



1 shows that service properly was made pursuant to 26 U.S.C. § 7603.<sup>1</sup> On June 8, 2009,  
2 petitioner Fouche-Munoz served a summons on respondent by leaving a copy of the summons at  
3 his last and usual place of abode. (See id. ¶ 7 and Ex. A). Respondent did not appear on June 30,  
4 2009 as requested. When respondent failed to appear, he was given another opportunity to  
5 appear and comply on August 18, 2009. Respondent again failed to appear. (See id. ¶¶ 9-11 and  
6 Ex. B).

7 On September 8, 2009, petitioners filed the instant verified petition to enforce the  
8 summons. On September 10, 2009, this court issued an order to show cause, setting a hearing  
9 for December 18, 2009. Petitioners have submitted evidence showing that the order to show  
10 cause and verified petition were served on respondent on September 23, 2009. (See Docket #4).  
11 However, Mr. Reed never filed a written response to the order to show cause or the verified  
12 petition.

## 13 II. DISCUSSION

14 Under 26 U.S.C. § 7602(a), the IRS is authorized to issue a summons relevant to the  
15 investigation of any taxpayer's liability. Summons may be issued for the purposes of  
16 "ascertaining the correctness of any return, making a return where none has been made,  
17 determining the liability of any person for any internal revenue tax or . . . collecting any such  
18 liability." 26 U.S.C. § 7602(a); see also Crystal v. United States, 172 F.3d 1141, 1143 (9th Cir.  
19 1999) (quoting 26 U.S.C. § 7602(a)). To enforce a summons, the IRS must establish a *prima*  
20 *facie* case for enforcement by showing that the summons (1) is issued for a legitimate purpose;  
21 (2) seeks information relevant to that purpose; (3) seeks information that is not already in the  
22 IRS's possession; and (4) satisfies all of the administrative steps set forth in the Internal Revenue  
23 Code. United States v. Powell, 379 U.S. 48 57-58 (1964). "The government's burden is a slight  
24 one, and may be satisfied by a declaration from the investigating agent that the Powell

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26 <sup>1</sup> Title 26 United States Code, Section 7603 provides that service of summons shall be  
27 made "by an attested copy delivered in hand to the person to whom it is directed, or left at his  
28 last and usual place of abode." 26 U.S.C. § 7603(a). Further, "the certificate of service signed  
by the person serving the summons shall be evidence of the facts it states on the hearing of an  
application for the enforcement of the summons." Id.

1 requirements have been met." Crystal, 172 F.3d at 1144 (quoting United States v. Dynavac, Inc.,  
2 6 F.3d 1407, 1414 (9th Cir. 1993)). "The burden is minimal because the statute must be read  
3 broadly in order to ensure that the enforcement powers of the IRS are not unduly restricted." Id.  
4 (quoting Liberty Fin. Servs. v. United States, 778 F.2d 1390, 1392 (9th Cir.1985)).

5         Once the government has met its burden in establishing the Powell elements, if the  
6 taxpayer chooses to challenge the enforcement, he bears a heavy burden to show an abuse of  
7 process or lack of good faith on the part of the IRS. Indeed, "[e]nforcement of a summons is  
8 generally a summary proceeding to which a taxpayer has few defenses." Crystal, 172 F.3d at  
9 1144 (quoting United States v. Den, 968 F.2d 943, 945 (9th Cir. 1992)). "The taxpayer must  
10 allege specific facts and evidence to support his allegations' of bad faith or improper purpose."  
11 Id. (quoting United States v. Jose, 131 F.3d 1325, 1328 (9th Cir. 1997)). As explained by the  
12 Ninth Circuit:

13                 The taxpayer may challenge the summons on any appropriate  
14 grounds, including failure to satisfy the Powell requirements or abuse of  
15 the court's process. Such an abuse would take place if the summons had  
16 been issued for an improper purpose, such as to harass the taxpayer or to  
17 put pressure on him to settle a collateral dispute, or for any other purpose  
18 reflecting on the good faith of the particular investigation. In addition, it  
19 has become clear since Powell that gathering evidence after having  
decided to make a recommendation for prosecution would be an improper  
purpose, and that the IRS would be acting in bad faith if it were to pursue  
a summons enforcement under these circumstances. While neither the  
Powell elements nor the LaSalle requirements is an exhaustive elaboration  
of what good faith means, still the dispositive question in each case is  
whether the Service is pursuing the authorized purposes in good faith.

20 Id. at 1144-45 (internal quotes and citations omitted).

21         While the government's burden is not great, it is not necessarily satisfied by an agent's  
22 mere assertion of relevance. United States v. Goldman, 637 F.2d 664, 667 (9th Cir. 1980).  
23 Once a summons is challenged, it must be scrutinized by the court to determine whether it seeks  
24 information relevant to a legitimate investigative purpose, and the court may choose either to  
25 refuse enforcement or narrow the scope of the summons. Id. at 668.

26         In the instant case, petitioners have met their initial burden of showing that the Powell  
27 elements have been satisfied, largely through the verification of the petition by Revenue Officer  
28 Fouche-Munoz. See Crystal, 172 F.3d at 1144 (finding that the special agent's declaration

1 satisfied the Powell requirements and that the government therefore "established a prima facie  
2 case to enforce the summonses"); Dynavac, Inc., 6 F.3d at 1414 (stating that the government's  
3 burden "may be satisfied by a declaration from the investigating agent that the Powell  
4 requirements have been met."); United States v. Bell, 57 F. Supp.2d 898, 906 (N.D. Cal. 1999)  
5 ("The government usually makes the requisite *prima facie* showing by affidavit of the agent").

6 Here, the verified petition indicates that the IRS's investigation is being conducted for a  
7 legitimate purpose of ascertaining respondent's assets and liabilities as part of an effort to  
8 collect unpaid federal tax liabilities for certain periods of time. (See Pet. ¶¶ 3-4). The summons  
9 is relevant to that purpose. It indicates that respondent has unpaid tax liabilities for the calendar  
10 years ending December 31, 2004, and December 31, 2005. The summons asks him to  
11 appear and bring with him documents pertaining to his assets and liabilities (e.g., bank  
12 statements, checkbooks, canceled checks, saving account passbooks, records or certificates of  
13 deposit, current vehicle registration certificates, deeds or contracts regarding real property,  
14 stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance  
15 policies). (See id. Ex. A). The petition further indicates that the information is not already in the  
16 IRS's possession, that there has been no referral for criminal prosecution of this matter, and that  
17 all administrative steps required by the Internal Revenue Code for the issuance of the summons  
18 have been taken. (See Pet. ¶¶ 6, 12, 13 and Exs. A and B).

19 Although the record presented demonstrates that respondent was duly served with notice  
20 of these proceedings, he failed to respond at all to the verified petition or the court's order to  
21 show cause. Accordingly, he has not met his burden of showing an abuse of process or lack of  
22 good faith on the part of the IRS, and this court finds that the verified petition to enforce  
23 the IRS summons be GRANTED.

24 Accordingly, the petition is hereby GRANTED, and respondent is hereby ORDERED to  
25 appear before Revenue Officer Fouche-Munoz, or any designated agent, on January 25, 2010, at  
26 9:00 a.m., at the Offices of the Internal Revenue Service, 450 Golden Gate Avenue, 6th Floor,  
27 San Francisco, California, 94102, and then and there give testimony relating to the matters  
28 described in the subject Internal Revenue Service summonses, copies of which are attached

1 hereto as Exhibits A and B, and produce for the Revenue Officer's inspection and copying the  
2 records described in the attached Internal Revenue Service summonses.

3 Failure to comply with the instant order may be grounds for a finding of contempt.  
4 See, e.g., United States v. Ayres, 166 F.3d 991, 994-96 (9th Cir. 1999) (affirming finding of  
5 contempt, where party failed to comply with court order directing him to provide testimony  
6 and produce records to IRS).

7 IT IS SO ORDERED.

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9 Dated: December 18, 2009

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