

Thomasita Taylor
2516 W. Washington
Phoenix, Arizona 85009
(602)413-1961

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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY: _____	DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	Civil No. 2:09-cv-00341-ROS
Plaintiff,)	
)	DEFENDANT'S RESPONSE TO
v)	UNITED STATES' MOTION FOR
)	ENTRY OF DEFAULT JUDGMENT
THOMASITA E. TAYLOR)	AGAINST THOMASITA E. TAYLOR
)	
Defendant,)	
Pro Se)	

COMES NOW the Defendant, Thomasita E. Taylor, pro se, and files this response to the United States' Motion for Entry of Default Judgment against Thomasita Taylor. Attached is a Memorandum Of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

1. STATEMENT

On July 7, 2008 Defendant Thomasita. E. Taylor entered into an installment agreement with the IRS for the years 1993, 1994, 1995, 1996, 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007. A copy of the Installment Agreement Activity for July 7, 2008 to July 13, 2009 which also includes payment detail is attached. Around 2007 or 2008, Defendant filed 1040 forms for the years 2004-2007, prior to entering into the installment agreement.

II. QUESTIONS PRESENTED

1) Whether the Defendant's failure to Answer the Complaint on her attorney's advice was good cause or excuseable neglect.

2) Whether the substitute for return is valid, since it was not signed under penalty of perjury.

3) Whether primary jurisdiction is with the IRS instead of District Court.

III ARGUMENT

Charles Reynolds submitted a declaration stating that because Thomasita Taylor failed to file income tax returns for the 2000-2006 years, an SFR was filed for those years. Sometime after receiving the complaint, Ms. Taylor consulted with an attorney, Gregory Robinson who advised her not to file an answer because of the cost of him writing and filing the answer. He said without filing an answer, the case would be reduced to a judgment lien. He recommended that she should go ahead and pay the 2008 taxes. He then discussed the option of bankruptcy. Based on Mr. Robinson's advice, Ms Taylor did not file an answer. Failure to appear was an excuseable neglect because he relied on the advice of counsel. Secretary of Labor v Northwest Conduit Corp. OSHRC Docket # 97-851 citing Butner v Neustadter 324 F2d 783 (9th Cir. 1963)(counsel's filing of an appearance one day

late, due to flawed communications between various counsel involved, warranted Rule 60(b) relief). Trial court's order setting aside entry of default is not abuse of discretion, where there is no evidence that default was wilful, application for relief was brought on timely basis, and Plaintiff was in no way prejudiced by entry of default. Kornblum v Millstone 38 FRServ 2d 174 (CA9 Cal 1983).

Ms. Taylor has been under a financial hardship due to the fact that her car is inoperable and cannot afford the repairs. Additionally, has been struggling to pay utilities, buy groceries and pay for medications due to the \$960.00/month installment payments. Ms. Taylor has been making a good faith attempt to comply with her tax obligations.

In order for a document to qualify as a return: (1) it must purport to be a return: (2) it must be executed under penalty of perjury: (3) it must contain sufficient data to allow calculation of tax: and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law. USA v Hatton 220 F3d 1057 See Germantown Trust Co v Commissioner 309 U.S. 304 (1940) and Zellerbach v Helvering 293 U.S. 172 (1934). The question presented is whether the SFRs were signed under penalty of perjury. Another question presented is whether the SFRs include deductions.

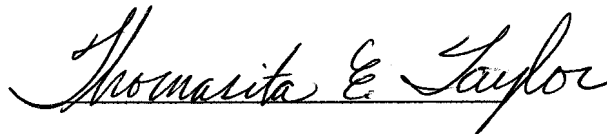
Another issue whether the District Court should remand the case back to the IRS for audit, since primary jurisdiction is with the administrative agency. Doctrine of primary jurisdiction does not contain element of discretion; issue either is within

agency's jurisdiction or it is not, and if issue is within agency's primary jurisdiction, court may not act until agency has made initial determination. US v General Dynamics Corp. 828 F2d 1356.

CONCLUSION

Plaintiffs motion for Entry of Default Judgment should be denied since Ms. Taylor has acted in good faith by making installment payments, acted on advice of counsel, and late response was not willful, but excuseable neglect.. Defendant is already under extreme hardship and Court should follow policy of favoring decisions on the merits.

RESPECTFULLY SUBMITTED this 8th day of October 2009



Thomasita E. Taylor

Exhibit A

DECLARATION OF THOMASITA E. TAYLOR

I, Thomasita E. Taylor, pursuant to 28 USC# 1746 hereby declare as follows:

1. On July 7, 2008 I entered into an installment agreement with the IRS for the years 1993-1996 and 2000-2007.
2. I filed 1040 forms for the years 2004-2007 prior to entering the installment agreement.
3. I am about to make the final installment payment for 2007 in the amount of approximately \$800.
4. I requested an extention for paying taxes for 2008, but was denied. Due to financial hardship, I have been unable to pay for the tax year 2008.
5. My automobile is inoperable and I'm unable to pay for repairs. I am struggling to pay for food, utilities, and medicine as a result of making the installment payments. I am unable to get all the health care needed (i.e. podiatrist, hearing specialist, optometrist).
6. In Mr. Reynolds declaration there is no indication that any of the substitute for returns were signed under penalty of perjury, and I am unaware of any business master file under my name..
7. I sought advice of counsel after service of the complaint. My attorney advised me not to file an answer, because it would be too costly \$240/hour, but advised me to go ahead and pay my taxes for 2008.
8. I am in the process of preparing the return for 2008.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of October, 2009

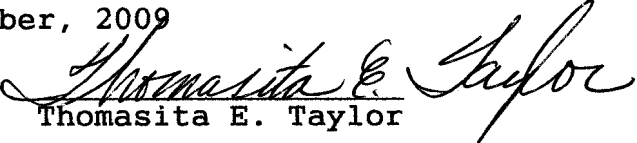

Thomasita E. Taylor

Exhibit B

If you have any questions,
please call us at:
1-800-829-0922

032592.642902.0095.003 1 AT 0.357 690



THOMASITA TAYLOR
1836 W MOHAVE ST
PHOENIX AZ 85007-4034



32592

THIS IS NOT A BILL

Annual Installment Agreement Statement THIS IS FOR YOUR INFORMATION

This is your Annual Installment Agreement Statement. This two-part statement shows the installment-agreement activity from July 7, 2008 to July 13, 2009, for each tax period included in your agreement.

I. The **Payment Detail** page shows the payments received and where they have been applied.

- Your payments are listed by date received to assist you as you review your records. The payments are also totaled at the end of the detail, for your convenience.
- Your payments have been applied according to the terms of your agreement and in accordance with the law. For each tax year, your payments are applied first to tax, then penalty, then interest, and other charges.

II. The **Installment Agreement Activity** page shows each tax period for which you owed tax.

- The Beginning Balance is calculated as of July 7, 2008, or the date you entered a tax period into an installment agreement, if it was later. The beginning balance of each tax period includes the unpaid tax, penalty, and interest as of this calculation date.

The Total Interest, Total Penalty and Other Charges are the amounts added during this period. Other Charges are items such as fees, refunds or adjustments.

If you'd like to pay the full amount you owe, please call us at 1-800-829-0922 so we may give you a current payoff figure. Your future statements will be mailed to you annually, for as long as you have installment agreement activity.

As always, we appreciate your timely payments.

