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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

United States of America, et al.,

NO. C 11-04416 JW

Petitioners,

ORDER TO SHOW CAUSE

v.

Christopher J. Augusto,

Respondent.

Presently before the Court is Petitioner's Verified Petition to Enforce Internal Revenue Service Summonses. (hereafter, "Petition," Docket Item No. 1.) In addition, Petitioner has filed a Proposed Order to Show Cause Re Enforcement of Internal Revenue Service Summonses. (Docket Item No. 3.) To date, no response to the Petition has been filed.

The IRS is authorized to summon a person for "the purpose of ascertaining the correctness of any return, making a return where none has been made . . . or collecting any such liability." 26 U.S.C. § 7602(a). To enforce a summons, the IRS must establish a *prima facie* case for enforcement by showing that the summons (1) is issued for a legitimate purpose, (2) seeks information relevant to that purpose, (3) seeks information that is not already in the possession of the IRS, and (4) satisfies all of the administrative steps set forth in the Internal Revenue Code.¹ United States v. Powell, 379 U.S. 48, 57-58 (1964). Before enforcement is ordered, the taxpayer is entitled to an adversary hearing. Id. at 58.

¹ In order to satisfy all of the administrative steps set forth in the Internal Revenue Code, the IRS Commissioner's Secretary or Delegate must: (1) determine that further examination is necessary after the investigation; and (2) notify the taxpayer in writing to that effect. Powell, 379 U.S. at 58.

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Accordingly, good cause having been shown by Petitioners, the Court ORDERS as follows:

- (1) Respondent Christopher J. Augusto shall appear before this Court on **November 14, 2011 at 9:00 a.m.** in Courtroom 9, 19th Floor, United States District Court, 450 Golden Gate Avenue, San Francisco, California, to show cause, if any, why Respondent should not be compelled to appear and provide documents and testimony as required by the summonses served upon Respondent as alleged in the Petition.
- (2) Petitioners shall serve a copy of this Order to Show Cause, together with a copy of the Petition, upon Respondent in accordance with Rule 4 or the Federal Rules of Civil Procedure at least thirty-five days before the return date of this Order.
- (3) On or before **October 31, 2011**, Respondent may file and serve a written response to the Petition, supported by appropriate affidavits or declarations in conformance with 28 U.S.C. § 1746, as well as any motion Respondent desires to make.
- (4) On or before **November 7, 2011**, Petitioners may file and serve a written reply to such a response or motion, if any.
- (5) All motions and issues raised by the pleadings will be considered on the return date of this Order, and only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavits or declarations will be considered. Any uncontested allegation in the pleading will be deemed admitted.

Dated: September 19, 2011



JAMES WARE
United States District Chief Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Blake D. Stamm blake.d.stamm2@usdoj.gov

3 Christopher J. Augusto
4 8 Wyworry Ct.
5 Novato, CA 94947

6 **Dated: September 19, 2011**

Richard W. Wieking, Clerk

7 **By: /s/ JW Chambers**
8 **Susan Imbriani**
9 **Courtroom Deputy**

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