ORDER TO COMPLY WITH A SUMMONS

A man and his wife received an IRS summons. In opposition to compliance with the summons, they argued that:

1. The summons was invalid for lack of an OMB control number.
2. The issuing officer had no authority to issue the summons.
3. The issuing officer had not been duly delegated the authority to issue the summons.
4. Authority to issue summons extended only to ATF.
5. No kick-backs had been received by them.
6. Compliance with the summons violated Fourth and Fifth Amendment protections of privacy and self incrimination.
7. Nonresident aliens are not subject to this tax.
8. Fifty States are outside of the jurisdiction needed to enforce the Code.
9. The summons was not signed under penalties of perjury.

In response to the arguments of the "taxpayer" enumerated above, this Federal District Court Chief Judge takes the time to explain how each of these arguments are off point, ill-founded, or frivolous. Any Court which hastily categorizes an argument as frivolous without explaining why such is the case can take a lesson from this prime example of how to dispose of an argument at Law.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT
DIVISION

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U.S. DISTRICT COURT
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CIVIL NOS. A-MISC- A-MISC-

UNITED STATES OF AMERICA and REVENUE OFFICER SHIRLEY M. KRIEZEL,

Petitioners,

vs.

Respondent.

ORDER

THIS MATTER is before the Court on the following motions: Petitioners' Motion to Enforce Summons and Notice of Filing of Interrogatories, filed November , (Pleading No. 6) ["Motion to Enforce"][1]; Respondent's "Demand to Vacate Collection Summons"[2]; Respondent's "Motion to Vacate with Prejudice, by Judicial Notice, the Motion to Enforce Summons and Filing of Interrogatories," filed December , (Pleading No. 8) ["Motion to Vacate"]; and

[1]Petitioners' subsequently-filed interrogatories "constitute the information sought via the Internal Revenue Service's administrative summons." Motion to Enforce at 1. Petitioners would presumably forego an in-person interview of Respondent if the proffered interrogatories, see Interrogatories, filed November , (Pleading No. 7), were fully and completely answered.

As the records in Civil Case No. A-MISC- and Civil Case No. A-MISC- are identical, all pleading citations in this Order refer to the pleadings filed in both cases.

[2]Respondent has actually filed two pleadings entitled "Demand to Vacate Collection Summons." See Demand to Vacate Collection Summons, filed September (Pleading No. 4) ["Demand I"]; Demand to Vacate Collection Summons, filed October , (Pleading No. 5) ["Demand II"]. For purposes of this Order, the Court shall consolidate these two pleadings and treat them as one "Demand."

Respondent's "Motion to Include This Case as Evidence," filed December 19, 1991 (Pleading No. 9). For the reasons stated herein, Petitioners' Motion to Enforce Summons will be allowed, and Respondent's Demand I, Demand II, Motion to Vacate, and "Motion to Include This Case as Evidence" will be denied.

I. FACTUAL BACKGROUND

On or about April 15, 1991, Officer Shirley M. Kriezel of the Internal Revenue Service ["IRS"] served Respondent with two Collections Summonses directing Respondent to appear before Officer Kriezel on May 2, 1991, to give testimony and produce books and records relating to Respondent's purported tax liability for the taxable years 1980 through 1990.[3] Respondent appeared before Officer Kriezel on May 2 as directed, but refused to answer Officer Kriezel's questions or to produce any books or records. Instead, Respondent read a prepared written statement into the record and declined further cooperation until such time, in the words of Respondent's wife,[4] "if and when, as . . . you can show us, and

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[3]The Collection Summons in Civil Case No. A-MISC-[redacted] seeks information pertaining to the years 1980, 1981, and 1982. The Collection Summons sought to be enforced in Civil Case No. A-MISC-[redacted] requests information pertaining to the years 1983 through 1990.

[4]There are identical proceedings for the enforcement of Collection Summonses pending against Respondent's wife, [redacted] United States of America and Revenue Officer Shirley M. Kriezel v. [redacted], A-MISC-[redacted] United States of America and Revenue Officer Shirley M. Kriezel v. [redacted], A-MISC-[redacted] Respondent and his wife have appeared before Officer Kriezel and before this Court together on every occasion and, based upon their joint filings of pleadings in these matters, are apparently assisting each other in the defense of these

written down, where we are liable, in the code, and how we can do that [i.e. testify and produce books and records] without violating any of our Constitutional rights." Exhibit 8 ("Transcript of May [illegible], [illegible] Meeting at Internal Revenue Service, Room 400, B.B.&T. Building 1 West Pack Square, Asheville, North Carolina") ["May 2 Transcript"] at 10 attached to Demand II. Although not expressly doing so, Respondent apparently asserted the fourth amendment right against unreasonable searches and seizures and a blanket fifth amendment right against self-incrimination so as to avoid producing records and answering Officer Kriezel's questions.

Pursuant to subsequent petitions by Petitioners, this Court ordered Respondent to appear again before Officer Kriezel on October 2, 1991, to give testimony and to produce books and records pertaining to the taxable years in question. Order, filed August 16, 1991 (Pleading No. 2). In the event of Respondent's noncompliance with the Summonses, the Court ordered Respondent to appear before the undersigned on October [illegible], [illegible], to show cause why he should not be compelled to testify and to produce the summoned documents. In response, Respondent filed his first "Demand to Vacate Collection Summons" on September [illegible], [illegible]. Although appearing before Officer Kriezel on October 2 as ordered, Respondent again refused to relinquish the requested information and documents, apparently on the basis of the fourth and fifth

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matters.

amendments.[5] Exhibit 10 ("Transcript of October [redacted], [redacted], I.R.S. Meeting in Room 400, B.B.&T. Building, 1 West Pack Square, [redacted]") ["October Transcript"] at 1-3 attached to Demand II.

On October 28, 1991, Respondent and his wife appeared before the undersigned pro se[6] to show cause why they should not be compelled to comply with the Collection Summonses. The Court explained to Respondent and his wife their constitutional rights, including their fourth and fifth amendment rights, the right to have counsel present, and the nature of the proceedings against them. Both the Respondent and his wife waived any right to assistance of counsel. Because of the pro se status of Respondent

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[5]The Court notes that, although neither summoned nor actively participating in the proceedings, Respondent's wife appeared with Respondent on October 2. Likewise, when [redacted] appeared before Officer Kriezel on October [redacted], [redacted], Respondent accompanied his wife, without being summoned and without actively participating in the proceedings. See Exhibit 9 ("Transcript of October [redacted], [redacted], I.R.S. Meeting in Room 400, B.B.&T. Building, 1 West Pack Square, [redacted]) ["October Transcript"] attached to Demand II.

[6]Respondent has repeatedly asserted that he is proceeding sui juris in this matter, rather than pro se. See, e.g., Demand I; Motion to Vacate at 1 ("Comes now the Respondent[] . . . sui juris, NOT PRO SE . . . ."). The distinction between sui juris and pro se has no bearing on the ultimate disposition of the motions considered herein. However, as Respondent is appearing "in his own behalf . . . for oneself, as in the case of one who does not retain a lawyer and appears for himself in court" Black's Law Dictionary at 1099 (5th ed. 1979), as well as "[o]f his own right . . . not under any legal disability, or the power of another, or guardianship," id. at 1286, pro se would apparently be the proper designation in the instant case, although the other term adds, as surplusage, to a proper description of Respondent.

It is noted, however, that Respondent has apparently consulted counsel in the preparation of this case. See October Transcript at _ ("But anyway, there is one more thing that my counsel wants me to do . . . .").

and his wife, the Court agreed, over Petitioners' objection, to forego any possibility of contempt penalties at this stage, and to restrict its ruling to whether the Summonses should be enforced.

At the hearing, Officer Kriezel testified that the Summonses were issued for a number of legitimate purposes, that the requested records and information were relevant to those purposes, that the records and information were not already in the Government's possession, and that all administrative procedures required by the Internal Revenue Code ["the Code"] for the issuance and service of the Summonses had been followed. According to Officer Kriezel, Respondent has an outstanding assessment of $[redacted], from a real estate business in Florida, for the taxable years of 1980, 1981, and 1982.[7] The Collection Summons pertaining to those years was issued for the purpose of determining whether that liability could be collected. <u>See</u> Petitioners' Memorandum in Support of Motion to Enforce Summons at 2, 8 <u>attached to</u> Motion to Enforce. The Collection Summons pertaining to the years 1983 through 1990 sought information as to taxable income, because of Respondent's failure to file returns since [redacted]. <u>Id.</u> at 2.[8] On behalf of Respondent and herself, [redacted] [redacted] cross-examined Officer Kriezel and read another prepared written statement into the

[7]Officer Kriezel also testified that Respondent's wife has an outstanding assessment from those same years and from that same business in the amount of $[redacted].

[8]Both Summonses also sought information as to the identity of "Divine Missions," the entity named as owner of the property where Respondent currently resides.

record. At the conclusion of the hearing, the Court took all pending motions under advisement.

II. DISCUSSION

A summons enforcement proceeding occurs "at only the investigative stage of any action against a taxpayer, and no guilt or liability on the part of the taxpayer is established. The sole reason for the proceedings . . . is to ensure that the IRS has issued the summons for proper investigatory purposes under section 7602 and not for some illegitimate purpose . . . ." United States v. Kis, 658 F.2d 526, 535 (7th Cir. 1981), cert. denied sub nom. Salkin v. United States, 455 U.S. 1018 (1982). See also United States v. Barrett, 837 F.2d 1341, 1349 (5th Cir. 1988), cert. denied, 492 U.S. 926 (1989).

