

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN THE MATTER OF THE TAX
LIABILITIES OF:

Civil Action No. 113-MC-24

JOHN DOES, Norwegian taxpayers holding
Capital One Bank, N.A. payment card
XXXXXXXXXXXXXXXX2518;
M&T Bank, N.A. payment cards
XXXXXXXXXXXXXXXX3921,
XXXXXXXXXXXXXXXX0626, and
XXXXXXXXXXXXXXXX0984;
Bank of America, N.A. payment cards
XXXXXXXXXXXXXXXX8220,
XXXXXXXXXXXXXXXX1756,
XXXXXXXXXXXXXXXX0066, and
XXXXXXXXXXXXXXXX2852; and
Citibank, N.A. payment cards
XXXXXXXXXXXXXXXX2182, and
XXXXXXXXXXXXXXXX2184.

2013 JUL 19 A 9:43
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

FILED

**EX PARTE PETITION FOR LEAVE
TO SERVE "JOHN DOE" SUMMONS**

The United States of America avers as follows:

1. This *ex parte* proceeding is commenced pursuant to sections 7402(a), 7609(f) and 7609(h) of the Internal Revenue Code (26 U.S.C.), for leave to serve Internal Revenue Service "John Doe" summonses on Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A.
2. Capital One, N.A. is found at 1680 Capital One Drive, McLean, Virginia, within the jurisdiction of this Court.
3. M&T Bank, N.A. is found at 6661 Old Dominion Drive, McLean, Virginia, within the jurisdiction of this Court.

4. Bank of America, N.A. is found at 1369 Chain Bridge Road, McLean, Virginia, within the jurisdiction of this Court.

5. Citibank, N.A. is found at One Mellon Center, 108 South Washington Street, Alexandria, Virginia, within the jurisdiction of this Court.

6. The Internal Revenue Service is in receipt of a request from the Kingdom of Norway for information pursuant to Article 28 of the Convention Between the Government of the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Property ("the Convention"). (See Declarations of Deputy Commissioner Michael Danilack and Revenue Agent Cheryl Kiger, attached to this Petition as Exhibits 1 and 2, respectively.) The request states that the information is to be used to determine the correct income tax liabilities of certain as-yet-unidentified taxpayers under the laws of Norway.

7. In furtherance of that request, the Internal Revenue Service, once service of the summons is authorized by the Court, will issue under the authority of section 7602 of the Internal Revenue Code administrative "John Doe" summonses to Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. Copies of the summonses are attached as Exhibits A, B, C, and D to the Declaration of Revenue Agent Kiger.

6. The "John Doe" summonses relate to the investigation of particular persons or ascertainable groups or classes of persons, that is, the holders of payment card 2518¹ issued by Capital One Bank, N.A., payment cards 3921, 0626, and 0984 issued by M&T Bank, N.A., payment cards 8220, 1756, 0066, and 2852 issued by Bank of America, N.A., and payment cards

¹ The account numbers of the payment cards at issue contain sixteen digits. For privacy considerations, all but the last four digits have been redacted.

2182 and 2184 issued by Citibank, N.A. There is a reasonable basis for believing that such person or group or class of persons may fail, or may have failed, to comply with one or more provisions of the internal revenue laws of Norway. The information sought to be obtained from the examination of the records or testimony (and the identity of the person with respect to whose tax liability the summons has been issued) is not readily available from other sources.

7. In support of this Petition, the United States submits the Declarations of Deputy Commissioner Danilack and Revenue Agent Kiger; the exhibits attached thereto; and a supporting memorandum.

WHEREFORE, the petitioner respectfully prays:

A. That this Court enter an order permitting service of the Internal Revenue Service "John Doe" summonses issued to Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. in substantially the form as attached as Exhibits A, B, C, and D to the Declaration of Revenue Agent Cheryl Kiger; and

B. That this Court grant such other and further relief as the Court deems proper or justice may require.

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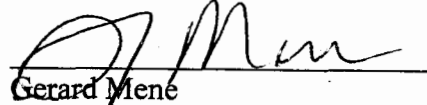
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DATE: July 19, 2013

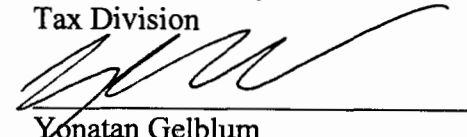
Respectfully submitted,

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FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria, Division

2013 JUL 19 A 9 42

IN THE MATTER OF THE TAX
LIABILITIES OF:

Civil Action No. 13-mc-24
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

JOHN DOES, Norwegian taxpayers holding
Capital One Bank, N.A. payment card
XXXXXXXXXXXXXXXX2518;
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Citibank, N.A. payment cards
XXXXXXXXXXXXXXXX2182, and
XXXXXXXXXXXXXXXX2184.

**MEMORANDUM IN SUPPORT OF *EX PARTE* PETITION
FOR LEAVE TO SERVE "JOHN DOE" SUMMONS**

This is an *ex parte* proceeding brought by the United States of America, pursuant to sections 7609(f) and (h) of the Internal Revenue Code (26 U.S.C.), for leave to serve Internal Revenue Service "John Doe" summonses upon Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. "John Doe" summonses are used to further investigations where a tax authority has reason to believe taxpayers may not be complying with the law, but does not know their identity. Courts may grant leave to serve a "John Doe" summons that does not identify the person with respect to whose liability it is issued if the United States establishes three factors: the summons relates to a particular person or group of individuals; there is a reasonable basis to believe that person or group may have not complied with the internal revenue

laws; and the information sought is not readily available from some other source. See 26 U.S.C. §7609(f). This Court has jurisdiction to determine this action because Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. are found in this judicial district, as they have branches in McLean and Alexandria, Virginia. See 26 U.S.C. § 7609(h)(1) (providing that the district court in which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under section 7609(f)).

This suit is out of the ordinary because the proposed "John Doe" summonses will gather information on behalf of the Kingdom of Norway. The United States has entered into tax treaties with other nations that provide, among other things, for gathering and exchanging information to assist each other in administering the tax laws. The tax treaty between the United States and Norway is the law of the United States, and it provides that, if Norway makes a proper request for information, the United States will use its internal revenue laws to collect the requested information.

Norway has made such a request here. It is investigating whether individuals may owe tax in Norway, and part of that investigation involves identifying individuals who are consistently using payment or credit cards in Norway that are issued by banks outside of Norway. Norwegian taxpayers can use a foreign payment card as part of a scheme to avoid reporting income and paying Norwegian income tax. Individuals can divert income to a foreign country, deposit the proceeds in a bank there, and then use the income to make purchases in their "home" country through payment or credit cards issued by foreign banks. The United States Internal Revenue Service has investigated this scheme with respect to U.S. taxpayers. See David R. Tillinghast, *Issues of International Tax Enforcement*, in THE CRISIS IN TAX ADMINISTRATION

38, 52 (Henry J. Aaron and Joel Slemrod, eds. 2004) (describing the “striking initiative” begun by the IRS in 2000 to issue summonses to American credit card companies to discover the identities of U.S. taxpayers who controlled debit cards issued by foreign banks).

The Court’s determination whether to allow the IRS to issue the proposed “John Doe” summonses shall be made *ex parte* and shall be made solely on the petition and supporting affidavits. 26 U.S.C. § 7609(h)(2). The declarations submitted with this petition establish the three requirements for issuing “John Doe” summonses to Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. to gather information about who might own or control the payment or credit cards that are being used in Norway. As will be discussed in more detail below, those declarations demonstrate (1) that the “John Doe” summonses that the IRS, on behalf of Norway, desires to serve upon Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. relate to the investigation of particular persons or ascertainable groups or classes of persons; (2) that there is a reasonable basis for believing that such particular persons or groups or classes of persons may fail or may have failed to comply with any provision of any internal revenue law; and (3) that the information sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose liability the summons is issued) is not readily available from other sources.

BACKGROUND

The tax information-exchange agreement between the United States and Norway applicable to this case is found in Article 28 of the Convention Between the Government of the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Property, as

amended effective December 15, 1981 ("Convention"). Income and Property Tax Convention, U.S.-Norway, art. 28, Dec. 3, 1971, 23 U.S.T. 2832, available at 1972 WL 122596 [hereinafter Convention]; Protocol Amending Income Tax Convention, U.S.-Norway, art. XII, Sept. 19, 1980, 33 U.S.T. 2828, available at 1981 WL 375910 [hereinafter Protocol]. Article 28, as amended, provides that upon a proper request under the treaty each country "shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the [requesting] State were the tax of that other State and were being imposed by that other State." Protocol, *supra*, art. XII.

The Declarations by IRS Deputy Commissioner Michael Danilack and Revenue Agent Cheryl Kiger describe how the IRS received a request from Norway for information pursuant to Article 28 of the Convention. The request states that the information is to be used to determine the correct income tax liability of certain as-yet-unidentified taxpayers ("John Does") under the laws of Norway. (Danilack Decl. ¶ 3.) The request identifies payment cards issued by U.S. financial institutions that were used in Norway over a period of time and in certain dollar volumes within certain geographic locations so that, in their totality, they are suggestive of taxable residence in Norway. (See Danilack Decl. ¶ 5.)

Norway's request for information stems from the Norwegian Directorate of Taxes' Payment Card Project, in which information on the use of payment cards (debit and credit cards) issued by foreign financial institutions is used to identify non-compliant Norwegian taxpayers. (See Danilack Decl. ¶ 5.) Norway has advised the IRS that, in circumstances where the payment cards are used only at automated-teller machines or in transactions where authorization is by PIN code and the cardholder need not identify himself or herself to the merchant, the cardholders

cannot be identified from information sources in Norway. (See Danilack Decl. ¶ 5; Kiger Decl. ¶ 32.)

As outlined above, Norwegian taxpayers can use a foreign payment card as part of a scheme to avoid reporting income and paying Norwegian income tax. Of course, the fact that a taxpayer holds a payment card issued by a foreign bank does not alone mean that the taxpayer is necessarily using that card for illegal purposes. But based upon the use of payment cards issued by foreign banks to withdraw currency and/or to purchase goods and services without leaving an identifiable record of such transaction, Norway has reason to believe that the holders of the payment cards may have failed to report foreign financial accounts or income on the tax returns they were required to file under the revenue laws of Norway. (See Danilack Decl. ¶ 6; Kiger Decl. ¶¶ 10, 13, 16, 19, 22, 25, 28, 31)

Payment card 2518¹ issued by Capital One Bank, N.A., payment cards 3921, 0626, and 0984 issued by M&T Bank, N.A., payment cards 8220, 1756, 0066, and 2852 issued by Bank of America, N.A., and payment cards 2182 and 2184 issued by Citibank, N.A. are ten of the cards identified by Norway as part of its Payment Card Project whose volume and history of use in Norway suggest that their holders are Norwegian taxpayers who may have failed to report foreign financial accounts or income on the tax returns they were required to file under the revenue laws of Norway. (See Kiger Decl. ¶ 5.) Thus, Norway is seeking information from the card's issuing bank. In furtherance of Norway's investigation and in accordance with the United

¹ The account numbers of the payment cards at issue contain sixteen digits. For privacy considerations, all but the last four digits have been redacted.

States' treaty obligations, the IRS requests authorization to serve "John Doe" summonses upon Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A.²

DISCUSSION

The U.S. Supreme Court approved the use of "John Doe" summonses as an investigative technique for the IRS in United States v. Bisceglia, 420 U.S. 141 (1975). In that case, the Supreme Court held that Internal Revenue Code sections 7601 and 7602 empowered the IRS to issue a "John Doe" summons to a bank to discover the identity of a person who had engaged in certain bank transactions. Bisceglia, 420 U.S. at 150. That authority was explicitly codified in section 7609(f) of the Internal Revenue Code, as added by the Tax Reform Act of 1976. Section 7609(f) provides as follows:

Any summons . . . which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that -

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

As discussed in more detail below, the "John Doe" summonses for which the United States seeks authorization in the instant case meet each of those three requirements.

² Copies of the proposed summonses are attached to Agent Kiger's Declaration as Exhibits A, B, C, and D.

I. The summons describes a particular person or ascertainable class of persons.

The proposed “John Doe” summonses to Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. seek information regarding the holders of specific payment cards, identified by account number, that were issued by those banks. (Kiger Decl. ¶ 7.) The proposed summonses relate to the investigation of particular persons (or groups of persons if the accounts are jointly held) who are easily ascertainable by account number. Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. should be able to readily identify which of their clients hold the specified account number and, thus, which of their clients fall within the ambit of the “John Doe” summonses.

II. There is reasonable basis to believe that these persons have failed to comply with any provision of any internal revenue law.

A. *“Any internal revenue law” includes the internal revenue laws of Norway.*

Section 7609(f)(2) requires that the IRS establish there is a reasonable basis to believe that the subject of a proposed “John Doe” summons “may fail or may have failed to comply with any provision of any internal revenue law.” As a threshold matter, the Court must determine whether “any internal revenue law” includes the internal revenue laws of a U.S. treaty partner, in this case Norway. Although that issue presents a question of first impression as applied to section 7609(f)(2),³ the Convention, which is part of the law of the United States, requires the United States to obtain information requested by Norway as if the tax of Norway were the tax of the United States. Thus, the requirement that the subject of a John Doe summons “may fail or

³ The present case, along with several others filed simultaneously in other jurisdictions throughout the United States, is the first in which the IRS has sought leave to serve a “John Doe” summons on behalf of a treaty partner.

may have failed to comply with any provision of any internal revenue law" includes Norway's revenue laws when Norway has made a proper request under the Convention.

The Convention pursuant to which Norway has made its present request for information is a treaty between the United States and Norway, duly ratified by the President of the United States upon the advice and consent of the United States Senate, and also ratified by Norway. The preface to the Convention shows the appropriate ratifications:

UNITED STATES-NORWAY
INCOME AND PROPERTY TAX CONVENTION

*Convention Signed at Oslo December 3, 1971;
Ratification Advised by the Senate of the United States of America August 11, 1972;
Ratified by the President of the United States of America August 28, 1972;
Ratified by Norway May 5, 1972;
Ratifications Exchanged at Washington September 29, 1972;
Proclaimed by the President of the United States of America October 31, 1972;
Entered into Force November 29, 1972.*

Convention, *supra*, preface. The protocol amending the Convention carries similar ratifications. Protocol, *supra*, preface. As a ratified treaty of the United States, the Convention as amended is part of the law of the United States. U.S. Const. Art. VI, cl.2 ("This Constitution . . . and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . ."); Bacardi Corp. of America v. Domenech, 311 U.S. 150, 161 (1940).

Article 28 of the Convention (as amended effective December 15, 1981) provides:

If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent *as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State*. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide

information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings), *to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.*

Protocol, *supra*, art. XII (emphases added). Because the Convention is the law of the United States, the phrase “any provision of any internal revenue law” encompasses the Norwegian internal revenue laws where a proper request has been made under the Convention.

Accordingly, the IRS is properly employing the procedures available under the Internal Revenue Code to obtain information requested by Norway as it would employ in the investigation of a domestic tax liability.

Courts already have determined that it is appropriate for the IRS to issue summonses under a related statute – Internal Revenue Code section 7602 – to obtain records requested by a treaty partner for use in an investigation under the tax laws of the treaty state. United States v. A.L. Burbank Co., Ltd., 525 F.2d 9, 14-15 (2d Cir. 1975) (enforcing IRS summons issued pursuant to request from Canadian tax authorities); Lidas, Inc. v. United States, 238 F.3d 1076, 1081 (9th Cir. 2001) (denying subject’s petition to quash IRS summons issued pursuant to request from French tax authorities). Internal Revenue Code section 7602 authorizes the use of a summons in determining the liability of any person for “any internal revenue tax.” Both the Burbank and Lidas courts have explicitly rejected the argument that summonses seeking information requested by treaty partners for use in enforcing foreign tax laws are not related to “any internal revenue tax” within the meaning of that language in section 7602. Burbank, 525 F.2d at 14-15; Lidas, 238 F.3d at 1081; see also Mazurek v. United States, 271 F.3d 226 (5th Cir. 2001) (finding that the attempt to meet its treaty obligations by assisting the

investigation of a foreign tax authority is a proper purpose for the IRS to issue a summons pursuant to section 7602). The basis for those rulings is that, upon ratification, a treaty, with its obligations to use available legal process in support of requests for assistance, becomes the law of the United States.⁴ Burbank, 525 F.2d at 14-15; Lidas, 238 F.3d at 1081. The same rationale applies whether a court is interpreting the meaning of “any internal revenue tax” in section 7602 regarding the issuance of IRS summonses in general or the meaning of “any internal revenue law” in section 7609(f)(2) regarding the issuance of IRS “John Doe” summonses.

In addition, guidance from the Supreme Court supports the proposition that the phrase “any internal revenue law” in section 7609(f)(2) includes the internal revenue laws of a U.S. treaty partner.⁵ It is well established that an IRS summons may be used to obtain records requested by a treaty partner for use in an investigation under the tax laws of the treaty state under authority of Internal Revenue Code section 7602, which, as noted above, authorizes the

⁴ The language in Article 28 of the U.S.-Norway Convention, quoted above, is similar to the language contained in the U.S. treaties with Canada and France, involved in the Burbank, Lidas and Mazurek cases.

⁵ Norway imposes taxes pursuant to the Taxation Act, or “Skatteloven.” Skatteloven av 18. August 1911 Nr 8 [The Taxation Act] available at <http://www.lovdato.no/all/nl-19990326-014.html>, translated in <http://translate.google.com/translate?sl=auto&tl=en&js=n&prev=t&hl=en&ie=UTF-8&eotf=1&u=http%3A%2F%2Fwww.lovdato.no%2Fall%2Fnl-19990326-014.html>. Norwegian taxpayers are subject to tax on their income, as well as on wealth and assets. Norway, the Official Site in the UK, Taxes in Norway, <http://www.norway.org.uk/Embassy/faq/tax/>; Norwegian Tax Administration, Tax in Norway - International Pages, <http://www.skatteetaten.no/en/International-pages/Felles-innhold-benytted-i-flere-malgrupper/Articles/Tax-in-Norway/>. Norwegian taxpayers are responsible for filing returns reporting their income and assets so that their correct tax liabilities may be determined. Norwegian Tax Administration, Tax in Norway - International Pages, <http://www.skatteetaten.no/en/International-pages/Felles-innhold-benytted-i-flere-malgrupper/Articles/Tax-in-Norway/>.

use of a summons in determining the liability of any person for "any internal revenue tax." The Supreme Court approved the use of an IRS summons under section 7602 to obtain records on behalf of a treaty partner in United States v. Stuart, 489 U.S. 353 (1989). In that case, the Supreme Court held that limitations in section 7602 regarding the issuance of summonses that otherwise could have applied to the IRS in certain criminal tax investigations did not apply in a case when the United States was seeking to enforce an IRS summons issued on behalf of Canada pursuant to a treaty request. If the reference in section 7602 to "any internal revenue tax" is sufficient to allow the IRS to serve a general summons under that section on behalf of a treaty partner, then, similarly, the reference in section 7609(f)(2) to "any internal revenue law" should be sufficient to allow the IRS to serve a "John Doe" summons on behalf of a treaty partner pursuant to section 7609(f)(2).

At its core, however, the origin of the United States' authority to serve a "John Doe" summons on behalf of a treaty partner rests upon the principle that treaties, including all the provisions of the U.S.-Norway Tax Convention at issue here, are the law of the United States. Upon a request for information from its treaty partner Norway, the Convention allows the United States to use any methods available by which the United States could obtain information on its own behalf. The "John Doe" summons is available to the United States to obtain information about an unidentified taxpayer, so long as the conditions to obtain judicial authorization for that type of summons have been met. It is proper for the United States, therefore, to use a "John

Doe” summons upon a request for information from Norway, so long as the otherwise applicable conditions are met.⁶

- B. *There is reasonable basis to believe that the holder of payment card 8985 has failed to comply with the internal revenue laws of Norway.*

In analyzing whether a “reasonable basis” exists, the IRS need not establish proof that the relevant tax laws have been violated. Congress did not intend section 7609(f) to impose stringent restrictions on the ability of the IRS to issue a “John Doe” summons; instead, Congress intended only to prevent the indiscriminate exercise of the summons power. See In re Tax Liabilities of John Does, Members of the Columbus Trade Exchange, 671 F.2d 977, 980 (6th Cir. 1982). For example, “reasonable basis” can be shown by a revenue agent’s affidavit that the audit of similar transactions revealed a high incidence of improper reporting. See id. at 978. Of course, prior audit experience is not necessary to show reasonable basis that the subject of a “John Doe” summons has failed or may fail to comply with internal revenue laws. In United States v. Pittsburgh Trade Exchange, Inc., 644 F.2d 302, 306 (3d Cir. 1981), the court held that the “reasonable basis” test had been met based upon a revenue agent’s testimony that barter transactions of the type arranged by the Pittsburgh Trade Exchange were “inherently susceptible to tax error.” And in United States v. Ritchie, 15 F.3d 592, 601 (6th Cir. 1994), the court held that the mere payment for legal services with large amounts of cash is a reasonable basis for the issuance of a “John Doe” summons.

⁶ As described throughout this memorandum, all the required conditions are satisfied in this case.

Norway has provided the IRS with information that shows that the cards at issue were used in numerous transactions in Norway as shown in the table below:

Card	Issuer	Time Period Used in Norway	Number of Transactions in Norway	Volume of Transactions (NOK)	Volume of Transactions (USD)
2518	Capital One, N.A.	May 2005 - May 2009	198	612,296	104,090
3921	M&T Bank, N.A.	Nov. 2005 - Oct. 2008	122	518,338	88,117
0626	M&T Bank, N.A.	Jan. 2004 - Feb. 2009	292	554,898	94,333
0984	M&T Bank, N.A.	Dec. 2005 - Jan. 2009	114	768,790	130,694
8220	Bank of Amer., N.A.	Feb. 2004 - Dec. 2008	254	1,519,500	258,315
1756	Bank of Amer., N.A.	May 2004 - Dec. 2007	125	524,239	86,499
0066	Bank of Amer., N.A.	Jan. 2004 - July 2012	319	1,067,064	181,401
2582	Bank of Amer., N.A.	July 2004 - Aug. 2008	477	1,106,431	188,093
2182	Citibank, N.A.	May 2005 - March 2008	252	1,000,547	170,093
2184	Citibank, N.A.	Jan. 2004 - April 2005	135	499,067	74,860

(Kiger Decl. ¶¶ 8-9, 11-12, 14-15, 17-18, 20-21, 23-24, 26-27, 29-30)

Based on the information provided by Norway, including the use of a payment card issued by a foreign bank to withdraw currency and/or to purchase goods and services without leaving an identifiable record of such transactions and the level of activity and large dollar volume of transactions on the card, it is reasonable to believe that the unidentified holders of

payment card 2518 issued by Capital One Bank, N.A., payment cards 3921, 0626, and 0984 issued by M&T Bank, N.A., payment cards 8220, 1756, 0066, and 2852 issued by Bank of America, N.A., and payment cards 2182 and 2184 issued by Citibank, N.A. may have failed to comply with provisions of the internal revenue laws of Norway, including failing to report income on tax returns required to be filed in Norway. Agent Kiger's general knowledge and experience concerning taxpayers who use banking and other services in foreign jurisdictions also attest to that conclusion. (See Kiger Decl. ¶¶ 10, 13, 16, 19, 22, 25, 28, 31)

In addition, information of the kind requested here already has produced evidence of extensive income tax evasion in Norway. (See Danilack Decl. ¶ 7.) Public details are limited, but Norway has advised the IRS that its Payment Card Project has produced evidence of foreign payment card usage in Norway showing that certain high-wealth persons claiming to be tax residents of other countries have in fact resided in Norway for sufficient periods to subject them to tax in Norway, resulting in fraud charges and additional tax assessments in the millions of dollars. (Danilack Decl. ¶ 7.) Norway also has advised that a similar list of account numbers presented to another jurisdiction produced account information that evidenced noncompliance with Norwegian tax-filing obligations by each and every one of the holders of those payment cards. (Danilack Decl. ¶ 7.)

In addition to that general information, Norway has provided specific examples of how the investigations of other foreign payment cards identified through its Payment Card Project already have led to the discovery of violations of Norwegian tax laws, including the failure to report substantial amounts of income. For instance, one person identified through the Payment Card Project had two credit cards issued in Great Britain. From March 2006 through

October 2007, one of those cards had a total transactions in Norway of approximately 800,000 NOK (\$136,000),⁷ and the other card had a total transactions in Norway of approximately 57,000 NOK (\$9,690). That person currently is the subject of a Norwegian court proceeding in which he is accused of failing to report approximately 177 million NOK (\$30,090,000) in Norway. (Danilack Decl. ¶ 8(a).)

Another Norwegian taxpayer identified through the Payment Card Project held three payment cards issued in the United States. Consumption in Norway was approximately 3,1 million NOK (\$527,000) during 2005 through 2007 on the first card; approximately 1,64 million NOK (\$278,800) during 2004 through 2005 on the second card; and approximately 1,57 million NOK (\$266,900) during 2005 through 2008 on the third card. Although this taxpayer had registered as having immigrated to Great Britain and claimed to be a resident there, Norwegian authorities learned through their investigation that the taxpayer had remained in Norway during 2000 through 2008. The investigation also revealed that this taxpayer had performed business activities for a company in Norway whose ownership was hidden by a complex structure through companies in Great Britain, Panama and the British Virgin Islands. This taxpayer now faces a charge of tax fraud in Norway. (Danilack Decl. ¶ 8(b).)

In addition, a British citizen who resided in Norway from 1988 also was identified through the Payment Card Project. This person held a payment card issued in the Isle of Man with total transactions in Norway of approximately 1 million NOK (\$170,000) during 2005 through 2007. The investigation by the Norwegian authorities showed that this taxpayer failed

⁷ All krone-to-dollar conversions are done using 17 cents as the U.S.-dollar equivalent of one Norwegian krone.

to report income of approximately 8 million NOK (\$1,360,000) that he should have reported to Norway. (Danilack Decl. ¶ 8(c).)

Finally, another taxpayer identified through the Payment Card Project held a credit card issued in the United States with total transactions in Norway of approximately 631,000 NOK (\$107,270) during December 2004 through December 2007. The investigation by the Norwegian authorities showed that this taxpayer failed to report approximately 10 million NOK (\$1,700,000) in income that he should have reported to Norway. (Danilack Decl. ¶ 8(d).)

As described above, Norway has provided the IRS with specific information concerning the payment cards that are the subject of this action. That information shows extensive use and a high volume of transactions in Norway over a multi-year period. Norway also has provided information showing that investigations of other foreign payment cards identified through its Payment Card Project already have produced evidence of extensive income tax evasion in Norway. Given all the circumstances, there is a reasonable basis for the issuance of the summonses at issue.

