

\_\_\_\_\_  
4796 \_\_\_\_\_ Road  
\_\_\_\_\_, PA 17362  
\_\_\_\_\_ Phone

Petitioner

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

_____	)	Case # _____
_____ ,	)	
	)	
PETITIONER ,	)	PETITION TO QUASH 3rd PARTY
	)	SUMMONS
	)	
Vs.	)	
United States of America, Mark	)	Date: _____
W. Everson, Commissioner of	)	
Internal Revenue, And Patricia	)	Time: _____
A. Katzmar Revenue Agent	)	
	)	Dept/Room: _____
RESPONDENTS.	)	Harrisburg Federal Building &
	)	U.S. Courthouse
	)	228 Walnut Street
	)	Harrisburg, PA 17108

Petitioner, \_\_\_\_\_, hereby petitions this court to quash the third party record keeper summons, issued to \_\_\_\_\_ Bank, by the Internal Revenue Service, and relating to \_\_\_\_\_.

**I  
JURISDICTION**

1. This court has jurisdiction in this action pursuant to the provisions of Title 26 U.S.C. Sections 7609(b)(2)(A), 7609(h), and Title 28 U.S.C. Sections 1331 and 1340, venue is proper in that the petitioner and respondents all reside or are found within the

1 geographical jurisdiction of this court.

2 **II**

3 **PARTIES**

4 2. Petitioner \_\_\_\_\_ is a Citizen of the State of Pennsylvania with a  
5 legal residence in Spring Grove, Pennsylvania.

6 3. Respondent United States of America, Internal Revenue Service (hereinafter  
7 "IRS"), is a federal government entity with agencies and offices throughout the United  
8 States, and more specifically with an Internal Revenue Service Office located at 57  
9 Haddonfield Road, Cherry Hill, New Jersey, from which this action has arisen.  
10 Respondents Mark W. Everson, Commissioner of Internal Revenue, and  
11 \_\_\_\_\_ Revenue Agent are employees and agents of the IRS operating  
12 from the Office located at 57 Haddonfield Road, Cherry Hill, New Jersey, from which  
13 this action has arisen.

14 4. Respondent \_\_\_\_\_ Bank is a Commercial Banking Corporation, and  
15 financial institution, with offices in a number of locations within and without the  
16 \_\_\_\_\_ District of Pennsylvania. More particularly found at \_\_\_\_\_ Bank,  
17 P.O. Box 2887, York, Pennsylvania 17403.

18 **III**

19 **PETITION TO QUASH SUMMONS**

20 5. On or about May 31, 2006 Revenue Agent \_\_\_\_\_ issued a third  
21 party summons to \_\_\_\_\_ Bank, a copy of which was mailed to  
22 \_\_\_\_\_. (copy of summons attached hereto exhibit 1, and made a part  
23 hereof by reference thereto).

24 6. The summons directed to respondent \_\_\_\_\_ Bank requests the following  
25 documentation:

- 26 1) Bank statements for all accounts located including those account  
27 numbers above (0000xxxxxxx)  
28 2) Cancelled checks  
3) Deposit Slips and deposit items including cashed out foreign items  
4) Copies of any applications for loans or mortgages  
5) Debit and credit memos

7. It appears on the face of the Summons that the Summons is issued "In the matter of \_\_\_\_\_". The apparent purpose for the documentation sought in the summons is therefore not disclosed upon the face of the summons.

8. The Internal Revenue Service must at all times use the summons authority in good-faith pursuit of a congressionally authorized purpose. The IRS has the burden of showing in an adversarial proceeding that its investigation is pursuant to a legitimate purpose, and that the information sought is relevant and material to this legitimate purpose. Good faith is not presumed where the summons power is used to harass or to pressure the individual.

9. This petition is based on Kaiser's contention that:

(a) Revenue Agent \_\_\_\_\_ is using the summons power to harass and pressure Kaiser, for reasons unknown to Kaiser at this time, and for purposes that are wholly illegitimate to the spirit and intent of the law, noting that no law or other authority was cited as the ostensible authority for issuance of the Summons.

(b) The IRS in general and Revenue Agent \_\_\_\_\_ specifically are aware that there is no legal basis of any kind that would support the issuance of a summons as evidence by the complete absence of any citation to any legitimate basis for the issuance of summons on its face.

And, therefore the IRS knows the summoned data cannot be relevant to any legitimate purpose.

