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

10
11 UNITED STATES OF AMERICA,

12 Petitioner,

13 v.

14 GLENN R. WILSON, individually and as
sole proprietor of FAMILY LAW FRESNO
15 COM,

16 Respondent.
17

1:15-CV-00475-LJO-MJS

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

Taxpayer:
GLENN R. WILSON

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19 This matter came on before Magistrate Judge Michael J. Seng on June 12, 2015, under
20 the Order to Show Cause filed March 27, 2015. Dkt. 5. The order, with the verified petition
21 filed March 26, 2015 (Dkt. 1), and its supporting memorandum (Dkt. 4-1), was personally
22 served on Respondent, at his business address located at 2141 Tuolumne Street, Suite B, Fresno,
23 California 93721, on April 2, 2015. Dkt. 6. Respondent did not file opposition or non-
24 opposition to the verified petition as provided for in the Order to Show Cause. At the hearing,
25 Bobbie J. Montoya, Assistant United States Attorney, appeared on behalf of Petitioner, and
26 investigating Revenue Officer Lori L. Minjarez also was present in the courtroom.
27 Respondent's Counsel Mark Coleman made a special appearance on behalf of Respondent, due
28 to a conflict on his calendar rendering him unavailable to attend the show cause hearing.

1 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce an
2 administrative summons (Exhibit A to the Petition) issued January 22, 2014. The summons is part of an
3 investigation of the respondent to secure information needed to collect assessed Form 940 Employer
4 Annual Federal Unemployment Tax for calendar periods ending December 31, 2004, and December 31,
5 2012; Form 941 Employer's Federal Quarterly Tax for the quarterly periods ending June 30, 2004,
6 June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2006, June 30, 2006, September 30,
7 2006, December 31, 2006, June 30, 2007, September 30, 2007, March 31, 2008, March 31, 2009,
8 June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, June 30, 2010, June 30, 2012
9 and September 30, 2012; and Form CIVPEN for the calendar periods ending December 31, 2005,
10 December 31, 2006, December 31, 2008, and December 31, 2010, all relating to respondent's sole
11 proprietor law practice.

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

16 I have reviewed the petition and documents in support. Based on the uncontroverted
17 verified petition by Revenue Officer Lori L. Minjarez and the entire record, I make the
18 following findings:

19 (1) The summons issued by Revenue Officer Lori L. Minjarez on January 22, 2014, and
20 served upon Respondent, on January 22, 2014, seeking testimony and production of documents
21 and records in respondent's possession, was issued in good faith and for a legitimate purpose
22 under I.R.C. § 7602, that is, to secure information needed to collect assessed Form 940 Employer
23 Annual Federal Unemployment Tax for calendar periods ending December 31, 2004, and December 31,
24 2012; Form 941 Employer's Federal Quarterly Tax for the quarterly periods ending June 30, 2004,
25 June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2006, June 30, 2006, September 30,
26 2006, December 31, 2006, June 30, 2007, September 30, 2007, March 31, 2008, March 31, 2009,
27 June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, June 30, 2010, June 30, 2012
28 and September 30, 2012; and Form CIVPEN for the calendar periods ending December 31, 2005,

1 December 31, 2006, December 31, 2008, and December 31, 2010, all relating to respondent's sole
2 proprietor law practice.

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

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

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

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

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

11 (7) The burden shifted to respondent, Glenn R. Wilson, to rebut that *prima facie*
12 showing.

13 (8) Respondent's specially-appearing counsel presented no argument or evidence to
14 rebut the *prima facie* showing.

15 I therefore recommend that the IRS summons served upon Respondent, be enforced; and
16 that Respondent be ordered to appear at the I.R.S. offices at 2525 Capitol Street, Suite 205,
17 Fresno, California, before Revenue Officer (RO) Minjarez or her designated representative, on
18 June 30, 2015, at 10:00 a.m., as agreed to by RO Minjarez and Respondent's specially-
19 appearing Counsel Mark Coleman at the show cause hearing. RO Minjarez is to mail IRS Form
20 433-A ("Collection Information Statement for Wage Earners and Self-Employed Individuals")
21 immediately to Respondent. Respondent is to fill out the form and attach all documents
22 requested therein, complete the form, sign it under penalty of perjury, and take it to the June 30
23 appearance at I.R.S. Should the June 30, 2015, appearance need to be continued or rescheduled,
24 it should be set in writing for a later date by RO Minjarez. Respondent is to appear before RO
25 Minjarez or her designated representative, then and there to be sworn, to give testimony, and to
26 produce for examining and copying the books, checks, records, papers and other data demanded
27 by the summons, the examination to continue from day to day until completed. I further
28 recommend that if it enforces the summons, the Court retain jurisdiction to enforce its order by