Therefore, in order to enforce an IRS summons issued pursuant to 26 U.S.C. § 7602, or to establish its validity upon a motion to quash, the United States must show that: (1) the summons was issued for a legitimate purpose; (2) the requested records and/or information may be relevant to that purpose; (3) the records and/or information are not already in the Government's possession; and (4) all administrative procedures required by the Code for the issuance and service of the summons have been followed. See, e.g., United States v. LaSalle Nat'l Bank, 437 U.S. 298, 313-14 (1978); United States v. Powell, 379 U.S. 48, 85 (1964); Alphin v. United States, 809 F.2d 236, 238 (4th Cir.), cert. denied, 480 U.S. 935 (1987); United States v. Davis, 636 F.2d 1028, 1034 (5th Cir.), cert.

denied, 454 U.S. 862 (1981). A declaration by the officer seeking enforcement of the summons that these four requirements have been met is sufficient to establish a prima facie case for the enforcement of the summons. See, e.g., In re Newton, 718 F.2d 1015, 1019 (11th Cir. 1983), cert. denied sub nom. Trio Mfg. Co. v. United States, 466 U.S. 904 (1984); Davis, 636 F.2d at 1034; White v. United States, 629 F. Supp. 992, 994 (E.D.N.C. 1986).

In a proceeding before a federal district court for the enforcement of an IRS summons, the individual served may challenge the summons on any appropriate ground. Reisman v. Caplin, 375 U.S. 440, 449 (1964). Once a prima facie case for enforcement has been established, the burden of disproving one of the four requirements for enforcement or of establishing any other appropriate ground for challenging the summons, including abuse of the Court's process, see, e.g., Powell, 379 U.S. at 58, shifts to the individual served. See, e.g., United States v. Centennial Builders, Inc., 747 F.2d 678, 680 (11th Cir. 1984); United States v. Beacon Fed. Sav. & Loan, 718 F.2d 49, 52 (2d Cir. 1983); United States v. Harper, 662 F.2d 335, 336 (5th Cir. 1981); Kis, 658 F.2d at 537. Respondent's burden of proof is "a heavy one." LaSalle Nat'l Bank, 437 U.S. at 316. See also United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990); Alphin, 809 F.2d at 238; United States v. Balanced Fin. Management, Inc., 769 F.2d 1440, 1444 (10th Cir. 1985); United States v. Krauth, 769 F.2d 473, 477 (8th Cir. 1985).

Officer Kriezel's Declaration, see Exhibit B (Declaration of Shirley M. Kriezel) attached to Petition, filed August 12, 1991

(Pleading No. 1), and her testimony before the undersigned on October 28, 1991, readily establish a prima facie case for the enforcement of the Summonses. After considering the voluminous pleadings filed by Respondent and Respondent's presentation in open court, the Court discerns the following objections by Respondent to the enforcement of the two Collections Summonses in the instant case:

A. Jurisdictional Objections to the Collection Summonses

1. Petitioners lack the authority to enforce either the Code or the Summonses against Respondent who, as a citizen of the "foreign state of North Carolina," is not amenable to the jurisdiction of the United States, **Motion to Vacate at 3-5;**

2. The Code and the Summonses are inapplicable to Respondent because he is a nonresident alien, **Demand I at 2; Motion to Vacate at 3-5;**

B. Objections to the Facial Validity of the Collection Summonses as Served

1. Petitioners' failure to serve Respondent with attested copies of the Collection Summonses, in violation of 26 U.S.C. § 7603, precludes enforcement of the Summonses, **Demand I at 1;**

2. Respondent has no federal tax liability, therefore vitiating the so-called "Matter of the Tax Liability of B.J. Walton" and precluding Petitioners from applying the Code to Respondent, **Demand I at 3;**

3. The Summonses are invalid as issued because they lack the requisite Office of Management and Budget control numbers, **Motion to Vacate at 6;**

4. Petitioners' failure to sign the Summonses under penalty of perjury, as required by 26 U.S.C. § 6065, precludes enforcement of the Summonses, id. at 2;

5. The Summonses were issued pursuant to 26 U.S.C. § 7602, as implemented by Title 27 of the Code of Federal Regulations ("Alcohol, Tobacco Products and Firearms"), which criminalizes activities Respondent has not undertaken, **Demand I at 2; Motion to Vacate at 2-3;**

C. Objections to Officer Kriezel's Actions and Her Lack of Authority

1. Officer Kriezel lacked the authority to issue the Summonses, because of her failure to produce a "Delegation of Authority" letter from the Secretary of the Treasury on demand and because of her status as a GS-12 level revenue officer, Demand I at 2; Motion to Vacate at 2;

2. Petitioners' failure to serve Respondent with a "form as listed in publication 676 and supported by Treasury Order #24 from the Handbook of Delegation Orders . . . prior to any year in question, ordering the Respondent to keep records or books of any kind," precludes enforcement of the Summonses, Demand I at 2; and

3. Officer Kriezel misrepresented to the Court, under penalty of perjury, that Respondent appeared but failed to comply with the Summonses when Respondent did, in fact, appear and comply, Demand I at 2.

Respondent's objections contest only the assertions by Officer Kriezel that the Summonses were issued for legitimate purposes and that all administrative procedures required by the Code for the issuance and service of such Summonses have been followed. Respondent's failure to object to the assertions that the requested records and information are relevant to the purportedly legitimate purposes and that the records and information are not already in the Government's possession effectively waives those objections. See, e.g., United States v. Gajewski, 419 F.2d 1088, 1091 (8th Cir. 1969), cert. denied, 397 U.S. 1040 (1970). The Court shall also address Respondent's blanket invocations of the fourth and fifth amendments, and Petitioners' objections thereunto.

A. JURISDICTIONAL OBJECTIONS

1. The "Foreign State" of North Carolina

Respondent claims that Petitioners may enforce neither the Code nor the Summonses against him because he is a citizen of the State of North Carolina, "a foreign state with respect to the 'United States,' and . . . therefore . . . an area 'abroad' or outside the 'United States.' This [i.e. North Carolina] is also considered a foreign country for U.S. revenue purposes." Motion to Vacate at 3-4. Apparently, as a citizen of the "foreign country" of North Carolina, Respondent neither resides in nor is a citizen of the United States of America. As a result, Respondent claims he is not subject to an internal revenue tax, the Code, the Collection Summonses issued by Agent Kriezel pursuant to § 7602, or the territorial jurisdiction of the United States. See id. at 4. No authority is cited by Respondent for this conclusory allegation of North Carolina's foreign sovereignty.

Although the concept of federalism recognizes the dual sovereignty of the State of North Carolina and the United States of America, North Carolina is indeed one of the fifty states constituting the United States of America.[9] See, e.g., Testa v.

[9] So long as the separate organisation of the members be not abolished, so long as it exists by a constitutional necessity for local purposes, though it should be in perfect subordination to the general authority of the Union, it would still be, in fact and in theory, an association of States, or a confederacy. The proposed Constitution, so far from implying an abolition of the State Governments, makes them constituent parts of the national sovereignty by allowing them a

Katt, 330 U.S. 386, 389-91 (1947); The Chinese Exclusion Case, 130 U.S. 581, 604-05 (1889); United States v. Cruikshank, 92 U.S. 542, 550 (1876); Cohens v. Virginia, 19 U.S. 264, 380-83 (1821). "This State shall ever remain a member of the American Union; the people thereof are part of the American Nation; there is no power on the part of this State to secede . . . ." N.C. Const. art. I, § 4. "Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force." Id. at art. I, § 5. "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." U.S. Const. amend. XIV, § 1.

The fact that Respondent is a citizen of North Carolina does not relieve him of the rights and obligations created by the laws of the United States, including the Code. Dennis v. United States, 660 F. Supp. 870, 875 n.2 (C.D. Ill. 1987) ("[T]he taxing power of the United States of America extends to every individual who is a citizen or resident of this nation."); Sloan v. United States, 621

> direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a Foederal Government.

The Federalist No. 9, at 55 (A. Hamilton) (J. Cooke ed. 1961) (emphasis added). See also The Federalist No. 33, at 208 (A. Hamilton) ("CONCURRENT JURISDICTION in the article of taxation was the only admissible substitute for an intire subordination, in respect to this branch of power, of the State authority to that of the Union.").

F. Supp. 1072, 1073-74 (N.D. Ind. 1985) (Secretary may issue summonses to obtain information about any potential tax liability), aff'd in part, dismissed in part, 812 F.2d 1410 (7th Cir. 1987), aff'd, 939 F.2d 499 (7th Cir. 1991), cert. denied __ U.S. __, 112 S. Ct. 940 (1992); Channell v. United States, No. C88-0118P(CS), 1988 U.S. Dist. LEXIS 16904 at *5 (W.D. Ky. August 9, 1988) (opinion by Magistrate Judge King). To paraphrase Justice Willis Van Devanter, when Congress, in the exertion of the power confided to it by the sixteenth amendment,[10] adopted the Code, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of North Carolina as if the Code had emanated from the North Carolina General Assembly, and should be respected accordingly by the citizens and courts of the State of North Carolina. Second Employers' Liability Cases, 223 U.S. 1, 57 (1912). See also Claflin v. Houseman, 93 U.S. 130, 136 (1876) ("The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are."). Respondent's "foreign state of North Carolina" argument is patently frivolous,[11] and is hereby rejected

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[10] "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without any apportionment among the several States, and without regard to any census or enumeration." U.S. Const. amend. XVI.

