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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, and  
CLIFFORD BROWN, Revenue Officer,  
Internal Revenue Service,

Petitioners,

v.

STANLEY J. JENKINS,

Respondent.

2:10-mc-00019-LKK-KJM

ORDER AND FINDINGS AND  
RECOMMENDATIONS RE:  
I.R.S. SUMMONS ENFORCEMENT

Taxpayer: STANLEY J. JENKINS

This matter came on for hearing on May 5, 2010, under the Order to Show Cause filed February 18, 2010. That order, with the verified petition and exhibits, was served on respondent in conformity with Fed. R. Civ. P. 4(e) on April 13, 2010. Yoshinori H. T. Himel appeared for petitioners, and petitioning Revenue Officer Clifford Brown was present. Respondent, who did not file an opposition, appeared at the hearing.

The Verified Petition to Enforce Internal Revenue Service Summons initiating this proceeding seeks to enforce an administrative summons, filed as Exhibit A to the petition, in aid of Revenue Officer Brown's investigation of Stanley Jenkins, to determine the taxpayer's ability to collect assessed Employer's Federal Quarterly Tax for the periods ending June 30, 2007, March 31, 2008, June 30, 2008, and September 30, 2008, for Eden Lawn Care and Maintenance, a sole proprietorship. Petitioners properly invoke subject

1 matter jurisdiction under 28 U.S.C. §§ 1340 and 1345. The action is authorized under  
2 I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.). The Order to Show Cause shifted to  
3 respondent the burden of rebutting any of the four requirements of United States v.  
4 Powell, 379 U.S. 48, 57-58 (1964).

5 Based on the uncontroverted verification of Revenue Officer Brown and the entire  
6 record, the court makes the following findings:

7 (1) The summons issued by Revenue Officer Clifford Brown to respondent,  
8 Stanley Jenkins, on May 29, 2009, seeking testimony and production of documents and  
9 records in respondent's possession, was issued in good faith and for a legitimate purpose  
10 under I.R.C. § 7602, that is, to determine the taxpayer's ability to collect assessed  
11 Employer's Federal Quarterly Tax for the periods ending June 30, 2007, March 31, 2008,  
12 June 30, 2008, and September 30, 2008, for Eden Lawn Care and Maintenance, a sole  
13 proprietorship.

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  
16 Service.

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

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

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

23 (7) The burden thus has shifted to respondent, Stanley Flores, to rebut that prima  
24 facie showing.

25 (8) Respondent has presented no argument or evidence to rebut the prima facie  
26 showing, and in fact indicated at hearing that he did not oppose enforcement.

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1           Accordingly, IT IS HEREBY RECOMMENDED that the IRS summons issued to  
2 respondent, Stanley Jenkins, be enforced, and that respondent be ordered to appear at the  
3 I.R.S. Fairfield office at 4830 Business Center Drive, Suite 250, Fairfield, California  
4 94534, before Revenue Officer Clifford Brown, or his designated representative, on  
5 Thursday, May 27, 2010, at 2:00 p.m., or at a later date and time to be set in writing by  
6 the Revenue Officer, then and there to be sworn, to give testimony, and to produce for  
7 examining and copying the books, checks, records, papers and other data demanded by  
8 the summons, the examination to continue from day to day until completed. It is further  
9 recommended that if it enforces the summons, the court retain jurisdiction to enforce its  
10 order by its contempt power.

11           IT IS HEREBY ORDERED that the Clerk shall serve this order and future orders  
12 on Mr. Stanley Jenkins, 824 Brookwood Avenue, Vallejo, California 94591.

13           These findings and recommendations are submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C)  
15 and Rule 72-304 of the Local Rules of the United States District Court for the Eastern  
16 District of California. Within ten (10) days after being served with these findings and  
17 recommendations, any party may file written objections with the court and serve a copy  
18 on all parties. Such a document should be titled "Objections to Magistrate Judge's  
19 Findings and Recommendations." Any reply to the objections shall be served and filed  
20 within ten (10) days after service of the objections. The parties are advised that failure to  
21 file objections within the specified time may waive the right to appeal the District Court's  
22 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: June 3, 2010.  
24           *nunc pro tunc* to May 5, 2010.

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28 U.S. MAGISTRATE JUDGE