III. The requested materials are not readily available from other sources.

With respect to the third and final requirement set forth in section 7609(f)(3), the information sought (and the identity of the person with respect to whose tax liability the summons is to be issued) is not readily available from other sources, but it is available from Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. Norway has advised the IRS that, in situations in which payment cards are used only at automated-teller machines or in transactions where authorization is by PIN code and the cardholder need not identify himself or herself, the cardholders cannot be identified from information sources in

Norway. (Danilack Decl. ¶ 5; Kiger Decl. ¶ 32.) payment card 2518 issued by Capital One Bank, N.A., payment cards 3921, 0626, and 0984 issued by M&T Bank, N.A., payment cards 8220, 1756, 0066, and 2852 issued by Bank of America, N.A., and payment cards 2182 and 2184 issued by Citibank, N.A. are ten of the cards whose holder cannot be identified from information sources in Norway. (Kiger Decl. ¶ 32.)

In cases in which the IRS has sought leave to serve “John Doe” summonses to identify United States taxpayers whom the IRS reasonably believed were using foreign financial and payment card accounts to avoid complying with United States tax laws, courts have routinely recognized that the identities of the United States taxpayers are not readily available from sources other than the financial institutions involved. See In re Tax Liabilities of John Does Who During the Years Ended December 31, 1998 and 1999, Had Signatory Authority Over American Express or MasterCard Credit, Charge or Debit Cards, Case No. 00-cv-3919, 2000 WL 34538137 (S.D. Fla. Oct. 30, 2000) (authorizing service of “John Doe” summons upon American Express and MasterCard International seeking account records establishing the identities of United States taxpayers who held an interest in American Express or MasterCard payment cards issued by or through, or for which payment was received from, banks or other financial institutions in Antigua, Barbuda, the Bahamas or the Cayman Islands); In re Tax Liabilities of John Does Who During the Years Ended December 31, 1999 through December 31, 2001, Had Signature Authority Over Visa Cards, Case No. 02-mc-00049 (N.D. Cal. Mar. 27, 2002) (authorizing service of “John Doe” summons upon Visa International seeking the identity of United States taxpayer who held certain credit card accounts with ties to foreign banks); In re Tax Liabilities of John Does Who During the Years Ended December 31,

1999 through December 31, 2001, Had Signature Authority Over MasterCard Payment Cards, Case No. 02-22404, 2002 WL 32879613 (S.D. Fla. Aug. 20, 2002) (authorizing service of “John Doe” summons upon MasterCard International seeking the identity of United States taxpayer who held certain credit card accounts with ties to foreign banks); In re HSBC India, Case No. 11-cv-1686 (N.D. Cal. Apr. 7, 2011) (authorizing service of “John Doe” summons upon HSBC India seeking financial account records establishing the identities of United States taxpayers with Indian bank accounts).

As in those cases, the identities of the John Does at issue here are not readily available from any source other than the financial institution that holds the payment-card-account relationship with him or her. Here, the only repositories of the information sought by the proposed summons that is available to the IRS are Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A., which hold the payment card relationships with the John Does in question and maintains records of those payment card accounts and related financial accounts. (Kiger Decl. ¶ 33.) Consequently, the only readily available means for the IRS to identify this subject and obtain the requested records is pursuant to “John Doe” summonses.

CONCLUSION

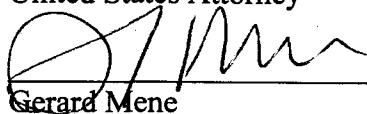
The summonses for which the IRS seeks authorization meet the requirements of a “John Doe” summons. Accordingly, the Court should enter an order granting the IRS leave to serve “John Doe” summons upon Capital One, N.A., M&T Bank, N.A., Bank of America, N.A., and Citibank, N.A. in substantially the form as attached as Exhibits A, B, C, and D to the Declaration of Cheryl Kiger.

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DATE: July 19, 2013

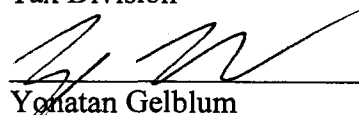
Respectfully submitted,

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