APPENDIX

TABLE OF CONTENTS

Appendix A	Court of appeals opinion, January 7, 2022	1a
Appendix B	District court order, November 16, 2020	31a
Appendix C	Court of appeals order granting motion to stay the mandate, April 7, 2022	43a
Appendix D	Court of appeals order denying petition for rehearing en banc, March 28, 2022	45a
Appendix E	Fourth Amendment to the U.S. Constitution	47a
Appendix F	I.R.C. § 7602	48a
Appendix G	I.R.C. § 7603	53a
Appendix H	I.R.C. § 7609	56a
Appendix I	Declaration of Michael Bryant, D. Ct. Doc. 6-2, June 28, 2019	65a
Appendix J	Wells Fargo Summons, D. Ct. Doc. 6-3, June 28, 2019	70a
Appendix K	JP Morgan Summons, D. Ct. Doc. 6-4, June 28, 2019	78a
Appendix L	Bank of America Summons, D. Ct. Doc. 6-5, June 28, 2019	85a

APPENDIX A

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 22a0003p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HANNA KARCHO POLSELLI; ABRAHAM & ROSE, P.L.C.; JERRY R. ABRAHAM, P.C., *Petitioners-Appellants*,	>	No. 21-1010
v.		
UNITED STATES DEPARTMENT OF THE TREASURY—INTERNAL REVENUE SERVICE, *Respondent-Appellee*.		

Appeal from the United States District Court for the Eastern District of Michigan at Flint.
No. 4:19-cv-10956—Stephanie Dawkins Davis, District Judge.

Decided and Filed: January 7, 2022

Before**:** MOORE, KETHLEDGE, and DONALD, Circuit Judges.

COUNSEL

ON BRIEF: Daniel W. Weininger, ABRAHAM & ROSE, P.L.C., Troy, Michigan, for Appellants. Michael J. Haungs, Geoffrey J. Klimas, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

MOORE, J., delivered the opinion of the court in which DONALD, J., joined. KETHLEDGE, J. (pp.18–21), delivered a separate dissenting opinion.

OPINION

KAREN NELSON MOORE, Circuit Judge. In pursuit of over $2 million of a taxpayer's unpaid liabilities, the IRS issued administrative summonses to the banks of the taxpayer's wife and lawyers, Petitioners in this case. The IRS did not notify Petitioners of the summonses, relying on relevant provisions of the Internal Revenue Code excluding summonses issued "in aid of the collection" of tax assessments from its notice provisions. We conclude that the summonses were issued in aid of the IRS's collection efforts and that Petitioners were not entitled to notice. Because the United States waives sovereign immunity only when a taxpayer entitled to notice challenges a summons, the district court lacked subject-matter jurisdiction over Petitioners' proceedings to quash the summonses. Accordingly, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

Remo Polselli underpaid his federal taxes for over a decade. R. 6-2 (Bryant Decl. ¶ 2) (Page ID #59). For the periods in which he failed to pay the government, the IRS has made formal assessments[1] against him. *Id.* The outstanding balance of those liabilities is over $2 million. *Id.*

While investigating the location of assets to satisfy those liabilities, IRS Revenue Officer Michael Bryant learned that Remo[2] used entities to shield assets from collection. *Id.* ¶ 7 (Page ID #60–61). For example, in 2018, Remo paid approximately $290,000 toward his outstanding tax liabilities from the account of "Dolce Hotel Management LLC," rather than from his own bank account. *Id.*

Bryant suspected that Remo was concealing the balance of his assets elsewhere to shield them from the IRS. Bryant's investigation has revealed that Remo "may have access to and use of" bank accounts held in the name of his wife, Hanna Karcho Polselli. *Id.* ¶ 5 (Page ID #60). Based on this information, Bryant served a summons on Wells Fargo Bank, N.A. seeking account and financial records of Hanna and Dolce Hotel Management LLC[3] "concerning" Remo.

---

[1] In tax law, "the assessment is the official recording of liability that triggers levy and collection efforts." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004).

[2] We use Remo Polselli's and Hanna Karcho Polselli's first names to avoid confusion.

[3] Dolce Hotel Management, LLC never appeared in this action and did not contest the Wells Fargo summons seeking to obtain its financial information.

Id. ¶ 5, 7 (Page ID #60); R. 6-3 (Wells Fargo Summons at 1) (Page ID #65).

Bryant also learned that Remo was a long-time client of the law firm Abraham & Rose, P.L.C. R. 6-2 (Bryant Decl. ¶ 8, 9) (Page ID #61). Surmising that the law firm's financial records might reveal (1) the source of Remo's funds, (2) bank accounts associated with Remo, (3) entities Remo owned or controlled, or (4) bank accounts associated with those entities, Bryant served the law firm with a summons. *Id.* ¶ 8, 16 (Page ID #61, 62). In response, Abraham & Rose sent a letter in which it asserted attorney-client privilege and represented that the firm did not retain any of the documents that the IRS requested. R. 6-6 (Letter from Abraham & Rose to IRS at 1) (Page ID #77). When Bryant contacted the firm's representative possessing the power of attorney, Sheldon Mandelbaum, Mandelbaum repeated that the firm did not possess any documents responsive to the IRS's request. R. 6-2 (Bryant Decl. ¶ 12) (Page ID #61).

Bryant then pursued another avenue to locate the financial records. He issued identical summonses against JP Morgan Chase Bank, N.A. and Bank of America, N.A., seeking any financial records of Abraham & Rose and a related entity, Jerry R. Abraham, P.C. (the Law Firms), "concerning" Remo.[4] *Id.* ¶ 8; (Page ID #61); R. 6-4 (JP Morgan Chase Summons at 1) (Page ID #69); R. 6-5 (Bank of America Summons at 1) (Page ID #73).

Bryant did not notify Hanna or the Law Firms of the bank summonses R. 3 (Suppl. Pet. to Quash ¶ 11)

[4] The summonses also sought the bank records of entities that are no longer parties to this action.

(Page ID #23). Wells Fargo alerted Hanna that the IRS had summoned her records, and she petitioned to quash the summons in district court. R. 8 (Opp'n to Mot. to Dismiss at 2) (Page ID #90); R. 1 (Pet. to Quash) (Page ID #1-18). After JP Morgan Chase and Bank of America notified the Law Firms of the summonses regarding their accounts, the Law Firms also petitioned to quash, and Hanna joined. R. 3 (Suppl. Pet. to Quash) (Page ID #21–34). The Petitioners alleged that the IRS failed properly to notify them of the summonses under Internal Revenue Code (I.R.C.) § 7609(a) (26 U.S.C. § 7609(a)). *Id.* ¶ 9.

The United States then moved to dismiss the petitions for lack of subject-matter jurisdiction. R. 6 (Mot. to Dismiss at 1) (Page ID #39). The Government explained that the relevant provisions of the Internal Revenue Code, § 7609(b)(2) and (h), waived its sovereign immunity from suit only for parties entitled to notice of the summonses under the code. R. 6 (Mot. to Dismiss at 8) (Page ID #46). Because the IRS was seeking the bank records "in aid of the collection" of Remo's assessed liability, the Government argued, Petitioners were not entitled to notice under § 7609 (c)(2)(D)(i). *Id.* at 10 (Page ID #48). To afford the Law Firms an opportunity to ensure that the summoned records related only to Remo or entities affiliated with him, the Government also offered to allow the banks to produce the summoned records to the Law Firms prior to producing the records to the IRS. *Id.* at 16 n.5 (Page ID #54).

Petitioners opposed the motion, arguing that the Government's construction of § 7609 was "hyperliteral." R. 8 (Opp'n to Mot. to Dismiss at 5) (Page ID #93). They urged the court to apply a Ninth Circuit rule that narrowly construes § 7609 to exempt a

summons from the notice requirements only if (1) "the third party is the assessed taxpayer," (2) "the third party is a fiduciary or transferee of the taxpayer," or (3) "the assessed taxpayer has 'some legal interest or title in the object of the summons.'" *Id.* at 7 (Page ID #95) (quoting *Viewtech, Inc. v. United States*, 653 F.3d 1102, 1105 (9th Cir. 2011)). Petitioners also declined the Government's offer to allow the Law Firms to review the summoned records prior to production to the IRS. *Id.* at 16 (Page ID #104). The Government replied, attaching a supplemental declaration to show that Petitioners were not entitled to notice even under the Ninth Circuit's test. R. 9-3 (Bryant Suppl. Decl.) (Page ID #125–26). Hanna submitted a supplemental declaration, seeking to rebut that evidence. R. 10 (Hanna Polselli Suppl. Decl.) (Page ID #146–49).

The district court agreed with the Government that the court lacked subject-matter jurisdiction. R. 11 (Dist. Ct. Order at 12) (Page ID #202). It found that "under the plain language of § 7609(c)(2)(D)(i), Petitioners are not entitled to notice under the circumstances, and as a consequence have no right to bring a petition to quash." *Id.* Petitioners appealed.

II. ANALYSIS

A. Standard of Review

In challenging a district court's subject-matter jurisdiction over a proceeding, a party may present a "facial attack or a factual attack." *Gaetano v. United States*, 994 F.3d 501, 505 (6th Cir. 2021) (quoting *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d. 430, 440 (6th Cir. 2012)). In a facial attack, a "movant accepts the alleged jurisdictional facts as true and 'questions merely the sufficiency of the pleading' to invoke federal jurisdiction." *Id.* (quoting *Gentek Bldg. Prods.,*

Inc. v. Sherwin-Williams Co., 491 F.3d 320, 330 (6th Cir. 2007)). In a factual attack, a movant presents evidence outside of the pleadings to contest jurisdictional facts alleged in the petitions. *Id.*

Before the district court, the Government mounted a facial challenge to the petitions under its interpretation of Internal Revenue Code § 7609(c)(2)(D)(i), which excludes from notice requirements a summons issued "in aid of the collection" of "an assessment … against the person with respect to whose liability the summons is issued." R. 6 (Mot. to Dismiss at 7-14) (Page ID #45–52). Without disputing the facts in the petition, the Government argued that Petitioners were not entitled to notice and thus that the district court lacked jurisdiction over the proceedings to quash under § 7609(b)(2).[5] In concluding that Petitioners were not entitled to notice under § 7609(c)(2)(D)(i), the district court interpreted the text of the statute and did not weigh evidence. "When the district court relies on a facial analysis, we review its findings de novo." *Carrier Corp.*, 673 F.3d at 440. We also review de novo questions of statutory interpretation. *Byers v. United States Internal Revenue Serv.*, 963 F.3d 548, 552 (6th Cir. 2020).

---

[5] The Government also factually attached the petitions by asserting that the relationships among the parties precluded Petitioners from entitlement to notice even under Petitioners' interpretation of § 7609(c)(2)(D)(i). R. 6 (Mot. to Dismiss at 14–16) (Page ID #52–54). We review for clear error a district court's factual findings. *Carrier Corp.*, 673 F.3d at 440. Because the district court declined to apply Petitioners' interpretation of § 7609(c)(2)(D)(i), however, it did not resolve any factual disputes. Accordingly, there are no factual findings to review.

B. Sovereign Immunity

The Government argues that sovereign immunity barred the district court from asserting jurisdiction over Petitioners' suits to quash the summonses. As a government agency, the IRS is immune from suit absent an explicit statutory waiver. *Clay v. United States*, 199 F.3d 876, 879 (6th Cir. 1999). We must construe strictly a waiver of sovereign immunity in favor of the United States. *Gaetano*, 994 F.3d at 506. "Any ambiguities in the statutory language are to be construed in favor of immunity … so that the Government's consent to be sued is never enlarged beyond what a fair reading of the text requires." *F.A.A. v. Cooper*, 566 U.S. 284, 290 (2012). We are particularly careful to construe § 7609(c)(2)(D)(i) in favor of immunity because "restrictions upon the IRS summons power should be avoided 'absent unambiguous directions from Congress.'" *United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984) (quoting *United States v. Bisceglia*, 420 U.S. 141, 150 (1975), *partially superseded by statute on other grounds*, Tax Reform Act of 1976, Pub. L. No. 94-455, § 1205, 90 Stat. 1520, 1699–1703 (1976)).

Section 7609's notice provisions not only guide the IRS procedurally but also define the scope of the United States' sovereign immunity. Under § 7609(b)(2), "any person who is entitled to notice of a summons … shall have the right to begin a proceeding to quash such summons." We have thus held that § 7609(b)(2) waives the Government's sovereign immunity for a "narrow class of taxpayers" petitioning to quash an IRS summons seeking materials from a third-party recordkeeper. *Gaetano*, 994 F.3d at 506. Indeed, § 7609(h) explicitly grants district courts jurisdiction over any such proceeding. Consequently,

federal district courts have subject-matter jurisdiction over petitions to quash summonses filed by any party that is entitled to notice under § 7609(a)(1). If one of the exceptions to the notice requirement applies, however, "the bar of sovereign immunity remains, and the court lacks subject-matter jurisdiction." *Id.* at 509. To determine whether the district court had jurisdiction over the petitions at issue, we must therefore determine whether Petitioners were entitled to notice of the Government's summonses.

C. Scope of § 7609(c)(2)(D)(i)'s Notice Requirement Exception

"[T]he Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability." *Bisceglia*, 420 U.S. at 145. Recognizing "the possibility that some citizens may be less-than-forthcoming with their financial records," however, Congress has conferred upon the IRS the "broad authority to collect information related to taxpayers' potential liabilities." *Byers*, 963 F.3d at 552. To that end, § 7602 of the Internal Revenue Code authorizes the IRS to summon the "person liable for tax," any officer or employee of such person, or any other person it "may deem proper" to produce records that may be relevant to the tax inquiry.[6] I.R.C. § 7602(a)(2). The IRS may issue such a summons

> [f]or the purpose of ascertaining the correctness of any return, making a return where

[6] Section 7602 grants the authority to issue summonses to the Secretary of the Treasury. § 7602(a). The Secretary may delegate her tax enforcement duties to the Commissioner of Internal Revenue. § 7803(a)(2) ("The Commissioner shall have such duties and powers as the Secretary may prescribe.")

> none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability.

§ 7602(a).

The IRS may also seek information from third parties to advance its enforcement efforts. Section 7609 of the Code outlines special procedures for summonses when those third parties are recordkeepers, often banks or financial institutions maintaining records of financial transactions of interest to the IRS. In general, the IRS must give notice to "any person … who is identified" in such a summons within three days of issuing the summons to the third-party recordkeeper. § 7609(a)(1). The third-party recordkeeper then has at least twenty-three days to comply, and the IRS may not examine the records prior to that time. § 7609(d). These notice requirements, however, contain several exceptions. As relevant here, the IRS is not required to notify the person or entity identified in a third-party recordkeeper summons when the summons is

> issued in aid of the collection of … (i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i).

§ 7609(c)(2)(D).

We agree with the district court that the summonses at issue fall squarely within the exception listed in § 7609(c)(2)(D)(i). That section unequivocally provides that the IRS may summon the third-party

recordkeeper of any person without notice to that person if (1) an assessment was made or a judgment was entered against a delinquent taxpayer and (2) the summons was issued "in aid of the collection" of that delinquency. We hold that as long as the IRS demonstrates that these conditions are satisfied, it may issue a summons to a third-party recordkeeper without notice to the person or entity identified in the summons.

The Government has satisfied its burden here. The parties do not dispute that the IRS issued assessments against Remo totaling over $2 million. R. 6-2 (Bryant Decl. ¶ 2) (Page ID #59). Officer Bryant avers, and the parties similarly do not dispute, that he issued the summonses to the banks solely to "locate assets" to satisfy Remo's "existing assessed federal tax liability, and not to determine additional federal tax liabilities." *Id.* ¶ 3 (Page ID #59–60). Bryant issued the summonses to Petitioners' banks to obtain information about entities or persons with ties to Remo's assets—that is, "in aid of the collection" of "an assessment made … against the person with respect to whose liability the summons is issued" as authorized by § 7609(c)(2)(D)(i). We therefore conclude that the district court lacked subject-matter jurisdiction over the petitions to quash.

Our holding aligns with the decisions of two of our sibling circuits. In *Davidson v. United States*, 149 F.3d 1190 (Table), 1998 WL 339541 (10th Cir. June 9, 1998), the IRS assessed tax liability against the petitioner's husband. The IRS issued a summons regarding the petitioner's bank records without notice, and the petitioner moved to quash. Like Hanna, the petitioner argued that § 7609's notice provisions applied because she had no tax liability and the account was not jointly shared with her husband. The

Tenth Circuit examined the text of § 7609(c)(2)(B)(i) (now § 7609(c)(2)(D)(i)) and held that the petitioner was not entitled to notice. "[T]he IRS was investigating whether a taxpayer fraudulently transferred funds to his wife," so the summons was issued "in aid of the collection" of her husband's assessed taxes. *Id.* at *2. Because the petitioner was not entitled to notice under § 7609(c)(2)(B)(i), the district court lacked subject-matter jurisdiction over the petitioner's suit to quash the summons.

The Seventh Circuit followed *Davidson* in *Barmes v. United States*, 199 F.3d 386 (7th Cir. 1999). The IRS in that case assessed taxes against a general partnership and issued a summons of the bank accounts of a trust over which the general partners had signature authority. *Id.* at 387. The general partners moved to quash the summons, and the Seventh Circuit upheld the district court's dismissal of the petition to quash. *Id.* at 390. The Seventh Circuit "agree[d] with the Tenth Circuit that as long as the third-party summons is issued to aid in the collection of any assessed tax liability the notice exception applies." *Id.* And under § 7609(c)(2)(D)(i), a petition to quash was not authorized.

Although we have not previously demarcated the scope of § 7609(c)(2)(D)(i), we have cited *Barmes* favorably in an unpublished opinion. In *United States v. AS Holdings Group, LLC*, a group of entities sought to intervene in an action to enforce an IRS third-party summons served on its contractor. 521 F. App'x 405, 406 (6th Cir. 2013). We affirmed the district court's finding that the would-be intervenor lacked a right to notice under § 7609, citing *Barmes*, because the summons was issued in aid of the collection of an assessment made or judgment rendered against one of

the entities. *Id.* at 406. As these cases demonstrate, the text of § 7609(c)(2)(D)(i) dictates a straightforward outcome: "as long as the third-party summons is issued to aid in the collection of any assessed tax liability the notice exception applies." *Barmes*, 199 F.3d at 390.

Petitioners argue that the analysis cannot be that simple, relying on *Ip v. United States*, 205 F.3d 1168 (9th Cir. 2000). In that case, the IRS summoned petitioner's bank account without notice after it had levied an assessment against a corporation for which petitioner's fiancé was the agent. *Id.* at 1169. The Ninth Circuit examined § 7609's legislative history and concluded that the statute's stated purpose was generally to facilitate notice to taxpayers and to enable them to challenge summonses in district court. *Id.* at 1172. Because it assumed that Congress would not have allowed the IRS to summon a third-party recordkeeper for the information of any person without notice, the Ninth Circuit held that the notice exception applies "only where the assessed taxpayer 'has a recognizable [legal] interest in the records summoned.'" *Id.* at 1176 (quoting *Robertson v. United States*, 843 F. Supp. 705, 706 (S.D. Fla. 1993)) (alteration in original). The taxpayer corporation in *Ip* lacked a legal interest in petitioner's bank account, so the court concluded that the petitioner was entitled to notice. *Id.* at 1176, 1177. Under the *Ip* rule, the IRS may issue a summons to a third-party recordkeeper without notice only if (1) the third party is the assessed taxpayer, (2) the third party is a fiduciary or transferee of the taxpayer, or (3) the assessed taxpayer has "some legal interest or title in the object of the summons." *Viewtech*, 653 F.3d at 1105.

We decline to adopt the *Ip* rule. "Only when following the literal language of the statute would lead to 'an interpretation which is inconsistent with the legislative intent or to an absurd result' can a court modify the meaning of the statutory language." *Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 254 (6th Cir. 2020) (quoting *Tenn. Prot. & Advoc., Inc. v. Wells*, 371 F.3d 342, 350 (6th Cir. 2004)). Although Petitioners criticize the IRS's interpretation of the statute as "hyperliteral," Appellants' Br. at 10, we may not depart from the literal text of the statute when it comports with legislative intent. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) ("The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982))). As explained below, our interpretation of § 7609 is consistent with Congress's intent generally to exempt from its notice requirements summonses issued in aid of collection of assessments.

In urging us to conclude otherwise, Petitioners first reiterate the Ninth Circuit's concern that the IRS's interpretation of the exception outlined in § 7609(c)(2)(D)(i) is so broad as to render clause (ii) superfluous. Appellants' Br. at 20; *see also TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (stating that a statute should be construed so that, if possible, "no clause, sentence, or word shall be superfluous, void, or insignificant."). According to Petitioners, "transferee and fiduciary liability cannot exist without the taxpayer's underlying assessment." Appellants' Br. at 21. The only way to prevent clause (i) from absorbing clause (ii), Petitioners contend, is to confine the application

of clause (i) to situations in which the taxpayer has some legal interest in the object of the summonsed records. *Id.* at 20. Petitioners argue that the *Ip* test solves this problem because clause (ii) expands the application of § 7609(c)(2)(D) to situations in which the summons seeks the records of assets that a taxpayer transferred to a transferee or fiduciary but no longer legally controls. *Id.*

We disagree that our interpretation renders clause (ii) meaningless. Transferee and fiduciary liability are indeed derivative of the taxpayer's assessment, so Petitioners are correct in asserting that the former cannot exist without the latter. Laurence F. Casey, Federal Tax Practice § 12:04 (Edward J. Smith, ed., 4th ed. 2021) ("[W]here there is no deficiency, there can be no transferee liability."). But the substantive law underlying the liability for taxpayers and their transferees or fiduciaries is distinct. The IRS determines the extent of a taxpayer's liability, which forms the basis for the assessment. *See* I.R.C. § 6203 ("The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary."). By contrast, "[t]he legal underpinning for holding a transferee liable is found in the state law of the relevant jurisdiction." *United States v. Westley*, 7 F. App'x 393, 399 (6th Cir. 2001) (citing *Comm'r v. Stern*, 357 U.S. 39 (1958)). Although the IRS has a statutory mechanism to collect a transferee's or fiduciary's liability, I.R.C. § 6901, that statute "neither creates nor defines a substantive liability." *Stern*, 357 U.S. at 42. The IRS's efforts to collect a taxpayer's liability—which stems from the IRS's own assessment—are thus legally and procedurally distinct from their collection efforts of the

transferee's or fiduciary's liability—which liability must be rooted in state law.

Summonses issued in aid of collecting a transferee's or fiduciary's liability, moreover, may seek information only obliquely related to the underlying taxpayer. Suppose Remo fraudulently conveyed some of his assets to party A, who is married to party B. Party B, in this example, bears no relation to Remo. Suppose also that the IRS prevails in a suit against Party A for fraudulent transfer or in a summary proceeding under Internal Revenue Code § 6901. The IRS, in this hypothetical, suspects that Party A is hiding assets with his spouse, party B. Clause (ii) clarifies that the IRS could summon party B's bank records to assist in its collection of party A's liability, even when party B has nothing to do with Remo, and even when the IRS has not made a formal assessment of party A's tax liability. Without clause (ii), party B's relationship to Remo may have been too tangential for the IRS to show that its summons was "in aid of the collection" of *Remo*'s outstanding assessment. Clause (ii) also clarifies that the IRS may issue a summons in aid of Party A's unassessed liability rather than Remo's assessment (which would fall under clause (i)).

The dissent notes that summonses issued in aid of the collection of a fiduciary or transferee's liability derive ultimately from the original assessment on a taxpayer, and so a summons issued under clause (ii) would be covered under our interpretation of clause (i). We agree that our interpretation of the statute leads to some redundancy, but that does not give us license to add limiting language to the statute. "We find it much more likely that Congress employed a belt and suspenders approach" to clarify the scope of the conduct covered by the statute than that Congress

intended us to adopt a meaning rooted nowhere in the statute's text. *See Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1350 n.5 (2020) ("Sometimes the better overall reading of the statute contains some redundancy." (quoting *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873, 881 (2019))); *see also Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1172 n.7 (2021) (noting that Congress's decision to include for clarity two subsections in statutory definition covering the same conduct is not superfluity). Congress intended to clarify that the IRS does not need to give notice when it issues summonses in aid of the collection of a liability of a transferee or fiduciary. We do not find that clarification meaningless.

Petitioners also endorse the Ninth Circuit's conclusion that the IRS's interpretation hinders the statute's overall aim of providing taxpayers with notice of third-party summonses. Appellants' Br. at 12–13. The provisions exempting summonses issued in aid of collection of assessments, in Petitioners' view, would consume the general rule encouraging notice of third-party recordkeeper summonses. *Id.* at 13. The "general rule," however, is broader than the Ninth Circuit and Petitioners contend. The Ninth Circuit's concern that "it is virtually impossible to conceive of any situation where the notice requirement would apply once an assessment of tax liability against anyone has been made" led it to conclude that the statute must be "fraught with ambiguity." *Ip*, 205 F.3d at 1173. But "[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Roth v. Guzman*, 650 F.3d 603, 614 (6th Cir.

2011) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).

Section 7609(c)(1) applies the notice requirement "to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612." This means that the IRS must provide notice when issuing summonses related to any of its non-collection functions, which include determining the correctness of any return, determining a person's tax liability, and examining books and records. Under § 7602(b), the IRS must also provide notice of summonses issued in its investigatory capacity before it has made an assessment or obtained a judgment. *See Scotty's Contr. & Stone, Inc. v. United States*, 326 F.3d 785, 787 (6th Cir. 2003) (holding that entity was entitled to notice of third-party summonses issued as part of investigation into owner's tax liabilities). The notice requirement applies to many summonses issued in aid of IRS functions other than collection. Excluding summonses issued in aid of IRS collection efforts from the notice requirement, therefore, hardly absorbs the general rule requiring the IRS to notify persons and entities identified in third-party recordkeeper summonses. In concluding that the text of § 7609 is ambiguous, the Ninth Circuit overlooked the other functions of the IRS and read too much into Congress's intent to notify taxpayers of third-party recordkeeper summonses.

The Ninth Circuit also leaned on legislative history in interpreting § 7609 without cause to do so. "Because a literal reading of the unambiguous text" of § 7609 "does not lead to an absurd result, we have no cause to reach beyond the text and rely on legislative history." *Donovan*, 983 F.3d at 254. Even if § 7609 is "difficult and opaque" enough to warrant looking into

extrinsic sources, *Ip*, 205 F.3d at 1177 (O' Scannlain, J., concurring), its legislative history does not conflict with our interpretation. As part of the Tax Reform Act of 1976, Congress did seek to protect taxpayer privacy when it enacted the notice requirements for third-party recordkeeper summonses. The Report of the House Ways and Means Committee explained that "the use of [the third-party summons as an] important investigative tool should not unreasonably infringe on the civil rights of taxpayers."[7] H.R. Rep. No. 94-658, at 307 (1975). It reasoned that the then-existing ability of a third-party recordkeeper, such as a bank, to challenge a summons did not afford taxpayers with sufficient privacy protections because "the interest of the third-party witness in protecting the privacy of the records in question is frequently far less intense than that of the person to whom the records pertain." *Id.* To "cure[]" these problems, the Committee decided that the "parties to whom the records pertain" should be given notice of the third-party summons. *Id.*

Congress, however, recognized that it must balance this right to privacy with the IRS's ability to collect on an assessment or judgment. The House Ways and Means Committee generally stated that "this procedure will not apply in the case of a summons used solely for purposes of collection." *Id.* at 310. The Committee provided only one example of an instance in which the notice exception does not apply: when the IRS is "attempting to obtain information concerning the taxpayer's account for purposes other than collection." *Id.* Nothing in the Committee Report

---

[7] The Senate Finance Committee Report addressing § 7609 contains language identical to the House Ways and Means Committee report. S. Rep. No. 94-938, pt.1 at 368-69 (1976).

constrains the exception to instances in which the parties possess some legal interest in the object of the summons. The legislative history of § 7609, therefore, does not change our interpretation of the statute.

Petitioners emphasize the "far-reaching privacy implications" of a broad interpretation of § 7609 and argue that these concerns "spurred Congress to enact . . . § 7609 in the first place." Appellants' Br. at 23. As the Government highlights, other provisions in the Internal Revenue Code afford parties some privacy protections. Appellee's Br. at 35. Section 6103 prohibits the IRS from disclosing "return information," which includes, among other things, "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments." I.R.C. § 6103(a), (b)(2). If, for example, the information the IRS discovers leads to information that is embarrassing to Hanna or the Law Firms, § 6103 prevents the IRS from sharing it with another person or entity.

Hanna argues that her financial information does not qualify as "return information" under § 6103 because it "does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer," § 6103(b)(2), and her financial records cannot be connected to Remo. Appellants' Reply Br. at 11. We are not persuaded that § 6103's protection of confidentiality is so limited. For one thing, we do not see why Hanna would not count as a "particular taxpayer" under § 6103. *See Aloe Vera of Am., Inc. v. United States*, 699 F.3d 1153, 1156 (9th Cir. 2012) ("Taxpayer information obtained or prepared by the IRS . . . is 'return information' regardless of the person with respect to whom it was obtained or

prepared.") (quoting *Mallas v. United States*, 993 F.2d 1111, 1118 (4th Cir. 1993)). But even if Hanna were not the "particular taxpayer" § 6103 contemplates, it would be difficult for the Government to argue both that Hanna's records are unrelated, "directly or indirectly," to Remo under § 6103(b)(2) and that her records will "in aid of the collection" of Remo's liability under § 7609(c)(2)(D)(i). Section 6103 thus provides Hanna some privacy protections.

Section 7602(a)(2) also limits the scope of the summonses issued to third-party recordkeepers. Under that section, the IRS may summon an individual to provide information "as may be relevant or material" to an IRS inquiry. § 7602(a)(2). Any information irrelevant to the collection of a taxpayer's assessed liability—in this case, bank account information that does not relate to Remo, his assets, or related entities—would thus lie outside the scope of an IRS summons. This limitation is borne out in the summonses that the IRS issued to the banks in this case, which all specify that they seek information "concerning the person identified" in the summons. R. 6-3 (Wells Fargo Summons at 1) (Page ID #65); R. 6-4 (JP Morgan Chase Bank Summons at 1) (Page ID #69); R. 6-5 (Bank of America Summons at 1) (Page ID #73). In this way, § 7602(a)(2) protects private information that does not pertain to the IRS's collection efforts regarding Remo's assessment.

Petitioners protest that those protections are insufficient. Although we are sympathetic to worries that the IRS may be able to access information regarding blameless third parties without notice, "this possibility was not thought by Congress to create a sufficient infringement to warrant the inclusion of additional statutory notice requirements for

unidentified persons." *United States v. First Bank*, 737 F.2d 269, 274 (2d Cir. 1984). Given that the IRS may share any information with the Department of Justice for criminal prosecution under Internal Revenue Code § 6103(h)(2), Petitioners worry that the IRS may summon information from a third-party record-keeper and then use against them information obtained through the summons, violating the "Fourth Amendment's prohibition against searches and seizures absent probable cause." Appellants' Reply Br. at 12. Notifying Petitioners of the summonses, however, would not impose a heightened burden for the government to examine their records. *See* H.R. Rep. No. 94-658, at 309 ("[T]hese [notice] provisions are not intended to expand the substantive rights of these parties."). Petitioners' concern with the information-sharing mechanisms between the IRS and the Justice Department does not implicate the notice requirement and is therefore outside the scope of this appeal.

If Petitioners worry about their inability to challenge an improperly issued third-party summons in court, they may pursue other avenues. Because we have held that "the IRS may validly issue summonses for the purpose of investigating criminal offenses," *Scotty's Contr.*, 326 F.3d at 788, Petitioners hypothesize that the IRS could issue a summons solely to investigate a criminal offense without giving the object of the investigation notice and an opportunity to challenge the summons. Appellants' Reply Br. at 11–12. But the exception to the notice provisions, and the related jurisdictional bar, are tied to the IRS's *collection* efforts. Individuals suspecting that the IRS harbors ulterior motives are free to challenge the summons in court and may even seek jurisdictional discovery on the issue. *See Haber v. United States*, 823

F.3d 746, 751, 753 (2d Cir. 2016) (engaging in a "preliminary review of the IRS's contention that it issued the challenged summons in aid of collection"). Petitioners argue that *Haber* illustrates the futility of such challenges because the court ruled in favor of the IRS in that case. In *Haber*, however, the petitioner offered "no affirmative reason to believe that there was any ulterior purpose to the summons." *Id.* at 752. If the taxpayer had made "a showing of facts that give rise to a plausible inference of improper motive," his challenge would have been successful. *Id.* at 754 (quoting *United States v. Clarke*, 573 U.S. 248, 254 (2014)). A challenge to the government's motives does not seem as insurmountable a hurdle as Petitioners contend. *See Clarke*, 573 U.S. 254 (holding that a petitioner need not proffer a "fleshed out case" to present a plausible inference of bad faith of IRS agent).

In sum, Petitioners' conjectural fears do not defeat Congress's prerogative to prioritize the IRS's collection efforts over taxpayer privacy. Any other result would significantly impede the IRS's "expansive information-gathering authority." *Arthur Young*, 465 U.S. at 816. Congress explained that the impetus for excluding the notice requirement from collection efforts is to prevent individuals from hiding their assets. *See* H.R. Rep. No 94-658 at 310 (explaining exemptions to notice provisions prevent the possibility that the taxpayer could use the extra time to withdraw assets indirectly, thus "frustrating the collection activity of the Service."). One can easily imagine how a delinquent taxpayer could shield money from the IRS under Petitioners' view. Remo could have, for example, transferred money from an alter ego company to a bank account solely under Hanna's name. Once the IRS gave Hanna notice of the summons, she would

have twenty-three days to transfer that money elsewhere before the bank would be required to respond to the summons. I.R.C. § 7609. Petitioners would require that the IRS prove that Remo transferred assets to them in order to justify the issuance of a summons on their bank accounts without notice. But how would the IRS accomplish that without access to the information in the bank accounts? We conclude that the IRS does not need to navigate such a Catch-22 to seek information about delinquent taxpayer obligations it has already assessed.

D. Petitioners' Remaining Arguments

Because we decline to adopt the *Ip* test, we need not apply it to the facts of this case. Even though the district court reached the same result, Petitioners argue that it abused its discretion by failing to consider Hanna's supplemental declaration. Appellants' Br. at 28–29. Hanna submitted that declaration to refute the IRS's argument that Hanna's relationship with Remo would have survived the *Ip* test should we choose to adopt it. *Id.* at 28 ("Hanna filed a supplemental declaration for the limited purpose of countering [Officer Bryant's] supplemental declaration."). Without the *Ip* test, however, the legal relationship between Remo and Hanna is irrelevant. The district court did not need to consider these declarations and therefore did not abuse its discretion in declining to do so.

We also decline Petitioners' invitation to address the merits in this case. Petitioners were not entitled to notice of the IRS's summonses of their bank accounts, so the district court lacked subject-matter jurisdiction over their proceedings to quash them. *See Gaetano*, 944 F.3d at 511. The district court could not address the propriety of the summons without

subject-matter jurisdiction over the petitions to quash, and neither can we. *See Palkow v. CSX Transp., Inc.*, 431 F.3d 543, 556 (6th Cir. 2005) ("Being without jurisdiction, the District Court could not, and we cannot, address the merits of Plaintiff's complaint.").

III. CONCLUSION

Because the summonses the IRS issued regarding Petitioners' bank accounts were "in aid of the collection" of the assessments against Remo Polselli, we conclude that Petitioners were not entitled to notice under Internal Revenue Code § 7609 and that the district court therefore lacked subject-matter jurisdiction over Petitioners' proceeding to quash the summonses. We therefore **AFFIRM** the judgment of the district court.

DISSENT

KETHLEDGE, Circuit Judge, dissenting. The Supreme Court has expressed "a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." *Penn. Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552, 562 (1990). In my view, respectfully, that is how the government and now the majority have interpreted 26 U.S.C. § 7609(c)(2)(D)(i) here. By way of background, § 7609(a)(1) generally requires that, when the IRS serves a summons upon a third party for records held on behalf of another person "identified in the summons," the IRS must provide that identified person

with notice of the summons. As relevant here, for example, if the IRS orders a bank to produce a particular customer's account records, the IRS must provide that customer with notice of the summons. More to the point, "any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash" that summons. *Id.* § 7609(b)(2). Only a person entitled to notice of a summons, therefore, can seek judicial review of whether the summons is lawful.

Judicial review of the lawfulness of three summonses is all that Hanna Polselli and the petitioner law firms seek here. A single IRS agent issued summonses to three banks—Wells Fargo, JP Morgan Chase, and Bank of America—directing them to "appear before" the agent "to give testimony" and "to produce for examination[,]" among other things, "all bank statements relative to the accounts" of Hanna and the two law firms. That is a significant intrusion upon the privacy of those account holders. *Cf.* U.S. Const. Amend. IV ("The right of the people to be secure in their . . . papers . . . against unreasonable searches and seizures, shall not be violated"). Indeed that is the archetype of what the Founding generation would have called "inquisitorial process," as opposed to due process of law. Yet the district court dismissed these petitions for review on the ground that Hanna and the two law firms were not entitled to any notice of the production of their account records and thus not entitled to challenge the lawfulness of the summonses that required that production.

Whether the petitioners had a right to judicial review of those summonses, under the law as it comes to us, depends on the meaning of § 7609(c)(2)(D). That

subsection states, in relevant part, that the IRS need not provide notice of "any summons" that is

> (D) issued in the aid of the collection of—
>
> > (i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or
> >
> > (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i)[.]

The question, more specifically, is whether the summonses to the banks fell within the scope of § 7609(c)(2)(D)(i). If they did, the petitioners were not entitled to notice of the summonses and thus cannot obtain judicial review of them either. The government argues—and the majority agrees—that the summonses did fall within the scope of § 7609(c)(2)(D)(i), "because the summonses here were issued in the aid of the collection of previously assessed tax liabilities." Gov't Br. at 4. Thus, in the government's view, § 7609(c)(2)(D)(i) applies whenever two conditions are met: first, a tax assessment was previously rendered against someone else; and second, the summons would be helpful in the collection of that assessment. The identity of the person whose records are the object of the summons—and her relationship, if any, with the delinquent taxpayer—is immaterial. According to the government, therefore, the IRS need not provide notice to *any* person whose records are the object of a summons "issued in the aid of the collection of" a tax assessment rendered against someone else.

The problem with that interpretation, plainly enough, is that it renders § 7609(c)(2)(D)(ii) superfluous. The liability "of any transferee or fiduciary" of a taxpayer against whom the IRS has rendered an

assessment—as that liability is referred to in § 7609(c)(2)(D)(ii)—is entirely derivative of *that assessment*; for recovering against the transferee or fiduciary of the assessed taxpayer is simply another way of collecting the assessment itself. On that point everyone agrees. *Every* summons "issued in aid of the collection of" the liability of a "transferee or fiduciary" of an assessed taxpayer, therefore, is "issued in the aid of the collection of" that assessment. Again nobody argues otherwise. Thus, every summons that falls within § 7609(c)(2)(D)(ii) already falls within the government's (and now the majority's) interpretation of § 7609(c)(2)(D)(i)—because every such summons is "issued in the aid of the collection of previously assessed tax liabilities." Gov't Br. at 4. If the government and the majority are right about their interpretation of § 7609(c)(2)(D)(i), therefore, Congress was wasting its time in writing § 7609(c)(2)(D)(ii).

