## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

## UNITED STATES OF AMERICA,

Petitioner,

v.

KEITH E. GUY,

Respondent.

1:12-cv-00734-AWI-BAM

FINDINGS AND RECOMMENDATIONS RE: I.R.S. SUMMONS ENFORCEMENT AND ORDER

TAXPAYER: KEITH E. GUY

This matter came before Magistrate Judge Barbara A. McAuliffe, on July 27, 2012, under the Order to Show Cause filed May 10, 2012, which, with the verified petition and memorandum, was personally served upon the respondent, Keith R. Guy, on June 1, 2012. Respondent did not file written opposition. Yoshinori H. T. Himel, Assistant United States Attorney, appeared for petitioner; investigating Revenue Officer David M. Lopez was present. Respondent appeared for himself. He did not oppose the enforcement of the I.R.S. summons, and he agreed to appear and partially comply on August 30, 2012, at 9:00 a.m., at the I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721-2227.

The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to enforce an administrative summons, Exhibit A to the petition. The summons seeks information to aid Revenue Officer Lopez' investigation to collect Form 1040 delinquent taxes for the tax years ending December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007.

Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government to bring

the action. The Order to Show Cause shifted to respondent the burden of rebutting any of the four requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

The Court has reviewed the petition and documents in support. Based on the uncontroverted verification of the petition by Revenue Officer Lopez and the entire record, the Court makes the following findings:

- (1) The summons issued by Revenue Officer David M. Lopez on November 14, 2011, and served upon respondent, Keith E. Guy, on November 15, 2011, seeking testimony and production of documents and records in respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to collect Form 1040 delinquent taxes for the tax years ending December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007.
- (2) The information sought is relevant to that purpose.
- (3) The information sought is not already in the possession of the Internal Revenue Service.
- (4) The administrative steps required by the Internal Revenue Code have been followed.
- (5) There is no evidence of referral of this case by the Internal Revenue Service to the Department of Justice for criminal prosecution.
- (6) The verified petition and its exhibits made a prima facie showing of satisfaction of the requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964).
- (7) The burden shifted to respondent, Keith E. Guy, to rebut that prima facie showing.
- (8) Respondent presented no argument or evidence to rebut the prima facie showing.

The Court therefore recommends that the IRS summons served upon respondent, Keith E. Guy, be enforced, and that respondent be ordered to appear within twenty-one (21) 1 day
2 wr
3 Fre
4 rep
5 and
6 the
7 tha
8 con

days after the filing date of the summons enforcement order, or a later date to be set in writing by Revenue Officer Lopez, at the I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721-2227, before Revenue Officer Lopez or his designated representative, then and there to be sworn, to give testimony, and to produce for examining and copying the books, checks, records, papers and other data demanded by the summons, the examination to continue from day to day until completed. The Court further recommends that if it enforces the summons, the Court retain jurisdiction to enforce its order by its contempt power.

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

Respondent Keith E. Guy SHALL APPEAR at the I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721-2227, on August 30, 2012, at 9:00 a.m.

THE CLERK SHALL SERVE this and further orders by mail to Keith E. Guy, 7292 Black Oak Lane, Yosemite National Park, CA 95389.

IT IS SO ORDERED.

Dated: August 27, 2012 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE