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14 UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 UNITED STATES OF AMERICA,

18 Petitioner,

19 v.

20 [REDACTED]

21 Respondent.

No. [REDACTED]

Petition to Enforce Internal Revenue
Service Summons; Memorandum of Points
and Authorities; and Declaration in Support
Thereof

22 PETITION

23 The United States of America, Petitioner, states:

24 1. The United States brings this proceeding to judicially enforce an Internal
25 Revenue Service (IRS) administrative summons pursuant to sections 7402(b) and
26 7604(a) of the Internal Revenue Code (26 U.S.C.). The IRS properly served [REDACTED]
27 [REDACTED] Respondent, with a summons requesting that he appear, testify, and produce
28 documents. To date, however, Respondent has failed to comply with the IRS summons.

2. Respondent resides in the Central District of California.

3. The IRS is, and at all relevant times was, investigating Respondent's federal
income tax liabilities for the [REDACTED] through [REDACTED] tax years. Declaration of Revenue

1 Agent [REDACTED] Decl.) ¶¶ 5-6. The IRS investigation also
2 concerns whether Respondent received income on behalf of other individuals. [REDACTED]
3 Decl. ¶ 6.

4 4. In connection with this investigation, an IRS summons for testimony and
5 documents was issued and served on Respondent by taping an attested copy to the front
6 door of Respondent's last and usual place of abode. [REDACTED] Decl. ¶ 9. The summons, a
7 true and correct copy of which is attached to the [REDACTED] Decl. as Exhibit 1, was served
8 on February 8, [REDACTED]. A true and correct copy of the summons' certificate of service is
9 attached to the [REDACTED] Decl. as Exhibit 2.

10 5. The summons requested that Respondent appear at an IRS office in Los
11 Angeles, California, on March 5, [REDACTED], and give testimony. [REDACTED] Decl. ¶ 8; Ex. 1. It
12 also requested that Respondent produce "books, records, papers, and other data" relating
13 to certain foreign financial accounts and foreign entities that he owned or controlled.
14 [REDACTED] Decl. Ex. 1.

15 6. Respondent did not appear before the IRS on the date listed on the
16 summons. [REDACTED] Decl. ¶ 10. Nor did he produce the documents requested in the IRS
17 summons. [REDACTED] Decl. ¶ 10.

18 7. The IRS subsequently requested that Respondent comply with the summons
19 by appearing before it on April 27, [REDACTED] [REDACTED] Decl. ¶ 11. At Respondent's request,
20 the IRS agreed to reschedule that meeting to June 1, [REDACTED] [REDACTED] Decl. ¶ 12.
21 Respondent did not appear before the IRS on that date or produce any responsive
22 documents. [REDACTED] Decl. ¶ 12.

23 8. Respondent has failed to give testimony and to produce the required books,
24 records, papers, and other data in response to the summons, and such failure has
25 continued to the date of this petition. [REDACTED] Decl. ¶ 13.

26 9. The IRS is not in possession or control of the books, records, papers, and
27 other data sought by the summons. [REDACTED] Decl. ¶ 15.

28 //

1 10. All administrative steps required by the Internal Revenue Code in
2 connection with the issuance and service of the summons have been taken. [REDACTED]
3 Decl. ¶ 16.

4 11. The testimony and books, records, papers, and other data sought by the
5 summons are necessary in order to properly pursue and complete the investigation.
6 [REDACTED] Decl. ¶ 17.

7 12. No recommendation for criminal prosecution of Respondent has been made
8 by the IRS to the United States Department of Justice. In addition, no Department of
9 Justice referral, as described in 26 U.S.C. § 7602(d), is in effect with respect to
10 Respondent. [REDACTED] Decl. ¶ 18.

11 WHEREFORE, Petitioner requests that the Court enforce the IRS administrative
12 summons by:

13 A. Ordering Respondent to appear and show cause why Respondent should not
14 be compelled to give testimony and to produce the documents specified in the summons;

15 B. Ordering Respondent to appear before an authorized representative of the
16 IRS at a time and place to be determined by the IRS in order to give testimony and
17 produce the documents specified in the summons; and

18 C. Granting the Petitioner its costs in this proceeding and such other and
19 further relief as may be just and proper.

20
21 Dated: September 12, [REDACTED]

Respectfully submitted,

[REDACTED]
United States Attorney

[REDACTED]
Assistant United States Attorney
Chief, Tax Division

[REDACTED]
Assistant United States Attorney

Attorneys for Petitioner
UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Section 7602(a) of the Internal Revenue Code (26 U.S.C.) provides that:
4 For the purpose of ascertaining the correctness of any return, making a
5 return where none has been made, determining the liability of any person
6 for any internal revenue tax or the liability at law or in equity of any
7 transferee or fiduciary of any person in respect of any internal revenue tax,
8 or collecting any such liability, the Secretary is authorized--

- 9 1. To examine any books, papers, records, or other data which may be
10 relevant or material to such inquiry;
- 11 2. To summon the person liable for tax or required to perform the act, or
12 any officer or employee of such person, or any person having
13 possession, custody, or care of books of account containing entries
14 relating to the business of the person liable for tax or required to
15 perform the act, or any other person the Secretary may deem proper,
16 to appear before the Secretary at a time and place named in the
17 summons and to produce such books, papers, records, or other data,
18 and to give such testimony, under oath, as may be relevant or
19 material to such inquiry; and
- 20 3. To take such testimony of the person concerned, under oath, as may
21 be relevant or material to such inquiry.

