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

10
11 UNITED STATES OF AMERICA,
12
13 Petitioner,
14
15 v.

14 ROBERT BAILEY LITTLE,
15
16 Respondent.

2:14-cv-02531-JAM-KJN

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

**Taxpayer:
ROBERT BAILEY LITTLE**

17
18 This matter came on before Magistrate Judge Kendall J. Newman on December 18, 2014,
19 under the Order to Show Cause filed November 3, 2014. The order, with the amended verified
20 petition filed October 31, 2014, and its supporting memorandum, was personally served at
21 Respondent's residence on November 7, 2014. Respondent did not file opposition or non-
22 opposition to the verified petition as provided for in the Order to Show Cause. At the hearing,
23 Yoshinori H. T. Himel, Assistant United States Attorney, appeared for Petitioner. Investigating
24 Revenue Officer Jose Arteaga was present in the courtroom. Respondent appeared at the
25 hearing.

26 The Amended Verified Petition to Enforce Internal Revenue Summons seeks to enforce
27 an administrative summons (Exhibit A to the petition) issued May 30, 2014. The summons is
28 part of an investigation of the respondent to secure information relevant to collection of Form

1 940 taxes for the calendar years ending December 31, 1999, December 31, 2000, December 31,
2 2001, December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005,
3 December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009 and
4 December 31, 2012; Form 941 taxes for the quarterly periods ending March 31, 1999, June 30,
5 1999, September 30, 1999, December 31, 1999, March 31, 2000, June 30, 2000, September 30,
6 2000, December 31, 2000, March 31, 2001, June 30, 2001, September 30, 2001, December 31,
7 2001, March 31, 2002, June 30, 2002, September 30, 2002, December 31, 2002, March 31,
8 2003, June 30, 2003, September 30, 2003, December 31, 2003, March 31, 2004, June 30, 2004,
9 September 30, 2004, December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005,
10 December 31, 2005, March 31, 2006, June 30, 2006, September 30, 2006, December 31, 2006,
11 March 31, 2007, June 30, 2007, September 30, 2007, December 31, 2007, March 31, 2008, June
12 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, September
13 30, 2009, September 30, 2010, December 31, 2010, September 30, 2011, December 31, 2011,
14 March 31, 2012, June 30, 2012, September 30, 2012, December 31, 2012 and March 31, 2013,
15 and Form CIVPEN taxes for the calendar period ending December 31, 2010.

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

20 I have reviewed the petition and documents in support. Based on the uncontroverted
21 petition verified by Revenue Officer Jose Arteaga and the entire record, I find:

22 (1) The summons issued and served by Revenue Officer Jose Arteaga on May 30, 2014,
23 seeking testimony and production of documents and records in respondent's possession, was
24 issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to secure
25 information needed to determine the corrected amounts on Form 940 taxes for the calendar years
26 ending December 31, 1999, December 31, 2000, December 31, 2001, December 31, 2002,
27 December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, December
28 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2012; Form 941 taxes for

1 the quarterly periods ending March 31, 1999, June 30, 1999, September 30, 1999, December 31,
2 1999, March 31, 2000, June 30, 2000, September 30, 2000, December 31, 2000, March 31,
3 2001, June 30, 2001, September 20, 2001, December 31, 2001, March 31, 2002, June 30, 2002,
4 September 30, 2002, December 31, 2002, March 31, 2003, June 30, 2003, September 30, 2003,
5 December 31, 2003, March 31, 2004, June 30, 2004, September 30, 2004, December 31, 2004,
6 March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2006, June
7 30, 2006, September 30, 2006, December 31, 2006, March 31, 2007, June 30, 2007, September
8 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December
9 31, 2008, March 31, 2009, June 30, 2009, September 30, 2009, September 30, 2010, December
10 31, 2010, September 30, 2011, December 31, 2011, March 31, 2012, June 30, 2012, September
11 30, 2012, December 31, 2012 and March 31, 2013, and Form CIVPEN taxes for the calendar
12 period ending December 31, 2010.

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

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

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

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

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

21 (7) The burden shifted to respondent, Robert Bailey Little, to rebut that prima facie
22 showing.

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

24 (9) Respondent agreed with the Revenue Officer, and stated his agreement in open court,
25 to appear and comply with the summons at the I.R.S. offices at 4830 Business Center Drive, Ste.
26 250, Fairfield, CA 94534, before Revenue Officer Arteaga or his designated representative, on
27 January 15, 2015, 9:00 A.M. He is hereby ORDERED to appear and to comply with the I.R.S.
28 summons then and there.


1 I therefore recommend that the I.R.S. summons served upon Respondent be enforced;
2 and that Respondent be ordered to appear at the I.R.S. offices at 4830 Business Center Drive,
3 Ste. 250, Fairfield, CA 94534, before Revenue Officer Arteaga or his designated representative,
4 on January 15, 2015, at 9:00 A.M., as agreed to by RO Arteaga and Respondent Little at the
5 show cause hearing. Should the January 15th appearance need to be continued or rescheduled,
6 the rescheduled date is to be set in writing by RO Arteaga. Respondent is to appear before RO
7 Arteaga or his designated representative, then and there to be sworn, to give testimony, and to
8 produce for examining and copying the books, checks, records, papers and other data demanded
9 by the summons, the examination to continue from day to day until completed. I further
10 recommend that if it enforces the summons, the Court retain jurisdiction to enforce its order by
11 its contempt power.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten (10) days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
17 objections shall be served on all parties and filed with the court within ten (10) days after service
18 of the objections. The parties are advised that failure to file objections within the specified time
19 may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455
20 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

21 THE CLERK SHALL SERVE this and further orders by mail to Robert Bailey Little,
22 125 Sage Sparrow Circle, Vacaville, CA 95637

23 It is SO ORDERED and RECOMMENDED.

24 Dated: December 29, 2014

25 
26 KENDALL J. NEWMAN
27 UNITED STATES MAGISTRATE JUDGE
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