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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Petitioner,
13 v.
14 SHARRON NISBETT,
15 Respondent,

Case No.: 1:11-cv-01610-LJO-BAM

**MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS RE: I.R.S.
SUMMONS ENFORCEMENT**

TAXPAYER: SHARRON NISBETT

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17 This matter came before this Court on November 18, 2011, under the Amended Order to
18 Show Cause filed September 27, 2011, which, with the verified petition and memorandum,
19 was personally served upon respondent on October 11, 2011. Yoshinori H. T. Himel appeared
20 for petitioners, and investigating Revenue Agent Elaine Moore was present. Respondent
21 appeared and partially complied with the summons.
22

23 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to
24 enforce an administrative summons (Exhibit A to the petition) in aid of Revenue Agent
25 Moore's investigation of Sharron Nisbett to determine the existence and amount of personal
26 income tax liability (Form 1040) for the tax year ending 2009.
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1 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found
2 to be proper. Authorization for the action is under I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.).
3
4 The Order to Show Cause shifted to respondent the burden of rebutting any of the four
5 requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

6 The Court has reviewed the petition and documents in support. Based on the
7 uncontroverted verification of Revenue Agent Moore and the entire record, the Court makes
8 the following findings:
9

10 (1) The summons issued by Revenue Agent Elaine Moore to respondent, Sharron
11 Nisbett, on June 30, 2011, seeking testimony and production of documents and records in
12 respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C.
13 § 7602, that is, to determine the existence and amount of personal income tax liability (Form
14 1040) for the tax year ending 2009.
15

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

17 (3) The information sought is not already in the possession of the Internal Revenue
18 Service.
19

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

21 (5) There is no evidence of referral of this case by the Internal Revenue Service to the
22 Department of Justice for criminal prosecution.
23

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

26 (7) The burden shifted to respondent, Sharron Nisbett, to rebut that prima facie
27 showing.
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1 (8) Respondent presented no argument or evidence to rebut the prima facie showing.

2 The Court therefore recommends that the IRS summons issued to respondent, Sharron
3 Nisbett, be enforced, and that respondent be ordered to appear at the I.R.S. offices at 2525
4 Capitol Street, Suite 203, Fresno, California 93721, before Revenue Agent Elaine Moore, or
5 her designated representative, within twenty-one (21) days after the filing of the summons
6 enforcement order, or at a later date to be set in writing by Revenue Agent Moore, then and
7 there to be sworn, to give testimony, and to produce for examining and copying the books,
8 checks, records, papers and other data demanded by the summons, the examination to continue
9 from day to day until completed. The Court further recommends that if it enforces the
10 summons, the Court retain jurisdiction to enforce its order by its contempt power.
11
12

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule
15 304 of the Local Rules of the United States District Court for the Eastern District of California.
16 Within ten (10) days after being served with these findings and recommendations, any party
17 may file written objections with the court and serve a copy on all parties. Such a document
18 should be titled "Objections to Magistrate Judge's Findings and Recommendations." Any reply
19 to the objections shall be served and filed within ten (10) days after service of the objections.
20 The District Judge will then review these findings and recommendations pursuant to 28 U.S.C.
21 § 636(b)(1). The parties are advised that failure to file objections within the specified time
22 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
23 Cir. 1991).
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