[11] "The contention that appellants are not taxpayers because they are 'free born, white, preamble, sovereign, natural, individual common law 'de jure' citizens of Kansas' is frivolous." United States v. Dawes, 874 F.2d 746, 750-51 (10th Cir. 1989). See also United States v. Studley, 783 F.2d 934, 937 (9th Cir. 1986) (an "absolute, freeborn and natural individual" is still a "person" under the Code and thus subject to its provisions).

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as a basis for quashing the Collection Summonses in question.

2. Respondent's Nonresident Alien Status

Respondent also challenges Petitioners' jurisdiction to serve the Collection Summonses and to assess a tax liability by asserting the nonresident alien status under 26 U.S.C. § 865(g)(1)(B).[12] The "nonresident alien" status is actually defined in 26 U.S.C. § 7701(b)(1)(B) as "[a]n individual . . . [who] is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A))." See also 26 C.F.R. § 1.871-2(a).

Respondent has failed to produce evidence demonstrating that he is indeed a nonresident alien. First, as to Respondent's citizenship, the record is devoid of evidence showing that

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[12]Respondent sets forth his residency status in the following statement:

> I, [redacted], declare that: I am an American inhabiting North Carolina State; I am a Non-Resident to the United States [26 USC 865 (g) (1) (B)]; I have never worked for a domestic corporation; I have never filed Form 1078 or an equivalent as prescribed in 26 CFR 1.1441-5, that would rebut my non-resident status [26 CFR 1.871-4(b)]; I never had any gross income attributable to 26 CFR 872 (a) (1) or (2); I am excluded from being required to obtain and submit an identifying number [26 CFR 301.6109-1(g)]; should I have income from sources within the United States, I am still not subject to a withholding of any kind as it is not deemed to be income [26 USC (a) (3) (C) (i)].
>
> Therefore I am neither now nor even been subject to the jurisdiction of the United States for "internal revenue."

Asseveration, Declaration of Status, dated September [redacted], attached to Demand I.

Respondent was born or naturalized somewhere other than the United States. U.S. Const. amend. XIV, § 1.[13] Second, Respondent's "Declaration of Status" does not constitute a voluntary and intentional relinquishment of United States nationality under 8 U.S.C. § 1481. See Vance v. Terrazas, 444 U.S. 252, 260 (1980); Afroyim v. Rusk, 387 U.S. 253, 268 (1967); Kahane v. Secretary of State, 700 F. Supp. 1162, 1166 (D. D.C. 1988).[14] Third, Respondent has failed to satisfy the "lawfully admitted for permanent residence," "substantial presence," or "first year election" residency tests under 26 U.S.C. § 7701(b)(1)(A)(i), (ii), and (iii), thereby precluding his qualification as a nonresident alien. Because Respondent is admittedly both a citizen and a resident of North Carolina, and North Carolina is one of the United States, the Court can only presume, in the absence of any

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[13]See also Slaughter-House Cases, 83 U.S. 36, 74 (1873) ("He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union."); Factor v. Pennington Press, Inc., 230 F. Supp. 906, 909 (N.D. Ill. 1963) ("But in order to be a citizen of a state, it is elementary law that one must first be a citizen of the United States."); Western Mut. Fire Ins. Co. v. Lamson Bros. & Co., 42 F. Supp. 1007, 1012 (S.D. Iowa 1941) ("Under our system of government an individual citizen of a State is also a citizen of the United States. . . .").

[14]Even if the "Declaration of Status" is sufficient to relinquish Respondent's United States nationality, the Code provides for the fully graduated taxation of all United States source income for the ten years preceding the date of such expatriation, or September 19, 1991, unless Respondent can prove that avoidance of taxes was not one of the principal purposes for his expatriation. See Di Portanova v. United States, 690 F.2d 169, 176-78 (Ct. Cl. 1982); 26 U.S.C. § 877. Hence, Respondent's tax liability could date back as far as 1980, the first year questioned by the issued Collection Summonses.

contradictory evidence, that Respondent is a citizen of the United States.

Even if Respondent could demonstrate that he was a nonresident alien, he would still be subject to the Code's nonresident alien individual provisions, 26 U.S.C. § 871 <u>et</u> <u>seq</u>. and 26 C.F.R. § 1.871 <u>et</u> <u>seq</u>. The uncontested evidence presented at the hearing established that Respondent had substantial income from a real estate business in Florida, another one of the United States, between 1980 and 1982. That would constitute taxable United States source income under 26 U.S.C. § 871. Furthermore,

> every nonresident alien individual . . . who is engaged in business or trade in the United States . . .or who has [taxable] income . . . shall make a return on Form 1040NR. . . . even though (a) he has no income which is effectively connected with the conduct of a trade or business in the United States, (b) he has no income from sources within the United States, or (c) his income is exempt from income tax by reason of an income tax provision or any section of the Code.

26 C.F.R. § 1.6012-1(b). <u>See</u> <u>also</u> 26 C.F.R. § 1.6015(i)-1(b) (requiring certain nonresident aliens to file declarations of estimated income tax). If, as set forth in his "Declaration of Status," Respondent has no taxable United States source income, he may still be subject to taxation on income derived from sources <u>outside</u> of the United States. 26 U.S.C. §§ 862, 863(b). Respondent has failed to explain how, if he is indeed a nonresident alien, these provisions would be inapplicable to him.

Finally, the IRS is entitled to use its authority under § 7602 to determine the accuracy of Respondent's alleged nonresident alien status and any assertion that the Code's nonresident alien

provisions do not apply to him. See, e.g., Kis, 658 F.2d at 537; Sloan, 621 F. Supp. at 1074. The Court concludes that the Summonses may not be quashed on the basis of Respondent's alleged nonresident alien status.

B. VALIDITY OF SUMMONS OBJECTIONS

1. Lack of Attestation

Respondent contends that, because Officer Kriezel served him with copies of the Collection Summonses that were not attested as authentic, Petitioners failed to follow all administrative procedures required by the Code for the issuance and service of such Summonses. Demand I at 1.

Under the Code, "[a] summons . . . shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode . . . ." 26 U.S.C. § 7603 (emphasis added). Because the Code does not define "attested copy," some district courts have referred to Black's Law Dictionary in requiring that "an attested copy must have a signed written notation that the copy is a correct copy." Mimick v. United States, CV 90-0-271, CV 90-0-456, 91-1 USTC para. 50,070, at 87,283 (D. Neb. January 23, 1991). See also Henderson v. Unites States, CA No. 91-805-20K (D. S.C. November 27, 1991) (citing Mimick with approval).[15] Respondent relies on these decisions for the proposition that the Summonses served in the

[15] The Henderson decision is the case contemplated by Respondent's "Motion to Include This Case as Evidence," filed December [illegible], [illegible] (Pleading No. 9).

instant case cannot be enforced because of the absence of such a signed written notation.

Since the entry of the Henderson decision by the South Carolina district court, the Eighth Circuit has reversed the Nebraska district court's opinion in Mimick. Mimick v. United States, 952 F.2d 230 (8th Cir. 1991). In refusing to require a separate attestation, the Eighth Circuit adopted the Fifth Circuit's approach for determining whether a summons may be enforced, which "'requires the court to evaluate the seriousness of the violation under all circumstances including the government's good faith and the degree of harm imposed by the unlawful conduct.'" Id. at 232 (quoting United States v. Gilbert C. Swanson Foundation, Inc., 772 F.2d 440, 441 (8th Cir. 1985), and United States v. Payne, 648 F.2d 361, 363 (5th Cir. 1981), cert. denied, 454 U.S. 1032 (1982)). The Eighth Circuit found that, because the Government acted in good faith and the summoned parties suffered no harm from the lack of attestation, the summons could be enforced notwithstanding the lack of separate attestations. Mimick, 952 F.2d at 232.

In the instant case, Officer Kriezel testified under oath that she made carbon copies of the Summonses in question, compared the copies with the originals to ensure that the copies were identical, and tendered those copies to the Respondent. Officer Kriezel then orally attested to the authenticity of the Summonses. The Court is satisfied that the Government, through Officer Kriezel, acted

in good faith in serving the two Summonses without separate attestations.

Respondent suffered no prejudice or harm due to the absence of separate attestations on the Summonses. Indeed, when he appeared before Officer Kriezel for the first time on May [illegible], [illegible], Respondent failed to object to the absence of separate attestations or to allege any prejudice as a result of the absent attestations. See May 2 Transcript. Strict compliance with 26 U.S.C. § 7603 is waived when the summoned party appears at the time and place set forth in the Summonses and fails to object to a procedural deficiency in the service of the Summonses. Payne, 648 F.2d at 362-63.

"The evidence shows that the copies served are true and correct copies of the originals and lack only the attestation to fully comply with the requirements of § 7603." Mimick, 952 F.2d at 232. This technical failure to comply with the dictates of § 7603, which Respondent has already waived by his failure to timely object thereunto, is not sufficient to forestall enforcement of the Summonses.[16] See also United States v. Texas Heart Institute, 755 F.2d 469, 477-78 (5th Cir. 1985), overruled in part on other grounds, United States v. Barrett, 837 F.2d 1341, 1351 (5th Cir. 1988); United States v. Bank of Moulton, 614 F.2d 1063, 1066 (5th Cir. 1980) (to hold otherwise would improperly "elevate form over

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[16]This Court shall, however, echo the Eighth Circuit by holding that "[a]s the Internal Revenue Service has now been alerted to the requirements of an attested copy, future summonses should comply with this holding." Mimick, 952 F.2d at 232.

substance . . . . Nothing in the language of the Code itself mandates [the preclusion of the enforcement of an IRS summons] for infringement [of a requirement of the Code]."); United States v. Scoville, No. 91-W-9063-1, 1991 U.S. Dist. LEXIS 11785 at *16-*17 (W.D. Mo. August 18, 1991).

2. "Matter of the Tax Liability" and Office of Management and Budget Control Number

The Court finds that the same rationale outlined in Section B.1. supra applies to Respondent's objections to the titles of the Collection Summonses[17] and the absence of the Office of Management

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[17]According to Respondent's argument, the Collection Summonses are improperly entitled "In the matter of the tax liability of [redacted] [redacted]," because he has no tax liability and, therefore, Petitioners' assertion of jurisdiction over this matter is improper. Demand I at 3.

The purpose of a Collection Summons is to gather pertinent information for the preparation of a Collection Information Statement so as to determine, among other things, whether a tax liability indeed exists or whether such liability may be collected. See, e.g., 26 U.S.C. § 7602(a); Exhibit A (Collection Summons) attached to Petition. The gathering of such information is an appropriate use of the authority to summons documents and testimony under § 7602(a). See, e.g., United States v. Garden State Nat'l Bank, 607 F.2d 61, 68-69 (3d Cir. 1979); United States v. Cates, 686 F. Supp. 1185, 1190 (D. Md. 1988). The titles of the Collection Summonses are unfortunate misnomers that neither confer nor divest Petitioners of jurisdiction over this matter. Petitioners' jurisdiction over this matter comes from the fact that the Summonses are issued "[f]or the purpose of . . . determining the liability of any person for any internal revenue tax . . . ." 26 U.S.C. § 7602(a).

Respondent also argues that he has no tax liability because of the repeated failures by the IRS to identify any section in the Code that renders him liable to pay taxes or to file a return. Demand I at 3. Respondent cites the Uniform Commercial Code § 3-505(2) as authority for this proposition. Id. Respondent's reliance on this section is misplaced, because it governs only the rights of a party upon presentment of a negotiable instrument. Respondent cannot infer the concurrence of the IRS in his interpretation of the Code from the IRS's failure to respond to

and Budget control numbers on the faces of the Summonses.[18] The Court finds that the Government acted in good faith as to both of

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his letters. See, e.g., Southern Stone Co. v. Singer, 665 F.2d 698, 703 (5th Cir. 1982); Wilson v. Clancy, 747 F. Supp. 1154, 1157-59 (D. Md. 1990), aff'd, 940 F.2d 654 (4th Cir. 1991); White Indus., Inc. v. Cessna Aircraft Co., 611 F. Supp. 1049, 1062-64 (W.D. Mo. 1985).

Respondent's claim that he has no tax liability is an insufficient basis for the avoidance of a Collection Summons. Sloan, 621 F. Supp. at 1074. The IRS need not establish an actual tax liability in order to enforce a Collection Summons. See United States v. McAnlis, 721 F.2d 334, 336 (11th Cir. 1983), cert. denied, 467 U.S. 1227 (1984); Sloan, 621 F. Supp. at 1074; Uhrig v. United States, 592 F. Supp. 349, 353 (D. Md. 1984); United States v. Raabe, 431 F. Supp. 424 (D. S.D. 1977), appeal dismissed sub nom. Barney v. United States, 568 F.2d 116 (8th Cir. 1978). "The Government . . . need show only that the inspection of the desired records 'might throw light' upon the correctness of the taxpayer's return and liabilities." Kis, 658 F.2d at 537 (quoting United States v. Turner, 480 F.2d 272, 279 (7th Cir. 1973)). The mere fact that Respondent failed to file a tax return between 1983 and 1990 is a sufficient basis for the issuance of a Collection Summons prior to the establishment of an actual tax liability. McAnlis, 721 F.2d at 336. See also Wall v. Mitchell, 287 F.2d 31 (4th Cir. 1961).

[18]According to Respondent, the absence of an Office of Management and Budget control number, as required by the Paper Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, renders the two Summonses unenforceable. Motion to Vacate at 6.

However, the Summonses in issue do not constitute information requests under the Paper Reduction Act because they are issued in the course of an administrative investigation directed against a specific individual. United States v. Collins, 920 F.2d 619, 630 n.12 (10th Cir. 1990) (citing 44 U.S.C. § 3518(c)(1)(B)(ii)), cert. denied, __ U.S. __, 111 S. Ct. 2022 (1991). See also Lonsdale v. United States, 919 F.2d 1440, 1445 (10th Cir. 1990) (citing seven federal district court opinions concurring in this result). Even if these Summonses were implicated by the Paper Reduction Act, 26 C.F.R. §§ 601.9000 and 602.101 set forth all Office of Management and Budget control numbers assigned to the IRS. Those sections are intended, and do, "comply with the requirements of § 1320.7(f), 1320.12, 1320.13, and § 1320.14 of 5 CFR Part 1320 . . . for the display of control numbers assigned by OMB to collections of information of the Internal Revenue Service in the Statement of Procedural Rules." 26 C.F.R. § 601.9000(a). See also 26 C.F.R. § 602.101(a). Therefore, in the instant case, the Summonses are neither implicated by the Paper Reduction Act nor voided by the absence of Office of Management and Budget control numbers.

these matters, that the Respondent suffered no prejudice or harm due to these technical matters, and that Respondent waived these objections by failing to assert them during his first appearance before Officer Kriezel. These objections are therefore insufficient grounds to preclude enforcement of the Collection Summonses.

3. Signature under Penalty of Perjury

Respondent claims that, because Officer Kriezel failed to sign the Collection Summonses under "penalties of perjury" as required by 26 U.S.C. § 6065, the Summonses cannot be enforced. Demand I at 2.

"[A]ny return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury." 26 U.S.C. § 6065 (emphasis added). Section 6065 is simply inapplicable to a Summons issued under § 7603. A Collection Summons is not a "document required to be made" under the Code; instead, it is a discovery tool which the Secretary or his designee may, in their discretion, utilize to effectuate the purposes outlined in § 7602(a). United States v. Barksdale, 499 F. Supp. 624, 628 (M.D. Fla. 1980) ("The mere fact that the IRS has the power . . . to obtain information by issuing summonses does not require it to do so . . . ."). So long as it complies with the

provisions of § 7603, a Collection Summons may be enforced, regardless of the absence of a "penalty of perjury" statement.

Moreover, § 6065 is a statutorily-created obligation imposed on any person required by the Code to file any document with the IRS. See Borgeson v. United States, 757 F.2d 1071, 1072-73 (10th Cir. 1985).

> The requirement that a taxpayer must sign his or her return and thereby attest, under penalty of perjury, to the veracity of the information submitted is not empty form. The perjury penalty constitutes a legitimate and important deterrent to the filing of false returns. The federal government relies heavily upon the self-assessment by the taxpayers to determine the amount of revenues it will collect. Because of limited resources, the Internal Revenue Service is unable to conduct a full-scale investigation into the accuracy of every return. . . . The penalty of perjury that attaches to [any] falsification is necessary to provide added incentive to those persons who might otherwise be tempted to play the odds in favor of undiscovered tax fraud.

Schneider v. United States, 594 F. Supp. 611, 613 (E.D. Mich. 1984). Because the IRS needs no such added incentive and because § 7603 and the Supreme Court decisions in LaSalle Nat'l Bank and Powell provide adequate safeguards as to the veracity of summonses issued by the IRS, the "penalty of perjury" obligation under § 6065 is not reciprocally imposed on the IRS. See Borgeson, 757 F.2d at 1072-73; United States v. Moore, 627 F.2d 830, 834 (7th Cir. 1980), cert. denied, 450 U.S. 916 (1981).

Also, as stated in Sections B.1. and 2. supra, because Petitioners acted in good faith as to the issuance of the Summonses, because Respondent suffered no prejudice or harm due to the absence of a signature "under penalty of perjury," and because Respondent waived this objection by failing to assert it during his

first appearance before Officer Kriezel, the absence of signatures under penalty of perjury on the Collection Summonses is not sufficient grounds for vacating those Summonses.

4. "Alcohol, Tobacco Products and Firearms" Regulations

In the instant case, the Collection Summonses were issued pursuant to 26 U.S.C. § 7602. See Petition at 2. Respondent has examined the listing in "Table I - Parallel Table of Authorities and Rules" in the Index of the Code of Federal Regulations pertaining to 26 U.S.C. § 7602, which refers only to 27 C.F.R. Parts 170 and 296. See Demand I at 2 and Exhibit 5; Motion to Vacate at 2-3 and Exhibits B-1 to B-12; Index to Code of Federal Regulations at 817 (1991) (also correlating 26 U.S.C. §§ 7601-7606 with 27 C.F.R. Part 70). Title 27 of the Code of Federal Regulations contains provisions related exclusively to alcohol, tobacco products, and firearms.

