

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| <i>Petitioner</i> |) | |
| v. |) | No. 2:15-mc-330-DBH |
| |) | |
| SUSAN MOORE and SUSAN MOORE, |) | |
| <i>as president of SUSAN MOORE</i> |) | |
| ENTERPRISES, |) | |
| |) | |
| <i>Respondents</i> |) | |

**REPORT AND RECOMMENDED DECISION ON PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONSES**

On October 9, 2015, the government filed a petition, pursuant to 26 U.S.C. §§ 7402(b) and 7604(a), to enforce two Internal Revenue Service summonses that had been previously served upon the respondent in both named capacities. ECF No. 1. On October 13, 2015, I ordered the respondent to appear before the court on December 9, 2015, to show cause why she should not be compelled to comply with the summons. ECF No. 2. The respondent was served in-hand on October 21, 2015, with a copy of the order and with notice of the hearing date. ECF No. 3. The respondent failed to appear in either capacity.

On December 10, 2015, based on the respondent’s failure to appear, the government filed a motion for issuance of a report and recommendation enforcing the summonses. ECF No. 5. I now recommend that the court grant the government’s motion and order the respondent to appear in response to the IRS’s summons as indicated below.

I. Proposed Findings of Fact

The government's motion is supported by the Declarations of Revenue Officer Miranda Shorty (ECF Nos. 1-3 & 1-4). Based on the *prima facie* showing set forth in the declarations, I ordered the respondent, Susan Moore, to appear before the court on December 9, 2015, to show cause why she should not be compelled to comply with the summonses.

On December 9, 2015, I convened the scheduled hearing on the order to show cause. Moore did not attend. An affidavit of service reflects that the order to show cause was served on Moore in hand on October 21, 2015. ECF No. 3. The government filed the instant motion the day after Moore failed to appear.

II. Discussion

This matter comes before the court pursuant to 26 U.S.C. 7402(b) and 7604, which clearly confer jurisdiction on the district court to enforce an IRS summons by compelling a person to attend, testify, and produce books, papers, and other documents in response to an administrative summons. The only jurisdictional prerequisite is that the person must reside in, or be found in, the district. 26 U.S.C. § 7402(b). Moore resides in Gorham, Maine. ECF No. 3.

In order to obtain enforcement related to the administrative summons, the government need show only

that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to that purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed—in particular, that the “Secretary of his delegate,” after investigation, has determined the further examination to be necessary and has notified the taxpayer in writing to that effect.

United States v. Powell, 379 U.S. 48, 57-58 (1964). Based on the representations set forth in Revenue Officer Shorty's declarations, I concluded that this *prima facie* showing was met by the

government in this case and ordered Moore to appear and show cause why the summons should not be enforced. This was an invitation to Moore to demonstrate, for example, that “the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on [her] to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.” *Id.* at 58. In other words, the order to show cause effectively shifted the burden to Moore, and her failure to respond to the order and her non-appearance at the related hearing result in a failure to carry that burden. *United States v. Kis*, 658 F.2d 526, 538 (7th Cir. 1981).

Based on Moore’s failure to carry her burden on this court’s prior order to show cause, I find that Moore has unjustifiably failed to comply with the administrative summons following service of an attested copy in hand, and has neglected or refused to obey the same. *See* 26 U.S.C. § 7604(b). Further, I find, based on the declaration submitted in support of the original petition to enforce the summons, as well as Moore’s failure to respond to the order to show cause, that the administrative summons was issued for legitimate tax assessment purposes under 26 U.S.C. § 7602, that the material sought is relevant and not already in the government’s possession, and that there has been compliance with the administrative steps required for issuance of the summons. The government’s *prima facie* burden is meant to be minimal and there is nothing apparent from the record to suggest that any heightened scrutiny is called for in this instance. *See United States v. Samuels, Kramer & Co.*, 712 F.2d 1342, 1344-45 (9th Cir. 1983).

Based on these findings, Susan Moore is presently subject to process by means of physical attachment, or arrest, so that the court may proceed to a compulsory hearing of the petition per section 7604(b). However, because the government has made its *prima facie* showing in support of its petition and because Moore has failed to carry her burden of demonstrating improper purpose, the court may also presently grant the government the relief it requests on its petition and

order Moore to comply with the summons without further hearing at this juncture. *See United States v. Snowden*, No. 2:08-mc-00038 LKK GGH, 2008 WL 2169524, at *2 (E.D. Cal. May 23, 2008), *adopted* 2008 WL 420892 (E.D. Cal. June 18, 2008).

III. Conclusion

I now recommend that the court grant the government's petition and order the respondent, Susan Moore, individually and as president of Susan Moore Enterprises, to obey the two summonses and appear at 220 Maine Mall Road, South Portland, Maine 04106, on February 15, 2016, at 1:30 p.m., to be sworn, to give testimony, and to produce the requested documents for examination and copying, the examination to continue from day to day until completed. Moore is hereby placed on notice that her continued actions could result in arrest and/or a finding of civil contempt and a resulting court order of imprisonment in order to obtain her compliance.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days after being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 15th day of January, 2016.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge