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8 IN THE UNITED STATES DISTRICT COURT FOR THE
 9 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
 12 Petitioner,
 13 v.
 14 MICHAEL G. BOYD,
 15 Respondent.

1:12-cv-00733-LJO-DLB

**MAGISTRATE JUDGE’S FINDINGS
 AND RECOMMENDATIONS RE:
 I.R.S. SUMMONS ENFORCEMENT;
 ORDER**

TAXPAYER: MICHAEL G. BOYD

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 18 This matter came before me on July 20, 2012, under the Order to Show Cause filed
 19 May 10, 2012, which, with the verified petition and memorandum, was personally served
 20 upon respondent on June 1, 2012. Respondent did not file written opposition to the
 21 verified petition filed May 4, 2012. Yoshinori Himel, Assistant United States Attorney,
 22 appeared for petitioner, and investigating Revenue Officer David M. Lopez was present.
 23 Respondent did not appear at the hearing.

24 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
 25 to enforce an administrative summons (Exhibit A to the petition), issued November 8,
 26

27 Magistrate Judge’s Findings and
 28 Recommendations Re: I.R.S.
 Summons Enforcement

1 2011, to collect Form 1040 delinquent taxes for the tax years ending December 31, 2001,
2 December 31, 2002, and December 31, 2004.

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

8 I have reviewed the verified petition and the documents in its support. On the
9 summons enforcement merits, based on the uncontroverted verification of the petition by
10 Revenue Officer Ramos and the entire record, I find as follows:

11 (1) The summons issued by Revenue Officer David M. Lopez to respondent,
12 Michael G. Boyd, on November 8, 2011, seeking testimony and production of documents
13 and records in respondent's possession, was issued in good faith and for a legitimate
14 purpose under I.R.C. § 7602, that is, to collect Form 1040 delinquent taxes for the tax
15 years ending December 31, 2001, December 31, 2002, and December 31, 2004.

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

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

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

1 (7) The burden shifted to respondent, Michael G. Boyd, to rebut that prima facie
2 showing.

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

5 I therefore recommend that the IRS summons issued to Respondent, Michael G.
6 Boyd, be enforced, and that respondent be ordered to appear at the I.R.S. offices at 2525
7 Capitol Street, Suite 206, Fresno, California 93721-2227, before Revenue Officer David
8 M. Lopez, or his designated representative, on the twenty-first (21st) day after the filing
9 date of the District Judge's summons enforcement order, or at a later date to be set in
10 writing by Revenue Officer Lopez, then and there to be sworn, to give testimony, and to
11 produce for examining and copying the books, checks, records, papers and other data
12 demanded by the summons, the examination to continue from day to day until completed.
13 I further recommend that if it enforces the summons, the Court retain jurisdiction to
14 enforce its order by its contempt power.

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

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3 THE CLERK SHALL SERVE this and further orders by mail to Michael G. Boyd,
4 at 39121 Manzanita, Bass Lake, CA 93604-0703.

5 IT IS SO ORDERED.

6 **Dated: July 31, 2012**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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27 Magistrate Judge's Findings and
28 Recommendations Re: I.R.S.
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