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 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,)	Case No. 1:11-cv-01250-AWI-SMS
)	
12 Petitioner,)	MAGISTRATE JUDGE’S FINDINGS
)	AND RECOMMENDATIONS RE: I.R.S.
13 v.)	SUMMONS ENFORCEMENT
)	
14 NATHAN D. BACON,)	TAXPAYER: NATHAN D. BACON
)	
15 Respondent.)	
16 _____)	

17 This matter came before me on November 16, 2011, under the Order to Show
 18 Cause filed August 2, 2011, which, with the verified petition and memorandum, was
 19 personally served upon respondent on September 15, 2011. Respondent did not file
 20 written opposition.

21 At the hearing, Yoshinori H. T. Himel appeared telephonically for petitioner, and
 22 investigating Revenue Officer Michael Nicholas was present. Respondent did not appear.

23 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
 24 to enforce an administrative summons (Exhibit A to the petition) in aid of Revenue
 25 Officer Nicholas’ investigation of Nathan D. Bacon to determine his correct liabilities for
 26 personal income tax for the tax years ending December 31, 2005, December 31, 2006,
 27 December 31, 2007, and December 31, 2009.

1 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is
2 found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government
3 to bring the action. The Order to Show Cause shifted to respondent the burden of
4 rebutting any of the four requirements of United States v. Powell, 379 U.S. 48, 57-58
5 (1964).

6 I have reviewed the petition and documents in support. Based on the
7 uncontroverted verification of Revenue Officer Nicholas and the entire record, I make the
8 following findings:

9 (1) The summons issued by Revenue Officer Martha Rodriguez to respondent,
10 Nathan D. Bacon, on January 7, 2011, seeking testimony and production of documents
11 and records in respondent's possession, was issued in good faith and for a legitimate
12 purpose under I.R.C. § 7602, that is, to determine his correct liabilities for personal
13 income tax for the tax years ending December 31, 2005, December 31, 2006, December
14 31, 2007, and December 31, 2009.

15 (2) The information sought is relevant to that purpose.

16 (3) The information sought is not already in the possession of the Internal Revenue
17 Service.

18 (4) The administrative steps required by the Internal Revenue Code have been
19 followed.

20 (5) There is no evidence of referral of this case by the Internal Revenue Service to
21 the Department of Justice for criminal prosecution.

22 (6) The verified petition and its exhibits made a prima facie showing of
23 satisfaction of the requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

24 (7) The burden shifted to respondent, Nathan D. Bacon, to rebut that prima facie
25 showing.

26 (8) Respondent presented no argument or evidence to rebut the prima facie
27 showing.

1 I therefore recommend that the IRS summons issued to respondent, Nathan D.
2 Bacon, be enforced, and that respondent be ordered to appear at the I.R.S. offices at 1533
3 Lakewood Avenue, Modesto, California 95355, before Revenue Officer Michael
4 Nicholas, or his designated representative, twenty-one (21) days after the issuance of the
5 order, or at a later date to be set in writing by Revenue Officer Nicholas, then and there to
6 be sworn, to give testimony, and to produce for examining and copying the books, checks,
7 records, papers and other data demanded by the summons, the examination to continue
8 from day to day until completed. I further recommend that if it enforces the summons,
9 the Court retain jurisdiction to enforce its order by its contempt power.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of
12 the Local Rules of the United States District Court for the Eastern District of California.
13 Within ten (10) days after being served with these findings and recommendations, any
14 party may file written objections with the court and serve a copy on all parties. Such a
15 document should be titled "Objections to Magistrate Judge's Findings and
16 Recommendations." Any reply to the objections shall be served and filed within ten (10)
17 days after service of the objections. The District Judge will then review these findings
18 and recommendations pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that
19 failure to file objections within the specified time may waive the right to appeal the
20 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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24 IT IS SO ORDERED.

25 **Dated: November 23, 2011** /s/ Sandra M. Snyder
26 UNITED STATES MAGISTRATE JUDGE
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