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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 ARNOLD H. SCHMIDT,
15 Respondent.

1:18-CV-00196-DAD-BAM
ORDER TO SHOW CAUSE
RE: TAX SUMMONS ENFORCEMENT
Taxpayer: ARNOLD H. SCHMIDT
Date: Friday, April 6, 2018
Time: 9:00 a.m.
Crtm: 8, 6th Floor
Judge: Honorable Barbara A. McAuliffe

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19 Upon the petition of KELLI L. TAYLOR, Assistant United States Attorney for the Eastern
20 District of California, including the verification of Revenue Officer LISA R. LOPEZ, and the Exhibit
21 attached thereto, it is hereby:

22 ORDERED that the Respondent, ARNOLD H. SCHMIDT, appear before United States
23 Magistrate Judge Barbara A. McAuliffe, in that Magistrate Judge's courtroom in the United States
24 Courthouse, 2500 Tulare St., Fresno, California, on Friday, April 6, 2018, to show cause why the
25 respondent should not be compelled to obey the IRS summons issued on May 24, 2017.

26 It is further ORDERED that:

27 1. The United States Magistrate Judge will preside, under 28 U.S.C. Section 636(b)(1) and
28 Local Rule 302(c)(9), at the hearing scheduled above. After hearing, the Magistrate Judge intends to

1 submit proposed findings and recommendations under Local Rule 304(a), with the original thereof filed
2 by the Clerk and a copy provided to all parties.

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

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

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

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

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

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

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

1 be considered admitted.

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

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7 IT IS SO ORDERED.

8 Dated: February 12, 2018

/s/ Barbara A. McAuliffe
9 UNITED STATES MAGISTRATE JUDGE