Based on that C.F.R. Index listing, Respondent argues that "[t]he enforcement of 26 IRC [Internal Revenue Code] 7601-7606, is found to have been recodified and not paralleled by any other agency, into 27 CFR Part 70, by the rule making authority of the ATF [Bureau of Alcohol, Tobacco, and Firearms, or BATF] agency . . . . [and t]he ATF is the only agency authorized to use IRC 7602 . . . ." Motion to Vacate at 2-3. See also Demand I at 2. Hence, according to Respondent, because Officer Kriezel is not an officer employed by the BATF, and because Respondent has not been

implicated in criminal activities[19] involving alcohol, tobacco, or firearms, § 7602 and the Collections Summonses issued thereunder are inapplicable to Respondent.

Respondent's argument is patently erroneous for at least three reasons. First, "[i]n order to encourage effective tax investigations, Congress has endowed the IRS with expansive information-gathering authority; § 7602 is the centerpiece of that congressional design." United States v. Arthur Young & Co., 465 U.S. 805, 816 (1984) (emphasis added). See also Hintze v. Internal Revenue Service, 879 F.2d 121, 125-26 (4th Cir. 1989). As such, § 7602 authorizes the Secretary of the Treasury to examine records, issue summons, and take testimony pertaining to "the correctness of any return," "the liability of any person for any internal revenue tax," and the collection of "any such liability." 26 U.S.C. § 7602(a) (emphasis added). "[T]he summons power clearly

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[19]In this regard, Respondent makes the following enigmatic statement: "27 C.F.R. § 72.11 defines internal revenue, either Federal or State, as in 'a commercial crime' class. The [illegible] are not fiduciaries holding any kickback return for the United States corporate government administrators to compel books and records or answer interrogatories." Motion to Vacate at 3.

The Court is unaware of any allegations of kickbacks or other criminal activity by Respondent at this time. The evidence presented to the Court shows that the Summonses were issued for the purposes of determining Respondent's tax liability and whether any such liability was indeed collectable, which constitute legitimate exercises of the authority created under § 7602. See, e.g., United States v. Richards, 631 F.2d 341, 345 (4th Cir. 1980); Garden State Nat'l Bank, 607 F.2d at 68-69. The fact that Respondent's suspected offense may be criminal, if indeed it is, rather than civil does not defeat the propriety of these Summonses. See, e.g., Abrahams, 905 F.2d at 1280-81; Pickel v. United States, 746 F.2d 176 (3d Cir. 1984); United States v. Law Firm of Zimmerman & Schwartz, P.C., 738 F. Supp. 407 (D. Colo. 1990).

is 'necessary for the [IRS's] effective performance of congressionally imposed responsibilities to enforce the tax Code' . . . ." Hintze, 879 F.2d at 126 (quoting United States v. Euge, 444 U.S. 707, 711 (1980)). "[T]he very language of § 7602 reflects . . . a congressional policy choice in favor of disclosure of all information relevant to a legitimate IRS inquiry." Arthur Young & Co., 465 U.S. at 816 (emphasis in original). The statute contains no language limiting its provisions to the BATF or its officers. If 27 C.F.R. Parts 70, 170, and 296 purported to be the exclusive regulations implementing § 7602, those regulations would be invalid as violative of the expansive investigative authority given to the Secretary by the unambiguously expressed intent of Congress in § 7602. See, e.g., Illinois by Ill. Dep't of Public Aid v. U.S. Dep't of Health and Human Services, 772 F.2d 329, 334 (7th Cir. 1985); Belmont v. Dole, 766 F.2d 28, 31 (1st Cir. 1985), cert. denied, 474 U.S. 1055 (1986); United States v. Parish of St. Bernard, 756 F.2d 1116, 1124 (5th Cir. 1985), cert. denied, 474 U.S. 1070 (1986); Walter O. Boswell Mem. Hosp. v. Heckler, 749 F.2d 788 (D.C. Cir. 1984).

Second, unlike the regulations themselves, the "Parallel Table of Authorities and Rules" does not have the force of law. It is instead a tool provided by the Office of the Federal Register, the publisher of the Code of Federal Regulations, to assist readers in ascertaining the statutory provisions upon which federal agencies have predicated their regulations. See Explanation by Martha L. Girard, Director of the Office of the Federal Register, at v, Index

to Code of Federal Regulations ("the CFR index provides a general guide to all existing regulations . . . ."). The fact that the BATF may have predicated some of its regulations on § 7602 is irrelevant to the case at bar. The BATF cannot, by promulgating regulations under a section in Title 26 of the United States Code, preempt the Secretary of the Treasury and the IRS's statutory authority to implement, by the creation of additional regulations, any provision of the Code it has been empowered to administer and enforce. 26 U.S.C. §§ 7801(a), 7805(a). Furthermore, a statute may be implemented by more than one regulation. To hold otherwise would repudiate the "Parallel Table" entries showing that § 7602 and §§ 7601-7606 (which includes § 7602) provide the statutory authority for three different parts of Title 27 of the Code of Federal Regulations.

Finally, Respondent has apparently ignored the qualifying language that precedes the "Parallel Table."

> Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, <u>the table cannot be considered all inclusive</u>. U.S. Code Service AND Fed. Register, same thing

Foreword to Table I - Parallel Table of Authorities and Rules, Index to Code of Federal Regulations at 773 (1991) (emphasis added). The IRS has presented its rulemaking authority citation for the issuance of Collection Summonses in just such an inconsistent manner. In delegating the information collection authority under § 7602 to "any authorized officer or employee of

the Internal Revenue Service," the IRS established a regulation that tracks the language of § 7602. 26 C.F.R. § 301.7602-1(a). Although § 7602 is not specifically cited as the authorizing statute for 26 C.F.R. § 301.7602-1(a), the regulation's nearly verbatim incorporation of § 7602 is a sufficient indicia of consistency with the statute to render the regulation and the statutory authority implemented thereunder valid. See, e.g., K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 292, (1988) ("If the agency regulation is not in conflict with the plain language of the statute, a reviewing court must give deference to the agency's interpretation of the statute."); United States v. Larionoff, 431 U.S. 864, 873 (1977) ("For regulations, in order to be valid must be consistent with the statute under which they are promulgated."); Community for Creative Non-Violence v. Kerrigan, 865 F.2d 382, 385 (D.C. Cir. 1989); Iglesias v. United States, 848 F.2d 362, 366-67 (2d Cir. 1988); Forging Ind. Ass'n Secretary of Labor, 748 F.2d 210, 213 (4th Cir. 1984); Washington Red Raspberry Comm'n v. United States, 657 F. Supp. 537, 545 (C.I.T. 1987), aff'd, 859 F.2d 898 (Fed. Cir. 1988).

Because § 7602 is not the exclusive province of the BATF, and because the IRS has implemented valid regulations under that statute, Respondent's objections pertaining to Title 27 of the Code of Federal Regulations and his lack of involvement with alcohol, tobacco, or firearms violations are insufficient to justify quashing the Summonses in question.

C. OFFICER KRIEZEL'S ACTIONS AND LACK OF AUTHORITY

1. "Delegation of Authority" Letter

Respondent next claims that, because she failed to display a "Delegation of Authority" letter upon demand, Officer Kriezel has demonstrated no authority to issue the Collection Summonses. Demand at 2. Respondent also claims that Revenue Officer Kriezel's GS-12 level was insufficient to authorize her to issue the Summonses.

"It is now undisputed that a special agent [of the IRS] is authorized, pursuant to 26 U.S.C. § 7602, to issue an Internal Revenue summons in aid of a tax investigation with civil and possible criminal consequences." Couch v. United States, 409 U.S. 322, 326 (1973).

> Congress has authorized the Secretary of the Treasury to issue administrative summons, inter alia, to determine a person's tax liability. 26 U.S.C. § 7602(a). The Treasury Secretary has delegated this authority to the Commissioner of the IRS under Treasury Department Order No. 150-37 (Apr. 22, 1982). The IRS Commissioner, in turn, has delegated that authority to certain IRS employees, 26 C.F.R. § 7701-9(b), including Internal Revenue Agents, Deleg. Order No. 4 (Rev. 19) § 1(d)(3), (Jan. 26, 1989) . . . .

United States v. National Commodity & Barter Ass'n, No. 90-X-2, 1990 U.S. Dist. LEXIS 5177 at *6, 90-1 U.S. Tax. Cas. (CCH) P90,284 (D. Colo. April 17, 1990). In the instant case, Officer Kriezel is a Revenue Officer employed at a GS-12 level in the Collection Division of the District IRS Office in Asheville, North Carolina. See Deleg. Order No. 4 (Rev. 20) § 1(d)(2) (March 5, 1990) (giving District Collection Revenue Officers, GS-9 and above, authority to issue summons), reprinted in Internal Revenue Service Cumulative

Bulletin (1990). See also Couch, 409 U.S. at 326; 26 U.S.C. § 7602(a). As such, the Summonses were issued by Officer Kriezel pursuant to valid delegated authority.

