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2 **IN THE UNITED STATES DISTRICT COURT**  
3 **EASTERN DISTRICT OF CALIFORNIA**  
4

5 UNITED STATES OF AMERICA,

6 Petitioner,

7 v.

8 ARNOLD H. SCHMIDT,

9 Respondent.

**Case No. 1:18-CV-00196-DAD-BAM**

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THE PETITION TO  
ENFORCE I.R.S. SUMMONS BE GRANTED

(ECF NO. 1).

10 **OBJECTIONS DUE WITHIN FOURTEEN**  
11 **DAYS**

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13  
14 Currently before the Court is Petitioner United States of America's petition to enforce an Internal  
15 Revenue Service ("IRS") summons, which was filed on February 7, 2018. (ECF No. 1). The Court  
16 issued an Order to Show Cause on February 14, 2018. (ECF No. 5). The Order to Show Cause with the  
17 verified petition filed February 7, 2018, (ECF No. 1), and its supporting memorandum (ECF No. 4-1),  
18 was personally served on Respondent, on March 7, 2018, at his place of residence, 57437 W. Cromwell,  
19 Fresno, California. (ECF No. 6). Respondent did not file an opposition or non-opposition to the  
20 verified petition as provided for in the Order to Show Cause. The Court held a show cause hearing  
21 before Magistrate Judge Barbara A. McAuliffe on April 6, 2018. (ECF No. 7). At the hearing, John  
22 Edwards, Assistant United States Attorney, personally appeared for Petitioner, and investigating  
23 Revenue Officer Lisa R. Lopez was also present in the courtroom. Respondent appeared at the hearing.

24 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to enforce an  
25 administrative summons issued May 24, 2017. *See* (ECF No. 2). The summons is part of an  
26 investigation of the respondent to secure information needed to collect the tax liability for Form 1040 for  
27 the calendar periods ending December 31, 2005, December 31, 2010, December 31, 2011, and CIVPEN  
28 for the quarterly period ending December 31, 2013.

1 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found to be  
2 proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government to bring the action. The  
3 Order to Show Cause shifted to respondent the burden of rebutting any of the four requirements of  
4 *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 uncontroverted  
6 petition verified by Revenue Officer Lisa R. Lopez and the entire record, the Court makes the following  
7 findings:

8 (1) The summons issued by Revenue Officer Lisa R. Lopez on May 24, 2017 and served  
9 upon Respondent on May 25, 2017, seeking testimony and production of documents and records in  
10 Respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C. § 7602, that  
11 is, to secure information needed collect the tax liability for Form 1040 for the calendar periods ending  
12 December 31, 2005, December 31, 2010, December 31, 2011, and CIVPEN for the quarterly period  
13 ending December 31, 2013. (ECF No. 2, Exh. A).

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 Service.

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

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

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

21 (7) The burden shifted to respondent, Arnold H. Schmidt, to rebut that *prima facie* showing.

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

23 Based on the foregoing, it is therefore RECOMMENDED that the I.R.S. summons served upon  
24 Respondent, Arnold H. Schmidt, be enforced and that Respondent be ordered to appear at the I.R.S.  
25 offices at 2525 Capitol Street, Suite 206, Fresno, CA 93721-2227, before Revenue Officer Lisa R.  
26 Lopez or her designated representative, on or before May 18, 2018, at 9:00 a.m., as agreed to by  
27 Revenue Officer Lopez and Respondent Arnold H. Schmidt, at the show cause hearing, then and there to  
28 be sworn, to give testimony, and to produce for examining and copying the books, checks, records,

1 papers and other data demanded by the summons, the examination to continue from day to day until  
2 completed, unless compliance with the summons is fully achieved prior to that date and time. Should  
3 the foregoing appointment date need to be continued or rescheduled, the Respondent is to be notified in  
4 writing of a later date by Revenue Officer Lopez. It is further recommend that if it enforces the  
5 summons, the Court retain jurisdiction to enforce its order by its contempt power.

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

16 THE CLERK SHALL SERVE this and further orders by mail to Arnold H. Schmidt, 5737 W.  
17 Cromwell, Fresno, CA 93722.

18 IT IS SO ORDERED.

19  
20 Dated: April 16, 2018

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE