

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

UNITED STATES OF AMERICA,

CASE NO. 1:15-cv-00418-LJO-SAB

Petitioner.

ORDER TO SHOW CAUSE RE: TAX SUMMONS ENFORCEMENT

JAMES W. WITT,

Respondent.

Taxpayer:
JAMES W. WITT

Date: June 10, 2015
Time: 10:00 a.m.
Ctrm: 9, 6th Floor

Upon the petition of BENJAMIN B. WAGNER, United States Attorney for the Eastern District of California, including the verification of Revenue Officer EVAN D. MOSES, and the Exhibit attached thereto, it is hereby:

ORDERED that the Respondent, JAMES W. WITT, appear before United States Magistrate Judge Stanley A. Boone, in the United States Courthouse, 2500 Tulare Street, Fresno, California, on June 10, 2015, at 10:00 a.m. in Courtroom 9, to show cause why the respondent should not be compelled to obey the Internal Revenue Service summons issued on July 29, 2014.

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It is further ORDERED that:

1. The United States Magistrate Judge will preside, under 28 U.S.C. Section 636(b)(1) and Local Rule 72-302(c)(9), at the hearing scheduled above. After hearing, the Magistrate Judge intends to submit proposed findings and recommendations under Local Rule 304(a), with the original thereof filed by the Clerk and a copy provided to all parties.

2. Under Fed. R. Civ. P. 4(c)(1), the Court hereby appoints the investigating Internal Revenue Service employee, and all federal employees designated by that employee, to serve process in this case.

3. To afford the respondent an opportunity to respond to the petition and the petitioner an opportunity to reply, a copy of this order, the Petition and its Exhibit, and the Points and Authorities, shall be served by delivering a copy to the respondent personally, or by leaving a copy at the respondent's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by any other means of service permitted by Fed. R. Civ. P. 4(e), at least 30 days before the show cause hearing date including any continued date, unless such service cannot be made despite reasonable efforts.

4. Proof of any service done under paragraph 3, above, shall be filed with the Clerk as soon as practicable.

5. If the federal employee assigned to serve these documents is not reasonably able to serve the papers as provided in paragraph 3, petitioner may request a court order granting leave to serve by other means. See Fed. R. Civ. P. 81(a)(5). The request shall detail the efforts made to serve the respondent.

6. The file reflects a prima facie showing that the investigation is conducted pursuant to a legitimate purpose, that the inquiry may be relevant to that purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed. See United States v. Powell, 379 U.S. 48, 57-58 (1964). The burden of coming forward therefore has shifted to whoever might oppose enforcement.

1 7. If the respondent has any defense or opposition to the petition, such defense or
2 opposition shall be made in writing and filed with the Clerk and a copy served on the United
3 States Attorney at least 10 days before the show cause hearing date including any continued
4 date.

5 8. At the show cause hearing, the Magistrate Judge intends to consider the issues
6 properly raised in opposition to enforcement. Only those issues brought into controversy by the
7 responsive pleadings and supported by affidavit will be considered. Any uncontested allegation
8 in the petition will be considered admitted.

9 9. The respondent may notify the Court, in a writing filed with the Clerk and served
10 on the United States Attorney at least 10 days before the date set for the show cause hearing,
11 that the respondent has no objections to enforcement of the summons. The respondent's
12 appearance at the hearing will then be excused.

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14 IT IS SO ORDERED.

15 Dated: March 20, 2015



UNITED STATES MAGISTRATE JUDGE

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