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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 UNITED STATES OF AMERICA,)
13)
Petitioner,)
14)
v.) MC 07-0001-PHX-MHM
15)
JOHN J. KULAK,)
16) **MOTION FOR ORDER TO**
Respondent.) **SHOW CAUSE HEARING**
17)
18 _____)

19 The United States of America respectfully requests that this Court enter an Order
20 setting a Show Cause Hearing for Respondent John J. Kulak to show cause, if any, why
21 he should not comply with and obey the Internal Revenue Service Summons issued to
22 him. This Motion is supported by the attached Memorandum of Points and Authorities.

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1 Respectfully submitted this 12th day of January, 2007.

2 PAUL K. CHARLTON
3 United States Attorney
4 District of Arizona

5 *s/Janet M. Walsh*

6 Janet M. Walsh
7 Assistant United States Attorney
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9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. FACTS**

11 Paul Chase, a Revenue Officer of the Internal Revenue Service (“IRS”), is
12 conducting an investigation into the federal tax liability of John J. Kulak for the calendar
13 years ending on December 31, 2004 and December 31, 2005. [Declaration of Revenue
14 Officer Paul Chase (“Chase Dec.”) is attached as an exhibit to the United States' Petition
15 To Enforce Internal Revenue Service Summons, and is incorporated herein by
16 reference.] (Chase Dec. at ¶¶ 1, and 3) Respondent John J. Kulak is in possession and
17 control of the documents, which are relevant to the IRS investigation. (Chase Dec. ¶ 9)

18 On August 10, 2006, Revenue Officer Chase issued an IRS Summons, directing
19 John J. Kulak to appear before an IRS officer on September 13, 2006, to testify and
20 produce the documents identified in the Summons. On August 10, 2006, Revenue
21 Officer Chase served the IRS Summons by leaving a copy of it with Respondent's
22 spouse, Patricia Kulak, at their residence. (Chase Dec. ¶¶ 6 and 7)

23 On September 13, 2006, Respondent John J. Kulak appeared at the IRS office, but
24 failed to bring the summoned documents. In response to each and every question
25 presented to him, Respondent John J. Kulak asserted a Fifth Amendment privilege and

1 refused to provide any records. (Chase Dec. ¶ 8) As of the date of execution of the
2 Declaration, Respondent has refused to comply with the Summons. (Chase Dec. ¶ 8)

3 II. ARGUMENT

4 In United States v. Derr, 968 F.2d 943 (9th Cir. 1992), the Ninth Circuit Court of
5 Appeals explained the nature of a summons enforcement proceeding:

6 Enforcement of a summons is generally a summary proceeding to
7 which a taxpayer has few defenses. As delegate of the Secretary of the
8 Treasury, the IRS has authority to issue a summons to investigate a
9 taxpayer's federal income tax liability. 26 U.S.C. § 7602. The district
10 courts have jurisdiction to order compliance with a summons. Id.
11 §§ 7402(b), 7604(a). “[S]ummons enforcement proceedings should be
summary in nature and discovery should be limited.” United States v.
Stuart, 489 U.S. 353, 369 (quoting S. Rep. No. 494, 97th Cong., 2d Sess.
285 (1982), reprinted in 1982 U.S.C.C.A.N. 781, 1031).

12 To obtain enforcement of an IRS summons, the government "must
13 show [1] that the investigation will be conducted pursuant to a legitimate
14 purpose, [2] that the inquiry may be relevant to the purpose, [3] that the
15 information sought is not already within the Commissioner's possession,
and [4] that the administrative steps required by the Code have been
followed." [United States v.] Powell, 379 U.S. [48] at 57-58 [(1964)].

16 Id. at 945 (footnote and parallel citations omitted).

17 According to the Ninth Circuit, the normal method by which the IRS makes a
18 prima facie showing that it has issued a summons in good faith is by submitting
19 affidavits stating that the summons was issued in compliance with the four Powell
20 factors. Ponsford v. United States, 771 F.2d 1305, 1308 (9th Cir. 1985). The showing
21 by the IRS “need only be minimal” and “[a]ssertions by affidavit of the investigating
22 agent that the requirements are satisfied are sufficient.” Liberty Financial Services v.
23 United States, 778 F.2d 1390, 1392 (9th Cir. 1985).

24 Once the Powell requirements are established, the party opposing summons
25 enforcement must disprove “the actual existence of a valid civil tax determination or

1 collection purpose Without a doubt, this burden is a heavy one." United States v.
2 Jose, 131 F.3d 1325, 1328 (9th Cir. 1997) (en banc), quoting, United States v. LaSalle
3 Nat'l Bank, 437 U.S. 298, 316 (1978).

4 In conclusion, Revenue Officer Paul Chase's Declaration meets the Powell
5 requirements. The United States requests, therefore, that this Court enter an Order
6 setting a Show Cause Hearing in this matter.

7 Respectfully submitted this 12th day of January, 2007.

8 Respectfully submitted,

9 PAUL K. CHARLTON
10 United States Attorney
11 District of Arizona

12 *s/Janet M. Walsh*

13 Janet M. Walsh
14 Assistant United States Attorney
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