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

UNITED STATES OF AMERICA,)	
)	Case No.
Petitioner,)	
)	PETITION TO ENFORCE
v.)	INTERNAL REVENUE SERVICE
)	SUMMONS
STEVEN A. BALLMER,)	
)	
Respondent.)	
_____)	

The United States of America, through undersigned counsel, petitions this Court for an order enforcing an Internal Revenue Service (“IRS”) related summons served on respondent Steven A. Ballmer pursuant to 26 U.S.C. § 7602.

In support of this petition, the United States alleges as follows:

1. This is a proceeding brought pursuant to Sections 7402(b) and 7604(a) of the Internal Revenue Code (Title 26, United States Code) for judicial enforcement of the IRS summons described below.

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1 2. Mr. Ballmer's place of abode is in Hunt's Point, Washington.

2 3. The Court has jurisdiction over this proceeding pursuant to Sections 7402(b) and
3 7604(a) of the Internal Revenue Code and 28 U.S.C. §§ 1340 and 1345. Venue properly lies
4 within this district.

5 4. The IRS is conducting an examination of the federal income tax liabilities of
6 Microsoft Corporation and includible subsidiaries ("Microsoft") for the taxable periods ending
7 June 30, 2004, June 30, 2005, and June 30, 2006 (the "2004-2006 Examination"). (Declaration
8 of Revenue Agent Walter Choi ("Choi Decl."), at ¶ 1).

9 5. Walter Choi is a Supervisory Internal Revenue Agent, employed in the Large
10 Business and International Division, International Business Compliance, Territory 12, Internal
11 Revenue Service, assigned to advise the 2004-2006 Examination. (Choi Decl., ¶¶ 1, 4).

12 6. Douglas M. Odell is a Revenue Agent employed in the Large Business and
13 International Division of the IRS and is authorized to issue administrative summonses pursuant
14 to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, and IRS Delegation Order No. 25-1. Revenue
15 Agent Odell is an International Examiner assigned to the 2004-2006 Examination. (Choi Decl.,
16 ¶¶ 5-7).

17 7. In furtherance of the 2004-2006 Examination and in accordance with 26 U.S.C.
18 §§ 7602 and 6503(j), on October 30, 2014, Revenue Agent Odell issued an IRS designated
19 summons to Microsoft. The summons directed Microsoft to appear on November 20, 2014, and
20 to produce for examination books, records, papers, and other data as described in the summons.
21 (Choi Decl., ¶ 8). On December 11, 2014, the United States filed a petition to enforce the
22 designated summons in this court which was assigned case number 2:14-mc-00117-RSM.

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1 8. In furtherance of the 2004-2006 Examination and in accordance with 26 U.S.C.
2 §§ 7602 and 6503(j), on November 13, 2014, Revenue Agent Odell issued a summons, related to
3 the designated summons, to Steven A. Ballmer, a former Microsoft officer (“Ballmer
4 summons”). The Ballmer summons demanded that Mr. Ballmer appear on the 16th floor at 915
5 2nd Avenue, Seattle, Washington 98174 on December 8, 2014 at 9:00 a.m. and give testimony.
6 (Choi Decl., ¶ 9, Exhibit A).

7 9. In furtherance of the 2004-2006 Examination, and in accordance with 26 U.S.C.
8 §§ 7602 and 7603, on November 13, 2014, Revenue Agent Roy Morledge served the Ballmer
9 summons by leaving an attested copy of the summons at Mr. Ballmer’s place of abode. On that
10 same day, in accordance with 26 U.S.C. § 7609(a), notice of the issuance of the Ballmer
11 summons was sent via certified mail to Microsoft. (Choi Decl., ¶¶ 9, 10, Exhibit A).

12 10. On December 2, 2014, James O’Brien, counsel for Microsoft Corporation,
13 indicated in writing that Mr. Ballmer would not be made available to testify. (Choi Decl., ¶ 11,
14 Exhibit B).

15 11. Mr. Ballmer failed to appear on December 8, 2014, the date scheduled for
16 compliance with the summons. (Choi Decl., ¶ 12).

17 12. The 2004-2006 Examination involves several unagreed international tax issues.
18 The primary remaining areas on which the IRS needs additional information, and the focus of the
19 designated summons, are transfer pricing issues involving intangibles and relating to two
20 regional cost sharing arrangements between Microsoft and its affiliates. (Choi Decl., ¶ 15).

