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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DAVID MICHAEL BISHOP; SLIM VENTURES, LLC, Petitioners - Appellants, v. UNITED STATES OF AMERICA; INTERNAL REVENUE SERVICE; TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his official capacity, Respondents - Appellees.	Nos. 23-4020, 23-4021, 23-4022, 23-4026 & 23-4027 (D.C. Nos. 2:22-CV-00340-DBB, 2:22-CV-00344-DBB, 2:22-CV-00351-DBB, 2:22-CV-00345-DBB & 2:22-CV-00352-DBB) (D. Utah)

ORDER AND JUDGMENT*

(Filed Dec. 4, 2023)

Before **BACHARACH**, **BRISCOE**, and **McHUGH**, Circuit Judges.

In 2021, the Internal Revenue Service (IRS) began investigating petitioners David Michael Bishop and

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Slim Ventures, LLC, for commercially promoting monetized installment sales as a way of delaying the reporting of capital gains on the sale of assets. As part of that investigation, the IRS issued summonses to four banks that it believed might have records associated with petitioners' activities. Petitioners responded by filing petitions to quash the summonses. After allowing the parties to brief the matter, the district court denied the petitions to quash and entered separate judgments in favor of the government in each case. Petitioners now appeal. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm the judgments of the district court.

I

Factual background

a) Monetized installment sales

The Internal Revenue Code (Code) defines an "installment sale" as "a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs." 26 U.S.C. § 453(b)(1). The Code permits the seller in a typical installment sale to report capital gains either in the tax year that title to the property is transferred from the seller to the purchaser or in the tax year that the purchaser actually pays for the property, assuming that those years are different. *Id.* § 453(a), (c), (d).

A monetized installment sale (MIS) attempts to delay the reporting of capital gains for many years. In an MIS, "an intermediary purchases appreciated

property from a seller in exchange for an installment note, which typically provides for payments of interest only, with principal being paid at the end of the term." *Fed. Tax Coordinator*, ¶ T-10164.10 (2d. Nov. 2023). "In these arrangements, the seller gets the lion's share of the proceeds but improperly delays the gain recognition on the appreciated property until the final payment on the installment note, often slated for many years later." *Id.*

In 2021, the IRS published a Chief Counsel Advisory warning that an MIS, for numerous reasons, has no legal effect. Aplt. App. at 50. "[A]n arrangement to swap equal sums of cash in 30 years, solely to avoid taxation, is a quintessential farce" according to the IRS. *Id.* "Since issuing that advisory, the IRS has twice included MIS on its annual list of 'dirty dozen' scams to watch out for." *Id.*; *see Dirty Dozen: Watch Out For Schemes Aimed At High-Income Filers; Charitable Remainder Annuity Trusts, Monetized Installment Sales Carry Risk*, IRS News Release, IR-2023-65, 2023 WL 2727299 (Mar. 31, 2023).

b) Bishop

Bishop received a law degree from George Mason University in 1996, and subsequently worked as a financial planner. In November 2003, the IRS filed a civil action against Bishop in the United States District Court for the District of Utah seeking to enjoin him from promoting the "Employee Leasing and Foreign Deferred Compensation" program. Aple. Br. at

6–7; *see United States v. Bishop*, 2:03-cv-01017-BSJ (D. Utah). At the time it filed the lawsuit, the IRS had recently published guidance warning of an "abusive arrangement" whereby taxpayers, typically those who were self-employed, sought to defer or avoid taxes by forming a foreign corporation which then "leased" their labor back to their business in the United States. Aple. Br. at 7 (citing IRS Notice 2003–22, 2003-18 I.R.B. 851, 2003-1 C.B. 851, 2003 WL 1786830). In December 2003, the district court overseeing the matter entered a permanent injunction barring Bishop from, among other things, promoting any tax plan that Bishop knew or had reason to know was false or fraudulent as to any material matter.[1] Aplt. App. at 51.

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[1] In the final judgment of permanent injunction entered in the case, the district court found that Bishop "ha[d] not admitted the [government's] allegations that [he had] engaged in conduct that [wa]s subject to penalty under" the IRC, but had nevertheless "consented to the entry of judgment for injunctive relief . . . to prevent [him] from (1) engaging in conduct subject to penalty under [the IRC]; and (2) organizing, promoting, and selling [an] 'Employee Leasing and Foreign Deferred Compensation' program." Aple. Br., Addendum at 2. The judgment also, more specifically, prohibited Bishop from "[m]aking false statements that participation in the 'Employee Leasing and Foreign Deferred Compensation' program will eliminate taxes on income in excess of consumption levels or will eliminate or defer capital gains taxes," and from "[e]ncouraging, instructing, advising and assisting others to violate the tax laws, including to evade the payment of taxes legally due, by participating in the 'Employee Leasing and Foreign Deferred Compensation' program." *Id.*

c) Slim Ventures

In 2021, the IRS's Lead Development Center (LDC)[2] began identifying promoters of MIS. One of those promoters was an entity called Slim Ventures, LLC (Slim Ventures). "Promotional materials on Slim Ventures' website promised that '[a]n owner of highly appreciated assets c[ould] sell them and defer 100% of the capital gains tax for up to 30 years while receiving up to 95% of the value in cash.'" *Id.* The website described how MIS worked and stated that the first step was for an interested seller of any capital asset to find a buyer and then contact Slim Ventures. The website stated that Slim Ventures would act as "an intermediate purchaser from the seller" and "re-sell[] the asset to the final buyer." *Id.* But, according to the website, "[t]he deed or other title instrument . . . 'w[ould] pass directly (in a 'directed' transfer) from Slim Ventures LLC's seller to Slim [V]entures LLC's buyer, without going through Slim Ventures.'" *Id.* Thereafter, Slim Ventures would "pay[] the seller with 'an unsecured installment contract' for about 95% of the sale proceeds." *Id.* "The entire principal on this installment contract [would be] due in 30 years." *Id.* As part of the transaction, "a 'third-party lender' [would] give[] the seller a cash loan equal to the principal." *Id.* "The interest that the seller owe[d] the third-party lender

[2] According to the record, the LDC "receives, identifies, and develops leads on individuals and entities that promote or aid in the promotion of abusive tax schemes." Aplt. App. at 65. The LDC is part of the IRS's Office of Promoter Investigations. Aple. Br. at 12.

[would] equal[ ] the interest owed to the seller on Slim Ventures[’] installment contract.” *Id.* at 51–52. This meant that the seller would “delay paying a capital gains tax for 30 years, while [receiving] 95% of the sale proceeds up front.” *Id.* at 52.

d) The IRS’s investigation of Slim Ventures

The IRS determined that Slim Ventures was established by Bishop, and that Bishop served as its managing director. On September 30, 2021, IRS Revenue Agent Tim Bauer[3] interviewed Bishop regarding his promotion of MIS. Bauer explained at the outset of the interview that the IRS was investigating whether Bishop could be liable for tax penalties under 26 U.S.C. § 6700 resulting from the MIS transactions. Bishop told Bauer that he learned about MIS from a financial advisor named Stanley Crow, who had a website promoting MIS.[4] According to Bishop, he studied Crow’s website for six months before deciding to market MIS himself. Bishop stated that he used the information from Crow’s website to write Slim Ventures’ promotional materials.

Bishop characterized MIS as his first “pay day” and he told Bauer that, during the previous three

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[3] This is a pseudonym employed by the United States in this case for privacy and safety reasons.

[4] According to the IRS, Crow “was himself under investigation for promoting abusive tax schemes.” Aple. Br. at 12 (citing *S. Crow Collateral Corp. v. United States*, 782 F. App’x 597, 598 (9th Cir. 2019)).

years, he had averaged three to four sellers per month. Aplt. App. at 52. Bishop said that he used a bank named Summit Crest Financial LLC (Summit Crest) as the third-party lender for all of the MIS. Bishop also told Bauer that a family trust, of which his daughters were beneficiaries, owned Slim Ventures and that he simply managed Slim Ventures. Bauer suspected, however, that Bishop was the de facto owner of Slim Ventures and was using the family trust to hide that fact.

Between June 2021 and February 2022, the IRS formally requested from Bishop documents related to his promotion of MIS or similar tax plans. Bishop responded with some information but, according to the IRS, "left myriad questions unanswered." *Id.* at 53. For example, Bishop refused to respond to the IRS's requests for his accounting records, bank statements, and client list.

Bauer searched Slim Ventures on the IRS's Information Returns Processing (IRP) system. "IRP stores data on payments to third parties." *Id.* In the IRP, Bauer found information indicating that Wells Fargo Bank had paid Slim Ventures $11,227 in interest in 2020. According to the IRS, "[s]uch a large amount of ordinary bank interest indicates that Slim Ventures likely held a substantial sum of money with Wells Fargo in 2020." *Id.* "Further research on internal IRS systems indicated that Key Bank and Zions Bank [(Zions)] m[ight] likewise have information relevant to Bishop's promotion of MIS." *Id.* at 53–54.

e) The IRS's summonses

Based upon this information, Bauer prepared IRS summonses to Wells Fargo, Key Bank, Zions, and Summit Crest. Bauer believed that records from these entities could "help determine whether to assess § 6700 penalties against Bishop for promoting MIS" and would also "be relevant to a contempt inquiry against Bishop for violating the Court's injunction not to promote fraudulent tax schemes." *Id.* at 54.

On May 4, 2022, the IRS issued eight summonses to Zions, Wells Fargo, Key Bank, and Summit Crest seeking records concerning any bank accounts of Bishop or Slim Ventures for the period from January 1, 2018 through the "date of compliance."[5] Aplt. App. at 43; Supp. App. at 50. The summonses issued to Summit Crest sought records relating to monetized installment sales in which either Bishop or Slim Ventures was identified as a seller or borrower for the period from January 1, 2018, through the "date of compliance." Supp. App. at 72. After issuing the summonses, the IRS mailed notices of the summonses to Bishop and Slim Ventures as required by 26 U.S.C. § 7609(a)(1).

On May 6, 2022, Key Bank notified Bauer that it had no documents responsive to the summons issued to it. Zions did the same on May 31, 2022.

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[5] Each entity received two summonses: one relating to Bishop and one relating to Slim Ventures.

II

Procedural history

On May 20 and 23, 2022, Bishop and Slim Ventures each filed separate petitions to quash the summonses in the United States District Court for the District of Utah.[6] Aplt. App. at 1; Supp. App. at 29, 51, 73, 95. The government moved to consolidate all of the cases. Aplt. App. at 45–62. The government also moved to deny as moot the summonses issued to Zions and Key Bank and to compel compliance with the summonses issued to Wells Fargo and Summit Crest.

On December 13, 2022, the district court notified the parties that, in lieu of consolidation, it intended to sua sponte reassign all of the cases to a single district court judge pursuant to its local civil rules of practice. Aple. App. at 6. Although the district court afforded the parties seven days to object to the proposed reassignment, neither party objected. Consequently, on December 22, 2022, all of the cases were reassigned to the same district court judge.

On January 9, 2023, the district court granted the government's motion, denied the petitions to quash, ordered Wells Fargo and Summit Crest to respond to the respective summonses, and entered separate

[6] The eight petitions were assigned the following district court case numbers: 2:22-cv-00340-DBB (Bishop/Zions); 2:22-cv-00341-DBB (Slim Ventures/Key Bank); 2:22-cv-00344-DBB (Bishop/Wells Fargo); 2:22-cv-00345-DBB (Slim Ventures/Summit Crest); 2:22-cv-00347-DBB (Bishop/Key Bank); 2:22-cv-00348-DBB (Slim Ventures/Zion); 2:22-cv-00351-DBB (Slim Ventures/Well Fargo); 2:22-cv-00352-DBB (Bishop/Summit Crest).

judgments in favor of the government in all eight cases. In doing so, the district court concluded, as an initial matter, that the petitions to quash the summonses issued to Key Bank and Zions were moot because both of those "banks informed the IRS that they had no information responsive to the summonses" and the IRS in turn "state[d] that it w[ould] not enforce the summonses." Aplt. App. at 199–200.

As for the remaining summonses, the district court concluded that the IRS made a prima facie case that it properly issued the summonses to Summit Crest and Wells Fargo because the IRS demonstrated that it had not referred the case for criminal prosecution and had issued the summonses in good faith. The district court in turn concluded that Bishop and Slim Ventures failed to meet their burden of refuting the IRS's prima facie showing of good faith. In particular, the district court rejected the argument by Bishop and Slim Ventures "that the IRS [was required to] prove the illegality of MIS transactions before beginning its investigation." *Id.* at 207. The district court also rejected as "pure conjecture" what it characterized as "an expansive First Amendment argument" by Bishop and Slim Ventures "to assert an improper purpose for the summonses." *Id.* at 208–09. The district court denied the requests by Bishop and Slim Ventures for an evidentiary hearing, concluding that they failed to point to any evidence of bad faith on the part of Bauer, as well as their requests for in camera review of the documents sought by the summonses. Finally, the district

court denied as moot the government's motion to consolidate the cases.

Judgment was entered in the cases on January 9, 2023. Bishop and Slim Ventures filed notices of appeal on February 22, 2023.[7]

III

Petitioners argue on appeal that the district court erred in two respects: (1) in determining there was no violation of First Amendment rights and by embracing a view of IRS power that eviscerates the First

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[7] Appeal No. 23-4020 arose out of District Court Case No. 2:22-cv-00340-DBB. Appeal No. 23-4021 arose out of District Court Case No. 2:22-cv-00344-DBB. Appeal No. 23-4022 arose out of District Court Case No. 2:22-cv-00351-DBB. Appeal No. 23-4023 arose out of District Court Case No. 2:22-cv-00341-DBB. Appeal No. 23-4024 arose out of District Court Case No. 2:22-cv-00348-DBB. Appeal No. 23-4025 arose out of District Court Case No. 2:22-cv-00347-DBB. Appeal No. 23-4026 arose out of District Court Case No. 2:22-cv-00345-DBB. Appeal No. 23-4027 arose out of District Court Case No. 2:22-cv-00352-DBB.

Four of these appeals—No. 23-4020, 23-4023, 23-4024, and 23-4025—pertained to the summonses issued to Key Bank and Zions. As noted, the district court agreed with the government that the petitions to quash all of these summonses were moot because Key Bank and Zions responded to the summonses and indicated they had no records responsive thereto. Petitioners dismissed Appeal Nos. 23-4023, 23-4024, and 23-4025 after they were filed. For some unexplained reason, however, petitioners failed to dismiss No. 23-4020, which sought to quash the summonses issued to Zions seeking records pertaining to Bishop. Nevertheless, petitioners do not challenge the district court's conclusion that those summonses were moot. We therefore summarily affirm the judgment of the district court in that case.

Amendment; and (2) by wholesale ignoring controlling precedents, statutes, and facts demonstrating various legal grounds and improper purposes and in turn short-circuiting litigation processes such as an evidentiary hearing.

A

Before addressing these two issues on the merits, we begin by briefly discussing the IRS's authority to issue summonses, the manner by which the IRS can seek to enforce its summonses, and the manner by which taxpayers can challenge IRS summonses.

"Congress has 'authorized and required' the IRS 'to make the inquiries, determinations, and assessments of all taxes' the Internal Revenue Code [(IRC)] imposes." *United States v. Clarke*, 573 U.S. 248, 249–50 (2014) (quoting 26 U.S.C. § 6201(a)). Congress has, in turn, "granted the Service broad latitude to issue summonses '[f]or 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 collecting any such liability.'" *Id.* (quoting 26 U.S.C. § 7602(a)(1)). This includes the "authority to issue summonses to the subject taxpayer and to third parties who may have relevant information." *Standing Akimbo, LLC v. U.S. through Internal Revenue Serv.*, 955 F.3d 1146, 1154 (10th Cir. 2020).

A taxpayer may challenge an IRS summons by filing an action in federal district court to quash the

summons. The IRS, for its part, may file an enforcement action in federal district court if a taxpayer does not comply with a summons. *Clarke*, 573 U.S. at 250.

In either type of proceeding, the IRS must, "[a]s a threshold matter, . . . show that it has not made a referral of the taxpayer's case to the Department of Justice . . . for criminal prosecution." *Standing Akimbo*, 955 F.3d at 1154 (internal quotation marks omitted). After that, a reviewing court is limited to asking "only whether the IRS issued [the] summons in good faith, and must eschew any broader role of overseeing the IRS's determinations to investigate." *Clarke*, 573 U.S. at 254 (internal quotation marks and alterations omitted).

For the IRS to "demonstrate good faith in issuing the summons[es]," the IRS simply must establish "what have become known as the *Powell* factors: 'that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the [IRS's] possession, and that the administrative steps required by the [Internal Revenue] Code have been followed.'" *Id.* (quoting *United States v. Powell*, 379 U.S. 48, 57–58 (1964)). "To make that showing, the IRS usually files an affidavit from the responsible investigating agent." *Id.*

"The taxpayer, however, has an opportunity to challenge that affidavit, and to urge the court to quash the summons 'on any appropriate ground. . . .'" *Id.* (citing *Reisman v. Caplin*, 375 U.S. 440, 449 (1964)).

"Appropriate grounds" are limited to circumstances that amount to an abuse of the court's process. *Powell*, 379 U.S. at 58; *see Reisman*, 375 U.S. at 449. "Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *Powell*, 379 U.S. at 58. "The burden of showing an abuse of the court's process is on the taxpayer, and it is not met," for example, "by a mere showing . . . that the statute of limitations for ordinary deficiencies has run or that the records in question have already been once examined." *Id.*

B

We now turn to the two issues raised by petitioners. For the reasons outlined below, we conclude that both issues lack merit.

1) First Amendment challenge and related issues

In their first issue on appeal, petitioners assert that the district court erred by determining that there was no violation of their First Amendment rights, and by embracing a view of IRS power that eviscerates the First Amendment.

Petitioners argue in support that the summonses at issue were issued for an improper purpose, i.e., because "[t]he IRS and the Biden Administration

strongly disliked Petitioners' views about the legality of MIS and the depiction of the IRS and Administration as allegedly inconsistent and preferential in affording MIS to elite, wealthy, well-connected well-lobbied, influential taxpayers, compared to others of lesser wealth and influence." Aplt. Br. at 32-33. In other words, petitioners assert that they were "targeted" based "solely on the (illegal) criteria of [their] speech content on the internet; the IRS did not utilize speech-neutral means or criteria." *Id.* at 33 (emphasis omitted).

Relatedly, petitioners argue that

> [i]t is undisputed that A) neither Petitioner has any existing delinquent tax balance . . . ; B) neither Bishop personally nor Slim Ventures has ever been found to have actually done anything unlawful; C) the IRS has no evidence either Petitioner has ever actually engaged in or induced any 'improper' financial or tax transaction at any time . . . ; D) even if, arguendo, the IRS could show Petitioners had actually committed any MIS which the IRS now disfavors, the IRS cannot show MIS is actually illegal at all, and the IRS admitted in its own filings 'no court has yet considered whether MIS are fraudulent', and scholarly tax articles 'tout their supposed efficacy'; E) the IRS has allowed MIS for various other (well-resourced) taxpayers; F) the IRS has already utterly failed to garner even a single relevant document in connection with 4 of 8 summons used for its fishing expedition; and G) Summit, one of the targets with the two

> remaining summonses, has already told the District Court it has no relevant records to produce.

Id. at 34–36 (emphasis and footnotes omitted).

In order to address petitioners' arguments, it is necessary to place them into the proper procedural context. As we have noted, petitioners initiated these proceedings by moving to quash the summonses that were issued by the IRS. The government opposed the petitioners' motions to quash by moving to enforce the summonses. In support, the government submitted a declaration from IRS Revenue Agent Bauer that stated that "[n]o 'Justice Department referral' has been in effect with respect to Bishop since the summonses were served," and in turn satisfied all of the *Powell* factors by stating that: (1) he was investigating the petitioners' activities to determine whether Bishop was subject to penalties under 26 U.S.C. § 6700 for promoting abusive tax schemes and whether he had violated the permanent injunction that was entered against him in *United States v. Bishop*, 2:03-cv-001017 (D. Utah); (2) the records sought by the summonses were relevant to his investigation of petitioners; (3) the information sought in the summonses was not already within the IRS's possession because Bishop had previously refused to provide any documents to Bauer in response to his request for his accounting records; and (4) he had informed Bishop about the investigation and had also sent IRS Forms 2039 to Bishop and Slim Ventures, via certified mail, notifying them of the summonses served on the four banks. Aplt. App. at 68. The district court

concluded, based upon Bauer's declaration, that the government made a prima facie case that the IRS properly issued the summonses to Summit Crest and Wells Fargo.

The district court in turn concluded that petitioners failed to meet their burden of refuting the government's prima facie showing of good faith. In reaching this conclusion, the district court noted, in relevant part, that petitioners were claiming "that the IRS began its investigation to chill their expressive view that MIS transactions are legal." Aplt. App. at 206. The district court further noted that petitioners asserted in support of this claim "that customers and business partners [had been] frightened away by the IRS investigation." *Id.* at 206–07. The district court concluded, however, that "evidence of an alleged adverse effect from an investigation is not evidence of improper intent" and that petitioners' "claim that unnamed persons ha[d] been scared off [wa]s both conclusory and not material." *Id.* at 207. The district court also noted and rejected petitioners' argument "that the IRS ha[d] failed to connect the dots 'between any purportedly forbidden scheme(s) and any specific language in any statute or case precedent.' " *Id.* Specifically, the district court concluded that petitioners "offer[ed] [no] support for the proposition that the IRS must prove the illegality of MIS transactions before beginning its investigation" and that, in fact, "courts have rejected the notion that the IRS must show probable cause to open investigations." *Id.* at 207–08. "In short," the district court concluded that "Petitioners' arguments amount[ed] to

preemptive defenses as to their ultimate liability and d[id] not rebut the government's showing of good faith." *Id.* at 208.

We conclude, petitioners' appellate arguments notwithstanding, that the record on appeal firmly supports the district court's conclusions. To begin with, there is no evidence that supports petitioners' claim that the IRS's investigation was motivated by an intent to chill their First Amendment rights or to "arbitrarily target Bishop for his scholarly legal musings." Aplt. Br. at 67. To be sure, the record indicates that the IRS first became aware of Slim Ventures because of information contained on Slim Ventures' web site promoting MIS. But, importantly, it was not the petitioners' mere expression of thought that prompted the IRS to issue the challenged summonses. Rather, the record indicates that Bauer first interviewed Bishop and learned from him that he and Slim Ventures had been actively promoting MIS for profit for a period of approximately three years, averaging three to four transactions per month. Bauer in turn learned, after researching Slim Ventures on the IRS's IRP system, that Wells Fargo had paid Slim Ventures a substantial amount of interest in 2020, suggesting that Slim Ventures held a substantial amount of money with Wells Fargo during 2020. All of that information, combined with the IRS's concern that some MIS were being misused to illegally avoid taxes, is what prompted the investigation and, in turn, the issuance of the summonses. There is no evidence in the record suggesting that Bauer's motivation was to suppress petitioners'

speech. To the contrary, the evidence in the record indicates only that Bauer acted to obtain more information in order to determine whether petitioners were actively engaging in a scheme to assist individuals and businesses to illegally avoid paying federal taxes.

Although petitioners assert that they have no delinquent tax balances, that is irrelevant to the question of whether the investigation was implemented in good faith. Likewise, the fact that, as petitioners argue, some MIS are considered permissible under the IRC does not mean that all variations of such sales are permissible. And, indeed, the IRS submitted its own evidence suggesting that some MIS are improper under the IRC. In any event, it is not within the scope of our authority, given the limited nature of these proceedings, to determine at this point the legality of any MIS transactions that Bishop and Slim Ventures may have been involved in or may be promoting.

Petitioners complain that the district court did not "allow a conference or hearing on any topic or wait to give Petitioners any opportunity to finish preparing and submitting a motion for leave to file a surreply or supplemental brief or anything else," even though "the case involved eight petitions . . . , two petitioners, four different targets of the subpoenas situated differently, and a complicated collection of issues arcane enough that [the district court] allocated [itself] about 33 pages to discuss the situation in [its] own written rulings." Aplt. Br. at 39–40. Notably, however, petitioners do not explain what they would have said in a surreply or supplemental brief, nor do they discuss what

evidence, if any, they would have presented at "a conference or hearing" on their motion to quash. *Id.* at 39. Thus, they have failed to establish that the district court erred in denying their motion to quash based upon the written record that was developed by the parties.

Petitioners also assert that they "asked [the district court] to analyze and rule upon and [sic] entire set of statutes and cases [they] had cited from the onset (especially post-*Powell* legal authorities enhancing and expanding taxpayer protections)." *Id.* at 43. They in turn assert that the district court "committed legal error and an abuse of discretion by refusing to even mention (let alone analyze or apply) the statutes and cases at any time throughout the case." *Id.* at 44 (emphasis omitted). Notably, petitioners essentially repeat these arguments in their second issue on appeal. As we shall discuss below, none of the statutes and cases cited by petitioners call into question the district court's decision.

Petitioners make a number of other arguments that have no basis in fact. For example, petitioners assert that the IRS's position is "that [its] power has no limiting principle whatsoever and the First Amendment, *Powell* test, taxpayer protections statutes, federal courts, *Clarke* evidentiary hearings, and other protective features of our legal system are *de facto* vestigial and illusory."[8] Aplt. Br. at 63–64. Nothing in the

[8] Petitioners similarly assert that "[t]he IRS urges it is a law unto itself, with no limitation other than its own whim" and that

record supports this assertion and we summarily reject it, along with the other, similar arguments made by petitioners.

Petitioners also assert that the IRS acted in this case "without any indication either Petitioner had actually committed any tax violation." *Id.* at 65. That is incorrect. As we have noted, Bauer's interview with Bishop led him to believe that Bishop and Slim Ventures might be engaged in improper activity involving MIS. In any event, the very purpose of an IRS investigation is to determine whether a tax violation has occurred. Therefore, to suggest that the IRS must have proof that a tax violation occurred *before* it can conduct an investigation is simply wrong.

Lastly, petitioners assert that "[t]he IRS invented a precept of MIS tax law which hasn't been declared by any statute or court decision, and the IRS hasn't consistently followed." *Id.* Whether there is any validity to this assertion is frankly irrelevant to this limited enforcement action. As the district court essentially noted, petitioners can assert these arguments if and when the IRS charges them with a tax violation related to their promotion of MIS.

In sum, we conclude there is no merit to petitioners' assertion that the IRS's investigation, and in turn the challenged summonses, were motivated by an

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"[t]he IRS says it can selectively and deliberately target anyone for expensive investigations based solely on disfavored speech." Aplt. Br. at 64. Nothing in the record supports these assertions.

intent to infringe upon petitioners' First Amendment rights.

2) Did the district court procedurally err and/or ignore controlling precedents and statutes?

In their second issue on appeal, petitioners argue that the district court "erred by wholesale ignoring controlling precedents, statutes, and facts demonstrating various legal grounds and improper purposes" and also "by short-circuiting litigation processes such as the *Clarke* evidentiary hearing requirement." Aplt. Br. at 67 (capitalization omitted). Petitioners also assert a number of related sub-issues, each of which will be addressed below.

a) Post-Powell taxpayer protection statutes and case law

Petitioners argue that "[t]he IRS and the District Court refuse[d] to even mention post-*Powell* statutes enacted to protect taxpayers, such as 26 U.S.C. § 7605(b)," which states in relevant part that "[n]o taxpayer shall be subjected to unnecessary examination or investigations," "26 U.S.C. § 7602(e)," which petitioners assert "curtail[s] IRS use of 'financial status or economic reality examination techniques'" "and various statutes and case law expressly allowing MIS use." Aplt. Br. at 68–69 (emphasis omitted). Petitioners further argue that "[n]either the IRS nor the District Court offered a cogent reconciling theory about why statutory plain language meaning could be ignored, let

alone reconciling Congressional intent, what practical role such statutes might have inside or outside the *Powell* test, or how such statutes can be accorded any interpretation to afford meaningful protection for taxpayers if the IRS position prevails." *Id.* at 69.

Notably, petitioners fail to cite to a single case holding that the standard of review outlined in *Powell* for challenges to IRS summonses has been altered by any of the statutes that they now cite. And for good reason. Nothing in the specific statutes cited by petitioners seriously calls into question the standards outlined in *Powell*. For example, 26 U.S.C. § 7605(b), which is cited by petitioners, states that "[n]o taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary." Although petitioners describe this as a "post-*Powell* statute," this statutory language was in existence at the time that *Powell* was issued. *See United States v. Carey*, 218 F. Supp. 298, 299 (D. Del. 1963) (discussing the language of § 7605(b)).

Petitioners also point to 26 U.S.C. § 7602(e) as a "post-*Powell*" statute that could impact the case. Section 7602(e) states that "[t]he 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." 26 U.S.C. § 7602(e). The phrase "financial status or economic reality examination techniques" is not defined in the statute, but it appears to refer to an "indirect method" of proof in a tax case that relies on reconstructing a defendant's finances by way of circumstantial evidence such as net worth analysis, bank deposits, and cash expenditures in excess of reported income. *See Chapin v. Internal Revenue Agent*, 2016 WL 383135 (D. Idaho Jan. 8, 2016); *United States v. Hart*, 70 F.3d 854, 860 n.8 (6th Cir. 1995) (discussing the indirect method of proof). Petitioners have made no attempt to explain the relevance of this statute to their case, and it is not readily apparent how the statute is relevant to a challenge to the validity of the summonses at issue. Most importantly, nothing in the statute calls into the question the standards outlined in *Powell* that apply in an action to quash or enforce an IRS summons.

Finally, petitioners refer to "various statutes and case law expressly allowing MIS use." Aplt. Br. at 68–69 (emphasis omitted). Notably, petitioners do not directly cite to any of these purported statutes or cases, and instead cite to three locations in the record that supposedly contain references to these statutes and case law. A review of the cited record pages, however, fails to produce any such "statutes and case law."

We therefore conclude that the district court did not ignore any relevant post-*Powell* statutes or cases.

b) Non-Powell sources for quashing a summons

Petitioners next argue that the district court "and the IRS have repeatedly pretended that *Powell* is the only avenue or test for quashing IRS summonses, when in reality the *Powell* factor test per se is only *one non-exclusive avenue* for quashing a summons which doesn't supplant other independent legal avenues or doctrines for doing so." *Id.* at 69 (emphasis in original). Petitioners suggest that other such avenues include "the First Amendment, various taxpayer protection statutes, and an entire line of post-*Powell* precedents with other additional parallel, non-supplanted summons tests involving ambiguity, fishing expeditions, disproportionality, relevance, etc." *Id.* at 70.

The First Amendment cases cited by petitioners, however, are irrelevant for two reasons. First, as we have already concluded, petitioners have failed to establish that the IRS's investigation of them was based solely on protected speech or was intended to infringe on their First Amendment rights. Second, none of the cases cited by petitioners deal with IRS summonses, and thus are all clearly distinguishable. *See id.* at 25 n.14 (citing various First Amendment cases).

As for the so-called "taxpayer protection statutes," petitioners point only to 26 U.S.C. §§ 7602(e) and 7605(b). As discussed above, both of these statutes are irrelevant to the question of whether the summonses in this case should be enforced.

According to petitioners, the "entire line of post-*Powell* precedents" that they refer to in their opening brief holds that (a) "[t]he IRS must make a showing of relevance tying purposes, theories and requested records in a valid, connect-the-dot fashion for the burden to shift to the Petitioner and for a Summons to be valid," (b) "[t]he IRS isn't entitled to '*carte blanche* discovery,' " (c) "a summons will not be enforced if 'overbroad and disproportionate' to the investigation, or a mere 'fishing expedition' through a taxpayer's records that 'might' uncover something about someone." Aplt. Br. at 27–28 n.19. Even assuming this to be true, it is clear from the record that the IRS has established that the challenged summonses are relevant, not overly broad, and not intended as a "fishing expedition" into petitioners' records.

That leaves only petitioners' reference to "other additional parallel, non-supplanted summons tests involving ambiguity, fishing expeditions, disproportionality, relevance, etc." *Id.* at 70. Notably, petitioners do not actually cite to or otherwise describe any of these purported "tests."

Thus, petitioners have failed to establish that the district court ignored relevant precedent in denying their motion to quash the summonses.

c) Did the district court ignore controlling case law?

Petitioners next assert that the district court "ignored entire lines of controlling cases . . . requiring the

summonses be quashed under the First Amendment and also under the "impermissible purpose" factor for the core *Powell/Clarke* test." *Id.* at 71 (capitalization omitted).

In support, petitioners first assert "that the District Court wholly ignored *Bantam Books, Inc. v. Sullivan*, [372 U.S. 58 (1963)] and numerous other of Petitioners' cases ruling Government investigations and summons cannot be used to chill or retaliate against disfavored First Amendment speech." *Id.* at 71–72. Most of the cases cited by petitioners, however, have nothing to do with the IRS or summonses, and thus they have little, if any, relevance to this case.[9] Petitioners do cite to a 1985 Tenth Circuit case, *United States v. Church of World Peace*, 775 F.2d 265 (10th Cir. 1985), in which this court set aside a district court's order enforcing an IRS summons for "all the books, records and accounts of the Church of World Peace," including "a list of members and names of persons for whom marriage ceremonies were performed." *Id.* at 265. That case is factually distinguishable, however, because this court was concerned in that case about the IRS's request for a membership list. No such request is at issue in the case at hand.

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[9] In *Bantam Books*, for example, the Supreme Court held that the acts and practices of the Rhode Island Commission to Encourage Morality in Youth, in declaring certain publications objectionable for sale, distribution or display to youths under 18 years of age, were unconstitutional. 372 U.S. at 71. The case did not involve either the IRS or any type of summons.

Petitioners also cite to an unpublished decision from the United States District Court for the Southern District of Ohio, *Lightborne Publ'g, Inc. v. Citizens for Cmty. Values*, No. 1:08-CV-00464, 2009 WL 778241 (S.D. Ohio March 20, 2009), that they suggest involved the IRS's "use[ ] [of] threats and investigation to suppress speech." Aplt. Br. at 72 n.112. The IRS, however, had no involvement in that case. Thus, it is inapposite.

