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11 IN THE UNITED STATES DISTRICT COURT FOR THE  
12 DISTRICT OF ARIZONA

13  
14 UNITED STATES OF AMERICA, )  
 ) Civil No. 2:09-cv-00341-ROS  
15 Plaintiff, )  
 )  
16 v. ) **MEMORANDUM OF POINTS AND**  
 ) **AUTHORITIES IN SUPPORT OF MOTION**  
17 ) **FOR ENTRY OF DEFAULT JUDGMENT**  
 ) **AGAINST THOMASITA E. TAYLOR**  
18 THOMASITA E. TAYLOR, )  
 )  
19 Defendant. )  
 )  
20 )

21 This brief is submitted in support of the United States' Motion for Entry of Default  
22 Judgment against Thomasita Taylor.

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24 **I. STATEMENT**

25 A duly authorized delegate of the Secretary of Treasury made assessments for unpaid  
26 federal taxes, interest, and related penalties and a separate civil penalty against defendant Taylor,  
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1 for the periods ending December 31, 1993 through December 31, 1996 and December 31, 2000  
2 through December 31, 2006. Declaration of Internal Revenue Service Technical Advisor Charles  
3 Reynolds (hereinafter “Reynolds Decl.”). The Internal Revenue Service (“IRS”) has made timely  
4 notice of, and demand for payment of, the aforementioned assessments on defendant Taylor, as  
5 required by 26 U.S.C. § 6303. Reynolds Decl. ¶¶ 4-9, 12-13, 16-17, 20-21, & 24-27. Despite  
6 notice and demand for payment of assessments, defendant Taylor has neglected, refused and/or  
7 failed to pay the assessments and there remains due and owing to the United States, including  
8 accrued but unassessed interest and applied credits, the total of \$184,564.50, plus statutory  
9 interest running from August 14, 2009, as provided by law. Reynolds Decl. ¶ 30.

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13 The tax, penalties, and interest were assessed in 1996-1997, 2000, and 2005-2007. The  
14 United States filed the complaint to commence this action on February 19, 2009 to reduce the  
15 assessments to judgment. Dkt. No. 1. Defendant Taylor was personally served on April 12, 2009  
16 with a copy of the summons and complaint in this matter. Dkt. No. 4. On May 22, 2009, the  
17 United States moved the Clerk of the Court for entry of default of defendant Thomasita E.  
18 Taylor. Dkt. No. 5. That same day, the Clerk of the Court entered default pursuant to Fed. R.  
19 Civ. P. 55(a). Dkt. No. 6. Defendant Taylor was notified via Certified Mail, both to the address  
20 of record with the IRS and an alternate address used by defendant Taylor, of the United States’  
21 motion to move the Clerk of the Court for entry of default against her for failing to answer or  
22 otherwise plead. Declaration of Trial Attorney Andy R. Camacho (hereinafter “Camacho Decl.”)  
23 ¶¶ 2-3.

## 24 II. QUESTIONS PRESENTED

1 Whether the United States is entitled to a default judgment against defendant Ms. Taylor  
2 as to her federal income tax liabilities.

### 3 III. ARGUMENT

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5 On May 22, 2009, the Clerk of the Court entered the default of defendant Taylor. “Upon  
6 default, the well-pleaded allegations of the complaint relating to liability are taken as true,” but  
7 not allegations as to the amount of damages. *Dundee Cement Co. v. Howard Pipe & Concrete*  
8 *Products*, 722 F.2d 1319, 1323 (7th Cir. 1983); *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d  
9 915, 917 (9th Cir. 1987). The Court has discretion whether to enter default judgment. *See Lau*  
10 *Ah Yew v. Dulles*, 236 F.2d 415 (9th Cir. 1956). As the Ninth Circuit observed in *H.F. Livermore*  
11 *Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689 (9th Cir. 1970), default judgments are  
12 appropriate  
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15 when the adversary process has been halted because of an essentially unresponsive  
16 party. In that instance, the diligent party must be protected lest he be faced with an  
17 interminable delay and continued uncertainty as to his rights. The default judgment  
18 remedy serves as such a protection. Furthermore, the possibility of a default is a  
deterrent to those parties who choose delay as part of their litigative strategy.

