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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 SCOTT A. WHITTINGTON,

9 Plaintiff,

10 v.

11 UNITED STATES GOVERNMENT,

12 Defendant.

CASE NO. C13-5274 BHS

ORDER GRANTING
UNOPPOSED MOTION TO
DISMISS

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14 This matter comes before the Court on Defendant the United States Government's
15 ("Government") motion to dismiss (Dkt. 8). The Court has considered the pleadings filed
16 in support of the motion and the remainder of the file and hereby grants the motion for
17 the reasons stated herein.

18 On April 10, 2013, Plaintiff Scott A. Whittington ("Whittington") filed a petition
19 to quash a Government summons issued to third-party Fibre Credit Union ("Fibre") (Dkt.
20 1), where, the Government alleges, Whittington has account(s) for Seismic Support
21 Services, LLC, "a partnership" in which he is "a 95% owner." Dkt. 8 at 2 (*citing* Dkt. 8-
22 1 (Declaration of Daniel Erickson, Internal Revenue Service ("IRS") Agent).

1 Whittington is under audit for the tax years 2010 and 2011 for failure to file income tax
2 returns, and he has not been cooperating with IRS's requests for information for said tax
3 years. *Id.* Therefore, the Government issued a summons to third parties, including Fibre,
4 to acquire the necessary information for its audit. *Id.*

5 On June 3, 2013, the Government filed the instant motion to dismiss Whittington's
6 petition. Dkt. 8. Whittington filed no response.

7 The Government has demonstrated that its motion to dismiss has merit and should
8 be granted. It has effectively shown that the United States of America is the only proper
9 party respondent to this proceeding, as the IRS is not an entity subject to suit, and
10 Whittington cannot maintain this type of proceeding against individual IRS employees.

11 Dkt. 8 at 4-5. Accordingly, the United States, therefore, should be substituted as the only
12 proper party respondent. *Id.* Moreover, the Government has shown that Whittington

13 failed to establish subject matter jurisdiction because he failed to give proper notice of
14 this proceeding to the IRS. *Id.* at 5-6. Further, the Government has established the four

15 factors from *United States v. Powell*, 379 U.S. 48, 57-58 (1964), showing that the IRS
16 can defeat Whittington's petition to quash. The Government has shown: (1) the IRS

17 examination is legitimate, (2) the inquiry into Fibre's banking records is relevant to the
18 IRS's legitimate examination, (3) the banking information sought is not already

19 possessed by the IRS, and (4) the administrative steps required by the Internal Revenue
20 Code have been complied with. Dkt. 8 at 6-8 and 8-1. Further, the Government has

21 demonstrated that IRS summonses do not violate the Right to Financial Privacy Act. *Id.*

22 at 9. Whittington has filed no response in opposition to the Government's motion, and the

1 Court construes his failure to respond in opposition as an admission that the
2 Government's motion has merit. *See* W.D. Local Rule 7(b)(2).

3 Therefore, it is hereby **ORDERED** that the Government's motion to dismiss (Dkt.
4 8) is **GRANTED**, and this case is closed.

5 Dated this 3rd day of July, 2013.

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BENJAMIN H. SETTLE
9 United States District Judge
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