Ultimately, petitioners have, as discussed above, failed to provide any evidence that would have allowed the district court to reasonably find that either the IRS investigation or the challenged summonses were intended to chill petitioners' First Amendment rights or to retaliate against petitioners for "disfavored First Amendment speech." To the contrary, the record establishes that the issuance of the summonses was prompted, in large part, by Bishop's own admission that Slim Ventures had engaged in numerous, and what appeared to Bauer to be questionable, MIS transactions for profit over a period of years.

d) Petitioners' concluding arguments

Finally, petitioners argue that "[t]he district court erroneously ignored entire lines of cases . . . requiring the summonses be quashed under principles asserted by petitioners related to 'relevance,' 'realistic expectation rather than an idle hope,' prohibition against 'overbroad' and 'disproportionate' 'rambling expeditions' and 'fishing expeditions,' as independent theories and also as incorporated under the 'impermissible

purpose' and 'relevance' factors for the core *Powell/Clarke* test." Aplt. Br. at 75 (capitalization omitted and placement of commas corrected). We conclude that this argument is merely a rehash of all of the previous arguments made by petitioners elsewhere in their opening brief. We therefore summarily reject it.

IV

The judgments of the district court are AFFIRMED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

DAVID MICHAEL BISHOP and SLIM VENTURES, LLC, Petitioners, v. UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity, Respondents.	**ORDER TRANSFERRING CASES SUA SPONTE TO DISTRICT JUDGE DAVID BARLOW** Case No. 2:22-cv-00340-DBB Case No. 2:22-cv-00341-DAK-DBP Case No. 2:22-cv-00344-TS-DBP Case No. 2:22-cv-00348-RJS-JCB Case No. 2:22-cv-00352-JNP-DAO District Judge David Barlow (Filed Dec. 22, 2022)

On August 26, 2022, Respondents United States, Internal Revenue Service ("IRS"), and Agent Timothy Bauer (collectively "Respondents") moved to consolidate seven cases under the instant case number pursuant to Federal Rule of Civil Procedure 42(a) and District of Utah Local Rule of Civil Practice 42-1.[1] On September 28, 2022, Petitioners David Michael Bishop and Slim Ventures LLC (collectively "Petitioners")

[1] Mot. to Consolidate & Summarily Deny Pets. to Quash IRS Summonses & Enforce the Summonses, ECF No. 13, filed Aug. 26, 2022.

responded that they would not object to consolidation as long as the court assigned certain judges.[2]

Upon review of Respondents' motion, the court finds that transfer of the related cases would be a better vehicle than consolidation.[3] As such, the court gave notice of its intent to transfer sua sponte four cases to the undersigned on December 13, 2022.[4] The deadline for objections was December 20, 2022. No party filed an objection.[5]

The transfer of cases to a single district judge will meet the same judicial economy and efficiency purposes as consolidation while avoiding the downsides of the consolidation process.[6] Additionally, the factors set forth in District of Utah Local Civil Rule of Practice 83-2(g) support transfer. The cases are related. They arise from the same IRS investigation and involve the same parties. They address the same legal questions. And transfer will help avoid inconsistent rulings and eliminate duplication of labor. As the district judge

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[2] Pets. Resp. to IRS Mot. 2–3, ECF No. 16, filed Sept. 28, 2022. Petitioners requested the assignment of District Judge Dale A. Kimball and Chief Magistrate Judge Dustin B. Pead to the consolidated cases. *Id.*

[3] *See Kane County, Utah (1) v. United States*, No. 2:08-cv-00315, 2021 WL 4502814, at *3 (D. Utah Oct. 1, 2021).

[4] ECF No. 23. The court may transfer sua sponte related cases. DUCivR 83-2(g).

[5] *See* Docket.

[6] *See*, *e.g.*, *XPO Logistics, Inc. v. Peterson*, No. 2:15-cv-00703, 2022 WL 1469397, at *2 (D. Utah May 10, 2022) (discussing how consolidation may lead to "delay, confusion, and prejudice").

assigned to the lower numbered case, the undersigned is the appropriate judge to receive the transferred cases.[7]

ORDER

Accordingly, the following cases are reassigned and transferred sua sponte to District Judge David Barlow for all future proceedings:

- *Slim Ventures v. United States et al.*, No. 2:22-cv-00341-DAK-DBP (D. Utah);
- *Bishop v. United States et al.*, No. 2:22-cv-00344-TS-DBP (D. Utah);
- *Slim Ventures v. United States et al.*, No. 2:22-cv-00348-RJS-JCB (D. Utah); and
- *Bishop v. United States et al.*, No. 2:22-cv-00352-JNP-DAO (D. Utah).

IT IS FURTHER ORDERED that case numbers 2:22-cv-00348 and 2:22-cv-00352 are hereby referred to Chief Magistrate Judge Dustin B. Pead under 28 U.S.C. § 636(b)(1)(A). Judge Pead shall hear and determine all non-dispositive pretrial matters.

Signed December 22, 2022.

BY THE COURT

/s/ David Barlow
David Barlow
United States District Judge

[7] *See* DUCivR 83-2(g).

[THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Case No. 2:22-cv-00340-DBB
Case No. 2:22-cv-00341-DAK-DBP
Case No. 2:22-cv-00344-TS-DBP
Case No. 2:22-cv-00348-RJS-JCB
Case No. 2:22-cv-00352-JNP-DAO

DAVID MICHAEL BISHOP and SLIM VENTURES, LLC,
Petitioners,
v.
UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,
Respondents.]

01/03/2023	29	ORDER REFERRING CASE to Chief Magistrate Judge Dustin B. Pead under 28:636 (b)(1)(A). Magistrate Judge to hear and determine all non-dispositive pretrial matters. Signed by Judge David Barlow on 1/3/2023. (cfm)

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

DAVID MICHAEL BISHOP and SLIM VENTURES, LLC, Petitioners, v. UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity, Respondents.	**MEMORANDUM DECISION AND ORDER GRANTING RESPONDENTS' MOTION TO (1) SUMMARILY DENY PETITIONS TO QUASH IRS SUMMONSES AND DENYING SUMMONSES AND (2) ENFORCE THE PETITIONERS' MOTIONS TO QUASH** Case No. 2:22-cv-00340-DBB-DBP Case No. 2:22-cv-00341-DBB-DBP Case No. 2:22-cv-00344-DBB-DBP Case No. 2:22-cv-00345-DBB-DBP Case No. 2:22-cv-00347-DBB-DBP Case No. 2:22-cv-00348-DBB-DBP Case No. 2:22-cv-00351-DBB-DBP Case No. 2:22-cv-00352-DBB-DBP District Judge David Barlow (Filed Jan. 9, 2023)

There are two matters before the court. Petitioners David Michael Bishop ("Mr. Bishop") and Slim Ventures, LLC ("Slim Ventures") (collectively "Petitioners") have filed eight Petitions to Quash IRS Third Party Summons regarding four different financial institutions.[1] Also before the court is Respondents United States, Internal Revenue Service ("IRS"), and Agent Timothy Bauer's ("Agent Bauer") (collectively "Respondents") Motion to (1) Consolidate and Summarily Deny Petitions to Quash IRS Summonses and (2) Enforce the Summonses.[2] Having considered the briefing and relevant law, the court finds that oral argument is unnecessary.[3] For the following reasons, the

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[1] Pet. to Quash Summons ("Pet. to Quash"), ECF No. 2, filed May 20, 2022, *Bishop v. United States*, No. 2:22-cv-00340 (D. Utah 2022). In seven related cases, Petitioners filed nearly identical motions to quash IRS summonses in the District of Utah: *Slim Ventures v. United States*, No. 2:22-cv-00341; *Bishop v. United States*, No. 2:22-cv-00344; *Slim Ventures v. United States*, No. 2:22-cv-00345; *Bishop v. United States*, No. 2:22-cv-00347; *Slim Ventures v. United States*, No. 2:22-cv-00348; *Slim Ventures v. United States*, No. 2:22-cv-00351; and *Bishop v. United States*, No. 2:22-cv-00352. As a result, the court references the petition to quash filed by Mr. Bishop regarding Zions Bancorporation NA in this Memorandum Decision & Order.

[2] Mot. to (1) Consolidate & Summarily Deny Pets. to Quash IRS Summonses & (2) Enforce Summonses ("Mot. to Deny & Enforce"), ECF No. 13, filed Aug. 26, 2022. On December 22, 2022, the court transferred sua sponte the four related cases to the undersigned. ECF No. 27. Accordingly, Respondents' request for consolidation is moot and the court terminates the portion of Respondents' motion seeking consolidation.

[3] *See* DUCivR 7-1(g).

court grants Respondents' motion and denies the eight petitions.

BACKGROUND

Mr. Bishop is the managing director of Slim Ventures,[4] which describes itself as a "dealer in capital assets" that promotes Monetized Installment Sale ("MIS") transactions.[5] A typical installment sale transaction occurs when a seller conveys property to a buyer and transfers the associated title before receiving payment.[6] For example, if title transfer takes place in December but the buyer pays the seller in January, the tax code allows the seller to defer capital gains tax until the next calendar year.[7]

A MIS transaction is different. This type of transaction occurs when a party simultaneously sells an appreciated asset[8] and receives payment while deferring capital gains tax for an extended period of time.[9] As advertised by Slim Ventures, "[a]n owner of highly appreciated assets can sell them and defer 100% of the

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[4] Decl. of David Michael Bishop ("Bishop Decl.") ¶ 4, ECF No. 2-3, filed May 20, 2022; Decl. of Revenue Agent Tim Bauer ("Bauer Decl.") ¶ 5, ECF No. 13-1, filed Aug. 26, 2022.

[5] Exec. Summ. Monetized Installment Sale Transactions ("Exec. Summ.") 1, 4, Ex. 1, ECF No. 13-1, filed Aug. 26, 2022.

[6] 26 U.S.C. § 453(b)(1).

[7] *Id.* § 453(c).

[8] Slim Ventures describes "appreciated assets" as including "real estate, mineral rights, water rights, privately held stock, partnership interests, etc." Exec. Summ. 1.

[9] *See id.*

capital gains tax for up to 30 years while receiving up to 95% of the value in cash."[10] Slim Ventures describes the process as follows: (1) Slim Ventures offers to buy the seller's assets in exchange for an installment note; (2) the seller is offered a "limited-recourse 'monetization loan' from a third-party lender introduced by Slim Ventures"; (3) Slim Ventures resells the asset to the buyer, and the closing on the MIS transaction and the resale closing happens simultaneously; (4) assuming that the seller accepted the loan, the seller would receive the proceeds immediately after closing on the asset's sale.[11] Slim Ventures explains that the strategy allows investors to "re-invest at 95% on a tax deferred basis instead of at 75% by paying the tax" so that investors can "pay with future (inflation eroded) dollars."[12]

The IRS considers MIS transactions as an example of an "abusive tax scheme[]."[13] Around 2021, the IRS identified Slim Ventures and its manager Mr. Bishop as promoters of MIS transactions.[14] Consequently, the IRS began an investigation into Mr. Bishop for possible violations of 26 U.S.C. § 6700 for promoting illegal tax schemes and violations of a permanent injunction.[15] As part of the investigation, the

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 6.

[13] *See* Bauer Decl. ¶ 4.

[14] *Id.* ¶ 2.

[15] *Id.* ¶ 6; Final J. of Permanent Inj., ECF No. 6, filed Dec. 5, 2003, *United States v. Bishop*, No. 2:03-cv-01017 (D. Utah, filed

IRS sent Mr. Bishop information and document requests.[16] The IRS avers that he cooperated to some extent, but claims that he did not produce "accounting records, bank statements, [or a] client list."[17] After an interview and further investigation, Agent Bauer found four financial institutions purportedly connected to Slim Ventures and Mr. Bishop: Key Bank, Summit Crest Financial, LLC ("Summit Crest"), Wells Fargo Bank, N.A. ("Wells Fargo"), and Zions Bancorporation NA ("Zions Bank").

On May 7, 2022, the IRS issued eight summons to the four financial institutions under the authority of 26 U.S.C. § 7602(a).[18] Each summons directed the specified bank to produce records relevant to Mr. Bishop's or Slim Venture's income.[19] The IRS notified Petitioners of the summonses by certified mail.[20] Key Bank and Zions Bank responded on May 6 and May 31, respectively.[21] Summit Crest and Wells Fargo have not

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Nov 20, 2003). The injunction ordered Mr. Bishop to stop engaging in any activity that would subject him to penalty under § 6700.

[16] Bauer Decl. ¶ 8.

[17] *Id.* ¶ 9; Bishop Decl. ¶ 15.

[18] *E.g.*, Summons, ECF No. 2-6, filed May 20, 2022. The summons in the seven other cases are identical except for the bank information and the name of the IRS' target (Mr. Bishop or Slim Ventures).

[19] Bauer Decl. ¶ 20.

[20] *Id.* ¶ 19.

[21] *Id.* ¶¶ 23, 24.

responded.[22] And the IRS has not referred the cases for grand jury investigation or criminal prosecution.[23]

On May 20 and May 23, 2022, Petitioners filed timely petitions to quash the IRS third-party summonses.[24] All eight petitions are virtually identical.[25] On August 26, 2022, Respondents filed a motion to consolidate and summarily deny the petitions, and a motion to enforce the summonses against Summit Crest and Wells Fargo.[26] Petitioners filed a response on September 28, 2022.[27] Respondents replied on October 24, 2022.[28]

On December 13, 2022, the court gave notice that it would transfer the related cases to the undersigned and gave the parties one week to object.[29] No party

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[22] *Id.* ¶ 25. While Petitioners claim that Summit Crest has indicated that it has "no information responsive to the two IRS summons served upon it[,]" Pets. Resp. to IRS Mot. ("Resp.") 3 n.2, ECF No. 16, filed Sept. 28, 2022, Respondents assert that the IRS has yet not "receive[d] that same representation in a formal response[,]" Reply to Opp'n ("Reply") 2 n.11, ECF No. 19, filed Oct. 24, 2022.

[23] Bauer Decl. ¶ 26.

[24] *E.g.*, Mot. to Quash. A petitioner has twenty days to move to quash an IRS summons. 26 U.S.C. § 7609(b)(2)(A).

[25] The only differences are the parties' information and the banks' locations. *See*, *e.g.*, Mot. to Quash ¶¶ 1, 4.

[26] Mot. to Deny & Enforce.

[27] *See* Resp.

[28] *See* Reply.

[29] ECF No. 23.

objected. As such, the court transferred the related cases on December 21, 2022.[30]

Petitioners filed a Notice of Additional Cases on December 14, 2022 ("Notice").[31] Respondents then filed a Motion to Strike Petitioners' Surreply on December 16, 2022.[32] Petitioners filed an opposition on December 20, 2022,[33] and Respondents replied on December 27, 2022.[34] Pursuant to local rules, a party may file a notice of supplemental authority when "pertinent and significant authority comes to the attention of a party before the court has entered a decision on a motion."[35] Asking the court to take notice of ten cases, Petitioners claim that Respondents "filed a reply with new caselaw and arguments."[36] But Petitioners "ignore[] the fact that [Respondents' arguments] rebut[] matters [Petitioners] raised in [their] opposition memorandum."[37] Further, Petitioners could have cited the cases in their opposition brief since all ten cases were published before the close of briefing.[38] Given this fact, Petitioners

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[30] ECF No. 27.

[31] ECF No. 24.

[32] ECF No. 25.

[33] ECF No. 26.

[34] ECF No. 28.

[35] DUCivR 7-1(c).

[36] ECF No. 24.

[37] *Simmler v. Reyes*, No. 2:19-cv-01009, 2021 WL 535501, at *1 (D. Utah Feb. 12, 2021), *appeal dismissed*, No. 21-4062, 2021 WL 8323748 (10th Cir. June 2, 2021).

[38] The cases were published between 1970 and 2021. *See* ECF No. 24.

fail to explain why the cases only came to their attention after Respondents' reply brief. Additionally, the Notice provides only generic case summaries; it does not explain adequately why the cases are "pertinent and significant authority." Thus, the court treats the Notice as a surreply. Because Petitioners have not sought leave to file a surreply,[39] the court grants Respondents' motion to strike.[40]

STANDARD

The IRS has "broad latitude to issue summonses '[f]or 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 collecting any such liability.'"[41] "Indeed, the very language of § 7602 reflects . . . a congressional policy choice *in favor of disclosure* of all information relevant to a legitimate IRS inquiry."[42] "[T]he IRS's burden . . . is 'slight,' because statutes like 26 U.S.C. § 7602(a) 'must be read broadly to ensure

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[39] *See* DUCivR 7-1(a)(8).

[40] ECF No. 25.

[41] *Standing Akimbo, LLC v. United States Through Internal Revenue Serv.*, 955 F.3d 1146, 1154 (10th Cir. 2020), *cert. denied sub nom. Standing Akimbo, LLC v. United States*, 141 S. Ct. 2236 (2021), *reh'g denied*, 142 S. Ct. 919 (2021) (quoting *United States v. Clarke*, 573 U.S. 248, 250 (2014)).

[42] *United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984).

that the enforcement powers of the IRS are not unduly restricted.' "[43]

DISCUSSION

Petitioners seek to quash IRS summonses sent to Key Bank, Summit Crest, Wells Fargo, and Zions Bank. The court first addresses the summonses against Key Bank and Zions Bank.

