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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 United States of America,  
10 Petitioner,  
11 v.  
12 Jeffrey G. Sharp,  
13 Respondent.

No. MC 12-0092-PHX-JAT

**ORDER**

14  
15 Pending before the Court is Petitioner's request that the Court enter an order  
16 setting a hearing for Respondent Jeffrey G. Sharp ("Mr. Sharp") to show cause, if any,  
17 why he should not comply with and obey the Internal Revenue Service ("IRS") Summons  
18 issued to him (Doc. 3).

19 On April 11, 2012, Jennifer Pardue, an IRS revenue officer issued an IRS  
20 Summons to Mr. Sharp to testify and to produce for examination books, records, papers,  
21 and other data as described in the Summons. On April 12, 2012, the Summons was  
22 served at Mr. Sharp's last and usual place of abode. The Summons directed Mr. Sharp to  
23 appear before an officer of the IRS on April 27, 2012. On April 27<sup>th</sup>, Mr. Sharp did not  
24 appear and comply with the Summons and his refusal to comply with the Summons  
25 continues to the present. The testimony and information sought by the Summons are not  
26 already in the possession of the IRS. The IRS contends that it is necessary to obtain the  
27 testimony and to examine the information sought by the Summons to collect Mr. Sharp's  
28 federal tax liabilities for the tax periods at issue.

1 District courts have jurisdiction to order compliance with a summons. 26 U.S.C.  
2 §§ 7402(b), 7604(a); *United States v. Derr*, 968 F.2d 943, 945 (9th Cir. 1992). Because  
3 an IRS summons is not self-enforcing, the United States achieves compliance with a  
4 summons by seeking judicial enforcement of the summons and by requesting a  
5 showcause hearing. *See, e.g., Reisman v. Caplin*, 375 U.S. 440, 445-46 (1964); *United*  
6 *States v. Gilleran*, 992 F.2d 232, 233 (9th Cir. 1993). “Summons enforcement  
7 proceedings should be summary in nature and discovery should be limited.” *United*  
8 *States v. Stuart*, 489 U.S. 353, 369 (1989) (citation, quote marks, and brackets omitted);  
9 *see also Derr*, 968 F.2d at 945 (“Enforcement of a summons is generally a summary  
10 proceeding to which a taxpayer has few defenses.”).

11 To obtain enforcement of an IRS summons, the United States must show that (1)  
12 the investigation will be conducted pursuant to a legitimate purpose; (2) the inquiry may  
13 be relevant to the purpose; (3) the information sought is not already within the  
14 Commissioner’s possession; and (4) the administrative steps required by the Internal  
15 Revenue Code have been followed. *United States v. Powell*, 379 U.S. 48, 57-58 (1964).  
16 Typically, the United States makes this showing by submitting affidavits stating that the  
17 summons was issued in compliance with the four *Powell* factors. *Ponsford v. United*  
18 *States*, 771 F.2d 1305, 1308 (9th Cir. 1985). To establish judicial enforcement, the  
19 United States’ “showing need only be minimal,” and “[a]ssertions by affidavit of the  
20 investigating agent that the requirements are satisfied are sufficient to make the prima  
21 facie case.” *Liberty Financial Services v. United States*, 778 F.2d 1390, 1392 (9th Cir.  
22 1985); *see also United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993) (“The  
23 government’s burden is a slight one, and may be satisfied by a declaration from the  
24 investigating agent that the *Powell* requirements have been met.”).

25 Once the United States has established the *Powell* requirements, “those opposing  
26 enforcement of a summons . . . bear the burden to disprove the actual existence of a valid  
27 civil tax determination or collection purpose by the [IRS]. . . . Without doubt, this burden  
28 is a heavy one.” *United States v. LaSalle Nat’l Bank*, 437 U.S. 298, 316 (1978); *see also*

1 *Lidas, Inc. v. United States*, 238 F.3d 1076, 1082 (9th Cir. 2001) (“[T]he taxpayer bears a  
2 heavy burden to rebut the presumption of good faith. . .”) (citation and quote marks  
3 omitted); *United States v. Jose*, 131 F.3d 1325, 1328 (9th Cir. 1997) (en banc)  
4 (taxpayer’s burden in opposing enforcement of IRS summons requires production of  
5 specific facts and evidence).

6 Petitioner has submitted the Declaration of Revenue Officer Jennifer Pardue.  
7 (Doc. 1-1). The Court finds the declaration satisfies the *Powell* requirements and  
8 demonstrates that the United States is entitled to enforcement of the Summons.

9 Based on the foregoing,

10 **IT IS HEREBY ORDERED** that Respondent Jeffrey G. Sharp appear before the  
11 United States District Court for the District of Arizona in that branch thereof presided  
12 over by the Honorable James A. Teilborg, the undersigned, in the Sandra Day O’Connor  
13 United States Courthouse, located at 401 West Washington Street, Phoenix, Arizona  
14 85003, 5th Floor, Courtroom No. 503, on Wednesday, September 25, 2013, at 11:30 a.m.,  
15 to show cause why Mr. Sharp should not be compelled to comply with the Internal  
16 Revenue Service Summons served on him by Revenue Officer Jennifer Pardue as set  
17 forth in the petition.

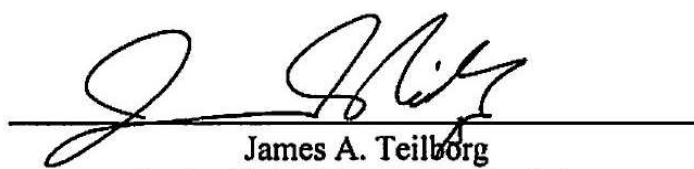
18 **IT IS FURTHER ORDERED** that a copy of this order, together with one copy  
19 each of the Petition to Enforce Internal Revenue Service Summons (Doc. 1), the  
20 Declaration of Revenue Officer Jennifer Pardue (Doc. 1-1), the Notice of Availability of  
21 a United States Magistrate Judge to Exercise Jurisdiction (Doc. 2), and the Motion for  
22 Order to Show Cause (Doc. 3), shall be personally served on Mr. Sharp by an official of  
23 the Internal Revenue Service within fourteen (14) days of the date of this Order.  
24 Alternatively, the documents may be served on Mr. Sharp’s attorney within fourteen (14)  
25 days of the date of this Order if his attorney agrees to accept service on Mr. Sharp’s  
26 behalf.

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1           **IT IS FINALLY ORDERED** that within fourteen (14) days of service of copies  
2 of this Order and the foregoing pleadings, Mr. Sharp shall file with the Clerk of the Court  
3 and serve on the United States Attorney a written response to the petition. Any defenses  
4 to the petition or motion Mr. Sharp desires to make in opposition to the petition shall be  
5 made in this written response and shall be supported by appropriate affidavits. Within  
6 seven (7) days of service of any written response filed by Mr. Sharp, the United States  
7 may file an optional reply. Only those issues raised by motion or brought into  
8 controversy by Mr. Sharp’s responsive pleading shall be considered by the Court, and  
9 any uncontested allegations in the petition shall be deemed admitted.

10           Dated this 7th day of August, 2013.

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16           James A. Teilborg  
17           Senior United States District Judge  
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