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DISTRICT OF ARIZONA
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Francisco Alatorre Urtuzuastegui,
Plaintiff,
v.
The United States of America,
Defendant.

CIV 00-381 TUC ACM

ORDER

June 19, 2000, Plaintiff, a Mexican citizen, filed a Petition to Quash an Internal Revenue Service (IRS) Summons, which was issued under the authority of the Mexico-U.S. Income Tax Treaty and served on Salomon Smith Barney, Inc. The tax authority in Mexico seeks copies of documents relating to the Mexican income tax liability of Plaintiff for the period of January 1, through December 31, 1998. Plaintiff challenges the legality of the tax investigation as barred by the statute of limitations because it was initiated after a "first" audit, which was officially closed. Plaintiff attests that on August 16, 2000, a Mexican court issued a permanent injunction suspending the Mexican audit and prohibiting the Taxing Authority from undertaking any further action.

The United States Government responds by filing a counter-petition for summary enforcement of the summons because it has shown that: 1) the summons was issued for a proper purpose; 2) the information sought may be relevant to that purpose; 3) the information being sought is not already in the possession of the IRS; and 4) the administrative steps required by the Code with respect to issuing and serving a summons

1 have been follows. See United States v. Powell, 379 U.S. 48 (1964) (prima facia case for
2 issuance of summons); United States v. Blackman, 72 F.2d 1418, 1422 (9th Cir. 1995).

3 The inquiry is not whether the Mexican authorities are acting in good faith, but
4 rather is as follows: 1) whether the foreign state has requested assistance under the treaty;
5 2) whether the competent authority has determined that providing such assistance is
6 appropriate; 3) whether the information is not already in the possession of the IRS or the
7 foreign state, and 4) whether the information sought might be relevant to the foreign tax
8 investigation. United States v. Stuart, 489 U.S. 353 (1989). The IRS need make only a
9 minimal showing; thereafter, the taxpayer has a heavy burden to disprove the elements or
10 to demonstrate an abuse of process or bad faith. United States v. Fagan, 1999 WL 164408
11 * 1-2 (S.D. Calif. 1999) (citing Blackman, 72 F.3d at 1422; Liberty Fin. Servs. V. United
12 States, 778 F.2d 1390, 1392 (9th Cir. 1985)).

13 The Court cannot reach the merits of the taxpayers liability in a summons
14 enforcement proceeding. United States v. Mueller, 930 F.2d 10, 12 (8th Cir. 1991);
15 United States v. Harper, 662 f.2d 335, 336 (5th Cir. 1980)' United States v. Fond du Lac,
16 906 F. Supp. 523, 528 (D. Minn. 1995); Panton v. United States, 780 F. Supp. 797, 801
17 (S.D. Fla. 1991). Other forums exist in which Plaintiff can challenge the tax assessment.
18 See Panton v. United States, 780 F. Supp. at 803 (arguments on the merits can be made
19 in any subsequent IRS assess, or appeals therefrom; argument can be made in Jamaican
20 courts) Here, Plaintiff can seek relief in the Mexican courts, in which he is already
21 proceeding.

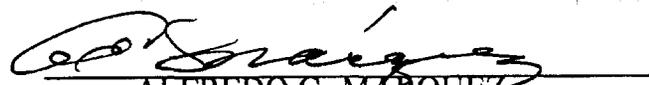
22 **Accordingly,**

23 **IT IS ORDERED** that Plaintiff's Petition to Quash is DENIED.

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IT IS FURTHER ORDERED that the Government's Counter-petition for Enforcement of the Summons is GRANTED.

Dated this 5th day of ^{Dec}~~November~~, 2000.


ALFREDO C. MARQUEZ
Senior U.S. District Judge