Payment Detail

for July 7, 2008 to July 13, 2009

Payment Date	Applied Amount	Applied to Tax Form	Tax Period
08/13/2008	\$ 864.00-	1040	12/31/1993
09/08/2008	\$ 969.00-	1040	12/31/1993
10/14/2008	\$ 960.00-	1040	12/31/1993
11/14/2008	\$ 960.00-	1040	12/31/1993
12/15/2008	\$ 960.00-	1040	12/31/1993
01/18/2009	\$ 960.00-	1040	12/31/1993
02/03/2009	\$ 960.00-	1040	12/31/1993
03/13/2009	\$ 960.00-	1040	12/31/1993
05/05/2009	\$ 960.00-	1040	12/31/1993
06/08/2009	\$ 960.00-	1040	12/31/2007
Total Payments	\$ 9,513.00-		



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- Payments received after June 29, 2009 may not appear on this statement, but will be shown on your next annual statement.
- If you think we missed giving you credit for a payment, please call 1-800-829-0922 and we will be glad to resolve any discrepancies.



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Installment Agreement Activity for July 7, 2008 to July 13, 2009

Tax Period	Form Number	Beginning Balance	Total Payments Received	Total Penalty Added	Total Interest Added	Other Charges Added	Ending Balance
12/31/1993	1040	\$ 27,831.37	\$ 8,553.00-	\$ *	\$ 1,063.54	\$ 0.00	\$ *
12/31/1993	8278	\$ 3,103.95	\$ 0.00	\$ 0.00	\$ 157.39	\$ 0.00	\$ 3,261.34
12/31/1994	1040	\$ 15,764.45	\$ 0.00	\$ *	\$ 753.64	\$ 0.00	\$ *
12/31/1995	1040	\$ 16,078.70	\$ 0.00	\$ *	\$ 753.08	\$ 0.00	\$ *
12/31/1996	1040	\$ 13,183.70	\$ 0.00	\$ *	\$ 603.86	\$ 0.00	\$ *
12/31/2000	1040A	\$ 21,146.55	\$ 0.00	\$ *	\$ 1,072.20	\$ 0.00	\$ *
12/31/2001	1040A	\$ 20,005.87	\$ 0.00	\$ *	\$ 1,014.39	\$ 0.00	\$ *
12/31/2002	1040A	\$ 19,109.83	\$ 0.00	\$ *	\$ 959.45	\$ 0.00	\$ *
12/31/2003	1040A	\$ 21,202.43	\$ 0.00	\$ *	\$ 1,030.73	\$ 0.00	\$ *
12/31/2004	1040	\$ 10,245.19	\$ 0.00	\$ 170.07	\$ 593.66	\$ 0.00	\$ 10,918.92
12/31/2005	1040	\$ 10,070.99	\$ 0.00	\$ 550.89	\$ 493.56	\$ 0.00	\$ 11,115.44
12/31/2006	1040	\$ 6,095.82	\$ 0.00	\$ 489.96	\$ 297.70	\$ 0.00	\$ 6,883.48
12/31/2007	1040	\$ 3,440.03	\$ 960.00-	\$ 76.02	\$ 152.79	\$ 0.00	\$ 2,708.84
Total		\$ 187,278.88	\$ 9,513.00-	\$ *	\$ 8,855.99	\$ 0.00	\$ *

* We have to manually compute these figures for your account. Please call 800-829-0922 and we will be glad to assist you. We can also provide any additional information about penalties and interest computations at this number.

CERTIFICATION OF SERVICE

Original filed this 8th day of October, 2009

with:

Clerk of District Court
Sandra Day O'Connor Courthouse
401 W. Washington Street Suite 130
SPC 1
Phoenix, AZ 85003-2118

Copies of the foregoing mailed
this 8th day of October 2009 to:
Dennis K. Burke
United States Attorney
District of Arizona
Two Renaissance Square
40 N. Central Ave. Suite 1200
Phoenix, AZ 85004-4408

Andy R. Comacho
Trial Attorney, Tax Division
U.S. Dept. of Justice
P.O. Box 683
Ben Franklin Station
Washington D.C. 20044-0683

By Thomasita E. Taylor
Thomasita E. Taylor