I. The Petitions to Quash IRS Summonses as to Key Bank and Zions Bank Are Moot.

Respondents contend that there is no live controversy as to Key Bank and Zions Bank for two reasons. First, the banks informed the IRS that they had no information responsive to the summonses.[44] And second, the IRS confirms that "the[se] summonses will never be enforced or result in any records production."[45]

In response, Petitioners argue that there is a live controversy because the IRS purportedly "indicated to Petitioners' counsel that the IRS reserves the right to reissue new summons toward Key Bank and Zions Bank to target the same two Petitioners in connection with the IRS' present investigation and future

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[43] *Speidell v. United States Through Internal Revenue Serv.*, 978 F.3d 731, 738 (10th Cir. 2020), *cert. denied sub nom. Speidell v. United States*, 141 S. Ct. 2800 (2021), *reh'g denied*, 142 S. Ct. 921 (2021) (quoting *Standing Akimbo*, 955 F.3d at 1155).

[44] Bauer Decl. ¶¶ 23–24.

[45] Mot. to Deny & Enforce 12.

investigation(s)."[46] On that basis, Petitioners argue that the "voluntary cessation" and "capable of repetition, yet evading review" mootness exceptions apply.[47]

Petitioners' arguments are unpersuasive. Both banks have responded to the IRS summonses and stated that they have no relevant information. The IRS accepted their responses and declared its intention not to seek enforcement of the summonses. In essence, Petitioners ask the court to preemptively enjoin the IRS from issuing future summonses.[48] The court declines to do so. The banks have responded to the summonses, indicated that they have no relevant information, and the IRS states that it will not enforce the summonses. Even if the IRS were to leave open the possibility of future summonses, there is no live controversy as to Key Bank or Zions Bank at this time.[49]

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[46] Resp. 5–6.

[47] *Id.* at 6.

[48] *See id.* ("[T]he IRS has not, and will not, *make any commitment, representation, or stipulation to this Court that the IRS will not assert further summons against the same two banks in reference to the same two Petitioners, notwithstanding an express request from the Petitioners to do so.*").

[49] *Cf. Wilson v. United States*, No. 841247, 1984 WL 15653, at *1 (10th Cir. Aug. 22, 1984) (unpublished) (citing *United States v. Trails End Motel, Inc.*, 657 F. 2d 1169 (10th Cir. 1981)) ("[C]ompliance with the summonses . . . renders all arguments concerning enforcement moot."); *see also Wadsworth v. United States*, No. 1:97 CV 2241, 1998 WL 180913, at *1 n.1 (N.D. Ohio Jan. 22, 1998) ("These claims are moot because [the three banks] have each responded to the Internal Revenue Service that they do not have documents responsive to the summonses." (citation omitted)).

The court rejects Petitioners' exception-to-mootness arguments. For the "voluntary cessation" exception, the IRS has not "voluntary[ily] ce[ased] a challenged practice"[50] or stopped an "allegedly wrongful behavior."[51] It has properly executed the summonses by service on Key Bank and Zions Bank pursuant to 26 U.S.C. § 7609(a) and in support of a lawful investigation. The banks then responded to the summonses and the IRS has no intention of enforcing the summonses. Speculation as to future IRS summonses is inappropriate.

Next, the court finds that the "capable of repetition, yet evading review" exception is inapt. "A dispute qualifies for th[is] exception only 'if (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.' "[52] Petitioners satisfy neither prong. "[A] challenge to the issuance of a summons is not 'too short' to be fully litigated prior to its having any effect on [Petitioners]."[53]

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[50] *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)).

[51] *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2607 (2022) (quoting *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007)).

[52] *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1540 (2018) (citation omitted).

[53] *Schaeffler v. United States*, No. 13 CIV. 4864, 2016 WL 3369538, at *3 (S.D.N.Y. June 17, 2016), *aff'd*, 696 F. App'x 542 (2d Cir. 2017) (unpublished).

Should the IRS reissue a summons, Petitioners may again bring a motion to quash "and the need to comply with the summons could be postponed until the completion of court review, no matter how long it took."[54] In addition, given the IRS' statements, there is only a speculative chance that these specific banks would be subjected to future summonses involving these cases.[55]

For these reasons, the court dismisses as moot the petitions to quash IRS summonses for Key Bank and Zions Bank.[56] The court now turns to the remaining four petitions.

II. Respondents Have Made a Prima Facie Case that the IRS Properly Issued the Summonses as to Summit Crest and Wells Fargo.

To raise a prima facie case that it has properly issued third-party summonses, the IRS must

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[54] *Id.; see United States v. Arthur Anderson & Co.*, 623 F.2d 720, 725 (1st Cir. 1980) (holding that "in the absence of some compelling circumstances that militate in favor of our deciding an otherwise moot case, the 'capable of repetition yet evading review' exception is not available to a litigant aggrieved by a summons or subpoena who could have avoided mootness by refusing to comply").

[55] *See McCormack v. Hiedeman*, 900 F. Supp. 2d 1128, 1138 (D. Idaho 2013), *aff'd sub nom. McCormack v. Herzog*, 788 F.3d 1017 (9th Cir. 2015) ("The mootness doctrine therefore requires a federal court to refrain from deciding a case if events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future" (citing *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000))).

[56] ECF No. 2, No. 2:22-cv-00340; ECF No. 2, No. 2:22-cv-00341; ECF No. 2, No. 2:22-cv-00347; ECF No. 2, No. 2:22-cv-00348.

demonstrate that they have not referred the case for criminal prosecution and that they have issued the summonses in good faith.[57] The court analyzes good faith using the *Powell* factors, which require that the IRS establish (1) that the "investigation will be conducted pursuant to a legitimate purpose," (2) "that the inquiry may be relevant to the purpose," (3) "that the information sought is not already within the [IRS]'s possession," (4) "and that the administrative steps required by the [IRS] Code have been followed."[58] If the government meets its burden, "generally . . . with an affidavit of the agent who issued the summons[,]" "a 'heavy' burden falls on the taxpayer 'to factually refute the *Powell* showing or factually support an affirmative defense.' "[59] "Because the burden of showing an abuse of the court's process is on the taxpayer, he or she must make a substantial preliminary showing before even limited discovery. . . ."[60]

A. Criminal Prosecution

Agent Bauer avers that the IRS has not recommended to the Department of Justice a grand jury investigation or criminal prosecution.[61] Petitioners agree

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[57] *Speidell*, 978 F.3d at 738.

[58] *United States v. Powell*, 379 U.S. 48, 57–58 (1964).

[59] *Speidell*, 978 F.3d at 738 (quoting *Standing Akimbo*, 955 F.3d at 1155).

[60] *Id.* (cleaned up).

[61] Bauer Decl. ¶ 26.

that there has been no referral.[62] The IRS has therefore satisfied the first prong.

B. *Powell* Factors

The second prong involves the *Powell* factors. Petitioners do not contest the fact that the IRS lacks pertinent records from Summit Crest and Wells Fargo based on the banks' inability to locate any relevant documents and Mr. Bishop's refusal to provide any such documents.[63] The third *Powell* factor thus weighs in favor of Respondents. As to the remaining three factors, Petitioners contend that the summonses serve no legitimate purpose, that they are irrelevant, and that the government has failed to observe proper procedural steps.

Under the legitimacy factor, Petitioners claim that the IRS' investigation is disproportionate and an unnecessary burden since they owe nothing or a minimal amount to the IRS.[64] They also argue that the IRS' failure to assert specific evidence of wrongdoing and its pattern of summonses has created the "effect of impermissibly frightening and chilling Petitioner's livelihood and network."[65] For relevancy, Petitioners claim that the IRS has not met its burden to show a nexus between Petitioners and the banks.[66] Petitioners

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[62] Pet. to Quash ¶ 13.

[63] Bauer Decl. ¶ 20.

[64] Pet. to Quash ¶ 7.A, 10; Bishop Decl. ¶ 10.

[65] Pet. to Quash ¶ 7.B, 11.C; Bishop Decl. ¶¶ 12, 17.

[66] Pet. to Quash ¶ 8; Bishop Decl. ¶ 13.

further assert that the IRS summonses are overbroad, and since they have submitted hundreds of pages of documents to the government,[67] the IRS has failed to show why the existing documentation is insufficient.[68] Last, Petitioners assert that the IRS failed to follow appropriate procedural steps. Citing the tax code, they state that the IRS has failed to give them "sufficient information and notice" to allow them to "respond with the relevant information . . . to maintain their privacy and avoid the potential embarrassment of IRS contact with third parties."[69] And they argue that the IRS failed to explain its "legitimate, adequate, specific justification of purpose" for the summonses.[70]

Respondents argue that they have met their burden to show legitimacy, relevance, and adherence to proper procedures. First, they contend that the investigation into whether Mr. Bishop is liable for statutory penalties and whether he has violated the court's permanent injunction is a legitimate purpose.[71] Next, they argue that the summonses would help determine Mr. Bishop's potential liability for statutory penalties because the investigation has revealed a nexus between Petitioners and the banks.[72] As to process, Respondents explain that they have met all required steps: serving

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[67] Pet. to Quash ¶ 11.E; Bishop Decl. ¶ 15.

[68] Pet. to Quash ¶ 9, 11.D; Bishop Decl. ¶ 14.

[69] Pet. to Quash ¶ 12.

[70] *Id.*

[71] Mot. to Deny & Enforce 13.

[72] *Id.* at 14–15.

the banks by certified mail, giving Petitioners timely notice, and ensuring that Mr. Bishop had not been referred for a criminal investigation.[73]

The court finds that Respondents have met their burden to show relevancy and legitimacy. Determining whether an individual has promoted false tax schemes can be a legitimate purpose.[74] Agent Bauer sought information to "shed light on the implementation and details of [Mr.] Bishop's MIS transactions," whether he would be liable for penalties under § 6700, the amount he was liable for, and whether he had violated the permanent injunction.[75]

Agent Bauer also sought information from the financial institutions because Mr. Bishop or Slim Ventures "held ownership interests, signatory authority, or right to make withdraw from, or for which they were" a fiduciary.[76] The IRS investigation indicated that Summit Crest and Wells Fargo were connected with Mr. Bishop and Slim Ventures through lending and other banking services.[77] Indeed, Agent Bauer discovered that Mr. Bishop uses Summit Crest as Slim Venture's third-party lender and that Wells Fargo paid

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[73] *Id.* at 15.

[74] *See*, *e.g.*, *S. Crow Collateral Corp. v. United States*, No. 1:17-mc-09828, 2018 WL 2454630, at *4 (D. Idaho Jan. 19, 2018), *R. & R. adopted*, No. 1:17-mc-09828, 2018 WL 2454628 (D. Idaho Apr. 10, 2018), *aff'd*, 782 F. App'x 597 (9th Cir. 2019) (unpublished).

[75] Bauer Decl. ¶ 21.

[76] *Id.* ¶ 16.

[77] *Id.* ¶ 13–14.

Slim Ventures $11,227 in interest during 2020.[78] Mr. Bishop also informed Agent Bauer that he had been averaging three to four MIS sales per month since 2018.[79] Taken together, these facts show that the summonses met the threshold of "*potential* relevance to an ongoing investigation."[80]

Finally, Respondents have shown that they followed proper procedures when they issued the summonses. The IRS complied with 26 U.S.C. § 7601 *et seq.* by serving Summit Crest and Wells Fargo with certified mail that was received on May 7, 2022,[81] sending Petitioners timely notice of the served summons,[82] and verifying that Mr. Bishop had not been referred for a grand jury investigation or criminal prosecution.[83]

Petitioners contend that the IRS failed to give them the opportunity to provide the necessary documents before sending the third-party summons.[84] Yet simply citing cases for general statements of law is not

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[78] *Id.* "Such a large amount of ordinary bank interest indicates that Slim Ventures likely held a substantial sum of money with Wells Fargo in 2020." *Id.*

[79] *Id.* ¶ 12.

[80] *Standing Akimbo*, 955 F.3d at 1160; *see also Arthur Young & Co.*, 465 U.S. at 814.

[81] Bauer Decl. ¶ 17.

[82] *Id.* ¶ 19.

[83] *Id.* ¶ 26.

[84] Pet. to Quash ¶ 12 (citing *J.B. v. United States*, 916 F.3d 1161, 1172–73 (9th Cir. 2019) (addressing whether notice to the taxpayer was reasonable advance notice under 26 U.S.C. § 7602(c)(1))).

enough to show that notice was insufficient for purposes of the *Powell* factors. To the extent that Petitioners argue that the IRS' actions were insufficient notice under § 7602(c),[85] the court need not address this question here. Because the IRS adhered to the prescribed procedures under § 7609(a), the IRS has made a prima facie showing.

In sum, the IRS has not referred the case for criminal investigation or prosecution, the summonses serve a legitimate purpose, they are relevant, and the IRS has observed proper process.[86] The court therefore finds that Respondents have made a prima facie showing of good faith.

III. Petitioners Have Not Met Their Burden to Refute the Government's Prima Facie Showing of Good Faith.

"To defeat the government's prima facie case, 'it is clear that a taxpayer must factually oppose the Government's allegations by affidavit. Legal conclusions or mere memoranda of law will not suffice.' "[87] Petitioners attempt to do so by focusing on the first two *Powell* factors: legitimacy and relevance.

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[85] *See id.*

[86] *See United States v. Balanced Fin. Mgmt., Inc.*, 769 F.2d 1440, 1443 (10th Cir. 1985).

[87] *High Desert Relief, Inc. v. United States*, 917 F.3d 1170, 1183 (10th Cir. 2019) (quoting *Balanced Fin. Mgmt.*, 769 F.2d at 1444).

A. Legitimacy

Petitioners argue that the IRS began its investigation to chill their expressive view that MIS transactions are legal. In support, they assert that customers and business partners are frightened away by the IRS investigation, which creates "considerable and unfair negative economic, business, and legal consequences."[88] But evidence of an alleged adverse effect from an investigation is not evidence of improper intent. "That [loss of customers] might be the effect, rather than the purpose, of the investigation is of no consequence."[89] The claim that unnamed persons have been scared off is both conclusory and not material.

Relatedly, Petitioners claim that the absence of relevant documents from Key Bank and Zions Bank indicate that the IRS summonses as a whole are "demonstrably meritless."[90] Yet the investigation into Petitioners began only in 2021,[91] and the IRS has not yet received documents from Summit Crest or Wells Fargo. The IRS "can hardly be expected to know whether such data will in fact be relevant until it is procured and scrutinized."[92]

Next, Petitioners argue that because MIS transactions are permissible, the IRS' investigation violates

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[88] Bishop Decl. ¶¶ 12, 15, 17.

[89] *La Mura v. United States*, 765 F.2d 974, 981 (11th Cir. 1985).

[90] Resp. 4.

[91] Bauer Decl. ¶ 5.

[92] *Arthur Young & Co.*, 465 U.S. at 814.

the First Amendment by attempting to chill their expressive speech.[93] They contend that the IRS has failed to connect the dots "between any purportedly forbidden scheme(s) and any specific language in any statute or case precedent."[94] Thus, "if the IRS cannot demonstrate that the various variants of MIS are actually illegal, . . . the IRS cannot invoke such a theory as a valid basis . . . for the IRS summons, and . . . the summons [are] invalid."[95]

Petitioners' argument fails because they do not offer support for the proposition that the IRS must prove the illegality of MIS transactions before beginning its investigation. Indeed, courts have rejected the notion that the IRS must show probable cause to open investigations.[96] The IRS need not prove that promoting MIS transactions incurs § 6700 penalties before issuing summonses. Indeed, the IRS must only show "that it has a realistic expectation rather than an idle

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[93] *See* Resp. 9–14; Bishop Decl. ¶¶ 9, 12, 17.

[94] Resp. 12.

[95] *Id.* at 15.

[96] *See United States v. Kaiser*, 308 F. Supp. 2d 946, 955 (E.D. Mo. 2004), *aff'd*, 397 F.3d 641 (8th Cir. 2005) ("*Powell* explicitly rejected the notion that the Internal Revenue Service was required to demonstrate the existence of probable cause for its investigations which used the broad summons power given to the IRS by section 7602 of the Internal Revenue Code."); *S. Crow Collateral*, 2018 WL 24554630, at *5 (prima facie showing of good cause because the information sought "may shed light" on "the implementation and details of the installment sale transactions" as to whether the taxpayer may be subject to penalties).

hope that something might be discovered."[97] Additionally, "[t]he fact that Petitioners proffer a factual and legal defense does not transmute an investigation, ipso facto, into an illegitimate exercise based on the IRS' declining to adopt the defense without further investigation."[98] In short, Petitioners' arguments amount to preemptive defenses as to their ultimate liability and do not rebut the government's showing of good faith.

Further, Petitioners rely on an expansive First Amendment argument to assert an improper purpose for the summonses. They claim that the IRS has deployed "governmental enforcement, threat of enforcement, auditing, and harassment of the Petitioners and their business network in an effort to curtail, suppress, and retaliate against discussion of First Amendment topics about disputed matters of public concern . . . that the Government disfavors."[99] Specifically, Petitioners contend that the IRS' investigation into MIS transactions—despite not proving the transactions' illegality—chills their expressive rights.

