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

13  
14 UNITED STATES OF AMERICA, )

15 Plaintiff, )

16 v. )

17 THOMASITA E. TAYLOR, )

18 Defendant. )  
19 )  
20 )

Civil No. 2:09-cv-00341-ROS

) UNITED STATES' OPPOSITION TO  
) MOTION TO SET ASIDE DEFAULT  
) JUDGMENT AND OPPOSITION TO  
) MOTION TO DISMISS WITH PREJUDICE  
) COMPLAINT TO REDUCE FEDERAL TAX  
) ASSESSMENTS TO JUDGMENT

21 The United States of America ("United States"), by and through its undersigned counsel,  
22 responds to the Defendant's Motion to Set Aside Default Judgment and Motion to Dismiss With  
23 Prejudice Complaint to Reduce Federal Tax Assessments to Judgment. For the reasons addressed  
24 below, the defendant's motion to set aside the default judgment and motion to dismiss the  
25 complaint should be denied.  
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## I. BACKGROUND

The United States filed the complaint to commence this action on February 19, 2009 to reduce the assessments to judgment. Dkt. No. 1. On April 12, 2009, defendant Taylor was personally served with a copy of the summons and complaint in this matter. Dkt. No. 4. On May 22, 2009, the United States moved the Clerk of the Court for entry of default against defendant Taylor. Dkt. No. 5. That same day, the Clerk of the Court entered a default against defendant Taylor pursuant to Fed. R. Civ. P. 55(a). Dkt. No. 6. On or about May 22, 2009, defendant Taylor was notified via Certified Mail, both to the address of record with the IRS and an alternate address used by defendant Taylor, of the United States' motion to move the Clerk of the Court for entry of default against her for failing to answer or otherwise plead. Dkt. No. 9-5, ¶¶ 2-3. Between April 12, 2009 and September 22, 2009, defendant Taylor did not respond to the United States' complaint or otherwise contact the undersigned attorney regarding the complaint. *Id.* at ¶4. On October 8, 2009, defendant Taylor filed a Response to United States Motion for Entry of Default Judgment Against Thomasita E. Taylor. Dkt. No. 10. On October 28, 2009, the United States filed a Reply in Support of its Motion for Entry of Default Judgment Against Thomasita E. Taylor. Dkt. No. 11. Three weeks after the Court entered the default judgment against defendant Taylor, she filed a motion to set aside the default on September 27, 2010. Dkt. No. 14. In addition, defendant Taylor filed on September 27, 2010 a motion to dismiss the United States' complaint with prejudice. Dkt. No. 15.

In defendant Taylor's motion to set aside the default judgment, she raises multiple frivolous arguments. First, defendant Taylor argues that she did not respond to the United States'

1 complaint because she did not have any money to pay her purported attorney Gregory Robinson  
2 and that “[t]he advice given [Taylor] by Robinson not to file an answer in this matter is obviously  
3 incompetent and was extremely prejudicial and detrimental to [Taylor].” Dkt. No. 14, ¶1.  
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5 Second, defendant Taylor argues that the Court does not have jurisdiction under Title 26 of the  
6 United States Code nor could she locate an express act of Congress or Executive Order providing  
7 the Internal Revenue Service (“IRS”) jurisdiction to operate in the United States. *Id.* at ¶2.  
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9 Third, defendant Taylor claims that the IRS has not provided her with validation of her federal  
10 income debt pursuant to 15 U.S.C. §1692(g). *Id.* at ¶3. Fourth, the Forms 4340 submitted by the  
11 United States are purportedly invalid because they were not signed by a duly authorized  
12 certifying officer “under penalty of perjury” pursuant to IRC 6065 and *Brafman v. US*, 384 F.2d  
13 (1967). *Id.* at ¶4.

15 Equally frivolous is defendant Taylor’s motion to dismiss the United States’ complaint.  
16 Defendant Taylor raises the same arguments set forth in the motion to set aside the default  
17 judgment as the basis for her motion to dismiss the United States’ complaint with prejudice.

## 19 II. ARGUMENTS

20 Defendant Taylor’s two motions lack any merit. They raise many of the same frivolous  
21 arguments already presented to, and rejected by, this Court. Defendant Taylor’s primary  
22 motivation appears to be to delay, hinder, and obstruct the IRS’s ability to collect federal taxes  
23 owed by her. Moreover, beyond the obvious lack of merit in each of defendant’s motions, she  
24 fails to reference – must less meet – the standard to set aside a default judgment under Fed. R.  
25 Civ. P. 55(c). Defendant Taylor’s motions should be denied.  
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1           **A. Defendant Taylor has not demonstrated “for good cause shown” as required**  
2           **under Fed. R. Civ. P. 55(c)**

3           A court may set aside an entry of default under Fed. F. Civ. P. 55 where there is “good  
4 cause” shown. *Franchise Holding II, LLC v. Huntington Restaurant Group, Inc.*, 375 F.3d 922,  
5 925 (9 th Cir. 2004). In deciding whether to set aside an entry of default judgment, there are  
6 three factors the Court considers: 1) whether the plaintiff will be prejudiced if the Court sets aside  
7 the default judgment; 2) whether the defendant has a meritorious defense; and 3) whether  
8 culpable conduct of the defendant led to the default. *See TCI Group Life Ins. Plan v. Knoebber*,  
9 244 F.3d 691, 696 (9th Cir. 2001). These factors are to be considered conjunctively, with the  
10 decision of whether to set aside a default at the discretion of the Court. *Id.* at 695-96.  
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12           Defendant Taylor’s motion to set aside the default judgment fails to demonstrate a  
13 meritorious defense or lack of culpable conduct that led to the default. Two of the three factors  
14 weigh heavily against setting aside the default judgement. In addition, if the Court were to set  
15 aside the default, it would waste the Court’s valuable time on a baseless case and detract the  
16 United States’ attention from meritorious matters. In sum, defendant Taylor’s motion is nothing  
17 more than a meager attempt to delay, hinder and obstruct the IRS from collecting federal taxes  
18 owed by her.  
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1           **B. Defendant Taylor does not raise a meritorious defense to her federal income**  
2           **tax liability**

3           **1. The Court has subject matter jurisdiction to make and issue civil orders**  
4           **as may be necessary and appropriate for the enforcement of the internal**  
5           **revenue laws**

6           Defendant Taylor’s claim that the Court does not have jurisdiction to address Title 26 of  
7 the United States Code is belied by the plain language of Title 26 and Title 28 of the United  
8 States Code. Section 7402(a) of Title 26 provides, “The district court of the United States at the  
9 instance of the United States shall have such jurisdiction to make and issue in civil actions, writs  
10 and orders of injunction . . . and such other orders and processes, and to render judgments and  
11 decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.” 26  
12 U.S.C. §7402(a). Similarly, section 1340 of Title 28 provides, “The district courts shall have  
13 original jurisdiction of any civil action arising under any Act of Congress providing for internal  
14 revenue . . . .” 28 U.S.C. §1340. The fact that defendant Taylor denies the Court’s jurisdiction  
15 has little relevance as to whether the Court has jurisdiction. It is plain that defendant Taylor’s  
16 jurisdiction argument is frivolous and therefore should be disregarded.  
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20           **2. Defendant Taylor’s wages are income and subject to federal income tax**

21           As every hard-working and honest taxpayer knows, wages are income and the requirement  
22 to pay income taxes is not voluntary. *See Wilcox v. Commission of Internal Revenue*, 848 F.2d  
23 1007, 1008 (9th Cir. 1988); *see also Gilmore v. United States*, 1999 WL 1808404, at \*1 (Oct. 18,  
24 1999) (income tax payments are not optional). Defendant Taylor’s denial of owing any money to  
25 the IRS is frivolous. *See* Dkt. No. 14, ¶3. For federal income tax purposes, “gross income”  
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1 means all income from whatever source derived and includes compensation for services. *See* 26  
2 U.S.C. §61. Moreover, all compensation for personal services, no matter what the form of  
3 payment, must be included in gross taxable income. This includes salary or wages paid in cash, as  
4 well as the value of property and other economic benefits received because of services  
5 performed, or to be performed in the future. *See United States v. Connor*, 898 F.2d 942, 943-44  
6 (3d Cir.) *cert. denied*, 497 U.S. 1029 (1990).  
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9 As reflected in the Forms 4340 presented in support of the United States' motion for entry  
10 of default judgment and the declaration by IRS Technical Advisor Charles Reynolds, defendant  
11 Taylor earned wages during the 1993-96 and 2000-2006 tax years. Dkt. No. 7-9. Those wages  
12 are subject to federal tax. Moreover, 15 U.S.C. §1692 is not applicable to the collection of  
13 federal taxes as federal taxes are not considered "debt" for purposes of the Fair Debt Collections  
14 Practices Act. *See Beggs v. Rossi*, 145 F.3d 511, 512-13 (2d Cir. 1998); *Bankston v. IRS*, No. 08-  
15 cv-2233, 2008 WL 6461042 at \*5 (D. Colo. May 19, 2009); *Feck v. Sprigg*, No. C-1-00-336,  
16 2001 WL 897725 at \*3 (S.D. Ohio June 11, 2001). As such, defendant Taylor has not presented a  
17 meritorious defense as to why she is not subject to federal income tax.  
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### 20 **3. The IRS Forms 4340 are valid**

21 Defendant Taylor incorrectly argues that the IRS Forms 4340 are not valid because they  
22 were not signed under penalty of perjury. To support that claim, defendant Taylor cites to 26  
23 U.S.C. §6065 and *Brafman v. U.S.*, 384 F.2d 863 (1967). However, neither source supports  
24 defendant Taylor's argument.  
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1 Section 6065 imposes requirements on taxpayers with respect to returns and other written  
2 declarations filed by taxpayers. 26 U.S.C. §6065; *Bordbrock v. U.S.*, No. 99-cv-444, 2001 WL  
3 997420 at \*2001-5497 (D. Ariz. July 30, 2001). Contrary to defendant Taylor's contention,  
4 section 6065 does not impose a requirement on the IRS to sign documents under penalty of  
5 perjury. *Id.* Moreover, an IRS Form 4340 is presumptive proof of a valid assessment. *Hughes v.*  
6 *Comm'r*, 953 F.2d 531, 535-36 (9<sup>th</sup> Cir. 1992). The IRS Forms 4340 were prepared by the IRS  
7 and submitted by the United States to support the motion for entry of default judgment and  
8 therefore the requirements of section 6065 do not apply.  
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11 Defendant Taylor's reliance on *Brafman* is equally unavailing. In *Brafman*, the IRS  
12 assessment officer, as defined in IRS regulations at the time, had not signed the summary record  
13 of assessment within the specified statutory period. 384 F.2d at 865-66. *Brafman* does not stand  
14 for the proposition that an IRS Form 4340 must be signed under penalty of perjury. As such,  
15 defendant Taylor does not provide any support that IRS Forms 4340 must be signed under  
16 penalty of perjury.  
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19 Defendant Taylor does not raise a single valid argument to demonstrate a meritorious  
20 defense to the United States' complaint. Accordingly, defendant Taylor has not met the  
21 meritorious defense prong established by the Ninth Circuit to set aside an entry of default  
22 judgment.  
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1                   **C. Defendant Taylor knew of the United States’ complaint for months yet took no**  
2                   **action to file a responsive pleading**

3                   As previously raised in the United States’ reply in support of its motion for entry of  
4                   default judgment, the United States questions defendant Taylor’s desire to litigate this matter on  
5                   the merits as well as her diligence in responding to the United States’ complaint. More  
6                   importantly, defendant Taylor is unable to demonstrate a lack of culpable conduct as required to  
7                   meet the “good cause” standard of Fed. R. Civ. P. 55(c). *See TCI Group Life Ins. Plan*, 244 F.3d  
8                   at 696. As reflected in the record, defendant Taylor learned of the action against her on or about  
9                   April 12, 2009. Dkt No. 4; 5-1, ¶3. Shortly thereafter, the United States mailed a letter, dated  
10                  May 22, 2009, via Certified Mail to defendant Taylor, both to the address of record with the IRS  
11                  and an alternate address used by defendant Taylor. Dkt. No. 9-5, ¶2-3. The May 22, 2009 letter  
12                  informed defendant Taylor of the United States’ motion to move the Clerk of Court for entry of  
13                  default against her for failing to answer or otherwise plead. *Id.* Between May 22, 2009 and  
14                  September 22, 2009, defendant Taylor did not file a responsive pleading to the United States’  
15                  complaint nor did she contact the undersigned counsel regarding this matter. *See* Dkt. No. 5-2,  
16                  ¶¶3-4; Dkt. No. 9-5, ¶¶2-4. In a four month span, defendant Taylor had more than sufficient time  
17                  to protect her interests by filing a responsive pleading with the Court. Yet defendant Taylor  
18                  chose to do nothing until after the United States filed a motion for entry of default judgment and  
19                  even then did not provide a valid reason for her neglectful conduct.  
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25                  Even if the Court were to accept defendant Taylor’s contention that she did not have  
26                  sufficient funds to retain an attorney, that justification (alone or in combination with any other of  
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1 her arguments) is insufficient to meet the standard for lack of culpable conduct. Defendant  
2 Taylor admits that she met with an attorney regarding this matter and knew of the need to  
3 respond to the complaint. *See* Dkt. 14 at p. 1. However, despite defendant Taylor's knowledge of  
4 the United States' complaint and the need to respond, she did not take any steps to file an answer  
5 or otherwise respond in this action until the United States filed a motion for entry of default  
6 judgment. *Id.* Again, defendant Taylor's arguments and actions demonstrate a desire to delay,  
7 hinder and obstruct the orderly collection of income taxes owed by her. As such, it was  
8 defendant Taylor's culpable conduct that led to the entry of default judgment against her.  
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11 **D. The United States would be prejudiced if the Court sets aside the entry**  
12 **of default judgment against defendant Taylor**

13 The United States has demonstrated a desire to resolve this matter on the merits. As  
14 reflected in the record, the United States has provided defendant Taylor with multiple  
15 opportunities to file an answer or otherwise file a responsive pleading. Instead of litigating this  
16 matter on the merits, defendant Taylor has ignored the United States' complaint until it filed a  
17 motion for entry of default judgment. Moreover, defendant Taylor's three filings to date have  
18 raised only frivolous arguments to support her claims. As such, the United States will be  
19 prejudiced by the continued delay caused by defendant Taylor's dilatory conduct and  
20 unwillingness to participate in orderly litigation.  
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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the UNITED STATES' OPPOSITION TO MOTION TO SET ASIDE DEFAULT JUDGMENT AND OPPOSITION TO MOTION TO DISMISS WITH PREJUDICE COMPLAINT TO REDUCE FEDERAL TAX ASSESSMENTS TO JUDGMENT have been made via Certified Mail this 18th day of October, 2010, to the following:

Thomasita E. Taylor  
2516 W. Washington St.  
Phoenix, Arizona 85009

Thomasita E. Taylor  
1836 W. Mohave St.  
Phoenix, Arizona 85007

s/ Andy R. Camacho  
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