The attempts of the government and the majority to revive § 7609(c)(2)(D)(ii) only underscore its superfluity under their interpretation of § 7609(c)(2)(D)(i). For all its experience administering the tax code, the government offers not a single concrete example of a summons that falls within § 7609(c)(2)(D)(ii) but not (D)(i)—choosing instead to assert that (D)(ii) "makes clear" that the IRS need not provide notice "when seeking financial records of an individual or entity with no discernable connection to the assessed taxpayer, but with a relationship to the taxpayer's transferee or fiduciary." Gov't Br. at 33. But on the government's own reading of § 7609(c)(2)(D)(i), whether the person whose records are the object of the summons has some "discernable connection to the assessed taxpayer" is irrelevant; all that matters, in the government's own formulation, is that the summons

was "issued in the aid of the collection of previously assessed tax liabilities." Gov't Br. at 4. And every summons to which § 7609(c)(2)(D)(ii) applies undisputedly meets that test. The majority, for its part, offers a hypothetical in which the assessed taxpayer transfers assets to "party A," who then transfers them to "party B"; the majority then asserts without any reasoning or authority that a summons for party B's records "may be too tangential for the IRS to show that its summons was 'in the aid of the collection'" of the assessment against the taxpayer. Maj. Op. at 14. But of course the summons for B's records is "in aid of the collection of" the outstanding assessment; that is why the IRS issued the summons in the first place. For the liability of any transferee is undisputedly derivative of the taxpayer's liability on the assessment.

The mistake of the government and the majority is to read § 7609(c)(2)(D)(i) in isolation. Their interpretation of that provision indeed renders § 7609(a)— which prescribes a general rule that persons whose records are the object of a summons are entitled to notice of that summons— entirely superfluous as to summonses issued in aid of collecting a previously assessed tax liability. The Ninth Circuit concluded as much in *Ip v. United States*, where they observed that the government's interpretation of the same provision at issue here (then codified as § 7609(c)(2)(B)(ii)) "vitiates completely the legislative purpose of providing notice to third parties because it would be difficult to hypothesize any situation where notice would be required once the IRS makes an assessment against any taxpayer and seeks to collect the tax." 205 F.3d at 1174. The same is true as to § 7609(b), which gives such persons a "right to begin a proceeding to quash" summonses that order production of their records. For

once an assessment is rendered, every summons issued with respect to that assessment is, in a literal sense, "issued in aid of collection of" it. The literal sense of "in aid of the collection of" must therefore be the problem with the government's interpretation here.

Reading § 7609 as a whole, I think the only way to give concrete meaning to §§ 7609(c)(2)(D)(i) and (D)(ii), and to avoid the "vitiation" of §§ 7609(a) and (b), is to read "in aid of collection of" more narrowly than it would ordinarily be read. In the context of all these provisions, rather, I think we must read that phrase to require a more direct connection between the summons and the "collection" of the liability of the persons described in §§ 7609(c)(2)(D)(i) and (D)(ii). Specifically, I agree with the Ninth Circuit that a summons has this more direct connection with the collection of those persons' liability "only where the assessed taxpayer[,]" in the case of § 7609(c)(2)(D)(i), or a fiduciary or transferee, in the case of § 7609(c)(2)(D)(ii), "has a recognizable legal interest in the records summoned." 205 F.3d at 1176 (cleaned up). In this case we must either maul the bulk of § 7609 or read narrowly one phrase within it. The Ninth Circuit's interpretation, in my view, is the least bad interpretation available to us here.

I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARCHO POLSELLI, *et al*, Petitioners, v. UNITED STATES OF AMERICA, Respondents. _____ /	Case No. 19-10956 Stephanie Dawkins Davis United States District Judge

ORDER GRANTING MOTION TO DISMISS (ECF No. 6)

I. INTRODUCTION

This matter concerns a petition to quash three administrative summonses issued by the Internal Revenue Service ("IRS") against Wells Fargo Bank, N.A., JP Morgan Chase Bank, N.A., and Bank of America, N.A., pertaining to the IRS's ongoing investigation of Mr. Remo Polselli. (ECF Nos. 1, 3). According to a declaration by IRS agent Michael Bryant, the IRS has made assessments against Mr. Polselli for over $2 million, and the purpose of the summonses is to satisfy that amount. (ECF No. 6-2).

In the Wells Fargo summons, the IRS requested the account and financial records of Petitioner Hannah Karcho Polselli, Mr. Polselli's wife, because Mr. Polselli may have access to one or more accounts in her name. In the JP Morgan and Bank of America summonses, the IRS requested the account and financial records of the law firm, Abraham and Rose, P.L.C., and related entity, Jerry R. Abraham, P.C., because Mr. Polselli was a long-time client of those firms.

Petitioners Karcho Polselli, Abraham & Rose, P.L.C., and Jerry R. Abraham, P.C.,[1] allege that the court should quash the subject summonses because they never received the requisite third-party notices under 26 U.S.C. § 7609(a). (ECF No. 1, PageID.3; ECF No. 3, PageID.23). The United States filed a motion to dismiss on June 28, 2019 for lack of subject matter jurisdiction. (ECF No. 6). Petitioners filed a response, (ECF No. 8), and the government filed a reply, (ECF No. 9).

II. STANDARD OF REVIEW

The United States brings this motion under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Rule 12(b)(1) allows a defendant to move for dismissal on the grounds that the court lacks subject matter jurisdiction. When subject matter jurisdiction is challenged, the party asserting jurisdiction bears the burden of establishing that subject matter jurisdiction exists. *Moir v. Greater Cleveland Regional Transit Authority*, 895 F.2d 266, 269 (6th Cir. 1990).

---

[1] The parties agree that the other named petitioners should be dismissed. (ECF No. 6, PageID.45; ECF No. 8, PageID.90)

A Rule 12(b)(1) motion may take the form of a facial or factual challenge. *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). A facial challenge merely questions the sufficiency of the pleading. *Id.* In such a case, the district court takes the allegations in the complaint as true, like the safeguard employed under Rule 12(b)(6). *Id.* On the other hand, if the defendant raises a factual challenge, no presumptive truthfulness applies to the factual allegations in the complaint. *Id.* And, when facts presented to the district court give rise to a factual controversy, the district court must weigh the conflicting evidence in determining whether subject matter jurisdiction exists. *Id.* In reviewing such motions, a district court has wide discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts. *Id.* The government's motion here is a factual challenge.

III. DISCUSSION

A proceeding to quash an IRS administrative summons is a civil suit against the United States. *See Clay v. United States*, 199 F.3d 876, 879 (6th Cir. 1999). "[T]he United States, as sovereign, is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Therefore, Petitioners must identify a waiver of sovereign immunity to proceed against the United States. *Reetz v. United States*, 224 F.3d 794, 795 (6th Cir. 2000). If they cannot, their claim must be dismissed on jurisdictional grounds. *Id.*

Petitioners assert that this court enjoys subject matter jurisdiction over this case pursuant to 26 U.S.C. § 7609(h) and 28 U.S.C. § 1340. (ECF No. 1, PageID.2; ECF No. 3, PageID.22). In its pursuit of tax collection, the IRS has "broad latitude" to summon persons and information. *United States v. Clarke*, 573 U.S. 248, 250 (2014). The IRS's collection efforts often lead it to issue summonses calling for information from third parties (i.e., entities other than the assessed taxpayer). Section 7609 of the Internal Revenue Code provides a specific set of rules for IRS summonses issued to "third-party recordkeepers," such as banks and credit unions that customarily maintain records of individual and business financial transactions. 26 U.S.C. § 7609(a)(3)(A); *Clay*, 199 F.3d at 878. "As a general rule, § 7609 requires the IRS to serve anyone whose financial records are sought in a third-party summons with a notice copy of the summons." *Barmes v. United States*, 199 F.3d 386, 388 (7th Cir. 1999); 26 U.S.C. § 7609(a)(1).

Subsection (h) provides that the district courts have jurisdiction "to hear and determine any proceeding brought under subsection (b)(2)." 26 U.S.C. § 7609(h)(1). Under subsection (b)(2), "any person who is entitled to notice of a summons" has "the right to begin a proceeding to quash such summons." 26 U.S.C. § 7609(b)(2). Reading these subsections together, the district court has jurisdiction over a petition to quash only if the petitioner is entitled to notice. *United States v. AS Holdings Grp., LLC*, 521 F. App'x. 405, 408 (6th Cir. 2013) (quoting *Barmes*, 199 F.3d at 388) ("[I]f notice is not mandated, neither is a petition to quash authorized.").

One exception to the general rule of notice is that notice is not required when a third-party summons is "issued in the aid of the collection of . . . (i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i)." 26 U.S.C. § 7609(c)(2)(D). If Petitioners are not entitled to notice under this section, then they may not proceed with their petition to quash.

The government argues that the plain language of § 7609(c)(2)(D)(i) makes clear that Petitioners were not entitled to notice because the summonses at issue are collection summonses issued to aid the collection of assessments against Mr. Polselli. And since the government has waived its immunity only in regard to persons to whom notice is required, this court is without jurisdiction to quash the administrative summonses at issue here. (ECF No. 6, PageID.46–48). On the other hand, Petitioners ask the courts to reject the government's "hyperliteral" approach; instead, they argue that because Mr. Polselli has no legal interest in the summoned records, notice was required.

As the parties point out, there is a circuit split on this issue. The Seventh and Tenth Circuits agree with the government. *Davidson v. United States* concerned the assessed tax liability against Sidney Davidson, the petitioner's husband. No. 97-1244, 1998 WL 339541, at *1 (10th Cir. June 9, 1998). At issue was a third-party summons the IRS had issued to the petitioner's bank in aid of collecting a tax assessment against the petitioner's husband. *Id.* The petitioner argued that under the exception in 26 U.S.C. § 7609(c)(2)(D)(i), "the IRS must give notice unless 'the

taxpayer whose tax liability has been assessed has a recognizable interest in the records summoned.'" *Id.* at *2. Relying on the plain language of the statute, the Tenth Circuit held that the petitioner was not entitled to notice because "the IRS was investigating whether a taxpayer fraudulently transferred funds to his wife" and so "the summons was issued in aid of the collection of [the taxpayer's] taxes." *Id.* Consequently, the court concluded that the district court correctly dismissed the matter because it lacked subject matter jurisdiction. *Id.* at *3.

Similarly, *Barmes* involved the tax liabilities against a husband and wife partnership. *Barmes*, 199 F.3d at 387. There, the IRS had served a summons on a bank in relation to a trust account on which the couple both had signature authority. The Barmeses petitioned the court to quash the subpoena, but the government argued that the court was without jurisdiction to act. The issue was the same as that in *Davidson*: "whether the IRS must notify the account holder if it attempts to collect an assessment by serving a summons on a third-party regarding the account of someone other than the taxpayer named in the assessment." *Id.* at 390. Following *Davidson*, the Seventh Circuit held that "as long as the third-party summons is issued to aid in the collection of any assessed tax liability the notice exception applies." *Id.* Thus, the court held that the Barmeses did not have a right to quash the summons under § 7609 and the district court did not err in dismissing the couple's petition.

On the other side of the split is the Ninth Circuit. In *Ip v. United States*, "the IRS summonsed [Ip's] banks, without notice to her, to produce her accounts

to aid in its investigation of Diamond Trade Ltd., a Hong Kong corporation for which Ip's fiancé was an agent." 205 F.3d 1168, 1169 (9th Cir. 2000). The court held that the notice exception in § 7609(c)(2)(D)(i) applies only where the assessed taxpayer "has a recognizable legal interest in the records summoned." *Id.* at 1175. In other words, "a third party should receive notice that the IRS has summonsed the third party's records unless the third party was the assessed taxpayer, a fiduciary or transferee of the taxpayer, or the assessed taxpayer had 'some legal interest or title in the object of the summons.'" *Viewtech, Inc. v. United States*, 653 F.3d 1102, 1105 (9th Cir. 2011). The court in *Ip* declined "relying solely on the literal language of clause (i)" and, instead, relied on legislative history. *Ip*, 205 F.3d at 1174. According to the court:

> Congress enacted § 7609 for the purpose of giving third parties notice that the IRS was summonsing their record, and enacted § 7609(c)'s exceptions to the notice requirement based solely on its recognition 'that giving taxpayers notice in certain circumstances would seriously impede the IRS's ability to collect taxes,' as would giving notice to fiduciaries or transferees of the taxpayer.

Viewtech, 653 F.3d at 1105. It also found that the literal reading would "render[] totally meaningless the explicit language of § 7609(c)(2)(B)(ii)."[2] *Ip*, 205 F.3d

---

[2] *Ip* dealt with a prior version of the statute. The changes, however, are "not materially different from the current version." *Viewtech*, 653 F.3d at 1105 n.4. The prior version of the statute read:

at 1174. To some extent, the court in *Ip* believed its opinion was consistent with *Barmes* and *Davidson* because "[t]hese cases all involved either persons who had recognizable legal interests in the accounts summonsed or individuals who had fiduciary relationships with the person against whom an assessment was made." *Id.*

The court finds the Seventh and Tenth's interpretations more persuasive. "In all cases of statutory construction, the starting point is the language employed by Congress." *Appleton v. First Nat'l Bank of Ohio*, 62 F.3d 791, 801 (6th Cir. 1995). And, where "the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Entertainment, Inc.*, 489 U.S. 235, 241 (1989). According to the plain language of § 7609(c)(2)(D)(i), notice is not required whenever a summons is issued to a third party to aid the IRS in the collection of a taxpayer's assessment. Furthermore, because any exercise of a court's jurisdiction over the United States depends on the United States' consent, "the waiver of sovereign immunity in regard to 26 U.S.C. § 7609 must be strictly construed." *Clay*, 199 F.3d at 879. This plain-text reading would be more consistent with that goal.

A summons shall not be treated as described in this subsection if—

…

(B) it is in aid of the collection of—

(i) the liability of any person against whom an assessment has been made or judgment rendered, or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i).

In this case, the IRS has assessed an aggregate tax liability of over $2 million against Remo Polselli for tax years 2005, 2006, 2013, 2015, 2016 and 2017 and trust fund recovery penalties for periods ending December 31, 2009, December 31, 2010, March 31, 2011, and June 30, 2011. IRS Officer Michael Bryant has attested to the fact that he is conducting an investigation to aid in the collection of Mr. Polselli's tax liabilities for those taxable periods. (ECF No. 6-2, PageID.59). He asserts that the purpose of his investigation is to locate assets to satisfy Mr. Polselli's existing assessed federal tax liability and that the IRS issued the summonses in question to aid in the collection of these assessed liabilities. (*Id.* at PageID.59-62). As a result, Petitioners were not entitled to notice.

Petitioners in this matter criticize *Davidson* and *Barmes*, arguing that neither decision "analyzed the congressional record, tracked section 7609's legislative history, or sought to harmonize the statute's purpose with its text"—like *Ip* did. (ECF No. 8, PageID.100). But the statute's language is plain. "Only if the statutory language is unclear is resort to a review of congressional intent or legislative history permissible." *In re Comshare, Inc.*, 183 F.3d 542, 549 (6th Cir. 1999). Since the statutory language here is unambiguous, there is no need to delve into the legislative history.

Petitioners also argue that the literal interpretation would render the language in § 7609(c)(2)(D)(ii) meaningless. *See Cafarelli v. Yancy*, 226 F.3d 492, 499 (6th Cir. 2000) ("[W]e must interpret [statutes] 'as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute

inconsistent, meaningless or superfluous.'") (quoting *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1992)). In other words, "it [would be] virtually impossible to conceive of any situation where the notice requirement would apply once an assessment of tax liability against anyone has been made." *Ip*, 205 F.3d at 1173. But it is not at all clear that this is true. As the government points out, in order for § 7609(c)(2)(D)(i) to apply, the court will have to review whether there has been an assessment made or judgment rendered against the taxpayer and whether the purpose of the summons is to aid in the collection of that judgment or assessment. (ECF No. 6, PageID.50). But, if the summons seeks to collect, for example, the unassessed liability of a transferee or fiduciary, then § 7609(c)(2)(D)(i) may not apply; nevertheless, the government would not have to provide notice under § 7609(c)(2)(D)(ii). *See Federal Tax Coordinator*, ¶ V-9700 (2d ed. 2020) ("When transferee liability is imposed, IRS has the choice of either applying available remedies in law or equity or applying IRC s 6901 assessment procedures."). The court agrees, therefore, with the government that § 7609(c)(2)(D)(ii) merely expands the situations where notice is not required. (ECF No. 6, PageID.51). As a result, the clause is not rendered "totally meaningless." *United States v. Trent*, 654 F.3d 574, 592 (6th Cir. 2011).

Finally, although the Sixth Circuit has not adopted the *Davidson*/*Barmes* rule, as the government points out, the court did cite *Barmes* favorably in resolving a closely related question in favor of the IRS in *AS Holdings*, 521 F. App'x at 408. In *AS Holdings* the court held that when a party is not entitled to notice of a third-party summons under § 7609, it does not have a right to intervene under Fed. R. Civ. P.

24(b) in a petition to quash the summons. *Id.* The Sixth Circuit appeared to endorse the district court's finding that the would-be intervenor was not entitled to notice because the third-party summons was issued in aid of the collection of an assessed tax liability. *Id.* Thus, although the Sixth Circuit has not adopted *Barmes* outright, it has implicitly endorsed its holding. And at least one federal court in the Eastern District of Michigan has also endorsed *Barmes*'s interpretation.[3] *United States v. Omega Solutions, LLC*, 873 F. Supp. 2d 887, 892 (E.D. Mich. 2012) ("Section 7609(c) clearly states that notice of the summons is not required where the summons is issued 'in the aid of collection' of a tax liability.").

Thus, under the plain language of § 7609(c)(2)(D)(i), Petitioners are not entitled to notice under the circumstances, and as a consequence have

---

[3] A number of district courts outside of the Sixth Circuit have also applied the *Davidson*/*Barmes* rule holding that petitioners are not entitled to notice in instances where the IRS issued a third-party summons to aid collection efforts. *See, e.g., Atlantic Ave. D.B. Financial/Legal Support Grp. v. United States*, No. 08-81257-MC, 2009 WL 2810449 (S.D. Fla. June 30, 2009) (applying *Davidson*/*Barmes* and holding that petitioner-company was not entitled to notice of a third-party summons of its bank account when the president of petitioner-company had a "persona relationship" with the taxpayer for several years); *Caton v. United States*, No. 2:07-cv-51-FtM-34DNF, 2007 WL 1549434, at *2 (M.D. Fla. May 25, 2007) (holding that the taxpayer was not entitled to notice of third-party summons served on his attorney when the summons sought information relating to the collection of the taxpayer's tax liabilities); *Ginsburg v. United States*, No. 3:02CV176, 2002 WL 31367262, at *2 (D. Conn. Sept. 25, 2002) (applying *Barmes* and holding that wife of taxpayer was not entitled to notice when the IRS summoned her Merrill Lynch account records to aid in the collection of her husband's tax liabilities).

no right to bring a petition to quash. Therefore, the court lacks subject matter jurisdiction to hear their petition, and the petition to quash is **DISMISSED**.

IT IS SO ORDERED.

Date: November 16, 2020

s/Stephanie Dawkins Davis
Stephanie Dawkins Davis
United States District Judge

APPENDIX C

Case No. 21-1010

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

HANNA KARCHO POLSELLI; ABRAHAM & ROSE, P.L.C.; JERRY R. ABRAHAM, P.C.

Petitioners - Appellants

v.

INTERNAL REVENUE SERVICE

Respondent - Appellee

BEFORE: MOORE, KETHLEDGE, DONALD, Circuit Judges

Upon consideration of motion to stay mandate,

It is **ORDERED** that the mandate be stayed to allow Abraham & Rose, P.L.C., Jerry R. Abraham, P.C. and Ms. Hanna Karcho Polselli time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case, but shall promptly issue if the petition is not filed within ninety days from the date of final judgment by this court.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

Issued: April 07, 2022

APPENDIX D

No. 21-1010

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 28, 2022
DEBORAH S. HUNT, Clerk

HANNA KARCHO POLSELLI; ABRAHAM & ROSE, P.L.C.; JERRY R. ABRAHAM, P.C.,
Petitioners-Appellants,

v.

UNITED STATES DEPARTMENT OF THE TREASURY–INTERNAL REVENUE SERVICE,
Respondent-Appellee.

