

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:11-mc-23107-ASG

MICCOSUKEE TRIBE OF INDIANS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____ /

**UNITED STATES' RESPONSE TO THE MICCOSUKEE TRIBE'S MOTION FOR
DISCOVERY**

Allowing the Miccosukee Tribe discovery regarding its petitions to quash IRS summonses in this case will be a waste of the parties' resources and will contravene the Congressional mandate that summons proceedings be summary in nature. This case concerns petitions to quash IRS summonses regarding the Tribe's federal tax withholding and reporting requirements for the 2010 tax year. This Court previously rejected petitions to quash identical summonses issued in an investigation for the 2006 to 2009 tax years. The Tribe's principal arguments to quash the summonses are legal in nature and therefore do not require discovery or an evidentiary hearing. The Tribe's factual arguments are identical to those this Court previously rejected; therefore, the Tribe is collaterally estopped from raising these arguments. The Tribe has failed to demonstrate a need for discovery or a hearing in this case; therefore, the Tribe's motion should be denied.

Congress has mandated that proceedings involving summonses be summary in nature. The summons power is the investigative tool that enables the Commissioner to discharge this investigative responsibility. 26 U.S.C. § 7602. “[T]he § 7602 summons is critical to the investigative and enforcement functions of the IRS.” *United States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984). Because “guilt or liability” is not established in a summons proceeding, “[t]he action should be concluded quickly, so that the investigation may advance toward the ultimate determination of civil or criminal liability, if any.” *United States v. Kis*, 658 F.2d 526, 535 (7th Cir. 1981); see *United States v. Stuart*, 489 U.S. 353, 369 (1989) (“Congress ... [laid] down an easily administrable test in § 7602(c): ‘Summons enforcement proceedings should be summary in nature’ ”(quoting S. Rep. No. 97-494, Vol. 1, p. 285 (1982))). In *Nero Trading, LLC v. United States*, the Eleventh Circuit explained that “[d]epositions, interrogatories, and the rest of the panoply of expensive and time-consuming pretrial discovery devices may *not* be resorted to as a matter of course and on a mere allegation of improper purpose.” 570 F.3d 1244, 1249 (11th Cir. 2009) (alterations in original).

The Tribe previously requested discovery regarding the same nucleus of facts at issue in this case. In response, the United States argued that the Tribe failed to demonstrate any need for discovery or a hearing and failed to demonstrate that discovery or a hearing could assist the Tribe in supporting its motions to quash.¹ Though the Tribe failed to identify how the discovery sought

¹The previous petitions to quash were consolidated under case number 10-cv-23507 (S.D. Fla.). The Tribe’s previous motion for discovery is available at docket number 17. The United States’ response, which explains in greater detail the applicable law and the United States’ position, is available at docket number 24. Following the United States’ response, the Court required the Tribe to file a reply and attempt to explain its need for discovery. Doc. 25. This reply is available at docket number 26.

would assist it meeting its burden, the Magistrate felt constrained by the Court's referral to grant the Tribe some discovery and allowed the Tribe three hours to depose Agent James Furnas.² The deposition of Agent Furnas conclusively established that the Tribe's accusations lacked merit. Agent Furnas's deposition transcript is available in its entirety at docket number 36-1 in 10-cv-23507 (S.D. Fla.). A large portion of the deposition concerned irrelevant inquiry into Agent Furnas's opinion of the applicable law. *E.g., id.* at p.13 ln.13 - p.16 ln.13. The Tribe did not even use the entire three hours that the Court provided. Discovery granted in the previous case demonstrates that the Tribe has no need for discovery.

The Tribe has failed to identify any area of inquiry requiring discovery in this case. In its motion for discovery, the Tribe identified three areas it wished to pursue in discovery: the breadth of the summonses, the applicability of the underlying tax law to the Tribe, and the IRS's potential imposition of "steep penalties" against individual Tribal members. Doc. 19, at 2. The first area appears to concern whether the information sought will be relevant to the IRS's inquiry. This area as well as the second area involve questions of law, which the Court has already determined in the United States' favor in the previous proceeding involving identically worded summonses. The third area of inquiry is irrelevant to this proceeding. *Cf. Tiffany Fine Arts, Inc., v. United States*, 469 U.S. 310, 324 (1985) (approving IRS use of "dual purpose" summonses). Because the Tribe failed to identify any need for discovery or a hearing, the Court should deny the Tribe's motion.

²Doc. 31, at 3, Transcript of Discovery Conf., 10-cv-23507 (S.D. Fla. Jan. 18, 2011) ("Let me make this much clear where we are starting from. Judge Gold has made it clear that the Tribe gets some discovery . . ."). Here, the Court has directed the Magistrate to consider *whether* the Tribe is entitled to any discovery. Doc. 17, at 2.

Respectfully submitted,

JOHN A. DICICCO
Principal Deputy Assistant Attorney General

/s/ William E. Farrior
ROBERT L. WELSH
S.D. Fla. Bar No. A5500117
WILLIAM E. FARRIOR
S.D. Fla. Bar No. A5501479
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 14198
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6068
Facsimile: (202) 514-9868
Robert.L.Welsh@usdoj.gov
William.E.Farrior@usdoj.gov

Of Counsel:

WILFREDO A. FERRER
United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2012, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, via transmission of Notices of Electronic Filing generated by CM/ECF or other approved means.

/s/ William E. Farrior
WILLIAM E. FARRIOR