

1
2
3
4
5
6
7
8
9
10
11
12
13

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

UNITED STATES OF AMERICA,

Petitioner,

v.

JOSE OCHOA,

Respondent.

1:14-cv-01335-AWI-SKO

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

Taxpayer:
JOSE OCHOA

14
15
16
17
18
19
20
21
22

This matter came on before Magistrate Judge Sheila K. Oberto on October 22, 2014, under the Order to Show Cause filed September 4, 2014. The order, with the verified petition filed August 26, 2014, and its supporting memorandum, was personally served on Respondent's wife, Francisca Ochoa, at their residence on September 11, 2014. Respondent did not file an opposition or a non-opposition to the verified petition as provided for in the Order to Show Cause. At the hearing, Yoshinori H. T. Himel, Assistant United States Attorney, appeared on behalf of Petitioner, and investigating Revenue Officer Michael J. Papasergia also was present in the courtroom. Respondent appeared at the hearing with his interpreter, Ruby Garcia.

23
24
25
26
27
28

The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce an administrative summons (Exhibit A to the petition) issued October 31, 2013. The summons is part of an investigation of the respondent to secure information needed to collect Form 1040 federal income taxes for tax years ending December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009.

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

5 The Court has reviewed the petition and documents in support. Based on the
6 uncontroverted verified petition by Revenue Officer Michael J. Papasergia and the entire record,
7 the Court makes the following findings:

8 (1) The summons issued by Revenue Officer Michael J. Papasergia on October 31, 2013,
9 and served upon Respondent's wife, Francisca Ochoa,¹ on November 1, 2013, seeking testimony
10 and production of documents and records in respondent's possession, was issued in good faith
11 and for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed to collect
12 Form 1040 federal income taxes for tax years ending December 31, 2006, December 31, 2007,
13 December 31, 2008, and December 31, 2009.

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

15 (3) The information sought is not already in the possession of the Internal Revenue
16 Service.

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

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

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

22 (7) The burden shifted to respondent, Jose Ochoa, to rebut that prima facie showing.

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

24 The Court therefore recommends that the IRS summons served upon Respondent's wife,
25 Francisca Ochoa, be enforced; and that Respondent be ordered to appear at the I.R.S. offices at
26

27 ¹ The Order to Show Cause permitted service pursuant to Federal Rule of Civil Procedure 4,
28 which allows substitute service by leaving a copy of the case documents at the respondent's dwelling
house with some person of suitable age and discretion residing therein. Fed. R. Civ. P. 4(e)(2)(B); see
also Doc. 4, ¶ 3.

1 4825 Coffee Road, Bakersfield, California 93308, before Revenue Officer Papasergia or his
2 designated representative, on November 19, 2014, at 11:00 a.m., as agreed to by RO Papasergia
3 and Respondent Ochoa at the show cause hearing. RO Papasergia shall mail IRS Form 433-A
4 ("Collection Information Statement for Wage Earners and Self-Employed Individuals")
5 immediately to Respondent. Respondent shall fill out the form and attach all documents
6 requested therein, complete the form, sign it under penalty of perjury, and take it to the
7 November 19, 2014, appearance at IRS. Should the November 19, 2014, appearance need to be
8 continued or rescheduled, it should be set in writing for a later date by RO Papasergia.
9 Respondent is to appear before RO Papasergia or his designated representative, then and there to
10 be sworn, to give testimony, and to produce for examining and copying the books, checks,
11 records, papers and other data demanded by the summons, the examination to continue from day
12 to day until completed. The Court further recommends that if it enforces the summons, the
13 Court retain jurisdiction to enforce its order by its contempt power.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of the Local
16 Rules of the United States District Court for the Eastern District of California. Within ten (10)
17 days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be titled
19 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
20 shall be served and filed within ten (10) days after service of the objections. The District Judge
21 will then review these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1). The
22 parties are advised that failure to file objections within the specified time may waive the right to
23 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 THE CLERK SHALL SERVE this and further orders by mail to Jose Ochoa, 5036 W.
25 Laguna Avenue, Riverdale, California 93656.

26 IT IS SO ORDERED.

27
28 Dated: November 3, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE