date of service of a motion . . . in which to file a response.”

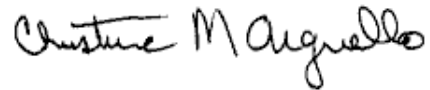
“Under the doctrine of sovereign immunity, the United States is not subject to suit absent its consent.” *Faber v. United States*, 921 F.2d 1118, 1119 (10th Cir. 1990) (citations omitted). Consent can come in the form of statutory waivers to sovereign immunity. See *id.* (citing *Ponsford v. United States*, 771 F.2d 1305, 1309 (9th Cir. 1985); *Stringer v. United States*, 776 F. 2d 274, 275 (11th Cir. 1985)). One such waiver is located in section 7609(b)(2) of the Internal Revenue Code. See 26 U.S.C. § 7609(b)(2). It provides the method by which a taxpayer can challenge a summons issued by the IRS to a third-party. *Id.* at § 7609(b)(2)(A). But in order to “have the right to begin a proceeding to quash such summons”, the taxpayer first must have been “entitled to notice of a summons under subsection (a)” of Section 7609. *Id.* Such notice is not required – and the conditional waiver of section 7609 is thus inoperative – when a third-party summons is “issued in the aid of the collection of . . . an assessment made or judgment rendered against the person with respect to whose liability the summons is issued.” 26 U.S.C. § 7609(c)(2)(D)(I).

IRS Officer Mark Elliott avers that the Summons was issued to aid in the collection of Plaintiff’s employment tax liabilities. (Doc. # 6, ¶¶ 2-3.) Accordingly, no notice was required or given under 26 U.S.C. § 7609(c)(2)(D)(I). Because Plaintiff was not entitled to notice under subsection 7609(a), Plaintiff lacked the right to file a petition to quash the Summons under subsection 7609(b)(2)(A). Thus, the Court lacks jurisdiction to entertain the Petition.

Accordingly, the Court GRANTS the Government's Motion to Dismiss (Doc. # 4)
and DISMISSES Plaintiff's Petition to Quash Summons (Doc. # 1.)

DATED: April 2, 2010

BY THE COURT:

A handwritten signature in black ink that reads "Christine M. Arguello". The signature is written in a cursive style with a large initial "C" and "A".

CHRISTINE M. ARGUELLO
United States District Judge