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3 IN THE UNITED STATES DISTRICT COURT FOR THE
4 EASTERN DISTRICT OF CALIFORNIA

5 **UNITED STATES OF AMERICA,**

6 Petitioner,

7 v.

8 **KEITH E. GUY,**

9 Respondent.

1:12-cv-00734-AWI-BAM

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

TAXPAYER: KEITH E. GUY

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

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

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

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

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

- 6 (1) The summons issued by Revenue Officer David M. Lopez on November 14,
7 2011, and served upon respondent, Keith E. Guy, on November 15, 2011,
8 seeking testimony and production of documents and records in respondent's
9 possession, was issued in good faith and for a legitimate purpose under I.R.C.
10 § 7602, that is, to collect Form 1040 delinquent taxes for the tax years ending
11 December 31, 2004, December 31, 2005, December 31, 2006, and
12 December 31, 2007.
- 13 (2) The information sought is relevant to that purpose.
- 14 (3) The information sought is not already in the possession of the Internal
15 Revenue Service.
- 16 (4) The administrative steps required by the Internal Revenue Code have been
17 followed.
- 18 (5) There is no evidence of referral of this case by the Internal Revenue Service
19 to the Department of Justice for criminal prosecution.
- 20 (6) The verified petition and its exhibits made a prima facie showing of
21 satisfaction of the requirements of *United States v. Powell*, 379 U.S. 48, 57-58
22 (1964).
- 23 (7) The burden shifted to respondent, Keith E. Guy, to rebut that prima facie
24 showing.
- 25 (8) Respondent presented no argument or evidence to rebut the prima facie
26 showing.

27 The Court therefore recommends that the IRS summons served upon respondent,
28 Keith E. Guy, be enforced, and that respondent be ordered to appear within twenty-one (21)