Petitioners' "assertion[s] are pure conjecture."[100] They merely reprise the argument that the IRS has not

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[97] *La Mura*, 765 F.2d at 981 (cleaned up).

[98] *S Crow Collateral*, 2018 WL 24554630, at *5.

[99] Resp. 16; *see* Bishop Decl. ¶¶ 12, 15, 17. Petitioners also accuse the Biden Administration of a pattern of using investigation and threat of investigation to suppress disfavored ideas and theories. *See* Resp. 16–17 nn.28–29.

[100] *United States v. Greenberger*, No. 1:15-CV-03532, 2016 WL 3912065, at *11 (N.D. Ga. Jan. 11, 2016), *R. & R. adopted*, No. 1:15-CV-3532, 2016 WL 3912060 (N.D. Ga. June 21, 2016). In

proven that MIS transactions are unlawful and so the investigation chills their speech. But this is a premature and unsupported claim. Thus, Petitioners fail to show an illegitimate purpose for the summonses.

B. Relevancy

Petitioners also argue that the IRS has not met its burden to show relevancy because it has not proven a nexus between Petitioners' actions and the summonses.[101] They maintain that the summonses are irrelevant, "overbroad fishing expeditions[,]"[102] and that the IRS cannot engage in "*carte blanche* discovery" to uncover some evidence of wrongdoing.[103] Citing the tax code, Petitioners contend that the IRS has failed to "*assert*[ ] that there is a reasonable indication that there is a likelihood of unreported income on the part of the Petitioners."[104] They liken the IRS' investigation

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Greenberger, the taxpayer asserted that the IRS investigation was improper because it had the effect of chilling him from exercising free speech. *Id.* The court soundly rejected the taxpayer's claims because the taxpayer offered "no basis for concluding that the IRS [wa]s conducting the investigation for the purpose of chilling any rights." *Id.* Here, Petitioners likewise fail to show that the IRS pursued its investigation to chill their expressive rights.

[101] Resp. 19–20 (citing *United States v. Goldman*, 637 F.2d 664, 667–68 (9th Cir. 1980)); Bishop Decl. ¶ 13.

[102] *Id.* at 19.

[103] *Id.* at 20–21 (quoting *United States v. Coopers & Lybrand*, 550 F.2d 615, 619 (10th Cir. 1977)).

[104] *Id.* at 19 n.31.

to a general warrant "without any practical guardrails or limitations."[105]

The court has previously explained that Respondents have met their burden to show that the summonses to Summit Crest and Wells Fargo are relevant and proportional. In opposition, Petitioners state merely that they have submitted hundreds of pages of documents to the IRS.[106] Otherwise, they offer boilerplate statements of law and conclusory claims. At the summons stage, the burden is squarely on the taxpayer to rebut the government's prima facie showing of good faith with "plausible inference[s] of improper motive."[107] "Bare assertion[s] or conjecture," as Petitioners offer here, are not enough.[108] For that reason, they have not overcome the government's low burden to show that material retrieved from Summit Crest and Wells Fargo "might throw light on the correctness of" Petitioners' tax liability.[109]

IV. Petitioners' Requests for an Evidentiary Hearing and *in camera* Review Are Denied.

The court addresses two other matters: Petitioners' request for an evidentiary hearing and *in camera* review. First, Petitioners request an evidentiary

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[105] *Id.; see* Bishop Decl. ¶ 11.

[106] Bishop Decl. ¶ 15.

[107] *Clarke*, 573 U.S. at 254.

[108] *Id.*

[109] *United States v. Sw. Bank & Tr. Co.*, 693 F.2d 994, 996 (10th Cir. 1982) (citation omitted).

hearing to question Agent Bauer because they have purportedly "raised an inference of bad faith."[110] However, Petitioners fail to "point to specific facts or circumstances plausibly raising an inference of bad faith."[111] Thus, they are not entitled to an evidentiary hearing. Second, Petitioners ask that the court conduct an *in camera* review of documents submitted by the financial institutions before their release to the IRS. They argue that such a review is needed to ensure that the documents are narrowly tailored to what is reasonable and proportionate, and not unduly broad, burdensome, or vague.[112] Though "[a] district court has broad discretion in deciding whether or not to grant an *in camera* review,"[113] "an *in camera* review should not be resorted to as a matter of course, simply on the theory that it can't hurt."[114] Finding no basis for an *in camera* review, the court denies the request.[115]

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[110] Resp. 18; Pet. to Quash 11.

[111] *Clarke*, 573 U.S. at 254.

[112] Pet. to Quash 12; Resp. 21.

[113] *Rifle Remedies, LLC v. Internal Revenue Serv.*, No. 18-cv-00949, 2021 WL 981317, at *12 (D. Colo. Mar. 16, 2021) (citing *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 392 (D.C. Cir. 1987)).

[114] *Hull v. I.R.S., U.S. Dep't of Treasury*, 656 F.3d 1174, 1178 (10th Cir. 2011) (cleaned up).

[115] *See MVT Servs., LLC v. Great W. Cas. Co.*, No. 2:18-cv-01128, 2021 WL 1227729, at *5 (D.N.M. Apr. 1, 2021) ("[T]he Court cannot issue a hypothetical or advisory opinion.").

V. The Court Grants Respondents' Motion to Enforce the Summonses for Summit Crest and Wells Fargo.

Respondents seek a court order enforcing the summonses against Summit Crest and Wells Fargo in light of the financial institutions' failure to respond.[116] "In [a proceeding to quash], the [IRS] may seek to compel compliance with the summons."[117] Given that the banks have not yet responded to the IRS, the court orders the enforcement of the summonses against Summit Crest and Wells Fargo.

ORDER

Accordingly, the court GRANTS Respondents' Motion to (1) Summarily Deny Petitions to Quash IRS Summonses and (2) Enforce the Summonses,[118] and DENIES the Petitions to Quash IRS Summonses:

1. As to Key Bank and Zions Bank, the court GRANTS Respondents' Motion to Deny Petitions to Quash IRS Summonses and DENIES as moot the associated Petitions to Quash IRS Summonses.[119]

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[116] Bauer Decl. ¶ 25.

[117] 26 U.S.C. § 7609(b)(2)(A).

[118] ECF No. 13.

[119] ECF No. 2, No. 2:22-cv-00340; ECF No. 2, No. 2:22-cv-00341; ECF No. 2, No. 2:22-cv-00347; ECF No. 2, No. 2:22-cv-00348.

2. As to Summit Crest and Wells Fargo, the court GRANTS Respondents' Motion to Deny Petitions to Quash IRS Summonses and DENIES the associated Petitions to Quash IRS Summonses.[120]

3. The court GRANTS Respondents' Motion to Enforce the Summonses against Summit Crest and Wells Fargo. The two financial institutions are ORDERED to respond to the summons within 30 days of this Memorandum Decision and Order.

Signed January 9, 2023.

BY THE COURT

/s/ David Barlow
David Barlow
United States District Judge

[120] ECF No. 2, No. 2:22-cv-00344; ECF No. 2, No. 2:22-cv-00345; ECF No. 2, No. 2:22-cv-351; ECF No. 2, No. 2:22-cv-352.

The United States District Court
District of Utah

DAVID MICHAEL BISHOP,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00340-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

SLIM VENTURES, LLC,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00341-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

DAVID MICHAEL BISHOP,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00344-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

SLIM VENTURES, LLC,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00345-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

DAVID MICHAEL BISHOP,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00347-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

SLIM VENTURES, LLC,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00348-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

SLIM VENTURES, LLC,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00351-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

The United States District Court
District of Utah

DAVID MICHAEL BISHOP,

Plaintiff,

v.

UNITED STATES, INTERNAL REVENUE SERVICE, and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:22-cv-00352-DBB-DBP

District Judge David Barlow

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of Defendants and against Plaintiff.

January 9, 2023
Date

BY THE COURT:

/s/ David Barlow
David Barlow
United States District Judge

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

DAVID MICHAEL BISHOP and SLIM VENTURES, LLC, Petitioners, v. UNITED STATES; INTERNAL REVENUE SERVICE; and TIMOTHY BAUER, Internal Revenue Agent (ID #0324589), in his Official Capacity, Respondents.	**MEMORANDUM DECISION AND ORDER DENYING [32] MOTION FOR RELIEF FROM ORDER AND JUDGMENT, AND/OR TO STAY EXECUTION ON JUDGMENT PENDING APPEAL** Case Nos. 2:22-cv-00340-DBB-DBP, 2:22-cv-00341-DBB-DBP, 2:22-cv-00344-DBB-DBP, 2:22-cv-00345-DBB-DBP, 2:22-cv-00347-DBB-DBP, 2:22-cv-00348-DBB-DBP, 2:22-cv-00351-DBB-DBP, 2:22-cv-00352-DBB-DBP District Judge David Barlow (Filed Feb. 22, 2023)

The matter before the court is Petitioners David Michael Bishop ("Mr. Bishop") and Slim Ventures, LLC's ("Slim Ventures") (collectively "Petitioners") Motion for Relief from Order and Judgment, and/or to

Stay Execution on Judgment Pending Appeal.[1] Petitioners move for relief from judgment in favor of Respondents United States, the Internal Revenue Service (the "IRS"), and Internal Revenue Agent Timothy Bauer (ID #0324589) ("Agent Bauer") (collectively "Respondents"). Petitioners also move for a stay pending appeal. Having reviewed the briefing and relevant law, the court finds that oral argument would not materially assist the court.[2] For the reasons below, the court denies Petitioners' motion.

BACKGROUND

On May 7, 2022, the IRS issued eight summonses to four financial institutions.[3] In May 2022, Petitioners filed corresponding petitions to quash.[4] On August 26, 2022, Respondents moved to deny the eight petitions and enforce the summonses against Summit Crest Financial, LLC ("Summit Crest") and Wells Fargo Bank

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[1] Mot. for Relief from Order & J. and/or to Stay Execution on J. Pending Appeal ("Mot. for Relief"), ECF No. 24, filed Jan. 16, 2023.

[2] *See* DUCivR 7-1(g).

[3] *See*, *e.g.*, Summons, ECF No. 2-6, *Bishop v. United States*, 2:22-cv-00340 (D. Utah May 20, 2022).

[4] Pet. to Quash Summons, ECF No. 2, filed May 20, 2022. In seven related cases, Petitioners filed nearly identical motions to quash IRS summonses: *Slim Ventures v. United States*, No. 2:22-cv-00341; *Bishop v. United States*, No. 2:22-cv-00344; *Slim Ventures v. United States*, No. 2:22-cv-00345; *Bishop v. United States*, No. 2:22-cv-00347; *Slim Ventures v. United States*, No. 2:22-cv-00348; *Slim Ventures v. United States*, No. 2:22-cv-00351; and *Bishop v. United States*, No. 2:22-cv-00352.

NA ("Wells Fargo").[5] On January 9, 2023, the court granted the motion.[6] The court ordered the two financial institutions to respond within thirty days.[7] Petitioners filed the instant motion on January 16, 2023.[8] Respondents filed an opposition on February 2, 2023.[9] Petitioners replied six days later.[10]

DISCUSSION

Petitioners move the court to provide relief from judgment. Alternatively, they move to stay enforcement of the summonses pending appeal. The court addresses each request in order.

I. Relief from Final Judgment Is Not Warranted.

Petitioners ask the court to vacate and amend its order pursuant to Rule 59(e) and Rule 60(b) of the Federal Rules of Civil Procedure.[11] They filed their motion

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[5] ECF No. 13.

[6] Order Granting Resp'ts Mot. to Summarily Deny Pets. to Quash IRS Summonses & Denying Pets. Mots. to Quash ("Order Denying Pets.") 18–19, ECF No. 30, filed Jan. 9, 2023.

[7] *Id.* at 19.

[8] *See* Mot. for Relief.

[9] Opp'n to Pets. Mot. to Vacate J. or Stay J. Pending Appeal ("Opp'n"), ECF No. 35, filed Feb. 2, 2023.

[10] Reply to Govt's Opp'n ("Reply"), ECF No. 36, filed Feb. 8, 2023.

[11] Petitioners' motion references Rule 46 and Rule 60(a) of the Federal Rules of Civil Procedure. "Rule 46 generally requires objections during trial proceedings to preserve questions for appeal." *Blaurock v. Kansas*, No. 12-3066, 2014 WL 6472870, at *1

seven days after judgment. The motion is timely under either rule.[12] "[H]ow we construe [which rule applies] depends upon the reasons expressed by the movant."[13] Petitioners' arguments center on the court's purported "Error, Mistake, Oversight, Omission, Inadvertence, And Other Considerations Justifying Relief."[14] Accordingly, the court analyzes the motion under Rule 60(b)(1) and (b)(6).[15]

Pursuant to Federal Rule of Civil Procedure 60(b)(1), a court may relieve a party from a final judgment and order for "mistake, inadvertence, surprise,

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(D. Kan. Nov. 18, 2014). And "Rule 60(a) covers a subset of 'mistake[s]'—*e.g.*, 'clerical' ones—whereas Rule 60(b)(1) covers 'mistake[s]' *simpliciter*[.]" *Kemp v. United States*, 142 S. Ct. 1856, 1863 (2022). Because there was no trial in this case and Petitioners do not assert a clerical mistake, the court addresses Rule 59(e) and Rule 60(b) only.

[12] *See* Fed. R. Civ. P. 59(e); Fed. R. Civ. P. 60(c)(1).

[13] *Commonwealth Prop. Advocs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 680 F.3d 1194, 1200 (10th Cir. 2011); *see Warren v. Am. Bankers Ins. of FL*, 507 F.3d 1239, 1244 (10th Cir. 2007) ("[A] 'motion to reconsider' filed prior to or within [28] days of entry of judgment may on occasion be construed as one arising under Rule 60." (citing *Jennings v. Rivers*, 394 F.3d 850, 855 (10th Cir. 2005))).

[14] Mot. for Relief 2 (emphasis removed).

[15] The court declines to adopt a rule that "[a]ny request to vacate a judgment within 28 days of entry must be brought under Rule 59(e)." Opp'n 2. In *Skagerberg v. Oklahoma*, cited by Respondents, the movant sought relief under Rule 60 only. 797 F.2d 881, 883 (10th Cir. 1986). And in *Banister v. Davis*, the court discussed Rule 60 versus Rule 59 motions in the context of an appeal to a habeas petition. 140 S. Ct. 1698, 1710 n.9 (2020).

or excusable neglect."[16] Motions for relief "premised upon mistake are intended to provide relief to a party . . . whe[n] the judge has made a substantive mistake of law or fact in the final judgment or order."[17] Under Rule 60(b)(6), the court may offer relief for "any other reason that justifies relief."[18] This rule is a "grand reservoir of equitable power to do justice in a particular case."[19] "Although [it] should be liberally construed when substantial justice will thus be served, relief under Rule 60(b)(6) is extraordinary and reserved for exceptional circumstances."[20] With the standard in mind, the court addresses Petitioners' claims that the lack of oral argument, a surreply, and an evidentiary hearing violated Petitioners' due process, and that the court erred in its factual and legal analysis.

A. Oral Argument

Petitioners contend that the court erred when it found oral argument unnecessary. They argue that such argument was needed because they could not have "mind-read in advance all potential arguments or precedents the Government might assert on reply" and even if they had anticipated the arguments, they

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[16] Fed. R. Civ. P. 60(b)(1).

[17] *Utah ex rel. Div. of Forestry, Fire & State Lands v. United States*, 528 F.3d 712, 722-23 (10th Cir. 2008).

[18] Fed. R. Civ. P. 60(b)(6).

[19] *Kile v. United States*, 915 F.3d 682, 687 (10th Cir. 2019), *as corrected* (Feb. 15, 2019) (citation omitted).

[20] *Johnson v. Spencer*, 950 F.3d 680, 701 (10th Cir. 2020) (cleaned up).

lacked the filing length to respond in briefing.[21] These arguments are unavailing. Under the local rules, oral argument is permissive.[22] "Refusing to conduct an unnecessary hearing is not an abuse of discretion."[23] Here, the court determined that oral argument would not materially benefit its decision.[24] Nothing Petitioners raise in their motion persuade the court that oral argument would have been of assistance. This basis for relief is rejected.

B. Surreply

Next, Petitioners argue that the court erred by treating Petitioners' notice of supplementary authority as a surreply and striking it. They contend that the court "invented a non-existent requirement" that a party can never submit cases in a notice of supplemental authority that have been published after the party's briefing.[25] By striking the notice, Petitioners argue that the court denied them due process.[26]

"The determination of whether to permit a party to file a sur-reply or notice of supplemental authority

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[21] Mot. for Relief 6 n.6.

[22] DUCivR 7-1(g) ("The court *may* set any motion for oral argument." (emphasis added)); *see Allender v. Raytheon Aircraft Co.*, No. 03-1396, 2005 WL 351693, at *2 (D. Kan. Feb. 7, 2005).

[23] *Pinson v. Berkebile*, 601 F. App'x 611, 614 (10th Cir. 2015) (unpublished) (citing *Anderson v. Att'y Gen. of Kan.*, 425 F.3d 853, 858–59 (10th Cir. 2005)).

[24] *See* Order Denying Pets. 2.

[25] Mot. for Relief 5; ECF No. 24, at 2.

[26] Mot. for Relief 5 n.4.

'is committed to the sound discretion of the [district] court.'"[27] Petitioners have not shown that the court erred in treating their submission as a motion for a surreply. Because they never moved for leave to file a surreply,[28] it was proper to disregard their request. Even treating the filing as a notice of supplemental authority, Petitioners fail to explain why the cases came to their attention only after briefing and why the cases were pertinent and significant authority.[29] The bottom line is that denying a party leave to belatedly cite additional authority does not infringe due process. It is not an "extraordinary circumstance[]" that makes vacatur "necessary to accomplish justice."[30]

C. Evidentiary Hearing

Petitioners contend that the court must allow an evidentiary hearing where they can cross-examine Agent Bauer. They allege that the "failure to do so result[s] in a denial of due process [and] unfair preclusion of the ability to explore the existing evidence. . . ."[31] To obtain an evidentiary hearing, Petitioners must assert "specific facts or circumstances plausibly raising

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[27] *One Vodka, LLC v. Benchmark Beverage Co.*, No. 21-11456, 2022 WL 860444, at *2 (E.D. Mich. Mar. 22, 2022) (citation omitted); *see* DUCivR 7-1(a)(8).

[28] Petitioners could not have moved for leave to file a surreply in an opposition brief. *See* DUCivR 7-1(a)(3).

[29] Mot. Denying Pets. 5–6.

[30] *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 579 (10th Cir. 1996).

[31] Mot. for Relief 4.

an inference of bad faith."[32] Agent Bauer's declaration stated his authority, the investigation's purpose, and his reasons for issuing the summonses.[33] The court found that Respondents had made a prima facie showing of good faith.[34] Petitioners fail to identify specific facts or circumstances to overcome their heavy burden.[35] Mere accusations are not enough.[36]

Petitioners also argue that the court's reliance on Agent Bauer's declaration violates due process because the declaration is "purported second-hand hearsay" based on "misleading notes."[37] Petitioners offer no

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[32] *United States v. Clarke*, 573 U.S. 248, 254 (2014).

[33] *See* ECF No. 13-1.

[34] *See Speidell v. United States Through Internal Revenue Serv.*, 978 F.3d 731, 738 (10th Cir. 2020), *cert. denied sub nom. Speidell v. United States*, 141 S. Ct. 2800 (2021), *reh'g denied*, 142 S. Ct. 921 (2021) (citation omitted); *Rice v. United States*, 9 F.3d 117 (10th Cir. 1993) (unpublished) ("Through the statements of [the] Revenue Agent . . . , the government clearly established its prima facie case for enforcement of the IRS summons." (citing *United States v. Powell*, 379 U.S. 48, 57-58 (1964))).

[35] *Standing Akimbo, LLC v. United States through Internal Revenue Serv.*, 955 F.3d 1146, 1155 (10th Cir. 2020); *see Clarke*, 573 U.S. at 254 ("Naked allegations of improper purpose are not enough: The taxpayer must offer some credible evidence supporting his charge.").

[36] For example, Petitioners claim that Agent Bauer was working for a "secret IRS unit known as the 'Lead Development Center' [that] . . . *dragnetted the internet searching for individuals and entities who expressed public viewpoints* about tax law disfavored by the IRS and the Biden administration" to "target Petitioners for investigation and a harassing shower of summons . . . *SOLELY on account of the Petitioners' First Amendment expression about MIS*." Mot. for Relief 6–7.

[37] *Id.* at 9.

authority for the proposition that it is erroneous for a court to rely on an IRS agent's signed declaration. Indeed, "[t]he IRS generally meets th[eir] burden [in these cases] with an affidavit of the agent who issued the summons."[38]

D. Factual and Legal Analysis

Petitioners last contend that the court erred in its factual and legal analysis. They argue that the court improperly relied on district court cases in finding that the IRS had a valid reason to investigate Mr. Bishop.[39] But Petitioners have not shown that the court erred. Based on Tenth Circuit precedent, the court reasoned that "[t]he IRS does not have to establish any probable cause to obtain enforcement of a summons."[40] Thus, the court found that Respondents met their burden to show that their investigation was relevant and legitimate.[41] It is Petitioners' burden to overcome the government's prima facie showing. Petitioners cannot do so with unsupported arguments such as a claim that monetized installment sales are legal tax vehicles.[42] In sum, they have not demonstrated any substantive

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[38] *Speidell*, 978 F.3d at 738; *see Clarke*, 573 U.S. at 250.

[39] *See* Mot. for Relief 7–8. Petitioners contend that the IRS's investigation was predicated on its desire to chill their First Amendment speech.

[40] *Rice*, 9 F.3d 117 (citing *Powell*, 379 U.S. at 57).

[41] *See* Order Denying Pets. 11–12.

[42] *See Clarke*, 573 U.S. at 254.

mistake or exceptional circumstances that would warrant relief under Rule 60(b).

II. Petitioners Do Not Meet their Burden for a Stay Pending Appeal.

Petitioners move the court to stay execution of the summonses against Summit Crest and Wells Fargo until the Tenth Circuit can address their appeal.[43] They first contend that the court has violated Rule 62(a)'s automatic stay requirements when it ordered enforcement within thirty days of judgment.[44] Petitioners misapprehend Rule 62(a). "[E]xecution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, *unless the court orders otherwise.*"[45] Here, the court has ordered otherwise.[46] Even so, "the IRS [i]s not required to comply with Rule 62(a) because [executing summonses] [i]s injunctive in nature and therefore within the exceptions to the . . . automatic stay period of Rule 62(a)."[47]

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[43] While they have not yet done so, Petitioners assert that they plan to appeal. Mot. for Relief 3.

[44] *Id.* at 3 n.1 ("[E]xecution on the summons without first waiting for Petitioners' pending appeal to the Tenth Circuit would deprive Petitioners of meaningful mandatory right of appeal[.]").

[45] Fed. R. Civ. P. 62(a) (emphasis supplied).

[46] ECF No. 30, at 19.

[47] *Rice v. United States*, 21 F.3d 1122 (10th Cir. 1994) (unpublished table decision) (citing *N.L.R.B. v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988)); *see United States v. Trenk*, No. 06-1004, 2009 WL 1298420, at *5 (D.N.J. May 8, 2009) ("[T]he government's summons enforcement proceeding is in the nature of an

For this reason, the court considers Petitioners' motion under the general standard for staying a civil judgment. The court weighs "(1) whether the . . . applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether . . . the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."[48]

First, Petitioners have not demonstrated that they are likely to succeed on the merits. The instant motion merely repackages their arguments that the investigation is unwarranted or has an unconstitutional purpose.[49] The court has already addressed Petitioners' arguments at length and explained how they are insufficient to overcome the IRS's prima facie showing of good faith.[50]

Next, Petitioners fail to show how they would suffer an irreparable injury should the court deny their motion for a stay. They argue that it would be prejudicial if the IRS executes the summonses and sees some of their private financial documents.[51] But prejudice is

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injunction." (citation omitted)); *United States v. Carlin*, No. 06-1906, 2006 WL 3208675, at *1 (E.D. Pa. Nov. 2, 2006).

[48] *Taylor v. Crowther*, No. 2:07-cv-194, 2020 WL 1677078, at *1 (D. Utah Apr. 6, 2020) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

[49] *See* Mot. for Relief 6–10.

[50] *See* Order Denying Pets. 9–17.

[51] Mot. for Relief 3.

not inevitably irreparable injury,[52] especially in the context of IRS summonses.[53] "[T]he mere requirement to produce documents while an appeal is pending does not constitute sufficient harm to warrant a stay."[54] Plus, even if an appeals court reverses enforcement, a court could still grant relief.[55]

But harm might result to the government should the court grant a stay. Specifically, the IRS would be limited in its ability to investigate Mr. Bishop for purportedly promoting abusive tax schemes. "[T]here is . . . a public interest in the 'timely assessment of tax liabilities and enforcement of the tax laws.' "[56]

Last, the court cannot say that allowing the IRS's lawful investigation to continue would harm the public

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[52] *See Gould v. Wyse*, No. 1:19-cv-00382, 2023 WL 171781, at *1 (D.N.M. Jan. 12, 2023) ("[T]he standard under the *Hilton* factors is not mere prejudice: it is irreparable injury.")

[53] *See United States v. Roe*, No. 10-cv-01049, 2010 WL 3777606, at *2 (D. Colo. Sept. 20, 2010) ("Several courts have held that the production of documents in response to an IRS summons is not sufficient irreparable injury to qualify for a stay of enforcement." (citation omitted)).

[54] *United States v. Bright*, No. 07-00311, 2008 WL 351215, at *3 (D. Haw. Feb. 7, 2008).

[55] *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992) (reasoning that the court could provide partial relief by ordering the government to "destroy or return any and all copies it may have in its possession").

[56] *Trenk*, 2009 WL 1298420, at *6 (citation omitted); *see United States v. Jud. Watch, Inc.*, 241 F. Supp. 2d 15, 18 (D.D.C. 2003) ("[T]he public has a strong interest in the prompt completion of tax audits and investigations.").

interest.[57] Petitioners' arguments to the contrary are irrelevant[58] or unpersuasive.[59] In short, their bald accusations do not outweigh the "the public['s] . . . interest in having the IRS perform its job."[60] For these reasons, the factors weigh against a stay.

ORDER

Accordingly, the court DENIES Petitioners' Motion for Relief from Order and Judgment, and/or to Stay Execution on Judgment Pending Appeal.[61]

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[57] *See Speidell*, 978 F.3d at 738 ("We have held that the IRS's burden in connection with these factors is 'slight,' because statutes like 26 U.S.C. § 7602(a) 'must be read broadly to ensure that the enforcement powers of the IRS are not unduly restricted.'" (quoting *United States v. Balanced Fin. Mgmt.*, 769 F.2d 1440, 1443 (10th Cir. 1985))).

[58] For example, Petitioners argue that the "*IRS has allowed MIS for various other (well-resourced) taxpayers* without dire public consequences." Reply 6.

[59] For instance, Petitioners argue that summons enforcement would violate their free speech rights and lead to the "impermissible implementation of a Chinese-style system of social credits, where the Government as a Ministry of Truth trolls . . . the public arena to target . . . individuals . . . to deter disfavored expression." Reply 6–7.

[60] *Jud. Watch*, 241 F. Supp. 2d at 18; *see High Desert Relief, Inc. v. United States*, No. 16-cv-1255, 2017 WL 2266871, at *3 (D.N.M. Apr. 30, 2017) ("[D]elaying the IRS's investigation . . . delays the public interest in seeing all taxpayers pay their fair share of taxes.").

[61] ECF No. 32.

Signed February 22, 2023.

BY THE COURT

/s/ David Barlow
David Barlow
United States District Judge

SELECT CONSTITUTIONAL AND STATUTORY PROVISIONS, AND CASE LAW (EMPHASIS ADDED IN BOLD & ITALICS)

UNITED STATES CONSTITUTION, AMENDMENT I

Congress shall make no law . . . ***abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances***.

UNITED STATES CONSTITUTION, AMENDMENT V

No person shall . . . be deprived of . . . ***liberty, or property, without due process of law*** . . .

UNITED STATES CONSTITUTION, AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the ***privileges or immunities of citizens of the United States***; nor shall any State deprive any person of life, ***liberty, or property, without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

26 U.S.C. § 453

§ 453. Installment method

(a) General rule. – Except as otherwise provided in this section, ***income from an installment sale shall***

be taken into account for purposes of this title under the installment method.

(b) Installment sale defined. – For purposes of this section –

(1) In general. – The term "installment sale" means a ***disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs***.

. . . .

(c) Installment method defined. – For purposes of this section, the term "installment method" means a ***method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.***

. . . .

26 U.S.C. § 6700. PROMOTING ABUSIVE TAX SHELTERS, ETC.

(a) Imposition of penalty. – Any person who –

(1)(A) organizes (or assists in the organization of) –

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other ***plan or arrangement***, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale) –

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement ***which the person knows or has reason to know is false or fraudulent as to any material matter***, or

(B) a gross valuation overstatement as to any material matter,

shall pay, with respect to each activity described in paragraph (1), a penalty equal to $1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity. . . .

. . . .

26 U.S.C. § 7602 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.

. . . .

(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.

. . . .

26 U.S.C. § 7605(b)

(b) Restrictions on examination of taxpayer. – ***No taxpayer shall be subjected to unnecessary examination or investigations*** . . .

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Main Document [. . .]

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re: LINDA J. MARTIN, an individual, Debtor and Debtor-in-Possession.	Case No. 8:13-bk-13134-TA Chapter 11 Proceeding ORDER ON DEBTOR'S MOTION FOR ORDER: 1. AUTHORIZING SALE OF PROPERTY (239 Carnation Ave., Corona Del Mar, California) FREE AND CLEAR OF LIENS AND FINDING BUYER TO BE GOOD FAITH PURCHASER PURSUANT TO 11 U.S.C. §363(b), (f) and (m);

2. APPROVAL OF THE SALE AS AN COLLATERALIZED INSTALLMENT SALE PURSUANT TO I.R.S. CODE § 453;
3. APPROVAL OF OVERBID PROCEDURES; AND
4. AUTHORIZING COMPENSATION OF REAL ESTATE BROKER.

Hearing
Date: January 22, 2013
Time: 10:00 a.m.
Place: 5B

(Filed Feb. 26, 2014)

On January 22, 2013 at 10:00 a.m. in Courtroom 5B of the United States Bankruptcy Court located at 411 West Fourth Street, Santa Ana, California 92701, the motion of Linda Martin, Debtor and Debtor-in-Possession herein ("Debtor"), an Order: Authorizing Sale ("Sale") of Property Free and Clear of Liens and Finding Buyer to be Good Faith Purchaser Pursuant to 11 U.S.C. Sections §363(b(, (f) and (m); Approval of the Sale as Collateralized Installment Sale Pursuant to I.R.S. Code Section 453 between Debtor and S. Crow Collateral Corporation ("SCC"); Approval of Overbid Procedures; Authorizing Compensation of Real Estate Broker; Authorizing Debtor to Incur Post-Petition Financing to Pay Off All Her Creditors (pursuant to 11 U.S.C. Section 364) with the Loan Proceeds (the "Sale

Motion") [Docket No. 54] came on for hearing on regular notice. The Honorable Judge Theodor C. Albert presiding. All appearances were noted on the record. At the hearing, Debtor withdrew her request in the Sale Motion to Authorize Debtor to Incur Post-Petition Financing to Pay Off All Her Creditors (pursuant to 11 U.S.C. Section 364)

THEREFORE, upon the record of the hearing on the Motion and findings recited on the record and all other pleadings and proceedings in this case, including the Motion and all papers filed in support thereof, no objections having been filed, after proper notice was provided; and after due deliberation and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Debtor's request in the Sale Motion to Authorize Debtor to Incur Post-Petition Financing to Pay Off AU Her Creditors (pursuant to 11 U.S.C. Section 364) was withdrawn by the Debtor.

2. Subject to the terms of this Order, the Debtor is authorized to perform on the contract and related documents with S. Crow Collateral Corporation ("SCC"), executed versions of which are attached hereto as Exhibits "1", "2", "3", "4", "5", "6", "7", "8" and "9"(which are, respectively, the same as Exhibits "3", "4" "5", "6", "7", "8", "9" "10" and "11" to the Declaration of Stanley D. Crow filed in support of the Sale Motion (dkt # 57).

3. Debtor and SCC have created new escrow instructions to reflect the Court's ruling noted

in items #14 and #15 below regarding Goe & Forsythe, LLP holding the proceeds from the sale of the Property. Attached hereto as Exhibits "2" and "8" are the revised and executed Supplemental Closing Instructions and a New Loan Closing Instructions needed to comply with the Court's ruling.

4. As a result of the contracts entered into with SCC as noted in #2 above, Debtor will transfer the real property known as 239 Carnation Ave., Corona Del Mar, California ("Property") to SCC and then SCC will sell the Property to Jeff McAninch ("Buyer"), or his assigns, for $3,900,000, to purchase the Property, which transactions are approved pursuant to 11 U.S.C. §363(b)(f) and (m).

5. Jeff McAinch, or his assigns, is approved as the final buyer of the Property for $3,900,000, pursuant to the terms of the Residential Purchase Agreement and signed Counter Offer with three (3) Addendums (collectively the "CRPA") attached as Exhibit "1" to the Linda Martin Declaration, which is attached to the Sale Motion.

6. Wilmington Trust Company, as successor Trustee to Bank of America, National Association, successor by merger of LaSalle Bank National Association, as Trustee for Morgan Stanly Mortgage Loan Trust 2007-10XS, Mortgage Pass-Through Certificates, Series 2007 (the "Lender") has a valid, first priority lien against the Property that as of January 31, 2014 is in the amount of $1,608,674.59,

subject to an updated payoff demand valid through the close of escrow to be submitted upon receipt from Lender. The transfer of the Property to SCC and the sale of the Property to the final Buyer is free and clear of all liens and interest against the Property with the lien of the Lender immediately attaching to the proceeds from the transfer of the Property to SCC and the sale of the Property by SCC to the final Buyer to the same extent and priority that existed prior to the Debtor's bankruptcy case.

7. Debtor is authorized to sign any and all documents necessary, and to undertake any non-material amendments and modifications necessary, to complete the sale of the Property without further notice, hearing or Court order.

8. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and the fourteen day stay of a sale provided for in Bankruptcy Rule 6004(h) is hereby waived to allow the sale of the Property to close forthwith.

9. All of the remaining funds held in escrow, which are the Property of SCC and subject to the Lender's lien noted in paragraph 6 above, will be transferred to the trust account of Debtor's counsel, Goe & Forsythe, LLP, in order for Goe & Forsythe, LLP to pay the creditors of Debtor's estate and to hold enough monies in its trust account as an estimate of the professional fees pending Court approval of such professional fees and costs.

APPROVED BY:

DATED:
February 26, 2014

GOE & FORSYTHE, LLP

By: /s/Marc C. Forsythe
Marc C. Forsythe
Attorneys for Debtor and
Debtor-in-Possession

DATED:
February 26, 2014

PITS DUNCAN, LLP

By: _____
Casey O'Connell
Attorneys for Wilmington
Trust Company, as successor
Trustee to Bank of America,
National Association,
successor by merger of
LaSalle Bank National
Association, as Trustee for
Morgan Stanly Mortgage
Loan Trust 2007-10XS,
Mortgage Pass-Through
Certificates, Series 2007

###

Date:
February 26, 2014

/s/ Theodor C. Albert
Theodor C. Albert
United States Bankruptcy
Judge

Summons

In the matter of David Michael Bishop. 32 West 200 South #628, Salt Lake City, Utah 84101

Internal Revenue Service *(division)* Small Business Self Employed

Industry/Area *(name or number)* South West Area Examination

Periods January 01, 2018 through date of compliance

The Commissioner of Internal Revenue

To Zions Bancorporation NA

At 15 West South Temple, Suite 600, Salt Lake City, Utah 84101

You are hereby summoned and required to appear before Timothy Bauer Identification Number 0324589 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.

See Summons Attachment

Do not write in this space

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

110 North City Parkway, Las Vegas, Nevada 89106, 702-868-5312

Place and time for appearance at 110 North City Parkway, Las Vegas, Nevada 89106 – RECORDS CAN BE MAILED

on the 6th day of June, 2022 at 10:00 o'clock a.m. *(year)*

Issued under authority of the Internal Revenue Code this 4th day of May, 2022 *(year)*

Signature of issuing officer		Title
/s/ Timothy Bauer	Digitally signed by Timothy Bauer Date: 2022.05.03 10:44:31 -07'00'	Revenue Agent

Signature of approving officer *(if applicable)*		Title
/s/ Tiffany Sim	Digitally signed by Tiffany Sim Date: 2022.05.02 10:50:50 -07'00'	Group Manager

Form **2039** (Rev. 3-2020) **Part C** – to be given to noticee	Catalog Number 21405J	publish. no.irs. gov	Department of the Treasury – **Internal Revenue Service**

* * *

ATTACHMENT TO SUMMONS/SUBPOENA

Issued to:	Zions Bancorporation NA
In the matter of:	David Michael Bishop
Address:	15 West South Temple, Suite 600, Salt Lake City, Utah 84101
Periods:	January 01, 2018 through date of compliance

For the periods specified above, please furnish all books, papers, records, and other data concerning all accounts in which the above-named individual(s) is identified as having any ownership interests, signatory privileges, rights to make withdrawals, or for which the above-named individual(s) is shown as the trustee, co-signer, guardian, custodia, administrator, and/or beneficiary. Records may pertain to an individual, sole proprietor with DBA, member of LLC, officer and/or board member of corporation, partner of general partnership, limited partnership and/or trust. This request for records includes, but is not limited to:

1. Monthly statements
2. Deposit offsets (front and back) $500.00 or greater
3. Deposit tickets
4. Cancelled checks (front and back) $500.00 or greater
5. Signature cards
6. Debit and credit memos
7. Loan applications, including lines of credit, and all documents related to loan(s)
8. Financial statements
9. Safe deposit box entry cards
10. Cashier's checks and applications
11. Money orders
12. Foreign and domestic letters of credit and wires of funds along with related documents disclosing source of funds and, for wires of funds, the destination of the funds along with any related correspondence
13. Agency agreements and correspondence
14. Closing transaction on the account (check, wire transfer, etc. regardless of amount)

Information may be provided in electronic format (i.e., CDs, disks, etc).

Summons

In the matter of David Michael Bishop. 32 West 200 South #628, Salt Lake City, Utah 84101

Internal Revenue Service *(division)* Small Business Self Employed

Industry/Area *(name or number)* South West Area Examination

Periods January 01, 2018 through date of compliance

The Commissioner of Internal Revenue

To Summit Crest Financial, LLC

At 13379 McGregor Blvd #2, Fort Myers, Florida 33919

You are hereby summoned and required to appear before Timothy Bauer Identification Number 0324589 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.

See Summons Attachment

Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.

Signature of IRS officer serving the summons	Title
/s/ Timothy Bauer Digitally signed by Timothy Bauer Date: 2022.05.03 11:25:04 -07'00'	Revenue Agent

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

110 North City Parkway, Las Vegas, Nevada 89106, 702-868-5312

Place and time for appearance at 110 North City Parkway, Las Vegas, Nevada 89106 – RECORDS CAN BE MAILED

on the 6th day of June, 2022 at 10:00 o'clock a.m. *(year)*

Issued under authority of the Internal Revenue Code this 4th day of May , 2022 *(year)*

Signature of issuing officer		Title
/s/ Timothy Bauer	Digitally signed by Timothy Bauer Date: 2022.05.03 10:44:31 -07'00'	Revenue Agent
Signature of approving officer *(if applicable)*		Title
/s/ Tiffany Sim	Digitally signed by Tiffany Sim Date: 2022.05.02 10:50:50 -07'00'	Group Manager

Form **2039** (Rev. 3-2020) **Part A** – to be given to person summoned	Catalog Number 21405J	publish. no.irs. gov	Department of the Treasury – **Internal Revenue Service**

* * *

SUMMONS ATTACHMENT

Issued to:	Summit Crest Financial, LLC
In the matter of:	David Michael Bishop
Address:	13379 McGregor Blvd #2, Fort Myers, Florida 33919
Periods:	January 01, 2018 through date of compliance

For the periods specified above, please furnish all books, papers, records, and other data concerning all accounts in which the above-named individual(s) is identified as seller and borrower in all monetized installment sale transactions. Records may pertain to an individual, sole proprietor with DBA, member of LLC, officer and/or board member of corporation, partner of general partnership, limited partnership and/or trust. This request for records includes, but is not limited to:

The records summonsed are described as (but not limited to):

- Escrow file
- Loan records including applications and supporting documentation
- All checks (front and back) paid into and out of the escrow
- Payment instructions
- Wire transfers or other means of monetary transfer of escrow funds
- Memorandums or notes of contact
- Contracts

- Promissory notes
- Payment records
- Closing statement
- 1099 INT issued
- 1099 INT received

Personal appearance is not required if the required records are received by mail by the date specified by the summons.

Summons

In the matter of Slim Ventures 1935 West 4700 South Suite 501, Salt Lake City, Utah

Internal Revenue Service *(division)* Small Business Self Employed

Industry/Area *(name or number)* South West Area Examination

Periods January 01, 2018 through date of compliance

The Commissioner of Internal Revenue

To Summit Crest Financial, LLC

At 13379 McGregor Blvd #2, Fort Myers, Florida 33919

You are hereby summoned and required to appear before Timothy Bauer Identification Number 0324589 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.

See Summons Attachment

Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.

Signature of IRS officer serving the summons	Title
/s/ Timothy Bauer Digitally signed by Timothy Bauer Date: 2022.05.03 10:21:48 -07'00'	Revenue Agent

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

110 North City Parkway, Las Vegas, Nevada 89106, 702-868-5312

Place and time for appearance at 110 North City Parkway, Las Vegas, Nevada 89106 - RECORDS CAN BE MAILED

on the 6th day of June, 2022 at 10:00 o'clock a.m. *(year)*

Issued under authority of the Internal Revenue Code this 4th day of May, 2022 *(year)*

Signature of issuing officer		Title
/s/ Timothy Bauer	Digitally signed by Timothy Bauer Date: 2022.05.03 10:22:14 -07'00'	Revenue Agent
Signature of approving officer *(if applicable)*		Title
/s/ Tiffany Sim	Digitally signed by Tiffany Sim Date: 2022.05.02 10:45:24 -07'00'	Group Manager

Form **2039** (Rev. 3-2020) **Part A** – to be given to person summoned	Catalog Number 21405J	publish. no.irs. gov	Department of the Treasury – **Internal Revenue Service**

* * *

SUMMONS ATTACHMENT

Issued to: Summit Crest Financial, LLC
In the matter of: Slim Ventures
Address: 13379 McGregor Blvd #2, Fort Meyers, Meyers, Florida 33919
Periods: January 01, 2018, through date of compliance

For the periods specified above, please furnish all books, papers, records, and other data concerning all

accounts in which the above-named individual(s) is identified as seller and borrower in all monetized installment sale transactions. Records may pertain to an individual, sole proprietor with DBA, member of LLC, officer and/or board member of corporation, partner of general partnership, limited partnership and/or trust. This request for records includes, but is not limited to:

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- Memorandums or notes of contact
- Contracts
- Promissory notes
- Payment records
- Closing statement
- 1099 INT issued
- 1099 INT received

Personal appearance is not required if the required records are received by mail by the date specified by the summons.

DAVID A. HUBBERT
Deputy Assistant Attorney General

MATTHEW UHALDE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
(202) 353-0013
Matthew.P.Uhalde@usdoj.gov

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Michael Bishop and Slim Ventures LLC, Petitioner, v. United States of America, *et al.*, Respondents.	Case No. 2:22-CV-00340-DBP **Declaration of Revenue Agent Tim Bauer** Magistrate Judge Dustin Pead

I, Tim Bauer, in accordance with 28 U.S.C. § 1746, declare that:

1. I am a duly commissioned Revenue Agent of the of the IRS. I am stationed in Las Vegas, Nevada.

2. Tim Bauer is not my real name. It is a pseudonym I use in my official capacity as an employee of the IRS. This pseudonym is used for privacy and safety reasons. It is registered with the IRS, in accordance with IRS procedures (Internal Revenue Manual

10.5.7), and all IRS procedures governing the use of pseudonyms have been followed.

3. I am authorized to issue IRS summonses under 26 U.S.C. § 7602 and 26 C.F.R. § 301.7602-1.

4. In or around 2021, the IRS's Lead Development Center (LDC) identified Slim Ventures LLC as an entity promoting monetized installment sales (MIS). LDC receives, identifies, and develops leads on individuals and entities that promote or aid in the promotion of abusive tax schemes. Attached as Exhibit 1 is a true and correct copy of promotional material downloaded from Slim Ventures' website.

5. The LDC further learned from material posted on the interne that David Michael Bishop is Slim Ventures' managing director. In 2021, it referred Bishop for investigation relating to his promotion of MIS.

6. The IRS is investigating Bishop to determine whether he may be subject to penalties under 26 U.S.C. § 6700 for promoting abusive tax schemes and whether he has violated a permanent injunction entered against him in *United States v. Bishop*, 2:03-cv-01017 (D. Utah).

7. I am assigned to the investigation in my official capacity as a Revenue Agent.

8. As part of the investigation, I sent Bishop a series of Information Document Requests between June 2021 and February 2022, which requested that he produce documents and answer questions related to his promotion of MIS or similar tax plans.

9. In response, Bishop produced some documents and answered some questions, but he did not produce all documents requested or answer many of the questions I had. For example, Bishop refused to provide any documents in response to my request for his accounting records, bank statements, and client list.

10. On September 30, 2021, I interviewed Bishop for the investigation.

11. I explained to Bishop at the start of the interview that I was investigating whether he may be liable for tax penalties under 26 U.S.C. § 6700 resulting from his promotion of MIS. I next asked Bishop for his educational background. Bishop told me that he received a JD from George Mason University in 1996. Then I asked Bishop how he began marketing MIS. Bishop told me that he learned about MIS from the website of a financial advisor named Stanley Crow. Bishop said he studied Crow's website for six months before deciding to market MIS himself. Bishop also said that he used the information from Crow's website to write Slim Ventures' promotional material.

12. Bishop told me that he had tried several things before MIS, but MIS were his first "pay day." Over the past three years, he had averaged three to four sellers per month.

13. I asked Bishop if he owned Slim Ventures. Bishop responded that a family trust, of which his daughters are the beneficiaries, owns Slim Ventures. He claimed to just be the manger. He also said that he uses a bank called Summit Crest Financial LLC as

Slim Ventures' third-party lender. From my experiences and training as a Revenue Agent, I suspect that Bishop may be Slim Ventures' *de facto* owner and is using the family trust to hide that fact.

14. After the interview, I looked up Slim Ventures on the IRS's Information Returns Processing (IRP) system. IRP stores data on payments to third parties. For example, employers must report the wages they pay, and banks must report their clients' earnings from things such as dividends and interest. I saw from searching Slim Ventures in the IRP database that Wells Fargo Bank had paid Slim Ventures $11,227 in interest in 2020. Such a large amount of ordinary bank interest indicates that Slim Ventures likely held a substantial sum of money with Wells Fargo in 2020.

15. My further research on internal IRS systems indicated that Key Bank and Zions Bank may have had information relevant to Bishop's promotion of MIS.

16. Afterward, I prepared IRS summonses to Key Bank, Zions Bank, Wells Fargo, and Summit Crest. The summonses sought information concerning any account over which Bishop or Slim Ventures held ownership interests, signatory authority, or right to make withdrawal from, or for which they were trustee, co-signer, guardian, custodian, administrator, or beneficiary, at any time from 2018 to the present. I suspected, from Bishop's interview and my own research, that the banks may have such records. Those records

may, in turn, help determine whether to assess § 6700 penalties against Bishop for promoting MIS.

17. In accordance with 26 U.S.C. § 7609(a), on May 4, 2022, attested copies of the IRS summonses described above were served on Zions Bank, Wells Fargo, and Summit Crest by certified mail. Key Bank was served by fax per an agreement it has with the IRS.

18. Before serving the four banks, I followed all administrative steps required by the IRS.

19. On May 4, 2022, I sent Bishop and Slim Ventures IRS Forms 2039, by certified mail, notifying them of each summons served on the four banks.

20. The summonses seek documents relevant to Bishop's income from promoting MIS, which are not already in the IRS's possession. Indeed, Bishop earlier refused to produce any bank statements or accounting records to me.

21. The information and records sought by the summonses may shed light on the implementation and details of Bishop's MIS transactions. They may further shed light on whether Bishop may be liable for penalties under 26 U.S.C. § 6700 and how to calculate the penalty amount, if necessary. They may similarly be relevant to determining whether Bishop violated the permanent injunction not to engage in conduct subject to penalties under § 6700.

22. All administrative steps required by the Internal Revenue Code for enforcement of the summonses have been followed. The IRS satisfied the

notice requirement of 26 U.S.C. § 7609(a) by sending Bishop and Slim Ventures IRS Forms 2039 within three days of when it served the banks.

23. On May 6, 2022, Key Bank notified me that it had no information responsive to the summonses.

24. On May 31, 2022, Zions Bank notified me that it had no information responsive to the summonses.

25. The summonses required the four banks to respond by June 6, 2022. But, to date, Wells Fargo and Summit Crest have not responded.

26. No "Justice Department referral" has been in effect with respect to Bishop since the summonses were served. More specifically, no recommendation has been made by the IRS to the Department of Justice for a grand jury investigation or criminal prosecution of Bishop for the periods under investigation. Moreover, no request has been made under 26 U.S.C. § 6103(h)(B)(3) for the disclosure of any return or return information in connection with a grand jury investigation or potential or pending criminal investigation of Bishop.

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

Dated: 08/26/2022.

Digitally signed by
Timothy Bauer
Date: 2022.08.26
/s/ Timothy Bauer 12:12:59 -07'00'

Timothy Bauer
IRS Revenue Officer

Exhibit 1

Executive Summary
Monetized Installment Sale Transactions

Overview

An owner of highly appreciated assets can sell them and defer 100% of the capital gains tax for up to 30 years while receiving up to 95% of the value in cash.

These appreciated assets can include real estate, mineral rights, water rights, privately held stock, partnership interests, etc.

The transaction allows a seller to:

- Sell the asset
- Walk away from escrow with no immediate capital gains taxes due
- Defer the taxes for 30 years
- Receive tax free 95% of the sale proceeds in cash in the form of a loan

Slim Ventures LLC offers to purchase the appreciated assets in exchange for an installment note. In addition, the owner is offered, but is not required to accept, a limited-recourse "monetization loan" from a third-party lender introduced by Slim Ventures LLC.

Slim Ventures LLC will immediately re-sell the asset to the ultimate buyer, who otherwise could have purchased the asset directly from the owner who sells to Slim Ventures LLC The closing on the Monetized Installment Sale transaction and the closing on the

resale will occur simultaneously, typically where the closing would have occurred if there had been no Monetized Installment Sale transaction.

If the seller enters into the monetization loan, it will be funded “up front", i.e. the seller receives the loan proceeds promptly after the closing on the sale of the asset. The entire transaction occurs within a third party escrow.

Benefits

The transactions may achieve the following:

1. An installment sale of the asset, with the capital-gains tax deferred for as long as 30 years, with no net tax cost to the seller during that time;

2. Near immediate availability (i.e. within days) of a non-taxable monetization loan for the seller, with the entire repayment of the monetization loan funded by Slim Ventures LLC’s installment payments to the seller, at no net cost to the seller for interest or principal payments;

3. Ability for the seller to invest the loan proceeds at the seller’s full discretion;

4. No risk that the seller will have to use any funds to repay the loan other than the money which Slim Ventures LLC pays to the seller pursuant to the monetized installment sale contract;

5. Administrative ease on the installments of the Monetized Installment Sale and payments on the loan

managed automatically by an escrow company and reported annually to the parties and the Internal Revenue Service;

7. Minimized credit risk, default risk and performance risk.

How It Works

1. Seller sells an appreciated asset at fair market value to a dealer for an interest only, non-amortizing long term installment note (which Is tax deferred under IRC 453).
2. The dealer sells the asset to the end buyer at fair market value.
3. The seller obtains a loan from a third party lender equal to 95% of the sales price.
4. The seller and the dealer continue to make loan payments on their respective notes. The dealer's installment payments fund seller's payments on the limited recourse loan.
5. While the seller defers the tax on the sale, inflation during the contract term acts in seller's favor, allowing them to pay the future tax bill tax in depreciated dollars.
6. In the meantime, the seller uses the proceeds to invest or consume as he would on any general purpose loan.

Other Companies that Have Done This

Several public companies have engaged in this transaction, in amounts that have ranged from $22 million to over $4.5 billion. These transactions have been undertaken with full assistance from the companies' teams of auditors at Big 4 accounting firms, investment banks, large Wall Street law firms, and in house attorneys and have been fully disclosed in their SEC financial statements.[1]

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[1] See GREIF Inc. at http://www.investquest.com/iq/g/gef/fin/8k/gef8k060605.htm;

See Kimberly Clark at http://files.shareholder.com/downloads/KMB/4330473318x0xS55785-03-1/55785/filing.pdf at p. 126;

See International Paper at https://www.sec.gov/Archives/edgar/data/51434/000119312511100407/filename1.htm;

See Plum Creek at investor.weyerhaeuser.com/download/PCL+Q2+2000+10-Q.pdf

See St. Joe's at http://ir.ioe.com/secfiling.cfm?filingID=745308-14-22;

See MeadWestvaco at http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NTM3NjAyfENoaWxkSUQ9Mjl2NTQwfFR5cGU9MQ==&t=1; and

See OfficeMax at http://investor.officedepot.com/phoenix.zhtml?c=94746&p=irol-faq

See Rayonier at https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.rayonier.com/Documents/2016_Annual_Report_RYN.aspx&ved=0ahUKEwjk6Ka1m4HUAhUT8GMKHQbhCucQFggfMAA&usg=AFQjCNE0YOGQCxnXiXBZf0D - QwvorYcog&sig2=b5kdrLLVtnl-YlnQ_rxGNg

See L.P. Building Products at http://www.otcmarkets.com/edgar/GetFilingPdf?FilingID=11369524

See Glatfelter at http://www.glatfelter.com/about us/news events/press release.aspx?PRID=10

These companies and their transactions have include:

1. The $43.25 Million Monetized Installment Sale by GREIF, Inc.
2. The $617 Million Monetized Installment Sale by Kimberly Clark.
3. The $4.8 Billion Monetized Installment Sale by International Paper.
4. The $350 Million Monetized Installment Sale by Plum Creek.
5. The $1.47 Billion Monetized Installment Sale by OfficeMax.
6. The $774 Million Monetized Installment Sale by Meadwestvaco.
7. The $183 Million Monetized Installment Sale by the St. Joe Company.
8. The $22.5 Million Monetized Installment Sale by Rayonier.
9. The $403 Million Monetized Installment Sale by Louisiana Paper.
10. The $37.9 Million Monetized Installment Sale by Glatfelter.

Slim Ventures focuses on the middle market for these transactions.

Tax and Non-tax Considerations

The core tax issues surrounding this strategy consist in:

1. The tax deferral of installment sales.
2. The tax free nature of loans.
3. Other 'judicial doctrines' related to 'substance over form' and 'business purpose'.

The IRS and the courts have discussed these issues in numerous instances. In a recent General Counsel Memorandum, the IRS discussed, and declined to challenge, a Monetized Installment Sale that one of the public companies referenced above had engaged in.[2]

Section 453 of the Internal Revenue Code provides that when a taxpayer sells a capital asset and does not receive full payment of the selling price in the year of sale, the transaction is an installment sale and the seller owes the tax to the extent (and when) the seller receives the principal.

In the case of an owner's sale to Slim Ventures LLC, the capital-gains tax may be entirely deferred for as long as 30 years, because Slim Ventures LLC's installment contracts are typically for that period of time with no payment of principal until the end of that time.

When installment reporting was adopted in the first Internal Revenue Code in 1913, there was no widely available system of institutional finance for the buying and selling of farms, homes and businesses, and

[2] See https://www.irs.gov/pub/irs-lafa/20123401F.pdf

Congress realized that installment sales were necessary to the functioning of the marketplace and the economy. Currently, it is estimated that 80% of business sales come with some form of buyer financing; in the residential context, some hundreds of thousands of properties are also financed per year. These transactions are an important part of the economy and contribute to the soundness of the financial system.

Congressional Intent

Congress implicitly recognized monetized installment sales when in 1980 it codified, in Section 453A, provisions allowing for monetization loans taken out at the same time as installment sales occur.

Congress further recognized that if all sales were treated for tax purposes as if they were cash sales, the effect on the economy would be adverse.

> Example: John and Mary own real estate on which, many years ago, they built a modest building in which they have operated a retail business ever since. They want to sell the business and the real estate and retire, but the tax cost of doing so, if they were to sell for cash, would mean that their after-tax resources for retirement would be insufficient. Of course, they regularly pay some income taxes because of the business, but that amount is modest. Because of the tax cost of selling, they feel trapped, and they continue their labors.
>
> Then John and Mary are approached by Sam the Developer, who knows that if he can purchase the property and business from John and Mary, Sam

> the Developer will close their business, tear down their building and replace it with a much bigger and grander, high-rise retail and residential structure. If they would sell to him, revenues from property taxes and income taxes related to the new structure and the business and personal tenants therein would increase ten, twenty or thirty times, or more. The value of the property would rise commensurately, so that when it would later be sold again the capital-gains tax would be many multiples of what it would be if John and Mary were to sell now. And, the number of taxable transactions would rise, too.
>
> The answer? John and Mary sell on a tax-deferred installment contract such as in an Monetized Installment Sale transaction, they defer their tax, they have sufficient funds for retirement, and the tax revenues for city, county, state and federal governments rise—all because of the availability of tax deferral for John and Mary because of their installment sale.

That outcome illustrates why installment reporting was never intended to be available only when a cash sale was not available. Installment reporting was intended to be available when a cash sale was not desirable, just as much as when a cash sale was not available; Congress wanted sellers to be able to choose freely the terms and conditions of sale, so that transactions would occur freely and the economy and tax revenues would grow commensurately.

We are happy to discuss additional legal aspects of the transaction, including legal requirements for a valid

loan as well as judicial doctrines such as economic substance, business purpose and the step transaction doctrine, which can be satisfied in this transaction.

Process

As a dealer in capital assets, Slim Ventures LLC purchases the asset—it can be virtually any capital asset, whether it's a business, investment or personal one—from the owner-seller, on an unsecured installment contract which calls for payments of interest only by Slim Ventures LLC to the seller for 30 years, followed by payment of the entire purchase price at the end of the term.

Most often, the seller has already found an ultimate buyer for the asset before Slim Ventures LLC becomes involved. Most often, the ultimate buyer is prepared to pay cash, or a considerable portion of the price in cash, and the seller prefers to defer the tax on the cash proceeds. With that in mind, the seller brings Slim Ventures LLC into the deal, to be an intermediate purchaser from the seller. The purchase price in the installment contract in an Monetized Installment Sale transaction is typically equal to the resale price, but with provision for a discount at the end of the 30 years if Slim Ventures LLC fully performs.

At the same time as the purchase, Slim Ventures LLC re-sells the asset to the final buyer to whom the seller had planned to sell directly. Slim Ventures LLC receives and retains the sale proceeds which the final buyer pays. (That's why Slim Ventures LLC doesn't

charge a fee to the seller; Slim Ventures LLC retains all of the resale proceeds, so it wouldn't make sense to charge a fee on top of that.)

Although there are two sale transactions—the installment sale to Slim Ventures LLC and the resale to the final buyer—there is only one transfer of title or ownership; the deed or other instrument of transfer will pass directly (in a "directed" transfer) from Slim Ventures LLC's seller to Slim Ventures LLC's buyer, without going through Slim Ventures LLC Therefore, the final buyer will receive the same instrument of transfer from the same party with the same representations and warranties, on the same day and for the same price as would have been the case if Slim Ventures LLC had not been involved.

Both the installment sale to Slim Ventures LLC and its resale to the final buyer are closed simultaneously, pursuant to mutually agreed closing instructions provided to the closing agent.

The Monetization Loan

At the same time and if the seller so desires, a third-party lender which is unrelated to Slim Ventures LLC is willing to lend to Slim Ventures LLC's seller (or, in the case of an entity which is the seller, the owner or owners of the entity) an amount of cash that is equal to a specified high percentage of the cash paid by the final buyer. Slim Ventures LLC's monthly interest payments on the installment contract will typically equal the seller's loan-interest payments, although the

interest rate on the monetization loan will be higher, because the installment purchase price will be higher than the loan amount. The final due dates on the installment contract and the monetization loan will typically be the same, and the principal amount paid on the installment contract at the end will equal or exceed the amount that the seller then owes on the loan.

The seller/borrower may then use those monetization loan proceeds—which should be non-taxable as are any other loan proceeds—for any business or investment purpose which the seller/borrower prefers, including to pay debt on the asset being sold or to pay other business debt. The seller/borrower is not restricted in the use of the proceeds of the investment.

The lender does not receive a lien on the installment contract, on the asset that was sold, on the installment payments made by Slim Ventures LLC, or on the investments made by the seller/borrower.

Unsecured Loans. The lender does not require that the seller/borrower provide any security, because the lender is looking to Slim Ventures LLC as the source of funds for the seller/borrower to repay the loan. The lender does not require that Slim Ventures LLC provide security, because Slim Ventures LLC agrees to invest the resale proceeds in accord with the lender's investment criteria.

30 Year Loans. The lender accepts a 30 year loan, so that Slim Ventures LLC can invest the resale proceeds for 30 years. History shows that when money can be invested for 30 years the likelihood is high that there

will be more than sufficient funds available at the end for Slim Ventures LLC to pay the seller in full on the installment contract, so that the lender will be paid in full on the monetization loan.

Because of the Monetized Installment Sale installment-sale transaction and the monetization loan, you, too, will have the opportunity to pursue long-term investments and long-term returns—and that is where your net cash flow will be after the Monetized Installment Sale transaction closes will occur (because all of your cash flow from the Monetized Installment Sale transaction will go to repay the monetization loan. Slim Ventures LLC is not a party to the loan; the monetization loan is a transaction solely between the seller/borrower and the lender.

Long Term Escrow Accounts. With a Monetized Installment Sales, three long-term escrows are established, the "Installment Escrow", the "Funding Escrow", and the "Loan Escrow".

Each month, the long-term escrow company will automatically take an installment-interest payment from Slim Ventures LLC's funds, place that money in the Installment Escrow, and credit Slim Ventures LLC with having made an installment-interest payment. Slim Ventures LLC's connection with that money thereupon ends, and the money then automatically transfers to the Funding Escrow, where the money belongs solely to the seller. The money then automatically transfers to the Loan Escrow, and the seller/borrower is credited

with having made a loan interest payment. When the principal is paid at maturity, the same process occurs.

This is an automatic process, just as would occur if a borrower were to arrange for incoming payments to be automatically deposited in the borrower's bank and for outgoing payments to be automatically withdrawn from the borrower's account in that bank.

Every January, the long-term escrow company will provide accountings of moneys received and paid, will perform the required tax reporting of the interest payments, and will bill the seller for the annual escrow fee (a modest sum).

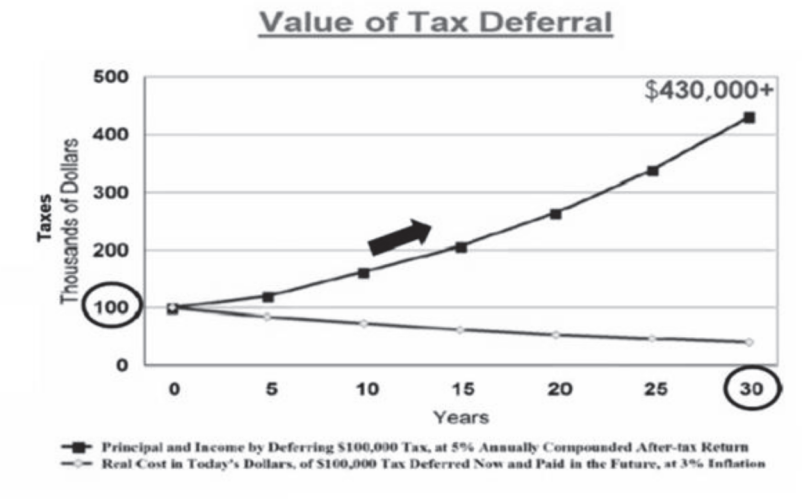
Recapture Tax

If recapture tax is a considerable factor in a given situation, the Monetized Installment Sale transaction may be revised in one or more respects, so that all or part of the recapture tax may be deferred, much as the capital gains tax is deferred.

End of the Term - Paying the Tax

The primary value of this strategy is that it:

1. Allows investors to re-invest at 95% on a tax deferred basis instead of at 75% by paying the tax;



2. Allows investors to pay with future (inflation eroded) dollars.

At the end of the installment contract term, capital gains tax will then be due, at whatever the rate is at that time for capital gains.

Our Role as a Dealer - Disclaimer

As a principal, Slim Ventures LLC does not act in the capacity of a broker, sales representative, investment adviser, or tax or legal adviser; does not sell or recommend any security; and does not accept any transaction fee or payment for transaction services. Circumstances may affect tax and legal outcomes. Each transaction is different and unique to each participant. Neither Slim Ventures LLC nor any of its officers or employees may or does provide tax, legal or investment advice. Nothing herein is intended to be, or may be taken to be, tax, legal or investment advice. Interested parties should consult their legal, tax and investment advisers before participating in any transaction.

Contact

Liquid Capital Partners
481 East Fashion Blvd
Salt Lake City, Utah 84107

www.liquidcappartners.com
chris@
liquidcappartners.com
Chris Sargent
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PEARSON
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November 17, 2023

Christopher M. Wolpert
Clerk of the Court
United States Court of Appeals
for the Tenth Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257

Re: Bishop, et al. v. United States et. al., Case Nos. 23-4020, 23-4021, 23-4022, 43-4026, & 23-4027

Dear Mr. Wolpert—

Per FRAP 28(j) and request of Court panel, Appellants submit citations as follows:

***1) 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).** A Westlaw-only citation to this late-breaking seismic case is in the Reply Brief at 12-13, 12 n.7, 17-18, 17 n.15, and is significant for, inter alia, reasons stated within briefing and oral argument. It is also Supreme Court de facto adaptation of "the type of investigation" or conduct "would chill or silence a person of ordinary firmness" standard in *White v. Lee*, 227 F.3d 1214,1226-28 (9th Cir. 2000), important because, inter alia, Bauer indicated to Petitioners the "Executive Summary" was illegal MIS promotion which should be removed and was being investigated (Petitioners then de-posted the material). Judge Barlow abruptly reneged on his 1/3/2023 Docket 29 order for Magistrate Pead to "hear

and determine all non-dispositive issues" and six days later closed the entire case and disallowed any hearing to hear argument or testimony about such circumstances.

***2) Missouri v. Biden*, – F.Supp.3d –, 2023 WL 4335270 *73 (116 Fed.R.Serv.3d 559) (W.D. La.), *aff'd in part*, 83 F.4th 350, 359-368, 372-373, 377-394, 398 (5th Cir. 2023), *cert. granted, Murthy v. Missiouri*, 601 U.S. –, – S.Ct. –, 2023 WL 6935337 (2023),** came out at the district level just as Reply Brief 30 n.32 was filed, but per oral argument is essentially a game-changing companion case opinion discussing the same *Bantam Book* and *White-type* First Amendment theories about threats, surveillance, coercion, intimidation and tactics (*e.g. Lakepoint Land II, LLC v. Commission, 2023 WL 5551183 *3*, 2023 RIA TC Memo 2023-111 (unreliable IRS declaration)) also applying in the IRS context to chill internet expression, all of profound concern to the public, U.S. House Weaponization Committee, attorneys, tax professionals, journalists, academics, Supreme Court, etc.

Respectfully,

/s/ Daniel E. Witte
Daniel E. Witte, Esq.