19 *H.F. Livermore Corp.*, 432 F.2d at 691.

20 In *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), the Court identified seven  
21 factors that districts court may consider in exercising their discretion to award a default  
22 judgment:  
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24 (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive  
25 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5)  
26 the possibility of a dispute concerning material facts; (6) whether the default was due to  
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1 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil  
2 Procedure favoring decision on the merits.

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4 *Id.* at 1471-72.

5 “In applying this discretionary standard, default judgments are more often granted than  
6 denied.” *PepsiCo, Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999). In this  
7 instance, Factor 2 (the merits of the government’s claim) and Factor 3 (the sufficiency of the  
8 complaint) weigh heavily in favor of granting the United States’ motion for default judgment  
9 against defendant Taylor. “Introducing Certificates of Assessments and Payments establishes a  
10 prima facie case for the United States.” *United States v. Jones*, 33 F.3d 1137, 1139 (9th Cir.  
11 1994). These Certificates establish the government’s prima facie burden, and the burden shifts to  
12 Defendant to show that it is not liable for the assessments. *See id.* Moreover, these Certificates  
13 establish that the tax liabilities were properly assessed against defendant Taylor (26 U.S.C. §§  
14 6201-6203), and that the notices and demand for payment of the liabilities were properly sent (26  
15 U.S.C. §§ 6303(a) and 6321). *See, e.g., United States v. Chila*, 871 F.2d 1015, 1017-1019 (11th  
16 Cir. 1989). And as it pertains to the tax years defendant Taylor did not file her tax return (2000,  
17 2001, 2002 & 2003), the Reynolds Declaration provides additional detailed support for those  
18 years with evidence of the sources of defendant Taylor’s income, allowed deductions, and  
19 assessed federal income tax liability. Reynolds Declaration ¶¶ 9-12, 13-16, 17-20, 21-24.

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24 The United States is “required to state a claim on which [it] may recover.” *Elektra Entm’t*  
25 *Group, Inc. v. Crawford*, 226 F.R.D. 388, 392 (C.D. Cal. 2005) (citation omitted). Because the  
26 United States established the merits of defendant Taylor’s federal income tax liabilities, as set  
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1 forth in the Reynolds Declaration, and described in detail the tax liabilities in its complaint, these  
2 factors weigh heavily in favor of entering the default judgment.

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4 The IRS has been specifically authorized by Congress to collect outstanding federal tax  
5 liabilities. 26 U.S.C. §§ 6321, 6322, 6331(a). In *Phillips v. Commissioner*, 283 U.S. 589, 595  
6 (1931), the Supreme Court held that “[t]he right of the United States to collect its internal  
7 revenue by summary administrative proceedings has long been settled.” *See also Commissioner*  
8 *v. Shapiro*, 424 U.S. 614 (1976). Under 26 U.S.C. § 7401, the IRS authorizes the Department of  
9 Justice to institute proceedings seeking to collect or recover federal taxes.

10  
11 In this case, the United States has been authorized to institute this action by the IRS to  
12 collect defendant Taylor’s outstanding federal income tax liabilities. (*See* Complaint, ¶2.)  
13 Defendant Taylor has been assessed for, and notified of, her federal income tax liabilities for the  
14 following years: 1993-96 and 2000-06. Reynolds Decl. ¶¶4-9, 12-13, 16-17, 20-21, & 24-27.  
15 The United States also has served defendant Taylor with a summons and complaint and provided  
16 notice of the United States’ motion entry of default against her; yet, defendant Taylor has not  
17 taken any steps to answer or otherwise challenge the government’s claim. Dkt. No. 4-5;  
18 Camacho Decl. ¶ 4. Accordingly, the United States has sufficiently pled its action to reduce  
19 federal tax liabilities to judgment and has shown that it will succeed on that claim. Again,  
20 Factors 2 & 3 factors weigh in favor of entering the default judgment as well as Factors 5 & 6.

