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7 Attorneys for Petitioner United States of America

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

11 UNITED STATES OF AMERICA,  
 12 Petitioner,  
 13 v.  
 14 KEVIN NELSON,  
 15 Respondent.

**2:14-cv-02341-GEB-EFB**

**[PROPOSED] MAGISTRATE JUDGE'S  
 FINDINGS AND RECOMMENDATIONS  
 AND ORDER RE: I.R.S. SUMMMONS  
 ENFORCEMENT**

**Taxpayer:  
 KEVIN NELSON**

19  
 20 This matter came on before Magistrate Judge Edmund F. Brennan on December 10,  
 21 2014, under the Order to Show Cause filed October 21, 2014. The order, with the verified  
 22 petition filed October 6, 2014, and its supporting memorandum, was personally served on  
 23 Respondent at his residence on November 7, 2014. Respondent did not file opposition or non-  
 24 opposition to the verified petition as provided for in the Order to Show Cause. At the hearing,  
 25 Yoshinori H.T. Himel, Assistant United States Attorney, personally appeared for Petitioner, and  
 26 investigating Revenue Agent Agavni Angela Isayan was present in the courtroom. Respondent  
 27 did not appear at the hearing.  
 28

1           The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce  
2 an administrative summons (Exhibit A to the petition) issued May 13, 2014. The summons is  
3 part of an investigation of the respondent to secure information needed to determine the correct  
4 federal income tax liabilities and statutory additions for the tax years ending December 31,  
5 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010, and  
6 December 31, 2011.

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

11           I have reviewed the petition and documents in support. Based on the uncontroverted  
12 petition verified by Revenue Agent Agavni Angela Isayan and the entire record, I make the  
13 following findings:

14           (1) The summons issued by Revenue Agent Agavni Angela Isayan on May 13, 2014, and  
15 served on May 13, 2014, seeking testimony and production of documents and records in  
16 respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C.  
17 § 7602, that is, to secure information needed to secure information needed to determine the  
18 correct federal individual income taxes and statutory additions for the years ending December  
19 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010,  
20 December 31, 2011.

21           (2) The information sought is relevant to that purpose.

22           (3) The information sought is not already in the possession of the Internal Revenue  
23 Service.

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

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

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

1 (7) The burden shifted to respondent, Kevin Nelson, to rebut that prima facie showing.

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

3 I therefore recommend that the IRS summons served upon Respondent, Kevin Nelson, be  
4 enforced, and that Respondent be ordered to appear at the I.R.S. offices at 4330 Watt Avenue,  
5 Sacramento, CA 95814, before Revenue Agent Agavni Angels Isayan or her designated  
6 representative, on the twenty-first (21st) day after the filing date of the District Judge's  
7 summons enforcement order, or at a later date to be set in writing by Revenue Agent Isayan,  
8 then and there to be sworn, to give testimony, and to produce for examining and copying the  
9 books, checks, records, papers and other data demanded by the summons, the examination to  
10 continue from day to day until completed. I further recommend that if it enforces the summons,  
11 the Court retain jurisdiction to enforce its order by its contempt power.

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

22 THE CLERK SHALL SERVE this and further orders by mail to Kevin Nelson, 27  
23 Railway, Roberts, MT 59070.

24 It is SO ORDERED.

25 DATED: December 18, 2014.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE