

1 ending March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31,
2 2009, and June 30, 2009; as well as Employer Annual Federal Unemployment Tax (Form
3 940) for the tax year ending December 31, 2008, assessed against Norman D. Bishop and
4 relating to his sole-proprietorship business, Clovis Ace Hardware. The summons was issued
5 by Revenue Officer Ramos on January 13, 2011, and was served by hand delivery to
6 respondent on the same date.

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

11 I have reviewed the petition and documents in support. Based on the uncontroverted
12 allegations of the verified petition, and the entire record, I make the following findings:

13 (1) The summons issued by Revenue Officer Lorena Ramos to respondent, Norman
14 D. Bishop, on January 13, 2011, seeking testimony and production of documents and records
15 in respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C.
16 § 7602, that is, to determine financial information relevant to the IRS' efforts to collect
17 Employer's Federal Quarterly Tax (Form 941) for the tax periods ending March 31, 2008,
18 June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009;
19 as well as Employer Annual Federal Unemployment Tax (Form 940) for the tax year ending
20 December 31, 2008, assessed against Norman D. Bishop and relating to his sole-
21 proprietorship business, Clovis Ace Hardware.

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.

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

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

3 (7) The burden shifted to respondent, Norman D. Bishop, to rebut that prima facie
4 showing.

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

6 For the reasons set forth above, it is HEREBY RECOMMENDED that:

- 7 1. The IRS summons issued to respondent, Norman D. Bishop, be enforced;
- 8 2. Respondent be ordered to appear at the I.R.S. offices at 2525 Capitol Street,
9 Suite 206, Fresno, California 93721-2227, before Revenue Officer
10 Lorena Ramos, or her designated representative, on the twenty-first (21st) day
11 after the filing date of the District Judge's summons enforcement order, or at
12 a later date to be set in writing by Revenue Officer Ramos, then and there to
13 be sworn, to give testimony, and produce for examining and copying the
14 books, checks, records, papers and other data demanded by the summons, the
15 examination to continue from day to day until completed; and
- 16 3. The Court retain jurisdiction to enforce its order by its contempt power.

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

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28 ¹ The Clerk shall serve this and further orders by mail to Norman D. Bishop at 11092 E. Mitchell Peak Way,
Clovis, CA 93619.

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

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4
5 IT IS SO ORDERED.

6 **Dated: January 23, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE