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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA, and
CHARLES DUFF, Revenue Officer,
12 Internal Revenue Service,

13 Petitioners,

14 v.

15 LINDA P. SHADLEY

16 Respondent.
17

Case No. 2:09-mc-00080-WBS-GGH

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

Taxpayer: LINDA P. SHADLEY

18 This matter came before me on October 15, 2009, under the Order to Show Cause
19 filed September 3, 2009, which, with the verified petition and exhibits, was personally
20 served on respondent on September 18, 2009, in compliance with Fed. R. Civ. P. 4(e).
21 Yoshinori H. T. Himel appeared for petitioners, and petitioning Revenue Officer Charles
22 Duff was present. Respondent did not file an opposition and appeared at the hearing.

23 The Verified Petition to Enforce Internal Revenue Service Summons initiating this
24 proceeding seeks to enforce an administrative summons (Exhibit A to the petition) in aid
25 of Revenue Officer Duff's investigation to determine the existence and amounts of
26 individual income tax liabilities for the years ending December 31, 2001, December 31,
27 2002, December 31, 2004, December 31, 2005, December 31, 2006, December 31, 2007,
28 and December 31, 2008.

1 During the Order to Show Cause Hearing, respondent stated that she was willing to
2 comply with the summons. Because of respondent's statement, I filed an Order on
3 October 21, 2009, discharging the order to show cause and ordering respondent to appear
4 before petitioning Revenue Officer Charles Duff, or his designated representative, to
5 provide testimony and produce the requested documents, on November 3, 2009, at 1:00
6 p.m.

7 Respondent appeared for the appointment before the Revenue Officer, but she
8 failed to comply. On December 7, 2009, the undersigned directed the government to file
9 and serve declaration outlining how respondent failed to comply with the summons. The
10 government has now filed the declaration of Charles Duff which states in part:

11 4. On November 3, 2009, respondent appeared before me at
12 the IRS Sacramento Offices. She brought with her non of the
13 papers requested in the summons. She was placed under oath
14 and did respond to some questions, until such time as she
15 asked to stop so she could have an attorney present with her.
16 She has yet to provide a power of attorney in this case.

17 Duff. Decl., filed December 11, 2009.

18 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is
19 found to be proper. Authorization for the action is under I.R.C. §§ 7402(b) and 7604(a)
20 (26 U.S.C.). The Order to Show Cause shifted to respondent the burden of rebutting any
21 of the four requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

22 I have reviewed the petition and documents in support. Based on the
23 uncontroverted verification of Revenue Officer Woods and the entire record, I make the
24 following findings:

25 (1) The summons issued by Revenue Officer Charles Duff to respondent, Linda P.
26 Shadley, on April 29, 2009, seeking testimony and production of documents and records
27 in respondent's possession, was issued in good faith and for a legitimate purpose under
28 I.R.C. § 7602, that is, to determine the existence and amounts of individual income tax
liabilities for the years ending December 31, 2001, December 31, 2002, December 31,

1 2004, December 31, 2005, December 31, 2006, December 31, 2007, and December 31,
2 2008.

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
7 followed.

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

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

12 (7) The burden shifted to respondent, Linda P. Shadley, to rebut that prima facie
13 showing.

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

16 I therefore recommend that the IRS summons issued to respondent, Linda P.
17 Shadley, be enforced, and that respondent be ordered to appear at the I.R.S. offices at
18 4330 Watt Avenue, Sacramento, California, 95821, before Revenue Officer Charles Duff,
19 or his designated representative, on the twenty-first day after the filing date of the
20 summons enforcement order, or at a later date and time to be set in writing by the
21 Revenue Officer, then and there to be sworn, to give testimony, and to produce for
22 examining and copying the books, checks, records, papers and other data demanded by
23 the summons, the examination to continue from day to day until completed. I further
24 recommend that if it enforces the summons, the Court retain jurisdiction to enforce its
25 order by its contempt power.

26 These findings and recommendations are submitted to the United States District
27 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C)
28 and Rule 72-304 of the Local Rules of the United States District Court for the Eastern

1 District of California. Within ten (10) days after being served with these findings and
2 recommendations, any party may file written objections with the court and serve a copy
3 on all parties. Such a document should be titled "Objections to Magistrate Judge's
4 Findings and Recommendations." Any reply to the objections shall be served and filed
5 within ten (10) days after service of the objections. The District Judge will then review
6 these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1). The parties are
7 advised that failure to file objections within the specified time may waive the right to
8 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 The Clerk shall serve this and future orders by mail to Ms. Linda P. Shadley, at
10 3601 Mint Way, Greenwood, California, 95635.

11 It is SO ORDERED.

13 DATED: February 1, 2010

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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