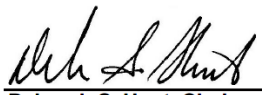
O R D E R

BEFORE: MOORE, KETHLEDGE, and DONALD, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Kethledge would grant rehearing for the reasons stated in his dissent.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX E

AMENDMENT IV TO THE
UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX F

I.R.C. § 7602 provides:

Examination of books and witnesses

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense

The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties

(1) General notice

An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts

The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions

This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral

(1) Limitation of authority

No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect

For purposes of this subsection—

(A) In general

A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination

A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the

administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person or,

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request, described in subparagraph (A)(ii).

(3) Taxable years, etc., treated separately

For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income

The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(Aug. 16, 1954, ch. 736, 68A Stat. 901; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §333(a), Sept. 3, 1982, 96 Stat. 622; Pub. L. 105–206, title III, §§3412, 3417(a), July 22, 1998, 112 Stat. 751, 757.)

APPENDIX G

I.R.C. § 7603 provides:

Service of summons

(a) In general

A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) Service by mail to third-party recordkeepers

(1) In general

A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

(2) Third-party recordkeeper

For purposes of paragraph (1), the term "third-party recordkeeper" means—

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any

bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A)),

(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))),

(C) any person extending credit through the use of credit cards or similar devices,

(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))),

(E) any attorney,

(F) any accountant,

(G) any barter exchange (as defined in section 6405(c)(3)),

(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof,

(I) any enrolled agent, and

(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)).

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which such source code relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II,

§202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–599, title V, §505(c)(5), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577; Pub. L. 105–206, title III, §§3413(c), 3416(a), July 22, 1998, 112 Stat. 754, 756; Pub. L. 106–554, §1(a)(7) [title III, §319(26)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648.)

APPENDIX H

I.R.C. § 7609 provides:

Special procedures for third-party summonses

(a) Notice

(1) In general

If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice

Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the

person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons

Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) Right to intervene; right to proceeding to quash

(1) Intervention

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th 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.

(B) Requirement of notice to person summoned and to Secretary

If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention; etc.

Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies

(1) In general

Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

(2) Exceptions

This section shall not apply to any summons—

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);

(D) issued in aid of the collection of—

(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i); or

(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws; and

(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)).

(3) John Doe and certain other summonses

Subsection (a) shall not apply to any summons described in subsection (f) or (g).

(4) Records

For purposes of this section, the term "records" includes books, papers, and other data.

(d) Restriction on examination of records

No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made—

(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(e) Suspension of statute of limitations

(1) Subsection (b) action

If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with the respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons

In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period—

(A) beginning on the date which is 6 months after the service of such summons, and

(B) ending with the final resolution of such response.

(f) Additional requirement in the case of a John Doe summons

Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the

summons is issued) is not readily available from other sources.

(g) Special exception for certain summonses

A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of district court; etc.

(1) Jurisdiction

The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g)

The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(i) Duty of summoned party

(1) Recordkeeper must assemble records and be prepared to produce records

On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate

The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses

Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statute of limitations in the case of a John Doe summons

In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of

such suspension to any person described in subsection (f).

(j) Use of summons not required

Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

(Added Pub. L. 94–455, title XII, §1205(a), Oct. 4, 1976, 90 Stat. 1699; amended Pub. L. 95–599, title V, §505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95–600, title VII, §703(*l*)(4), Nov. 6, 1978, 92 Stat. 2943; Pub. L. 96–223, title II, § 232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–248, title III, §§311(b), 331(a)–(d), 332(a), Sept. 3, 1982, 96 Stat. 601, 620, 621; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title VII, §714(i), title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 962, 1007; Pub. L. 98–620, title IV §402(28)(D), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 99–514, title VI, §656(a), title XV, §1561(a), (b), title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2299, 2761, 2778; Pub. L. 100–647, title I, §§1015(*l*)(1), (2), 1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3571, 3572, 3576, 3577; Pub. L. 104–168, title X, §1001(a), July 30, 1996, 110 Stat. 1467; Pub. L. 105–206, title III, §3415(a)–(c), July 22, 1998, 112 Stat. 755; Pub. L. 109–135, title IV, §408(a), Dec. 21, 2005, 119 Stat. 2635.)

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

HANNAH KARCHO POLSELLI, *et al.*	)	Case No. 19-cv-10956
Petitioners,	)	Judge Linda V. Parker
v.	)	
UNITED STATES OF AMERICA, *et al.*	)	
Respondents.	)	

DECLARATION OF MICHAEL BRYANT

MICHAEL BRYANT, pursuant to the provisions of 28 U.S.C. § 1746 and in support of the United States' Motion To Dismiss, declares that:

1. I am a duly commissioned Revenue Officer of the Small Business/Self-Employed Division of the Internal Revenue Service, with a post of duty in Pontiac, Michigan.

2. In my capacity as Revenue Officer, I am conducting an investigation to aid in the collection of Remo Polselli's tax liabilities for the following periods: Form 1040 (individual income tax) for 2005, 2006, 2013, 2015, 2016, and 2017; and trust fund recovery penalties for periods ending December 31, 2009,

December 31, 2010, March 31, 2011, and June 30, 2011. The Internal Revenue Service has made assessments against Mr. Polselli for those periods, which have a total outstanding balance of over $2 million.

3. The sole purpose of my investigation is to locate assets to satisfy Mr. Polselli's existing assessed federal tax liability, and not to determine additional federal tax liabilities of Mr. Polselli.

4. In furtherance of these collection activities, and in accordance with 26 U.S.C. §§ 7602 and 7603, I served administrative summonses on Wells Fargo Bank, N.A. ("Wells Fargo Summons"), JP Morgan Chase Bank, N.A.("JP Morgan Summons"), and Bank of America, N.A. ("Bank of America Summons"). Copies of the summons are attached hereto as Exhibits B-D. The summonses were issued to aid in the collection of the assessed tax liabilities for the periods identified therein.

5. In the Wells Fargo Summons, I requested that Wells Fargo provide account and financial records of Hannah Karcho-Polselli, Mr. Polselli's wife. My investigation suggests that Mr. Polselli may have access to, and use of, one or more bank accounts held in Hanna Karcho Polselli's name, and that such account or accounts may be held in the name of Hannah Karcho-Polselli to shield them from the IRS.

6. The information and documents gathered from the Wells Fargo Summons may assist the IRS in locating assets that are held by Hannah Karcho-Polselli, as the nominee or alter-ego or transferee of Mr. Polselli.

7. In the Wells Fargo Summons, I also requested that Wells Fargo provide account and

financial records of Dolce Hotel Management, LLC. My investigation suggests that Mr. Polselli may have an ownership interest in, or control over funds held by, Dolce Management, LLC. On October 19, 2018, Mr. Polselli made a $293,763.00 payment toward his outstanding liability via a check drawn on an account of Dolce Hotel Management, LLC.

8. In the JP Morgan Summons and Bank of America Summons, I requested that those entities provide account and financial records of a law firm, Abraham and Rose, PLC (and related entity Jerry R. Abraham, P.C.), and an accounting firm, Beals, Caruana & Company, P.C.

9. Mr. Polselli is a long-time client of the law firm and accounting firm referenced in the previous paragraph.

10. In November 2018, prior to serving the JP Morgan Summons and Bank of America Summons, as part of my investigation into Mr. Polselli, I served a summons directly on Abraham and Rose, PLC. The summons sought, among other things, invoices and billing notices sent to Mr. Polselli by the firm, and photocopies of cancelled checks, wire transfer/credit documents, and all other instruments used by Mr. Polselli to pay the firm.

11. Abraham and Rose responded to the summons by asserting that the firm did not retain any of the documents requested. A letter asserting such is attached as Exhibit E.

12. I further discussed the issue via phone with the power-of-attorney for Abraham and Rose, Sheldon Mandelbaum. Mr. Mandelbaum again asserted that the firm did not retain the requested

records. Abraham and Rose produced no records in response to the summons.

13. In November 2018, prior to serving the JP Morgan Summons and Bank of America Summons, I also served a summons directly on the accounting firm Beals, Caruana & Company, P.C. The summons sought, among other things, invoices and billing notices the accounting firm sent to Mr. Polselli, and photocopies of cancelled checks, wire transfer/credit documents, and all other instruments used by Mr. Polselli to pay the firm.

14. Beals, Caruana & Company, P.C. did provide some of the documentation requested in response to the summons. However, a considerable portion of the expected documentation was missing from its response.

15. Both Abraham and Rose, PLC, and Beals, Caruana & Company failed to attend the summons interviews they were required to attend.

16. The financial records of Abraham and Rose, PLC; Jerry R. Abraham, P.C.; and Beals, Caruana & Company, P.C. may aid in the collection of Mr. Polselli's assessed tax liabilities in the following ways: 1) they may show the source of funds Mr. Polselli used to pay the firms; 2) they may identify bank accounts used by Mr. Polselli; 3) they may identify entities owned by Mr. Polselli or entities whose funds Mr. Polselli has control over without formal ownership; and 4) they may identify bank accounts associated with such entities. My investigation suggests that Mr. Polselli often uses other entities to shield his assets from the Internal Revenue Service.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of June 2019, Pontiac, Michigan.

Revenue Officer Michael Bryant
Small Business/Self-Employed Division
Internal Revenue Service

APPENDIX J

Summons

In the matter of **REMO POLSELLI, 55 E LONG LAKE ROAD, BOX 204, TROY, MI 48085-4738**

Internal Revenue Service (Division): **Small Business / Self Employed**

Industry/Area (name or number): **Small Business / Self Employed**

Periods: **Form 1040 for the calendar period ending December 31, 2005, December 31, 2006, December 31, 2013, December 31, 2015, December 31, 2016, December 31, 2017, and CIVPEN for the quarterly periods ending December 31, 2009, December 31, 2010, March 31, 2011, and June 30, 2011**

The Commissioner of Internal Revenue

To: **Wells Fargo Bank, N.A. (Legal Order Process MAC#S3928-021)**

At: **P.O. Box 1416, Charlotte, NC 28201-1416**

You are hereby summoned and required to appear before Michael Bryant, an officer of the Internal Revenue Service, to give testimony and to bring with

you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

(1) Copies of all signature cards relative to the accounts, open and closed, of Remo Polselli (SSN , Dolce Hotel Management, LLC. (EIN , & Hanna O. Karcho-Polselli (SSN , for the period January 1, 2018 to Present;

(2) Copies of all corporate resolutions relative to the accounts, open and closed, of Remo Polselli (SSN , Dolce Hotel Management, LLC. (EIN , & Hanna O. Karcho-Polselli (SSN , for the period January 1, 2018 to Present;

(3) Copies of all bank statements relative to the accounts, open and closed, of Remo Polselli (SSN , Dolce Hotel Management, LLC. (EIN , & Hanna O. Karcho-Polselli (SSN , for the period January 1, 2018 to Present;

(4) Copies of all loan agreements relative to the accounts, open and closed, of Remo Polselli (SSN , Dolce Hotel Management, LLC. (EIN , & Hanna O. Karcho-Polselli (SSN , for the period January 1, 2018 to Present;

(5) Copies of 5 checks issued by the taxpayer for each month for the period January 1, 2018 to Present.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238, (248) 874-2235

Place and time for appearance at 1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238

IRS

Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

on the 3rd day of April, 2019 at 08:30 o'clock A m.
Issued under authority of the Internal Revenue Code
this 8th day of March, 2019

2019.03.06 14:53:24 -05'00'
Signature of Issuing Officer

Revenue Officer
Title

Michael DesRosiers 2019.03.06 15:16:32 -05'00'
Signature of Approving Officer *(if applicable)*

Group Manager
Title

Original – to be kept by IRS

(1) Copies of all signature cards relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Dolce Hotel Management, LLC. (EIN [redacted], & Hanna O. Karcho-Polselli (SSN [redacted], for the period January 1, 2018 to Present;

(2) Copies of all corporate resolutions relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Dolce Hotel Management, LLC. (EIN [redacted], & Hanna O. Karcho-Polselli (SSN [redacted], for the period January 1, 2018 to Present;

(3) Copies of all bank statements relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Dolce Hotel Management, LLC. (EIN [redacted], & Hanna O. Karcho-Polselli (SSN [redacted], for the period January 1, 2018 to Present;

(4) Copies of all loan agreements relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Dolce Hotel Management, LLC. (EIN [redacted], & Hanna O. Karcho-Polselli (SSN [redacted], for the period January 1, 2018 to Present;

(5) Copies of 5 checks issued by the taxpayer for each month for the period January 1, 2018 to Present.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238, (248) 874-2235

Place and time for appearance at 1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238

IRS

Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

on the 3rd day of April, 2019 at 08:30 o'clock A m.
Issued under authority of the Internal Revenue Code this 8th day of March, 2019.

2019.03.06 14:53:24 -05'00'
Signature of Issuing Officer

Revenue Officer
Title

Michael DesRosiers 2019.03.06 15:16:32 -05'00'
Signature of Approving Officer *(if applicable)*

Group Manager
Title

Original – to be kept by IRS

Service of Summons, Notice and Record-keeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time: 9:00 am
March 8, 2019	

How Summons Was Served

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☐ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): _____

3. ☒ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party

recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: P.O. Box 1416, Charlotte, NC 28201-1416

Signature Michael Bryant 2019.03.06 14:54:08 -05'00'	Title Revenue Officer

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given	☐	I gave notice by certified or registered mail to the last known address of the noticee.
	☐	I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).
	☐	I gave notice by handing it to the noticee.
	☐	In the absence of a last known address of the noticee, I left the notice with the person summonsed.
	☒	No notice is required.

Signature Michael Bryant 2019.03.06 14:54:26 -05'00'	Title: Revenue Officer

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the notice consents to the examination.

Signature	Title

Form **2039** (Rev. 10-2010)

APPENDIX K

Summons

In the matter of **Remo Polselli, 55 E Long Lake Road, Suite 517, Troy, MI 48085-4738**

Internal Revenue Service (Division): **Small Business / Self Employed**

Industry/Area (name or number): **Small Business / Self Employed**

Periods: **Form 1040 for the calendar period ending December 31, 2005, December 31, 2006, December 31, 2013, December 31, 2015, December 31, 2016, December 31, 2017, and Civil Penalties for the quarterly periods ending December 31, 2009, December 31, 2010, March 31, 2011, and June 30, 2011**

The Commissioner of Internal Revenue

To: **JPMorgan Chase Bank, N.A.**

At: **P.O. Box 183164, Columbus, OH 43218-3164**

You are hereby summoned and required to appear before Michael Bryant, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following

books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

(1) Copies of all signature cards relative to the accounts, open and closed, of Remo Polselli (SSN [redacted] for the period January 1, 2017 to the Present;

(2) Copies of all corporate resolutions relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Abraham & Rose, PLC (EIN [redacted], Jerry R. Abraham, P.C. (EIN [redacted], Beals, Caruana & Company, P.C. (EIN [redacted], for the period January 1, 2017 to the Present;

(3) Copies of all bank statements relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Abraham & Rose, PLC (EIN [redacted], Jerry R. Abraham, P.C. (EIN [redacted], Beals, Caruana & Company, P.C. (EIN [redacted], for the period January 1, 2017 to the Present;

(4) Copies of all loan agreements relative to the accounts, open and closed, of Remo Polselli (SSN [redacted] for the period January 1, 2017 to the Present;

(5) Copies of 3 checks issued by the taxpayer and each entity for each month for the period January 1, 2017 to the Present.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238, (248) 874-2235

Place and time for appearance at 1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238

IRS

Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

on the 6th day of May, 2019 at 08:00 o'clock A m.
Issued under authority of the Internal Revenue Code
this 8th day of April, 2019

Michael Bryant	Revenue Officer
Signature of issuing officer	Title
Michael DesRosiers 2019.04.05 12:55:22 -04'00'	Group Manager
Signature of Approving Officer *(if applicable)*	Title

Original – to be kept by IRS

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238, (248) 874-2235

Place and time for appearance at 1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238

IRS

Department of
the Treasury
Internal Revenue
Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

on the 6th day of May, 2019 at 08:00 o'clock A m.
Issued under authority of
the Internal Revenue Code
this 8th day of
April , 2019

Michael Bryant
Signature of issuing officer

Revenue Officer
Title

Michael DesRosiers 2019.04.05 12:55:39 -04'00'
Signature of Approving Officer *(if applicable)*

Group Manager
Title

Original – to be kept by IRS

Service of Summons, Notice and Record-keeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time: 9:00 am
April 8, 2019	

How Summons Was Served

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☐ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): _____

3. ☒ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party

recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: P.O. Box 183164, Columbus, OH 43218-2164_____

Signature Michael Bryant	Title Revenue Officer

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given

☐ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☐ I gave notice by handing it to the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summonsed.

☒ No notice is required.

Signature Michael Bryant	Title: Revenue Officer

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the notice consents to the examination.

Signature	Title

Form **2039** (Rev. 10-2010)

APPENDIX L

Summons

In the matter of **Remo Polselli, 55 E Long Lake Road, Suite 517, Troy, MI 48085-4738**

Internal Revenue Service (Division): **Small Business / Self Employed**

Industry/Area (name or number): **Small Business / Self Employed**

Periods: **Form 1040 for the calendar period ending December 31, 2005, December 31, 2006, December 31, 2013, December 31, 2015, December 31, 2016, December 31, 2017, and Civil Penalties for the quarterly periods ending December 31, 2009, December 31, 2010, March 31, 2011, and June 30, 2011**

The Commissioner of Internal Revenue

To: **Bank of America (Legal Order Processing)**

At: **P.O. Box 15047, Wilmington, DE 19850-5047**

You are hereby summoned and required to appear before Michael Bryant, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following

books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

(1) Copies of all signature cards relative to the accounts, open and closed, of Remo Polselli (SSN [redacted] for the period January 1, 2017 to the Present;

(2) Copies of all corporate resolutions relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Abraham & Rose, PLC (EIN [redacted], Jerry R. Abraham, P.C. (EIN [redacted], Beals, Caruana & Company, P.C. [redacted], for the period January 1, 2017 to the Present;

(3) Copies of all bank statements relative to the accounts, open and closed, of Remo Polselli (SSN [redacted], Abraham & Rose, PLC (EIN [redacted], Jerry R. Abraham, P.C. (EIN [redacted], Beals, Caruana & Company, P.C. (EIN [redacted], for the period January 1, 2017 to the Present;

(4) Copies of all loan agreements relative to the accounts, open and closed, of Remo Polselli (SSN [redacted] for the period January 1, 2017 to the Present;

(5) Copies of 3 checks issued by the taxpayer and each entity for each month for the period January 1, 2017 to the Present.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238, (248) 874-2235

Place and time for appearance at 1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238

Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

on the 6th day of May, 2019 at 08:00 o'clock A m.
Issued under authority of the Internal Revenue Code
this 8th day of April, 2019

Michael Bryant — Signature of issuing officer

Revenue Officer — Title

Michael DesRosiers 2019.04.05 12:56:35 -04'00'
Signature of Approving Officer *(if applicable)*

Group Manager — Title

Original – to be kept by IRS

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238, (248) 874-2235

Place and time for appearance at 1270 Pontiac Road, Suite 100, Pontiac, MI 48340-2238

IRS

Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

on the 6th day of May, 2019 at 08:00 o'clock A m.
Issued under authority of the Internal Revenue Code this 8th day of April, 2019

Michael Bryant
Signature of issuing officer

Revenue Officer
Title

Michael DesRosiers 2019.04.05 12:56:49 -04'00'
Signature of Approving Officer *(if applicable)*

Group Manager
Title

Original – to be kept by IRS

Service of Summons, Notice and Record-keeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time: 9:30 am
April 8, 2019	

How Summons Was Served

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☐ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): _____

3. ☒ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party

recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: P.O. Box 15047, Wilmington, DE 19850-5047

Signature Michael Bryant	Title Revenue Officer

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given

☐ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☐ I gave notice by handing it to the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summonsed.

☒ No notice is required.

Signature Michael Bryant	Title: Revenue Officer

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the notice consents to the examination.

Signature	Title

Form **2039** (Rev. 10-2010)