(c) The IRS already possesses all relevant information to determination of whether Kaiser may be liable under any internal revenue statute and the data summoned is incapable of adding any new information which could affect the determination of any potential liability. The data sought can only potentially provide names of Kaiser's customers and amounts of transactions which would have no relevance unless there is a legitimate purpose for the investigation to begin with. No legitimate purpose for the investigation is stated on the Summons or any other documents relative to this action.

1 Therefore, the data Summoned is not relevant to any legitimate purpose.

2 **WHEREFORE**, in consideration of the foregoing and the attached memorandum  
3 of Law in support hereof, petitioner prays that this court order the respondents to appear  
4 before this honorable court and show cause as to why this court should not quash the  
5 summons here involved.

6 Respectfully Submitted

7  
8 **DATED:**

9  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Phone

Petitioner

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

_____	)	Case # _____
_____ ,	)	
	)	
PETITIONER ,	)	MEMORANDUM OF LAW IN SUPPORT
	)	OF PETITION TO QUASH 3rd PARTY
	)	SUMMONS
Vs.	)	
<b>United States of America, Mark</b>	)	
<b>W. Everson, Commissioner of</b>	)	Date: _____
<b>Internal Revenue, And Patricia</b>	)	
<b>A. Katzmar Revenue Agent</b>	)	Time: _____
	)	
RESPONDENTS.	)	Dept/Room: _____
	)	Harrisburg Federal Building & U.S. Courthouse
	)	228 Walnut Street
	)	Harrisburg, PA 17108

Petitioner, \_\_\_\_\_ (hereinafter " \_\_\_\_\_ "), submits this memorandum of law in support of his petition to quash summons issued by the respondents United States, et al.

As grounds for his petition \_\_\_\_\_ contends that the Internal Revenue Service cannot meet the "relevancy and materiality" test required by United States v. Powell, 379 U.S. 48 (1964).

\_\_\_\_\_ further contends that the summons is nothing more than a "fishing

1 expedition" completely void of any "realistic expectation" that the information sought  
2 "may be relevant," therefore it is \_\_\_\_\_ contention that the Internal Revenue  
3 Service cannot make any showing greater than an "idle hope" of finding something, as  
4 required by the decision in United States v. Richards, 631 F. 2d. 341, 345 (4th Cir.,  
5 1980). Lastly, it is \_\_\_\_\_ contention that the summons has been issued in "bad  
6 faith" contrary to Powell, supra, and therefore shows as follows:

### 7 **FACTS**

8 Revenue Agent, \_\_\_\_\_ (hereinafter "\_\_\_\_\_"), operating out of the  
9 Internal Revenue Service office at 57 Haddonfield Road, Cherry Hill, New Jersey,  
10 issued an IRS third party summons to the PeoplesBank. The target of the summons was  
11 \_\_\_\_\_. The summons stated; "In the matter of \_\_\_\_\_." The summons  
12 appears to have been issued May 31, 2006.

13 Pursuant to 26 U.S.C. §§ 7602(a), 7609(a)(3) , I.R.M. §§ 4022.62(1) and 4022.63,  
14 and 26 C.F.R. § 1.6001-1, a summons must state on its face the "liability" (actual or  
15 ostensible) for which it is issued.

16 The summons issued by respondent \_\_\_\_\_ in this case fails to state any  
17 liability, actual or ostensible for which purpose the summons may have been issued.

18 On the face of the summons that \_\_\_\_\_ has not cited any authority to issue  
19 and enforce the summons in question.

20 The summons commands PeoplesBank to appear before \_\_\_\_\_, or her  
21 delegate, to give testimony and to bring:

- 22 1) Bank statements for all accounts located including those  
23 account numbers above (0000xxxxxxxx)  
24 2) Cancelled checks  
25 3) Deposit Slips and deposit items including cashed out foreign  
26 items  
27 4) Copies of any applications for loans or mortgages  
28 5) Debit and credit memos  
6) Safe deposit box signature and entry cards  
7) Signature cards

## ARGUMENT

The IRS has broad authority to issue summonses under 26 U.S.C. § 7602. Under Powell, supra the government must establish a prima facie case by "showing" that:

- (1) that the summons was issued for a legitimate purpose.
- (2) the summoned data may be relevant to that purpose.
- (3) the data is not already in the government's possession; and
- (4) the administrative steps required by the Internal Revenue Code for issuance and service of the summons have been followed (Powell, supra 379 U.S. at 57-58).