22 See Crystal v. United States, 172 F.3d 1141, 1143-44 (9th Cir. 1999).

23 Internal Revenue Code sections 7402(b) and 7604 authorize United States district
24 courts to issue orders compelling, through their powers of contempt, compliance with
25 IRS summonses. See United States v. Gilleran, 992 F.2d 232, 233 (9th Cir. 1993). An
26 IRS summons is issued administratively, "but its enforcement is only by federal court
27 authority in 'an adversary proceeding' affording the opportunity for challenge and
28 'complete protection to the witness.'" United States v. Church of Scientology of

1 California, 520 F.2d 818, 821 (9th Cir. 1975) (quoting Donaldson v. United States, 400
2 U.S. 517, 525, 91 S. Ct. 534, 539, 27 L. Ed. 2d 459 (1971)).

3 Because the enforcement of an IRS summons invokes the process of the court, the
4 court will not enforce a summons if it would constitute an abuse of process. United
5 States v. Powell, 379 U.S. 48, 58, 85 S. Ct. 248, 255, 13 L. Ed. 2d 112 (1964). Such an
6 abuse would occur if the summons was issued for an improper purpose, such as
7 harassment. Id., 379 U.S. at 58; United States v. Stuart, 489 U.S. 353, 360, 109 S. Ct.
8 1183, 1188, 103 L. Ed. 2d 388 (1989). Accordingly, to obtain enforcement of an IRS
9 summons, the government is required to make a *prima facie* case for enforcement of the
10 summons. Crystal, 172 F.3d at 1143-44; Gilleran, 992 F.2d at 233.

11 A *prima facie* case requires only that the government make a “minimal” showing
12 that it acted in “good faith in issuing the summons.” United States v. Stuart, 489 U.S. at
13 359. Specifically, it must show that: (1) the investigation will be conducted pursuant to
14 a legitimate purpose; (2) the inquiry may be relevant to the purpose; (3) the information
15 sought is not already within the IRS’s possession; and (4) it has followed the
16 administrative steps required by the Internal Revenue Code. Powell, 379 U.S. at 57-58.
17 The government’s “burden is minimal ‘because the statute must be read broadly in order
18 to ensure that the enforcement powers of the IRS are not unduly restricted.’” Crystal,
19 172 F.3d at 1144 (quoting Liberty Financial Services v. United States, 778 F.2d 1390,
20 1392 (9th Cir. 1985)). Once the government has made its *prima facie* case, the
21 summoned party bears the “heavy” burden to “disprove the actual existence of a valid
22 civil tax determination or collection purpose by the Service[.]” Crystal, 172 F.3d at
23 1144.

24 Normally, the government makes the “good faith” showing of materiality and
25 relevancy required by Powell in the petition to enforce the summons and the
26 accompanying declaration of the issuing IRS agent. See Crystal, 172 F.3d at 1144
27 (quoting United States v. Dynavac, Inc., 6 F.3d 1407, 1414 (9th Cir. 1993)).
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1 As to the required showing of relevance, the Supreme Court stated in United
2 States v. Arthur Young & Co., 465 U.S. 805, 814, 104 S. Ct. 1495, 1501, 79 L. Ed. 2d
3 826 (1984) that:

4 As the language of § 7602 clearly indicates, an IRS summons is not to be
5 judged by the relevance standards used in deciding whether to admit
6 evidence in federal court. *Cf.* Fed. Rule Evid. 401. The language “may be”
7 reflects Congress’ express intention to allow the IRS to obtain items of even
8 potential relevance to an ongoing investigation without reference to its
9 admissibility. The purpose of Congress is obvious: the Service can hardly
10 be expected to know whether such data will in fact be relevant until it is
11 procured and scrutinized. As a tool of discovery, the §7602 summons is
12 critical to the investigation and enforcement functions of the IRS, see
13 United States v. Powell, 379 U.S. 48, 57, 85 S. Ct. 248, 254, 13 L. Ed. 2d
14 112 (1964); the Service therefore should not be required to establish that the
15 documents it seeks are actually relevant in any technical, evidentiary sense.
16 (emphasis in original).

17 “Once the Government has established its *prima facie* case, the district court
18 issues an order requiring the party on whom the summons has been served to show
19 cause, at an enforcement hearing, why compliance with the summons should not be
20 required.” United States v. Samuels, Kramer and Co., 712 F.2d 1342, 1345 (9th Cir.
21 1983). The burden of proof is shifted to the person challenging the summons to “refute
22 the Government’s Powell showing of good faith to oppose successfully the enforcement
23 of an IRS summons.” *Id.* at 1346; see also Crystal, 172 F.3d at 1144. “The taxpayer
24 may challenge and attempt to rebut the *prima facie* case of good faith the government
25 has established or attempt to show that enforcement of the summons would otherwise
26 constitute an abuse of process.” Gilleran, 992 F.2d at 233; see also Crystal, 172 F.2d at
27 1144. “The taxpayer, however, carries a heavy burden of convincing the district court to
28 deny enforcement.” Stuckey, 646 F.2d at 1372; accord Crystal, 172 F.3d at 1144.

1 “[S]ummons enforcement proceedings should be summary in nature and
2 discovery should be limited.” Derr, 968 F.2d at 945, quoting Stuart, 489 U.S. at 369,
3 quoting S. Rep. No. 97 494, 97th Cong. 2d Sess., vol. 1, 285 (1982); see also, Church of
4 Scientology, 520 F.2d at 821.¹ “The taxpayer must allege specific facts and evidence to
5 support his allegations’ of bad faith or improper purpose.” Crystal, 172 F.3d at 1144
6 (quoting United States v. Jose, 131 F.3d 1325, 1328 (9th Cir. 1997) and Liberty
7 Financial Services, 778 F.2d at 1392). A party opposing the summons must be able to
8 come forward with at least “a minimal amount of evidence just to entitle him or her to an
9 evidentiary hearing.” Stuckey, 646 F.2d at 1372. In this Circuit, the Court may allow
10 limited discovery “only if the taxpayer can make a substantial preliminary showing of
11 abuse or wrongdoing.” Stuckey, 626 F.2d at 1374. But “[n]aked allegations of improper
12 purpose are not enough: The taxpayer must offer some credible evidence support his
13 charge.” Clarke v. United States, 134 S.Ct. 2361, 2367 (2014)

14 In Donaldson, 400 U.S. at 528-29, the Supreme Court noted that Rule 81(a)(3) of
15 the Federal Rules of Civil Procedure allows the Court to limit the application of the
16 federal rules in summons enforcement proceedings. In keeping with the summary nature
17 of these proceedings, the show cause order is an appropriate tool to place the burden of
18 proof on the summoned party after the government’s *prima facie* case has been made.

19 If no substantial challenge to the validity of the summons is made in a sworn
20 affidavit or declaration alleging specific facts, the matter should be decided on the
21 pleadings before the district court with no further proceedings, the summons should be
22 enforced, and the IRS should be allowed to obtain the summoned testimony, books,

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24 ¹ The Fifth Circuit has discussed the procedure to be followed in summons enforcement proceedings:

25 To ascertain whether there is any basis for questioning the summons, the traditional show cause
26 order is an effective and appropriate procedural tool. Indeed, it harmonizes procedure with the
27 substantive principle that puts the burden on the summoned party “of showing an abuse of the
28 court’s process.” Powell, (note 17, *supra*). In no way does its use extinguish the adversary
proceeding which the decisions call for. Rather it is a principle means by which the enforcing
Court can determine whether there is anything to “hear” and if so to give proper scope and
direction to an orderly, but expeditious, adjudication of the points in controversy.

United States v. Newman, 441 F.2d 165, 169 (5th Cir.1971).

1 papers, records, and other data. See, e.g., Liberty Financial Services, 778 F.2d at 1392-
2 93 (IRS affidavit was not controverted).

3 “Enforcement of a summons is generally a summary proceeding to which a
4 taxpayer has few defenses.” Derr, 968 F.2d at 945; accord Crystal, 172 F.3d at 1144.
5 “[T]he sole purpose of the enforcement proceeding is to ensure that the IRS has issued
6 the summons for proper purpose and in good faith, and ... the district court is strictly
7 limited to enforcing or denying IRS summonses.” Jose, 131 F.3d at 1328-29.

8 **II. CONCLUSION**

9 The filing of the petition to enforce IRS summons and the declaration of the
10 issuing IRS agent establish the government’s *prima facie* case for enforcement of the
11 summons. As attested to in the declaration of the IRS agent who issued the summons,
12 the IRS is conducting an investigation to determine the tax liabilities of the taxpayer for
13 the tax periods identified in the summons; the information sought by the summons may
14 be relevant to that purpose; the IRS does not already possess the requested information;
15 and the IRS followed the administrative steps required by the Internal Revenue Code for
16 issuance and service of the summons. The Court should issue an order directing
17 Respondent to show cause why the IRS summons should not be enforced.

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1 If Respondent fails to respond to or rebut the government's *prima facie* case for
2 enforcement, then the Court should issue an order enforcing the IRS summons and
3 compelling Respondent to appear before an authorized representative of the IRS at a
4 time and place to be determined by the IRS, and give testimony and produce the books,
5 records, papers, and other data for examination and copying as required by the IRS
6 summons.

7 Dated: September 12, [REDACTED]

Respectfully submitted,

8 [REDACTED]
United States Attorney

9 [REDACTED]
Assistant United States Attorney
Chief, Tax Division

11 [REDACTED]

12 _____
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