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

UNITED STATES OF AMERICA,

Petitioner,

v.

LINDA J. HAMPTON,

Respondent.

1: 12-cv-01984-LJO-BAM

**FINDINGS AND RECOMMENDATIONS  
RE: PETITION FOR JUDICIAL  
APPROVAL OF LEVY ON PRINCIPAL  
RESIDENCE**

**I. INTRODUCTION**

Pending before the Court is the United States' ("Petitioner") Petition for Judicial Approval of Internal Revenue Service Levy On a Principal Residence. (Doc. 2.) Petitioner seeks to levy upon Linda J. Hampton's ("Respondent") principal residence to satisfy Respondent's unpaid federal income tax liabilities, interest, and penalties for the 1991, 1992, 1997, 1998, 1999, 2001, 2002, 2003, 2006 and 2009 tax years. For the following reasons, the Court recommends that the petition be GRANTED.

**II. DISCUSSION**

This proceeding is brought, and the Court's jurisdiction arises, pursuant to section, 28 U.S.C. § 1340 and sections 6334(e)(1) and 7402(a) of the Internal Revenue Code (26 U.S.C.) ("Code").

1 By statute, “[i]f any person liable to pay any tax neglects or refuses to pay the same  
2 within 10 days after notice and demand,” the government may collect the unpaid tax “by levy  
3 upon all property and rights to property (except such property as is exempt under section 6334)  
4 belonging to such person or on which there is a lien provided in this chapter for the payment of  
5 such tax.” 26 U.S.C. § 6331(a). Section 6334 provides in relevant part that, “[a] principal  
6 residence shall not be exempt from levy if a judge or magistrate of a district court of the United  
7 States approves (in writing) the levy of such residence.” 26 U.S.C. § 6334(e)(1).

8 The United States may seek judicial approval of a levy on a taxpayer's principal residence  
9 pursuant to 26 U.S.C. § 6334(e). In order to obtain such approval, the United States must file a  
10 petition demonstrating that: (1) the underlying tax liability has not been satisfied, (2) the  
11 requirements of any applicable law or administrative procedure relevant to the levy have been  
12 met, and (3) there is no reasonable alternative for collection of the taxpayer's debt. 26 C.F.R §  
13 301.6334–1(d)(1). “The taxpayer will be granted a hearing to rebut the Government's prima facie  
14 case if the taxpayer files an objection within the time period required by the court raising a  
15 genuine issue of material fact demonstrating that the underlying tax liability has been satisfied,  
16 that the taxpayer has other assets from which the liability can be satisfied, or that the Service did  
17 not follow the applicable laws or procedures pertaining to the levy.” 26 C.F.R §  
18 301.6334–1(d)(2). “The taxpayer is not permitted to challenge the merits underlying the tax  
19 liability in the proceeding.” *Id.* “Unless the taxpayer files a timely and appropriate objection, the  
20 court would be expected to enter an order approving the levy of the principal residence property.”  
21 *Id.*

22 In support of its application, Petitioner submitted the sworn declaration of Revenue  
23 Officer Josephine Ramos, dated November 27, 2012, and Certified IRS Form 4340 transcripts,  
24 showing that the Internal Revenue Service (“IRS”) assessed federal income tax, interest, and  
25 penalties against Respondent. (Doc. 2, Attach. 2, 3.) Moreover, Petitioner submitted proof that  
26 the IRS properly notified Respondent of her liabilities and made a demand for payment from  
27 Respondent. *Id.*

1 After the filing of the Petition, the Court issued notice of the petition and an order to  
2 show cause for why the levy should not issue on January 16, 2013. (Doc. 3.) The Order to Show  
3 Cause was personally served on Respondent. (Doc. 4.) The Order to Show Cause notified  
4 Respondent of the Petition and informed her that Petitioner sought an order allowing the IRS to  
5 levy upon real property located at 107 Elmwood Ave., Modesto, CA 95354 (the “Subject  
6 Property”) to satisfy Respondent’s income tax liabilities. The Court further advised Respondent  
7 of her right to object to Plaintiff’s Petition and ordered her to file any objections in writing with  
8 the Clerk of Court within twenty-five days of the service of the order. (Doc. 3.) The Order  
9 advised Respondent that if no timely written objections were filed, the Court would enter an  
10 order approving an IRS levy on the subject property. *Id.*

11 To date, Respondent has not filed any written objections with the Clerk of Court to the  
12 Petition, and more than twenty-five days have elapsed since the Petition and the Court’s Order to  
13 Show Cause were personally served upon Respondent. Additionally, Respondent did not appear  
14 at the Order to Show Cause hearing on March 1, 2013. Accordingly, the Court finds that the  
15 Petition for Judicial Approval of Levy Upon Principal Residence should be granted. *See*, 26  
16 C.F.R. § 301.6334–1(d).

### 17 **III. RECOMMENDATION**

18 IT IS HEREBY RECOMMENDED THAT the United States’ Petition for Judicial  
19 Approval of Internal Revenue Service Levy upon the Principal Residence of Respondent, Linda  
20 J. Hampton, located at 107 Elmwood Ave., Modesto, CA 95354 be APPROVED.

21 IT IS FURTHER RECOMMENDED THAT a levy upon Linda J. Hampton’s interests in  
22 the real property located at 107 Elmwood Ave., Modesto, CA 95354 to satisfy all or part of the  
23 unpaid federal income taxes, penalties, interest, and other statutory additions for the income tax  
24 years 1991, 1992, 1997, 1998, 1999, 2001, 2002, 2003, 2006 and 2009, as set forth in paragraph  
25 five (5) and six (6) of the Government’s Petition, which may be executed by any authorized  
26 officer of the Internal Revenue Service, be APPROVED.

27 These findings and recommendations are submitted to the assigned United States District  
28 Judge pursuant to 28 U.S.C. § 636(b)(1) (B). Within fourteen (14) days after the date of these

1 Findings and Recommendations, the parties may file written objections with the Court. The  
2 document should be captioned "Objections to Magistrate Judge's Finding and Recommendation."  
3 The parties are advised that failure to file objections within the specified time may waive the  
4 right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.1991).

5 IT IS SO ORDERED.

6 **Dated: March 1, 2013**

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE