

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

CASE No. 8:18-mc-90-T-30TGW

NIGEL A. CASTANHEIRO,

Respondent.

REPORT AND RECOMMENDATION

The United States of America seeks to enforce in this matter an Internal Revenue Service (IRS) summons served upon the respondent. For the following reasons, I recommend that the summons be enforced.

In this case, a petition was filed stating that an investigation was being conducted into the respondent's tax liability for the years 2014, 2015 and 2016. It was alleged further that the respondent is in possession of testimony and documents concerning the investigation and that a summons was issued by the Internal Revenue Service directing the respondent to appear before a revenue officer and produce documents for examination. On June 19, 2018, the respondent appeared in response to the summons but failed to produce the required books, papers, records, or other data.

A revenue officer has filed a declaration under penalty of perjury stating that the books, papers, records, and other data may be relevant to the respondent's federal income tax liability for the tax periods ending December 31, 2014, through December 31, 2016. The petition also states that all administrative steps required by the Internal Revenue Code for the issuance of a summons have been taken, and that a Justice Department referral is not in effect for the years at issue.

An Order to Show Cause was issued directing the respondent to file a written response to the Government's petition within twenty (20) days of service (Doc. 2). The Order further directed that, should the respondent raise any objection to the enforcement of the summons, he should appear for a hearing on November 29, 2018, at 11:00 a.m., to show cause why the summons should not be enforced. The Order and accompanying documents were personally served on the respondent on October 29, 2018 (Doc. 3). The respondent did not respond to the Government's petition and did not appear for the scheduled hearing.

The Supreme Court held in United States v. Powell, 379 U.S. 48, 57-58 (1964), that a summons is to be enforced upon a showing "that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the [IRS's] possession, and that the administrative steps

required by the Code have been followed....” In this case, the Government has made such a showing through the petition and the verified declarations. See United States v. Southeast First National Bank of Miami Springs, 655 F.2d 661, 664 (5th Cir. 1981). The respondent has failed to controvert the showing or raise any other viable defense to the summons. I therefore recommend that the respondent be ordered to comply with the IRS summons served upon him.

Respectfully submitted,



THOMAS G. WILSON
UNITED STATES MAGISTRATE JUDGE

DATED: NOVEMBER 29, 2018

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. 11th Cir. R. 3-1.