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22 A court may consider the possibility of prejudice to the plaintiff (Factor 1) in exercising its  
23 discretion to enter a default judgment. Failure to reduce the assessments to judgment will  
24 prejudice the United States in that assessments of federal income taxes are subject to a collections

1 statute of limitations. By reducing the assessments to judgment, the United States extends the  
2 period by which it may collect assessed federal income taxes. Defendant Taylor's history of non-  
3 compliance with her federal income tax filing requirements and failure to pay her federal tax  
4 liabilities owed for multiple tax years demonstrate that the United States will be prejudiced if the  
5 Court does not grant its motion for default judgment. Therefore, the danger of prejudice to the  
6 United States (Factor 1) weighs in favor of entering the default judgment against defendant  
7 Taylor.  
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10 Factor 5 addresses the possibility of a dispute regarding the material facts of the case.  
11 Because upon entry of default the well-pleaded allegations of the complaint are taken as true, no  
12 dispute exists as to the material facts. *Elektra Entm't Group, Inc.*, 226 F.R.D. at 393. When  
13 accepted as true, the allegations in the United States' Complaint are sufficient to establish that (1)  
14 timely assessments against defendant Taylor for federal income tax, interest, penalties, and other  
15 statutory additions were made for the tax periods at issue in this case; (2) proper notice has been  
16 given and demand for payment of these assessments has been made on defendant Taylor; and (3)  
17 defendant Taylor has not fully paid these assessments and additional accrued interest and  
18 penalties. *See* Complaint ¶¶ 7-9. Thus, Factor 5 weighs in favor of entering default judgment.  
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22 There is no indication that the failure of defendant Taylor to file an Answer or otherwise  
23 appear is due to excusable neglect.<sup>1</sup> The United States properly served defendant Taylor. Dkt.  
24 No. 4. On May 22, 2009, the Clerk of the Court entered default against defendant Taylor. Dkt.  
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27 <sup>1</sup> Defendant Taylor is not an infant, incompetent person, or a person in the military service or otherwise exempted from  
28 default judgment under the Service Members Civil Relief Act, 50 App. U.S.C. § 501.

1 No. 6. Four months have passed since defendant Taylor was served and no appearance has been  
2 made nor has counsel for the United States been contacted by defendant Taylor or a  
3 representative of hers. Camacho Decl. ¶ 4. Accordingly, Factor 6 weighs in favor of entering  
4 default judgment against defendant Taylor.  
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6 Although there is a policy of favoring decisions on the merits (Factor 7), the United States  
7 will be prejudiced if it does not reduce the assessment to judgment. Defendant Taylor had more  
8 than sufficient time to come forward and challenge this cause of action but she has failed to do  
9 so.  
10

11 As demonstrated above, the factors set forth in *Eitel* weigh in favor of granting a default  
12 judgment against defendant Taylor and reducing the assessments to judgment.  
13

#### 14 IV. CONCLUSION

15 The evidence demonstrates that Thomasita E. Taylor is indebted to the United States for  
16 tax, interest, and penalties assessed for each of the tax years at issue, plus additional statutory  
17 interest and other statutory additions as provided by law. Based on the foregoing, the United  
18 States is therefore entitled to judgment as a matter of law reducing the assessments against  
19 defendant Taylor to judgment.  
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24 WHEREFORE, the United States respectfully requests that the Court grant this request for  
25 default judgment against Thomasita E. Taylor and that it order any additional relief to which the  
26 United States may be entitled.  
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1 Respectfully submitted this 22nd day of September, 2009.

2  
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