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

UNITED STATES OF AMERICA,
Petitioner,
v.
HAROLD A. CHUHLANTSEFF,
Respondent.

1:12-cv-01462-LJO-BAM

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

**Taxpayer:
HAROLD A. CHUHLANTSEFF**

This matter came before Magistrate Judge Barbara A. McAuliffe on November 9, 2012, under the Order to Show Cause filed October 9, 2012, which, with the verified petition and memorandum, was personally served upon the respondent, Harold A. Chuhlantseff, on October 23, 2012. Respondent did not file written opposition. Yoshinori H. T. Himel, Assistant United States Attorney, appeared for petitioner; investigating Revenue Officer Lorena Ramos was present. Respondent appeared for himself. He did not oppose the enforcement of the I.R.S. summons, and he agreed to appear and comply on December 11, 2012, at 10:00 a.m., at the I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721-2227.

Magistrate Judge's Findings and Recommendations
Re: I.R.S. Summons Enforcement

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1 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
2 to enforce an administrative summons, Exhibit A to the First Amended Petition. The
3 summons seeks information to aid Revenue Officer Ramos' investigation to collect
4 delinquent Form 1040 taxes for the tax years ending December 31, 1999, December 31,
5 2000, December 31, 2001, December 31, 2002, December 31, 2003, December 31, 2005,
6 December 31, 2006, December 31, 2007 and December 31, 2008.

7 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is
8 found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government
9 to bring the action. The Order to Show Cause shifted to respondent the burden of
10 rebutting any of the four requirements of United States v. Powell, 379 U.S. 48, 57-58
11 (1964).

12 I have reviewed the petition and documents in support. Based on the
13 uncontroverted verification of the petition by Revenue Officer Ramos and the entire
14 record, I make the following findings:

15 (1) The summons issued by Revenue Officer Lorena Ramos on August 26, 2011,
16 and served upon respondent, Harold A. Chuhlantseff, on August 26, 2011, seeking
17 testimony and production of documents and records in respondent's possession, was
18 issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to collect
19 Form 1040 delinquent taxes for the tax years ending December 31, 1999, December 31,
20 2000, December 31, 2001, December 31, 2002, December 31, 2003, December 31, 2005,
21 December 31, 2006, December 31, 2007 and December 31, 2008.

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.

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

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

5 (7) The burden shifted to respondent, Harold A. Chuhlantseff, to rebut that prima
6 facie showing.

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

9 I therefore recommend that the IRS summons served upon respondent, Harold A.
10 Chuhlantseff, be enforced, and that respondent be ordered to appear either at 10:00 a.m.
11 of the twenty-first (21st) day after the filing date of the District Judge's summons
12 enforcement order, or at a later date to be set in writing by Revenue Officer Ramos, at the
13 I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721-2227, before
14 Revenue Officer Ramos or her designated representative, then and there to be sworn, to
15 give testimony, and to produce for examining and copying the books, checks, records,
16 papers and other data demanded by the summons, the examination to continue from day
17 to day until completed. I further recommend that if it enforces the summons, the Court
18 retain jurisdiction to enforce its order by its contempt power.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of
21 the Local Rules of the United States District Court for the Eastern District of California.
22 Within ten (10) days after being served with these findings and recommendations, any
23 party may file written objections with the court and serve a copy on all parties. Such a
24 document should be titled "Objections to Magistrate Judge's Findings and
25 Recommendations." Any reply to the objections shall be served and filed within ten (10)
26 days after service of the objections. The District Judge will then review these findings
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