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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-01591-LJO-BAM**

**MAGISTRATE JUDGE'S 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 November 9, 2012, under the Order to Show Cause filed October 9, 2012, which, with the verified petition and memorandum, was personally served upon the respondent, Keith R. Guy, on October 19, 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 comply on December 31, 2012, at 10:30 a.m., at the I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721-2227.

1           The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks  
2 to enforce an administrative summons, Exhibit A to the petition. The summons seeks  
3 information to aid Revenue Officer Lopez' investigation to collect Form 1040 delinquent  
4 taxes for the tax years ending December 31, 2004, December 31, 2005, December 31,  
5 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010,  
6 and December 31, 2011.

7           Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is  
8 found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government  
9 to bring the action. The Order to Show Cause shifted to respondent the burden of  
10 rebutting any of the four requirements of United States v. Powell, 379 U.S. 48, 57-58  
11 (1964).

12           I have reviewed the petition and documents in support. Based on the  
13 uncontroverted verification of the petition by Revenue Officer Lopez and the entire  
14 record, I make the following findings:

15           (1) The summons issued by Revenue Officer David M. Lopez on July 27, 2012,  
16 and served upon respondent, Keith E. Guy, on July 27, 2012, seeking testimony and  
17 production of documents and records in respondent's possession, was issued in good faith  
18 and for a legitimate purpose under I.R.C. § 7602, that is, to collect Form 1040 delinquent  
19 taxes for the tax years ending December 31, 2004, December 31, 2005, December 31,  
20 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010,  
21 and December 31, 2011.

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

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

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

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

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

5 (7) The burden shifted to respondent, Keith E. Guy, to rebut that prima facie  
6 showing.

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

9 I therefore recommend that the IRS summons served upon respondent, Keith E.  
10 Guy, be enforced, and that respondent be ordered to appear either at 10:00 a.m. on the  
11 twenty-first (21<sup>st</sup>) day after the filing date of the District Judge's summons enforcement  
12 order, or a later date to be set in writing by Revenue Officer Lopez, at the I.R.S. offices at  
13 2525 Capitol Street, Suite 206, Fresno, California 93721-2227, before Revenue Officer  
14 David M. Lopez or his designated representative, then and there to be sworn, to give  
15 testimony, and to produce for examining and copying the books, checks, records, papers  
16 and other data demanded by the summons, the examination to continue from day to day  
17 until completed. I further recommend that if it enforces the summons, the Court retain  
18 jurisdiction to enforce its order by its contempt power.

19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of  
21 the Local Rules of the United States District Court for the Eastern District of California.  
22 Within ten (10) days after being served with these findings and recommendations, any  
23 party may file written objections with the court and serve a copy on all parties. Such a  
24 document should be titled "Objections to Magistrate Judge's Findings and  
25 Recommendations." Any reply to the objections shall be served and filed within ten (10)  
26 days after service of the objections. The District Judge will then review these findings  
27

1 and recommendations pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that  
2 failure to file objections within the specified time may waive the right to appeal the  
3 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Respondent, Keith E. Guy, SHALL APPEAR at the I.R.S. offices at 2525 Capitol  
5 Street, Suite 206, Fresno, California 93721-2227, on December 31, 2012, at 10:30 a.m.

6 THE CLERK SHALL SERVE this and further orders by mail to Keith E. Guy,  
7 7292 Black Oak Lane, Yosemite National Park, CA 95389.

8  
9 IT IS SO ORDERED.

10 **Dated: November 20, 2012**

**/s/ Barbara A. McAuliffe**

11 UNITED STATES MAGISTRATE JUDGE  
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