21 13. Transfer pricing generally, and as embodied in 26 U.S.C. § 482, refers to the
22 prices that related parties charge one another for goods and services transferred between them.

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1 The most common application of the transfer pricing rules is the determination of the correct
2 price for transfers between related entities.

3 14. The IRS is authorized to allocate income and deductions among commonly
4 controlled or owned entities as necessary to prevent tax avoidance or to clearly reflect the
5 income of such entities. 26 U.S.C. § 482. In particular, when rights to intangible property are
6 transferred or licensed between related entities, “the income with respect to such transfer or
7 license shall be commensurate with the income attributable to the intangible.” *Id.* “[T]he
8 standard to be applied in every case is that of a taxpayer dealing at arm’s length with an
9 uncontrolled taxpayer.” Treas. Reg. § 1.482-1(b)(1). Non-arm’s length prices can be used to
10 shift income, and thus the incidence of tax, to tax-favored jurisdictions.

11 15. Understanding the role of sales and marketing in generating profits is central to
12 evaluating Microsoft’s transfer pricing valuations related to its cost sharing arrangements. Mr.
13 Ballmer was the Chief Executive Officer of Microsoft from 2000 until 2014. In interviews
14 conducted by the IRS in September and October 2014, current Microsoft employees repeatedly
15 identified Mr. Ballmer as a central decision maker with overall responsibility for sales and
16 marketing priorities and strategies. Microsoft’s 2005 10-K also identifies Mr. Ballmer as the
17 “chief operating decision maker” responsible for “deciding how to allocate resources and in
18 assessing performance.” (Choi Decl., ¶ 16).

19 16. Operating in these capacities, Mr. Ballmer should have had responsibility for and
20 knowledge of sales and marketing activities and functions, including, but not limited to, setting
21 goals and priorities, and evaluating the impact of such activities and functions. The testimony
22 sought from Mr. Ballmer may be relevant to the IRS’s consideration of whether the transfer

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1 pricing Microsoft adopted for its Asia-Pacific and Americas (the United States, Canada, and
2 Latin America) cost sharing arrangements satisfies the arm's length pricing standard under 26
3 U.S.C. § 482 and the regulations thereunder. More specifically, Mr. Ballmer's testimony may be
4 relevant to evaluating the role of sales and marketing in Microsoft's operations in the Asia-
5 Pacific and Americas regions, and the relative value of non-technology intangibles in those
6 operations. (Choi Decl., ¶ 17).

7 17. All administrative steps as required by the Internal Revenue Code for issuance
8 and service of a related summons have been followed. (Choi Decl., ¶ 13).

9 18. There is no "Justice Department referral," as that term is described in Section
10 7602(d)(2) of the Internal Revenue Code, in effect with respect to Microsoft for the taxable years
11 ending June 30, 2004, June 30, 2005, and June 30, 2006. (Choi Decl., ¶ 14).

12 19. In order to obtain enforcement of a summons, the petitioner must establish that
13 the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that
14 purpose; (3) seeks information that is not already within the IRS's possession; and (4) satisfies
15 all administrative steps required by the Internal Revenue Code. *United States v. Powell*, 379
16 U.S. 48, 57-58, (1964).

17 20. In further support of this Petition and incorporated herein by reference, the United
18 States submits the Declaration of Revenue Agent Walter Choi. The United States has met the
19 *Powell* factors through these documents.

20 WHEREFORE, petitioner, the United States of America, seeks the following relief:

21 A. That this Court enter an order directing Mr. Ballmer to show cause in writing why he
22 should not fully comply with and obey the aforementioned IRS related summons and

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1 every requirement thereof as enumerated in the Declaration of Revenue Agent Walter
2 Choi;

3 B. That this Court enter an order directing Mr. Ballmer to appear before Revenue Agent
4 Odell, or any other proper officer or employee of the Internal Revenue Service, and
5 give testimony as required by the summons;

6 C. That the United States of America recover its costs in this action; and,

7 D. That the Court grant such other further relief as it deems just and proper.

8 Dated this 19th day of December, 2014.

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10 Deputy Assistant Attorney General

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