

1 BENJAMIN B. WAGNER
2 United States Attorney
3 YOSHINORI H. T. HIMEL #66194
4 Assistant United States Attorney
5 Eastern District of California
6 501 I Street, Suite 10-100
7 Sacramento, CA 95814-2322
8 Telephone: (916) 554-2760
9 Facsimile: (916) 554-2900
10 email: yoshinori.himel@usdoj.gov

11 Attorneys for Petitioner United States of America

12 **IN THE UNITED STATES DISTRICT COURT**

13 **EASTERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,

1:14-cv-01362-LJO-JLT

15 Petitioner,

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

16 v.

**Taxpayer:
MARK DERZON**

17 MARK DERZON,

18 Respondent.

(Doc. 1)

19 This matter came on before Magistrate Judge Jennifer L. Thurston on November 5, 2014,
20 under the Order to Show Cause filed September 9, 2014. The order, with the verified petition
21 filed August 28, 2014, and its supporting memorandum, was personally served on Respondent at
22 his professional law office on November 13, 2013. Respondent did not file opposition or non-
23 opposition to the verified petition as provided for in the Order to Show Cause. At the hearing,
24 Alyson A. Berg, Assistant United States Attorney, appeared telephonically for Petitioner on
25 behalf of Yoshinori H.T. Himel, Assistant United States Attorney, and investigating Revenue
26 Officer Michael J. Papasergia was present in the courtroom. Respondent appeared at the
27 hearing.

28 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce

1 an administrative summons (Exhibit A to the petition) issued November 26, 2013. The
2 summons is part of an investigation of the respondent to secure information needed to determine
3 the correct federal income taxes and statutory additions for the years ending December 31, 2006,
4 December 31, 2007, December 31, 2009, December 31, 2010, December 31, 2011, and
5 December 31, 2012.

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

10 I have reviewed the petition and documents in support. Based on the uncontested
11 petition verified by Revenue Officer Michael J. Papasergia and the entire record, I make the
12 following findings:

13 (1) The summons issued by Revenue Officer Kathy Ruiz on November 26, 2013, and
14 served on November 26, 2013, seeking testimony and production of documents and records in
15 respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C.
16 § 7602, that is, to secure information needed to secure information needed to determine the
17 correct federal individual income taxes and statutory additions for the years ending December
18 31, 2006, December 31, 2007, December 31, 2009, December 31, 2010, December 31, 2011,
19 and December 31, 2012.

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

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

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

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

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

28 (7) The burden shifted to respondent, Mark Derzon, to rebut that prima facie showing.

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

2 (9) Respondent agreed with the Revenue Officer, and stated his agreement in open court,
3 to appear at the I.R.S. offices at 4825 Coffee Road, Bakersfield, California 93308, before
4 Revenue Officer Papasergia or his designated representative, on November 20, 2014, at 11:00
5 a.m. He is hereby ordered to make that appearance.

6 I therefore recommend that the IRS summons served upon Respondent be enforced; and
7 that Respondent be ordered to appear at the I.R.S. offices at 4825 Coffee Road, Bakersfield,
8 California 93308, before Revenue Officer Papasergia or his designated representative, on
9 November 20, 2014, at 11:00 a.m., as agreed to by RO Papasergia and Respondent Derzon at the
10 show cause hearing. Should the November 20 appearance need to be continued or rescheduled,
11 the appearance is to be set in writing for a later date by RO Papasergia. Respondent is to appear
12 before RO Papasergia or his designated representative, then and there to be sworn, to give
13 testimony, and to produce for examining and copying the books, checks, records, papers and
14 other data demanded by the summons, the examination to continue from day to day until
15 completed. I further recommend that if it enforces the summons, the Court retain jurisdiction to
16 enforce its order by its contempt power.

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

1 THE CLERK SHALL SERVE this and further orders by mail to Mark Derzon, 5055
2 California Avenue, Suite 315, Bakersfield, California 93309-0712.

3
4 IT IS SO ORDERED.

5 Dated: November 14, 2014

/s/ Jennifer L. Thurston
6 UNITED STATES MAGISTRATE JUDGE