

1 MCGREGOR W. SCOTT
United States Attorney
2 KELLI L. TAYLOR
Assistant United States Attorney
3 Eastern District of California
501 I Street, Suite 10-100
4 Sacramento, CA 95814-2322
Telephone: (916) 554-2741
5 Facsimile: (916) 554-2900
Email: Kelli.L.Taylor @usdoj.gov
6

7 Attorneys for Petitioner United States

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

10
11 UNITED STATES OF AMERICA,
12 Petitioner,
13 v.
14 MARK A. WIMBLEY,
15 Respondent.

1:18-cv-00212-AWI-SKO
ORDER TO SHOW CAUSE
RE: TAX SUMMONS ENFORCEMENT
Taxpayer: MARK A. WIMBLEY
Date: Wednesday, April 25, 2018
Time: 9:30 a.m.
Crtm: 7, 6th Floor
Judge: Honorable Sheila K. Oberto

16
17
18
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, MARK A. WIMBLEY, appear before United States Magistrate
23 Judge Sheila K. Oberto, in that Magistrate Judge's courtroom in the United States Courthouse, 2500
24 Tulare St., Fresno, California, on Wednesday, April 25, 2018, to show cause why Respondent should not
25 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 the 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 Respondent an opportunity to respond to the petition and 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 Respondent personally, or by leaving a copy at Respondent's
8 dwelling house or usual place of abode with some person of suitable age and discretion then residing
9 therein, or by any other means of service permitted by Fed. R. Civ. P. 4(e), at least 30 days before the
10 show cause hearing date including any continued date, unless such service cannot be made despite
11 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
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 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. 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 Respondent
4 has no objections to enforcement of the summons. Respondent's appearance at the hearing will then be
5 excused.

6
7 IT IS SO ORDERED.

8 Dated: February 14, 2018

/s/ Sheila K. Oberto
9 UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28