

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Lexington)

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	Civil Action No. 5: 16-019-DCR
)	
V.)	
)	
MARK NEWTON, as Sole Member of)	ORDER
SOUTHERN INDUSTRIAL LLC,)	
)	
Respondent.)	

*** *** *** ***

The United States, on behalf of the Internal Revenue Service (“IRS”), filed this action on January 9, 2016, seeking to obtain production of certain testimony and documents related to an ongoing tax investigation of Southern Industrial LLC for 2011, 2012, and 2013. [Record No. 1] As outlined in government’s Petition, IRS summonses were issued on May 13, 2015, directing Respondent Mark Newton to appear before Revenue Officer Tiffany Stockwell on June 8, 2015, to respond. However, Newton failed to appear and failed to produce the requested information and documents. As part of the relief sought, the United States asked that an order be issued by this Court, directing Newton to show cause why he should not fully comply with and obey the summonses. Additionally, the United States has sought an order directing Newton, as the sole member of Southern Industrial LLC, to obey the aforementioned summonses.

Following service of a Show Cause Order by United States Magistrate Judge Robert E. Wier, a hearing was held in this matter on April 22, 2016. [Record No. 16] On the same

date, Magistrate Judge Wier issued a Recommended Disposition in this matter. [Record No. 17] Neither the United States nor Respondent Newton have filed objections to the Magistrate Judge's Recommended Disposition.

In relevant part, Magistrate Judge Wier found and concluded as follows:

A. The United States is properly proceeding under the administrative enforcement mechanics of the Internal Revenue Code and this Court has both subject matter and personal jurisdiction. 26 U.S.C. §§ 7402, 7602, and 7604.

B. The verified materials produced by the United States establish the government's prima facie right to enforcement of the two summonses in issue. *See United States v. Powell*, 85 S.Ct. 248, 255 (1964); *United States v. Monumental Life Ins. Co.*, 440 F.3d 729, 733 (6th Cir. 2006). More specifically, the two affidavits establish: (1) a legitimate purpose for the information sought; (2) relevance; (3) that the IRS does not already have the information being sought; and (4) compliance with the Internal Revenue Code's procedural requirements. As a result, the burden properly shifts to the respondent to "either disprove the elements of a prima facie case or 'demonstrate that judicial enforcement of the summons would otherwise constitute an abuse of the court's process.'" *Id.* at 733 (quoting *United States v. Davis*, 636 F.2d 1028, 1034 (5th Cir. 1981)).

C. The mode of administrative service over the respondent was valid and all processes complied with the Internal Revenue Code.

D. There is no parallel criminal investigation ongoing.

E. Respondent Mark Newton failed to establish any reason that the Court should not enforce the summonses.

Therefore, being sufficiently advised, it is hereby

ORDERED as follows:

1. The Recommended Disposition of United States Magistrate Judge Robert E. Wier [Record No. 17] is **ADOPTED** in **FULL** and **INCORPORATED** herein by reference.
2. The United States' Petition [Record No. 1] is **GRANTED**.
3. Respondent Mark Newton, as sole member of Southern Industrial LLC, shall respond fully to the Internal Revenue Service's Summons on or before June 3, 2016. More specifically, Newton must appear as directed, provide testimony, produce all books, papers, records, and other data as required and called for by the terms of the summonses before Revenue Officer Tiffany Stockwell, or other proper officer or employee of the IRS, at such time and place as may be determined by Revenue Officer Tiffany Stockwell, or any other proper officer or employee of the IRS.
4. The Respondent is advised that failure to comply with the IRS Summons and this Order may subject him to potential penalties, including contempt of court.

This 9th day of May, 2016.



Signed By:

Danny C. Reeves DCR

United States District Judge