UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 14-MC-20938-ALTONAGA

UNITED STATES OF AMERICA,

Petitioner,

vs.

COLLEY BILLIE, as Chairman,
Miccosukee General Counsel,
Miccosukee Tribe of Indians of Florida,

Respondent.
___________________________________/

ORDER

THIS CAUSE came before the Court upon Respondent, Miccosukee Tribe of Indians of Florida's (the "Miccosukee Tribe['s]") Emergency Motion to Stay Pending Appeal ("Motion") [ECF No. 31], filed on August 26, 2014. Petitioner, the United States of America (the "Government"), filed its Response . . . ("Response") [ECF No. 33] on September 11, 2014. No reply was filed. The Court has carefully considered the parties' written submissions and applicable law.

The Motion seeks to stay the Order Enforcing Summons [ECF No. 26], entered on August 13, 2014, pending appeal by the Miccosukee Tribe. The Miccosukee Tribe argues it "may" prevail on the merits of its appeal, although "existing law does not support [its] position." (Mot. 4 (alteration added)). Given the standard for stays pending appeal, this admission proves fatal to the Motion.

> In the case of a non-money judgment, whether a stay is warranted under Rule 62(d) depends upon:

> (1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Venus Lines Agency v. CVG Industria Venezolana De Aluminio, C.A., 210 F.3d 1309, 1313 (11th Cir. 2000) (alteration in original; citation omitted). "Ordinarily the first factor is the most important. . . . But the movant may also have [its] motion granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay." *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (alterations added; brackets, internal citations, and quotation marks omitted). As the Miccosukee Tribe is well aware, it faces a "heavy burden" to merit a stay. *Miccosukee Tribe of Indians of Florida v. United States*, No. 10-23507-CV, 2011 WL 5508802, at *1 (S.D. Fla. Nov. 8, 2011) (citations omitted).

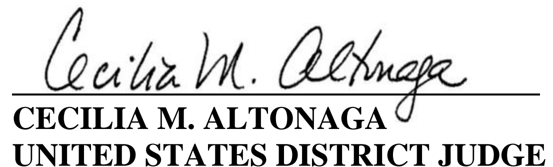
By the Miccosukee Tribe's own admission, case law does not support its argument on appeal in this matter. (*See* Mot. 4). Nevertheless, it argues Chairman Colley Billie "does not have the power to compile the summoned documents or to produce them to the Internal Revenue Service" (Mot. 5); enforcing the summons will result in a violation of the Miccosukee Tribe's Constitution (*see id.* 8); and enforcement would "set precedent that the governmental records of sovereign Indian tribes can be obtained by abrogating tribal self-government" (*id.*). As the Eleventh Circuit has stated in a related case, "tribal sovereign immunity would not bar a suit by the United States." *Miccosukee Tribe of Indians of Florida v. United States*, 698 F.3d 1326, 1331 (11th Cir. 2012) (citations omitted). "The Supreme Court has described tribal sovereign immunity as having passed to the United States to be held for the benefit of the tribes, much like the tribal lands. . . . Indian tribes may not rely on tribal sovereign immunity to bar a suit by a superior sovereign." *Id.* (internal citation omitted). While the Eleventh Circuit's decision

concerned summonses directed at third-party financial institutions (*see id.* at 1328), at least one court has ordered enforcement of an Internal Revenue Service summons directed at a tribal entity. *See United States v. Fond du Lac Reservation Bus. Comm.*, 906 F. Supp. 523, 525 (D. Minn. 1995).

Given these authorities, the Miccosukee Tribe does not successfully make a "lesser showing of a substantial case on the merits . . . ." *Garcia-Mir*, 781 F.2d at 1453 (citations and internal quotation marks omitted). The Court thus need not address the remaining three factors of the test. Accordingly, it is

ORDERED AND ADJUDGED that the Motion **[ECF No. 31]** is **DENIED**.

DONE AND ORDERED in Miami, Florida, this 24th day of September, 2014.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record