It is well settled precedent summons must state the "liability" (actual or ostensible) for which it is issued in compliance with the requirements of 26 U.S.C. §§ 7602(a), 7609(a)(3), I.R.M. §§ 4022.62(1) and 4022.63, and 26 C.F.R. § 1.6001-1. The summons issued by respondent \_\_\_\_\_ in this case fails to state any liability, actual or ostensible for which purpose the summons may have been issued. It is clear on the face of the summons that \_\_\_\_\_ has not cited any authority to issue and enforce the summons in question.

Internal Revenue Code § 7602(a)(1) authorizes the IRS "[t]o examine any books, papers, records, or other data which may be relevant or material" to "... determining the liability of any person for any internal revenue tax." However, in order to force compliance with the summons the IRS must clearly show a "realistic expectation" that the information sought would be "relevant or material" to the legitimate purposes of the summons, and is not merely a "fishing expedition" conducted in the "idle hope" that they will find something. United States v. Bisceglia, 420 U.S. 141 (1975); United States v. Richards, 631 F. 2d 341, 345 (4th Cir., 1980); United States v. Harrington, 388 F. 2d 520, 524 (2d Cir., 1968).

The burden is upon the United States to show that the information sought is "relevant to proper purpose" United States v. Euge, 444 U.S. 707, 712 (1980); United States v. Huckaby, 776 F. 2d 564, 567 (5th Cir., 1985).

It is readily apparent from the face of the summons that \_\_\_\_\_ claimed no

1 "legitimate purpose" in issuing the summons. Therefore, \_\_\_\_\_ has no "legitimate  
2 purpose," for the issuance of her summons.

3 \_\_\_\_\_ is unable to find published in the federal register any notice that  
4 opening a bank account and creating signature cards or depositing of monies in one's  
5 bank account amounts to a violation of any internal revenue law. Further, the IRS has  
6 failed and refused to identify any tax law which \_\_\_\_\_ is being investigated  
7 under, which indicates that this summons is clearly a "fishing expedition" devoid of  
8 any "realistic expectation" and does not rise to any level greater than "idle hope." United  
9 States v. Richards, 631 F. 2d at 345.

10 Absent legal authority for issuance and legitimate purpose for enforcement of the  
11 summons, nothing in \_\_\_\_\_'s bank records could possibly give rise to a "realistic  
12 expectation" of those records being relevant to any legitimate investigation. Thus,  
13 \_\_\_\_\_ contends that the summons is issued in "bad faith" with no purpose other  
14 than to harass and intimidate \_\_\_\_\_. It is unclear at this time what "bad faith"  
15 purpose \_\_\_\_\_ is pursuing in issuance of this Summons. Thus, discovery and  
16 an evidentiary hearing will in all likelihood be required to determine the true purpose of  
17 this Summons [Powell, supra 379 U.S. at 58; United States v. McCarthy, 514 F. 2d. 368  
18 (3rd Cir., 1975)].

19 **Wherefore,** Petitoiner requests that the summons be quashed.

20  
21 DATED: \_\_\_\_\_  
22  
23  
24  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Phone

Petitioner

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

_____	)	Case # _____
_____ ,	)	
	)	
PETITIONER ,	)	CERTIFICATE OF SERVICE
	)	
Vs.	)	
<b>United States of America, Mark</b>	)	
<b>W. Everson, Commissioner of</b>	)	
<b>Internal Revenue, And Patricia</b>	)	
<b>A. Katzmar Revenue Agent</b>	)	
	)	
RESPONDENTS.	)	

I HEREBY CERTIFY that service of the foregoing:

- 1 - PETITION TO QUASH 3rd PARTY SUMMONS ;
- 2 - MEMORANDUM OF LAW IN SUPPORT OF PETITION TO QUASH
- 3rd PARTY SUMMONS;
- 3 - ALL RELATED EXHIBITS THERETO

has this \_\_\_\_\_ day of June, 2006, been made by mailing, postage prepaid, a true and correct copy thereof to:

Mark W. Everson, Commissiooner  
Eastern Area Distribution Center  
INTERNAL REVENUE SERVICE  
P.O. Box 85074  
Richmond, VA 23261-5074

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_, Revenue Agent  
INTERNAL REVENUE SERVICE  
57 Haddonfield Road  
Cherry Hill, New Jersey 08002

\_\_\_\_\_  
P.O. Box 2887  
York, Pennsylvania 17403

\_\_\_\_\_  
\_\_\_\_\_