The Federal Regulations cited by Respondent do not confer a right upon Respondent to demand production of a so-called "Delegation of Authority" letter. Demand I at 2 (citing 26 C.F.R. §§ 1.6001-1, 1.6011-1, 1.6012-1). In fact, those regulations do not even refer to such a letter or to the delegation of any authority. It is apparent from the record that Respondent has actual knowledge of the delegation orders issued by the IRS, including Delegation Order No. 4, which conferred upon Officer Kriezel the authority to issue summonses. Failure to publish, file, or even display a document is without consequence as against a person who has actual knowledge of that document. Hatcher v. United States, 733 F. Supp. 218, 221 (M.D. Pa. 1990). See also Lonsdale, 919 F.2d at 1445-46; Hogg v. United States, 428 F.2d 274, 280 (6th Cir. 1970), cert. denied, 401 U.S. 910 (1971); United States v. Tucker, No. 89-5525, 1990 U.S. App. LEXIS 17122 at *9-*10 (6th Cir. September 24, 1990); National Commodity & Barter Ass'n, 1990 U.S. Dist. LEXIS 5177 at *8. Furthermore, because Respondent failed to assert this delegation of authority objection at the time of his appearance before Officer Kriezel pursuant to the Summonses, Respondent effectively waived that procedural objection. See Payne, 648 F.2d at 362-63; May 2 Transcript. Officer Kriezel's GS-12 level and her failure to produce a

"Delegation of Authority" letter upon demand are not sufficient grounds to deem the Collection Summonses unenforceable.

2. Failure to Require Respondent to Maintain Records

According to Respondent, Petitioners' failure to serve Respondent with a form pursuant to "Treasury Order #24 from the Handbook of Delegation Orders," Demand I at 2, requiring Respondent to maintain books and records pertaining to potentially taxable income, precludes enforcement of the IRS Summonses in question.

Delegation Order No. 24, erroneously identified by Respondent as "Treasury Order #24," reads as follows:

> The Assistant Commissioner (International) and District Directors of Internal Revenue are hereby authorized to require any person, by notice served upon him, to keep such records as shall show whether or not such person is liable for tax under the Internal Revenue Code of 1954.

Delegation Order No. 24, Internal Revenue Service Manual Handbook, HB 1229.

This internal IRS Order is couched in permissive, rather than mandatory, terms. It authorizes the enumerated IRS officers to require persons, through proper notice, to maintain certain books and records. Delegation Order No. 24 does not create an affirmative obligation on those IRS Officers to use that authority as to every potential taxpayer. Nor does it, or any other provision in the Internal Revenue Manual, have the effect of law or convey rights to taxpayers or preclude enforcement of an IRS summons upon mere violation thereof. See, e.g., Groder v. United States, 816 F.2d 139, 142 (4th Cir. 1987); United States v. Gilbert

C. Swanson Found., Inc., 772 F.2d 440, 441 (8th Cir. 1985); First Fed'l Sav. & Loan Ass'n v. Goldman, 644 F. Supp. 101, 103 (W.D. Pa. 1986); United States v. I.C. Indus., Inc., 555 F. Supp. 219, 222 (N.D. Ill. 1983); United States v. Price Waterhouse & Co., 515 F. Supp. 996, 999 (N.D. Ill. 1981). The fact that Officer Kriezel or other IRS officers could have invoked this authority by issuing such notice to Respondent, but did not, does not invalidate the Summonses in issue. See Barksdale, 499 F. Supp. at 628. "[S]uch a guideline, adopted solely for the internal administration of the IRS, rather than for the protection of the taxpayer, does not confer any rights upon the taxpayer." United States v. Will, 671 F.2d 963, 967 (6th Cir. 1982).

Furthermore, the absence of such notice pursuant to Delegation Order No. 24 does not free Respondent of his statutorily-created obligation to maintain records and books. "Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe." 26 U.S.C. § 6001. See also Jones v. Commissioner, 903 F.2d 1301, 1303 (10th Cir. 1990); Webb v. Commissioner, 394 F.2d 366, 371 (5th Cir. 1968); Halle v. Commissioner, 175 F.2d 500 (2d Cir. 1949), cert. denied, 338 U.S. 949 (1950); United States v. Wodtke, 627 F. Supp. 1034, 1042 (N.D. Iowa 1985), aff'd, 871 F.2d 1092 (8th Cir. 1988); 26 U.S.C. § 7203 (criminal violation for taxpayer to willfully fail to make a return, keep records, or supply information pertaining to tax

indebtedness); 26 C.F.R. § 1.6001-1. Moreover, service of "[a]n IRS summons imposes a duty to retain possession of summoned documents pending a judicial determination of the enforceability of the summons." United States v. Asay, 614 F.2d 655, 660 (9th Cir. 1980). See also United States v. Darwin Constr. Co., 873 F.2d 750, 755 (4th Cir. 1989). "Where . . . the taxpayer keeps inadequate records or no records at all the Commissioner is entitled to reconstruct the taxpayer's gross receipts and costs to arrive at an assessment for the unreported income." Jones, 903 F.2d at 1303. See also Adamson v. Commissioner, 745 F.2d 541, 548 (9th Cir. 1984).

Presumably, Respondent would argue that the obligation under § 6001 to maintain records is inapplicable as to him because he has no tax liability. Notwithstanding an individual's tax liability, § 7602 authorizes Petitioners to examine Respondent's books and records and to take Respondent's testimony so as to determine the accuracy of his assertions. See note 15, supra. The mere potential of Respondent's tax liability is a sufficient basis for Petitioners' invocation of § 7602. See, e.g., United States v. Bisceglia, 420 U.S. 141, 146 (1975) ("Of necessity, the investive authority so provided [by § 7602] is not limited to situations in which there is probable cause, in the traditional sense, to believe that a violation of the tax laws exists."); Sloan, 621 F. Supp. at 1074. Should Petitioners determine that Respondent is indeed liable for taxes and has failed to satisfy his statutorily-created obligation to maintain records and books, Respondent could be

criminally liable under 26 U.S.C. § 7203, without any IRS form under Delegation Order No. 24 ever being served on Respondent. Hence, Petitioners' failure to assert Delegation Order No. 24 against Respondent in the instant case, and thereby to require Respondent to maintain records as to potential tax liability, is no cause for the Summonses to be deemed unenforceable.

3. Respondent's Compliance with the Summonses

Respondent contests Officer Kriezel's testimony that Respondent appeared but refused to comply with the Summonses's demands for testimony and the production of books and records. Respondent claims that he fully complied with the Summonses by appearing before Officer Kriezel, giving testimony[20] (by reading a "letter of testimony" contesting his liability under the Code rather than providing the summoned information), and refusing to turn over the summoned books and records so as "to reserve all his Constitutional protections." Demand I at 2. If Respondent is correct, Petitioners' request for enforcement of the Summonses under § 7604(b) is moot.

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[20] "Testimony" is defined as "[e]vidence given by a competent witness under oath or affirmation . . . . Testimony is particular kind of evidence that comes to tribunal through live witnesses speaking under oath or affirmation in presence of tribunal, judicial or quasi-judicial." Black's Law Dictionary at 1324. As they were not presented or read under oath or affirmation, Respondent's written statements are not "testimony" in the truest meaning of that term. Fed. R. Evid. 603.

Even if Respondent's statements could be considered "testimony," the Court would exercise its discretion so as to permit a reasonable opportunity for cross-examination by Officer Kriezel. Fed. R. Evid. 611.

Compliance with a Collection Summons requires more than the summoned party's appearance, oral statement, and refusal to relinquish documents.

> From the declaration of purposes set forth in the opening words of § 7602(a), it is clear that the authorization conferred upon the IRS by subsections (1) and (2) thereof "to examine" books, papers, records, and other data, and to require their custodians "to produce" them and to "give . . . testimony" relevant to the inquiry, contemplates utilization of such documents and testimony for the declared purposes, namely the correct calculation and collection of tax liability. Hence the obligation imposed upon taxpayers by § 7602(a) is not satisfied unless the information supplied pursuant thereto is provided in such form and in such manner as will enable the IRS to utilize it effectively in fulfillment of the declared purposes, namely the calculation and collection of the correct tax liability of the taxpayers.

United States v. Hefti, 879 F.2d 311, 312-13 (8th Cir. 1989) (emphasis added) (footnotes omitted), cert. denied, 493 U.S. 1076 (1990).

Section 7602 invests the IRS with broad, expansive investigatory and inquisitorial powers. See, e.g., Holifield v. United States, 909 F.2d 201, 205 (7th Cir. 1990); La Mura v. United States, 765 F.2d 974, 979 (11th Cir. 1985); United States v. Wyatt, 637 F.2d 293, 299 (5th Cir. 1981). The scope of this inquisitorial power has been likened to that of a federal grand jury. See, e.g., Wyatt, 637 F.2d at 299; Richards, 631 F.2d at 345; United States v. Cortese, 540 F.2d 640, 642-43 (3d Cir. 1976). It is widely accepted that, in order to ascertain the truth of the matter under investigation, a federal grand jury is entitled to ask questions of the witnesses appearing before it. See, e.g., In re Sinadinos, 760 F.2d 167, 169-70 (7th Cir. 1985); In re Grand Jury Proceedings

Bank of Nova Scotia, 740 F.2d 817, 832 (11th Cir. 1984), cert. denied, 469 U.S. 1106 (1985); United States v. Hyder, 732 F.2d 841, 844 (11th Cir. 1984); In re Millow, 529 F.2d 770, 774 (2d Cir. 1976); United States v. Ruyle, 524 F.2d 1133, 1135 (6th Cir. 1975), cert. denied, 425 U.S. 934 (1975). It follows, therefore, that Officer Kriezel, in conducting her inquiry pursuant to the valid Collection Summonses, was entitled to ask questions of the Respondent and that Respondent could not properly refuse to submit to questioning on the basis of a general objection or claim of constitutional privilege. See, e.g., Richards, supra; United States v. Jones, 538 F.2d 225, 226 (8th Cir. 1976), cert. denied, 429 U.S. 1040 (1977). Absent adequate invocation of the fifth amendment privilege against self-incrimination as to each question posed, see discussion infra, II.D., Respondent did not fully comply with the Summonses by reading his prepared "letter of testimony" and refusing to answer questions posed by Officer Kriezel.

To "produce" documents under § 7602 means more than having the documents in the room when the summoned party appears before an IRS officer. In order to comply with a Summons requiring the production of books and records, the summoned party must turn the summoned documents over for a "reasonable examination . . . so as to permit intellectual apprehension of their content by the IRS agents conducting the audit." Hefti, 879 F.2d at 313 n.3. See also id. at 314-15. At no time in the instant case did Officer Kriezel have either possession of the summoned documents or a reasonable opportunity to use the documents in a meaningful fashion

so as to determine Respondent's purported liability. Id. at 313. Respondent's failure properly to invoke the fifth amendment privilege against self-incrimination as to the production of documents, see discussion infra, II.D., precludes the Court from finding that Respondent indeed complied with the document production sought by the Summonses. The Court concludes that, although he appeared before Officer Kriezel as directed, Respondent failed to comply with the dictates of the Collection Summonses, thereby validating Petitioners' resort to the Court's authority under § 7604(b) for the enforcement of the Summonses in the instant case.

D. FOURTH AND FIFTH AMENDMENT RIGHTS

In his appearances before the undersigned and Officer Kriezel, Respondent has implicitly claimed that the Summonses issued are violative of his fourth amendment right against unreasonable searches and seizures and his fifth amendment right against self-incrimination. The fourth amendment is simply not implicated by a Collection Summons because "[a]n IRS summons authorizes neither a search nor a seizure." United States v. Morgan, 761 F.2d 1009, 1012 (4th Cir. 1985). "The enforcement of an IRS summons does not violate the fourth amendment as long as the IRS has complied with the Powell requirements." United States v. Reis, 765 F.2d 1094, 1096 (11th Cir. 1985). See also Couch, 409 U.S. at 336 n.19; McAnlis, 721 F.2d at 337; United States v. Silkman, 543 F.2d 1218, 1220 (8th Cir. 1976), cert. denied, 431 U.S. 919 (1977); United

States v. Sun First Nat'l Bank, 510 F.2d 1107, 1110 (5th Cir.), cert. denied, 423 U.S. 927 (1975); United States v. Theodore, 479 F.2d 749, 754-55 (4th Cir. 1973). As demonstrated above, Petitioners have fulfilled the Powell requirements in the instant case, thereby establishing a prima facie case for the enforcement of the Summonses in question, and Respondent has failed to successfully challenge the Summonses. Respondent therefore has no valid fourth amendment objection to the enforcement of the Summonses.

Respondent's fifth amendment defense is somewhat more complicated. The fifth amendment protects a person against incrimination[21] by way of one's compelled testimonial communications, be it oral testimony or the production of documentary evidence.[22] See, e.g., Fisher, 425 U.S. at 408-11;

[21] "The fifth amendment privilege 'may not itself be used as a method of evading payment of lawful taxes.' Therefore, a taxpayer generally must comply with an I.R.S. summons issued under section 7602 as long as it is issued in good faith and prior to a recommendation for criminal prosecution." Reis, 765 F.2d at 1095 (quoting Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982)) (omitting citations). "The taxpayer cannot avoid compliance with the subpoena merely by asserting that the item of evidence which he is required to produce contains incriminating writing . . . ." Fisher v. United States, 425 U.S. 391, 410 (1976).

[22] The act of producing evidence in response to a subpoena nevertheless has communicative aspects of its own, wholly aside from the contents of the papers produced. Compliance with the subpoena tacitly concedes the existence of the papers demanded and their possession or control by the taxpayer. It also would indicate the taxpayer's belief that the papers are those described in the subpoena. The elements of compulsion are clearly present, but the more difficult issues are whether the tacit averments of the taxpayer are both

Couch, 409 U.S. at 336; United States v. Argomaniz, 925 F.2d 1349, 1356 (11th Cir. 1991); Cates, 686 F. Supp. at 1192-93. Its protection may be asserted in any civil, criminal, administrative, judicial, investigatory, or adjudicatory proceeding. Maness v. Meyers, 419 U.S. 449, 464 (1975) (quoting Kastigar v. United States, 406 U.S. 441, 444 (1972)). The right against self-incrimination has historically been "broadly construed" so as

> to assure that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action. The protection does not merely encompass evidence which may lead to criminal conviction, but includes information which would furnish a link in the chain of evidence that would lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution.

> "testimonial" and "incriminating" for the purposes of applying the Fifth Amendment. These questions perhaps do not lend themselves to categorical answers; their resolution may instead depend on the facts and circumstances of particular cases or classes thereof.

Fisher, 425 U.S. at 410.

The Court notes, without ruling, that Respondent and his wife may have already conceded the existence of the requested records, their possession and control thereof, and their belief that the records are those specified in the Summons. See May 2 Transcript at 2 (Mr. [redacted] ". . .the records are right here, okay?"), 8 (Agent Kriezel: "Where are the documents and records?" Mrs. [redacted] "They are here."), 11 (Mrs. [redacted] "We brought the records."), 12 (Mrs. [redacted] "We have our books and records."). These definitive statements by Respondent and his wife were followed by more evasive answers at their subsequent appearance before Agent Kriezel and before this Court. See October 3 Transcript at 2 (Mrs. [redacted] ". . . even if I had any books and records); 3 (Mr. [redacted] "But we didn't say that we don't have the books and records with us." Mrs. [redacted] ". . . we did not say whether we did or we did not . . ."); October 2, 1991 Hearing at 4 (Mrs [redacted] ". . . the books and records, even if we had any . . . ."), 5 (Mrs. [redacted] ". . . even if we had any books and records . . . .").

Maness, 419 U.S. at 461 (omitting citations). The Fourth Circuit has recently adapted this rationale to the context of a Collection Summons issued during the course of an IRS investigation into civil tax liability because of "the recognized potential that such investigations have for leading to criminal prosecutions." United States v. Sharp, 920 F.2d 1167, 1170 (4th Cir. 1990). See also Mathis v. United States, 391 U.S. 1, 4 (1968).

However, Respondent may not assert a broad, generalized claim of self-incrimination in response to the Summonses. See, e.g., Argomaniz, 925 F.2d at 1353 n.8; United States v. Allee, 888 F.2d 208, 212 (1st Cir. 1989). The fifth amendment may be invoked only where Respondent faces a substantial and real hazard of self-incrimination, as determined on a question-by-question basis. See, e.g., Argomaniz, 925 F.2d at 1354-55; Sharp, 920 F.2d at 1170-71; Reis, 765 F.2d at 1096; United States v. Riewe, 676 F.2d 418, 420 n.1 (10th Cir. 1982); United States v. Allshouse, 622 F.2d 53, 56 (3d Cir. 1980); United States v. Roundtree, 420 F.2d 845, 852 (5th Cir. 1969); Cates, 686 F. Supp. at 1191. "Whether there is a sufficient hazard of incrimination is of course a question for the courts asked to enforce the privilege." Sharp, 920 F.2d at 1170. See also Hoffman v. United States, 341 U.S. 479, 486 (1951) ("The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself--his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified . . . ."); Argomaniz, 925 F.2d at 1355.

The Court's determination of the sufficiency of the hazard of incrimination posed by the sought-after information depends upon a two-fold inquiry. Sharp, 920 F.2d at 1170-71. The Court must first determine whether the information's incriminating potential is facially evident or becomes evident upon introduction of further contextual proof. If the information is reasonably incriminating, the Court must then determine whether criminal prosecution is sufficiently a possibility to justify invocation of the fifth amendment's protections.

> [T]he reasonableness of a claimed apprehension should simply be assumed once incriminating potential is found, unless there are genuine questions about the government's legal ability to prosecute. That is to say, once incriminating potential is found to exist, courts should not engage in raw speculation as to whether the government will actually prosecute, and should only pursue that inquiry when there are real questions concerning the government's ability to do so because of legal constraints such as statutes of limitation, double jeopardy, or immunity.

Id. at 1171 (omitting citations and footnotes).

In the instant case, the incriminating potential of the information sought by both Collection Summonses is facially evident. The Collection Summons in Civil Case No. A-MISC-[redacted] seeking information pertaining to the taxable years 1983 through 1990, was issued on April [redacted], [redacted]. Based on the six-year statute of limitations for criminal prosecutions under 26 U.S.C. § 6531, the Government could still prosecute Respondent for criminal violations of the Code, 26 U.S.C. § 7201 et seq., arising from his alleged failure to file returns and pay taxes in the years 1986, 1987, 1988, 1989, 1990, and possibly 1985. See, e.g., United

States v. Williams, 928 F.2d 145, 149 (5th Cir.) (regardless of the actual filing date of return or failure to file return, statute of limitations begins to run on April 15 of the calendar year in which the taxable income becomes due), cert. denied, ___ U.S. ___, 112 S. Ct. 58 (1991); Sharp, 920 F.2d at 1172 (same); United States v. Crocker, 753 F. Supp. 1209, 1214 (D. Del. 1991) (same); United States v. Mauser, 723 F. Supp. 995, 998 (S.D.N.Y. 1989) (same). Although the § 6531 statute of limitations has likely run as to taxable years 1983 and 1984,[23] evidence of Respondent's failure to file returns or to pay taxes for those years would demonstrate willfulness, an essential element of proof under 26 U.S.C. §§ 7201, 7202, 7203, and thereby "furnish a link in the chain of evidence needed to prosecute" Respondent for alleged criminal activity from 1985 to 1990.[24] Sharp, 920 F.2d at 1171 (quoting Hoffman, 341 U.S.

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[23]It is possible, if he took some affirmative act within the past 6 years designed to perpetuate earlier evasions of taxation, that Respondent could be prosecuted under 26 U.S.C. § 7201 regardless of the due dates for taxable income. "'An act constituting evasion which occurs during the limitations period brings the prosecution within the statute of limitations even if the taxes being evaded were due and payable prior thereto.'" United States v. Ferris, 807 F.2d 269, 271 (1st Cir. 1986) (quoting United States v. Shorter, 608 F. Supp. 871, 874 (D.D.C. 1985), aff'd, 809 F.2d 54 (D.C. Cir.), cert. denied, 484 U.S. 817 (1987)), cert. denied, 480 U.S. 950 (1987). See also United States v. Sams, 865 F.2d 713, 716 (6th Cir. 1988) (under § 7603, the limitations period "'begins to run not when the taxes are assessed or when payment is demanded, but rather when the failure to pay the tax becomes wilful . . . .'") (quoting United States v. Andros, 484 F.2d 531, 532 (9th Cir. 1973)), cert. denied, 491 U.S. 905 (1989); United States v. Feldman, 731 F. Supp. 1189, 1191-96 (S.D.N.Y. 1990).

[24]In Sharp, the defendant was under investigation to determine his tax liability for the years 1977, 1978, 1980, 1981, and 1982, because of his failure to file tax returns for those years. Of the years under investigation, the six-year statute of limitations had

at 486). Respondent's apprehension of criminal prosecution as to these years is reasonable.

As to the Collection Summons in Civil Case No. A-MISC-[redacted] the Summons seeks information pertaining to the taxable years 1980, 1981, and 1982 only "to determine what, if any, assets are available for the United States to execute on in order to satisfy the already outstanding tax liabilities." **Petitioners' Memorandum in Support of Motion to Enforce Summons**, at 8. It is true that the expiration of the statute of limitations as to any alleged criminal conduct during 1980, 1981, and 1982 could preclude the Government from prosecuting Respondent for any Code provisions violated during that period. Id. at 9. But see note 23 supra. However, as stated above, evidence of Respondent's failure to pay taxes in 1980, 1981, and 1982 could be used to establish a pattern of criminal activity that continued up to 1990. Furthermore, evidence of earnings or other taxable items accumulated between 1980 and 1982 could implicate Respondent in further criminal

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not run as to the year 1982. Sharp, 920 F.2d at 1172. On the basis of that one unexpired limitation period, the Fourth Circuit found that the defendant's fear of prosecution was reasonable, and reversed the district court's order that compelled the defendant to answer questions as to all years under investigation. Id. Apparently, the Circuit's decision in Sharp was predicated on an implicit determination that the defendant's failure to pay taxes in 1977, 1978, 1980, and 1981, would constitute a chain of circumstantial evidence relevant to the issue of defendant's willfulness in failing to pay taxes in 1982. Id. at 1171-72. See also United States v. Poschwatta, 829 F.2d 1477, 1481 (9th Cir. 1987) (past failures to file tax returns admissible to establish willfulness of present failure to file returns), cert. denied, 484 U.S. 1064 (1988); United States v. Shivers, 788 F.2d 1046, 1048 (5th Cir. 1986); United States v. Serlin, 707 F.2d 953, 959 (7th Cir. 1983); United States v. Eagan, 587 F.2d 338, 339 (6th Cir. 1978).

activities during the 1985-1990 period if those 1980-1982 items produced additional income between 1985 and 1990, such as interest income or income derived from appreciated values, which Respondent failed to report and pay taxes upon. As the information sought in Civil Case Nos. A-MISC-[illegible] and A-MISC-[illegible] could be part of the chain of evidence in a prosecution of Respondent for post-1985 criminal activity, Respondent's apprehension of incrimination is reasonable as to both Summonses.

The Court expressly limits its ruling to a finding that enforcement of the Summonses issued in Civil Case Nos. A-MISC-[illegible] and A-MISC-[illegible] could constitute an impermissible infringement of Respondent's fifth amendment right against self-incrimination. The Court hereby reserves ruling on the propriety of Respondent's invocation of the fifth amendment in the instant case. As stated supra, the Court can make such determination only after Respondent presents himself with his records to Officer Kriezel for questioning or completes and returns the Government's proposed interrogatories and, as to each question and each record request, elects to assert or not to assert the fifth amendment privilege, based upon his assessment of the incriminatory potential of the information sought. See, e.g., Argomaniz, 925 F.2d at 1355-56; Davis, 636 F.2d at 1038-39; Cates, 686 F. Supp. at 1191. It would then be up to the Court, in an in camera proceeding or by other suitable method, to determine the propriety of Respondent's invocation of the fifth amendment by considering the questions asked, the documents requested, and Respondent's justification for

asserting the fifth amendment in response to those questions and requests. Argomaniz, 925 F.2d at 1355.

E. RESPONDENT'S "MOTION TO INCLUDE THIS CASE AS EVIDENCE"

Respondent has entitled the remaining pending motion in these cases as a "Motion to Include This Case as Evidence." The "This Case" referenced in Respondent's motion is the Order of the South Carolina federal district court in Henderson v. United States, CA No. 91-805-20K (D.S.C. Nov. 27, 1991), discussed herein at Section II, B., 1., supra. This Court is aware of its obligation to consider relevant case law from other jurisdictions in resolving cases and controversies that arise in this District. In fact, the Court has already considered the Henderson Order in the course of this Order. Respondent has properly supplemented his previously filed pleadings by calling the Court's attention to the Henderson case. However, there is no need to admit Henderson as an evidentiary matter. The Court shall therefore deny Respondent's "Motion to Include This Case as Evidence" as unnecessary and frivolous.

III. ORDER

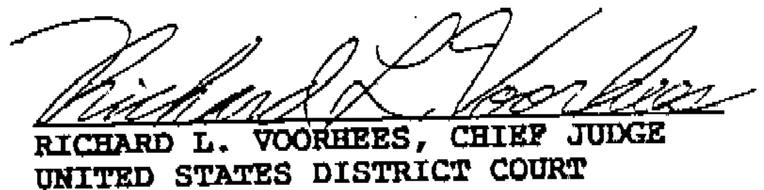
IT IS THEREFORE ORDERED that, as to Civil Case No. A-MISC-[illegible] and Civil Case No. A-MISC-[illegible]

1. Petitioners' Motion to Enforce the Collection Summons is hereby ALLOWED;

2. Respondent's Demand to Vacate Collection Summons, filed September 19, 1991 ["Demand I"], and Demand to Vacate Collection Summons, filed October [illegible], [illegible] ["Demand II"], are hereby **DENIED**;
3. Respondent's "Motion to Vacate with Prejudice, by Judicial Notice, the Motion to Enforce Summons and Filing of Interrogatories" ["Motion to Vacate"] is hereby **DENIED**;
4. Respondent's "Motion to Include This Case as Evidence" is hereby **DENIED**.

Respondent is hereby **ORDERED** to comply fully with the outstanding Collection Summonses, by fully and completely answering under oath or affirmation the interrogatories proffered by the Petitioners, with **THIRTY (30) DAYS** of the filing date of this Order. Respondent is notified of his constitutional right under the fifth amendment against self-incrimination, which may only be invoked in the face of a substantial and real hazard of self-incrimination as determined on a question-by-question basis.

THIS the [illegible] day of June, [illegible].



RICHARD L. VOORHEES, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES CODE SERVICE

Lawyers Edition

Index and Finding Aids to Code of Federal Regulations 1990

USCS

TABLE I

PARALLEL TABLE OF AUTHORITIES AND RULES

USCS to CFR

The following table lists rulemaking authority (except 5 USCS § 301) for regulations codified in the Code of Federal Regulations (CFR). Also included are statutory citations which are noted as being interpreted or applied by those regulations.

The table is divided into four segments: USCS citations, United States Statutes at Large citations, public law citations, and Presidential documents citations. Within each segment the citations are arranged in numerical order:

For USCS, by title and section;

For the United States Statutes at Large, by volume and page number;

For public laws, by number; and

For Presidential documents (Proclamations, Executive orders, and Reorganization plans), by document number.

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all inclusive.

The portion of the table listing the USCS citations is the most comprehensive, as these citations are picked up and carried in the table whenever they are given in the authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding USCS citations given.

For a list of current public laws cited as rulemaking authority, see Table I—Parallel Table of Authorities and Rules in the monthly "List of CFR Sections Affected" (LSA), published by the Government Printing Office.

This table is revised as of January 1, 1990. Additions and removals to the table resulting from regulations published in the Federal Register since January 1, 1990, are found in the current month's edition of the LSA, published by the Government Printing Office.