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

UNITED STATES OF AMERICA and
R. L. WILLETT, Revenue Officer,
Internal Revenue Service,

Petitioners,

v.

RODNEY W. HALL,

Respondent.

Case No. 2:10-mc-00101-JAM-KJN

**ORDER TO SHOW CAUSE RE:
TAX SUMMONS ENFORCEMENT**

Taxpayer: RODNEY W. HALL

Date: **Thursday, December 9, 2010**

Time: 10:00 a.m.

Ctrm: #25 (8th Floor, Honorable
Kendall J. Newman)

Upon the petition of BENJAMIN B. WAGNER, United States Attorney for the Eastern District of California, and the Exhibits attached thereto, including the verification of Revenue Officer R. L. WILLETT, it is hereby:

ORDERED that the Respondent, RODNEY W. HALL, appear before United States Magistrate Judge Kendall J. Newman, in that Magistrate Judge's courtroom in the United States Courthouse, 501 I Street, Sacramento, California, on Thursday, December 9, 2010, at 10:00 a.m., to show cause why the respondent should not be compelled to obey the Internal Revenue Service summons issued on June 9, 2010.

It is further ORDERED that:

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

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

3 2. The Court hereby appoints the group manager of the petitioning Internal
4 Revenue Service employee, and all federal employees designated by that group manager,
5 under Fed. R. Civ. P. 4(c)(1), to serve process in this case.

6 3. A copy of this order, the Verified Petition and the Exhibits attached
7 thereto, and the Points and Authorities filed with the court, shall be served by delivering a
8 copy to the respondent personally or by leaving a copy at the respondent's dwelling house
9 or usual place of abode with some person of suitable age and discretion then residing
10 therein, within 21 days of the date this order is served upon the United States Attorney,
11 unless such service cannot be made despite reasonable efforts.

12 4. If the federal employee assigned to serve these documents is unable to
13 serve them as provided in paragraph 3, despite making reasonable efforts to do so, the
14 documents may be served by any other means of service permitted by Fed. R. Civ. P. 4(e)
15 or petitioners may request a court order granting leave to serve by other means. See Fed.
16 R. Civ. P. 81(a)(5). The federal employee assigned to serve the documents shall make a
17 certificate detailing the efforts made within the 21-day period to serve the respondent as
18 provided in paragraph 3.

19 5. Proof of any service done pursuant to paragraph 3 or 4, above, shall be
20 filed with the Clerk of this Court *at least 14 days prior to the date set for the show cause*
21 *hearing*.

22 6. The file reflects a prima facie showing that the investigation is
23 conducted pursuant to a legitimate purpose, that the inquiry may be relevant to that
24 purpose, that the information sought is not already within the Commissioner's possession,
25 and that the administrative steps required by the Code have been followed. United States
26 v. Powell, 379 U.S. 48, 57-58 (1964). The burden of coming forward therefore has
27 shifted to whoever might oppose enforcement. See Stewart v. United States, 511 F.3d
28 1251, 1255 (9th Cir. 2008) (stating that "[o]nce a prima facie case is made a 'heavy'


1 burden is placed on the taxpayer to show an ‘abuse of process’ or ‘the lack of institutional
2 good faith’”) (citing Fortney v. United States, 59 F.3d 117, 210 (9th Cir. 1995)).

3 7. If the respondent has any defense or opposition to the petition, such
4 defense or opposition shall be made in writing and filed with the Clerk and a copy served
5 on the United States Attorney *at least 14 days prior to the date set for the show cause*
6 *hearing*.

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

11 9. The respondent may notify the Court, in a writing filed with the Clerk
12 and served on the United States Attorney at least 14 days prior to the date set for the show
13 cause hearing, that the respondent has no objections to enforcement of the summons. The
14 respondent’s appearance at the hearing will then be excused.

15 DATED: October 8, 2010

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE
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