

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 10cv2540 IEG (BGS)
)	
Petitioner,)	
)	
v.)	ORDER GRANTING PETITION TO
)	ENFORCE INTERNAL REVENUE SERVICE
DARRELL B. MOORE,)	SUMMONS
)	
Respondent.)	

The Government has petitioned the Court for an order enforcing the Internal Revenue Service (“IRS”) Summons issued to Respondent Darrell B. Moore (“Respondent”). On December 14, 2010, the Court issued an order to show cause why the IRS summons should not be judicially enforced. On December 16, 2010, the IRS personally served a copy of the order to show cause, the Government’s petition to enforce and supporting declaration upon Respondent. Respondent did not file a written response to the order to show cause.

The hearing was held on the Government’s petition on February 7, 2011, at 10:30 a.m. The Government was represented by Assistant United States Attorney Caroline J. Clark. Respondent did not appear. For the reasons explained herein, the Government’s petition to enforce the summons is granted.

BACKGROUND

On March 3, 2010, C. Garcia, a Revenue Officer employed by the IRS, issued an IRS summons to Respondent. [Declaration of Revenue Officer Gregory Peterson in Support of Petition, (“Peterson Decl.”), ¶ 3.] The IRS is conducting an investigation regarding Respondent’s ability to pay

1
2 his outstanding tax liabilities. The summons relates to the collection of Respondent's unpaid assessed
3 federal income tax liability for the tax years 2004 and 2006. [Id. at ¶¶ 2-3.] On March 4, 2010,
4 Revenue Officer Peterson served a copy of the summons on Respondent by leaving it at his last and
5 usual place of abode. [Id. at ¶ 4.]

6 The summons ordered Respondent to appear before the IRS on April 1, 2010 at 8:30. [Id. at ¶ 5.]
7 On April 1, 2010, Respondent did not appear before the IRS as directed and did not provide any of the
8 summonsed information. [Id.] On April 1, 2010, Revenue Officer Peterson received a telephone call
9 from Respondent during which he rescheduled his appointment to April 9, 2010. [Id. at ¶ 6.] On
10 April 9, 2010, Respondent did not appear but again called Revenue Officer Peterson and informed him
11 that he would pay his outstanding tax liability on April 12, 2010. [Id.] Respondent did not appear on
12 April 12, 2010 and did not provide any of the summonsed information or payment to the IRS. [Id.] The
13 Office of Division Counsel of the IRS subsequently sent a letter to Respondent directing him appear
14 before the IRS on June 8, 2010. [Id. at ¶ 7.] Respondent again failed to appear or provide any of the
15 summonsed information or payment. [Id.] On September 16, 2010, Assistant United States Attorney
16 Caroline Clark sent a letter to Respondent advising him that if he wanted to avoid the initiation of
17 enforcement proceedings, he needed to appear before Revenue Officer Peterson and comply with the
18 summons on October 15, 2010. [Id. at ¶ 8.] Respondent did not appear on October 15, 2010 and later
19 called Revenue Officer Peterson to reschedule the meeting until November 29, 2010. [Id. at ¶¶ 8-9.]
20 Respondent did not appear on November 29, 2010. [Id. at ¶ 9.] To date, Respondent has not provided
21 the IRS with the testimony and documents requested by the summons. [Id. at ¶ 10.]

22 On December 10, 2010, the Government petitioned the Court to enforce the summons. On
23 December 14, 2010, the Court set a hearing date for this matter and ordered Respondent to show cause
24 why he should not be compelled to comply with the IRS summons. Respondent did not file a written
25 response to the order to show cause. On February 7, 2011, the Court held a hearing on the order to show
26 cause.

27 DISCUSSION

28 Pursuant to 26 U.S.C. § 7602(a)(1), the Secretary of the Treasury may "examine any books,

1 papers, records, or other data which may be relevant of material” in connection with “ascertaining the
2 correctness of any return, making a return where none has been made, determining the liability of any
3 person for any internal revenue . . . or collecting any such liability.” Section 7602(a)(1) authorizes the
4 Secretary to issue summonses to compel persons in possession of such books, papers, records, or other
5 data to appear and produce the same and/or give testimony.

6 In order to obtain judicial enforcement of an IRS summons, the United States “must first
7 establish it’s ‘good faith’ by showing that the summons: (1) is issued for a legitimate purpose; (2) seeks
8 information relevant to that purpose; (3) seeks information that is not already within the IRS’
9 possession; and (4) satisfies all administrative steps required by the United States Code.” Fortney v.
10 United States, 59 F.3d 117, 119 (9th Cir. 1995) (citing United States v. Powell, 379 U.S. 48, 57-58
11 (1964)). “The government’s burden is a ‘slight one’ and typically is satisfied by the introduction of the
12 sworn declaration of the revenue agent who issued the summons that Powell requirements have been
13 met.” Id. at 120. Once the government has made a prima facie showing that enforcement of the
14 summons is appropriate, the burden shifts to the Respondent to show that enforcement of the summons
15 would be an abuse of the court’s process. Powell, 379 U.S. at 58. The Supreme Court has characterized
16 respondent’s burden as a heavy one. Id.

17 The Government’s petition and Revenue Officer Peterson’s supporting declaration satisfy all
18 four elements of the Powell standard. First, the IRS is conducting an investigation with respect to the
19 collection of Respondent’s unpaid assessed federal tax liabilities for the tax years 2004 and 2006.
20 [Peterson Decl., ¶ 2.] Such an investigation is expressly authorized by 26 U.S.C. § 7602(a). The
21 Internal Revenue Code explicitly allows the issuance of a summons for the purpose of determining “the
22 liability of any person for any internal revenue tax . . . or collecting any such liability . . .”
23 26 U.S.C. § 7602(a). Thus, the summons was issued for a legitimate purpose. Second, Revenue Officer
24 Peterson has declared in his affidavit that the information requested by the summons may be relevant
25 to the IRS determination of the collectibility of Respondent’s assessed income tax liability. [Id. at ¶ 13.]
26 Third, the IRS does not already possess the testimony, papers, records, and other data sought by the
27 summons issued to Respondent. [Id. ¶ 11.] Finally, the IRS has followed and exhausted all required
28 administrative steps, but Respondent has not complied with the summons. [Id. at ¶ 12.] Thus, the

1 Government has made prima facie showing that it is entitled to judicial enforcement of the summons.

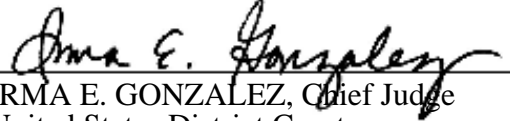
2 CONCLUSION

3 For the reasons set forth herein, the Government's petition to enforce the IRS summons is
4 GRANTED. Respondent, Darrell B. Moore, is directed to appear before IRS Revenue Officer Gregory
5 Peterson or a designee, on March 14, 2011, at 8:30 a.m., at the offices of the Internal Revenue Service
6 located at 880 Front Street, Suite 3295, San Diego, California, and to produce the documents and give
7 testimony as directed in the summons. The Government shall serve a copy of this Order upon
8 Respondent in accordance with Fed. R. Civ. P. 5, within 7 days of the date that this Order is served upon
9 counsel for the Government, or as soon thereafter as possible. Proof of such service shall be filed with
10 the Clerk of Court as soon as practicable.

11 Respondent is hereby notified that failure to comply with this Order may subject him to
12 sanctions for contempt of court.

13 **IT IS SO ORDERED.**

14 DATED: February 8, 2011

15 
16 IRMA E. GONZALEZ, Chief Judge
17 United States District Court
18
19
20
21
22
23
24
25
26
27
28