DENNIS K. BURKE
United States Attorney
District of Arizona
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

ANDY R. CAMACHO
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-1481
Email: andy.r.camacho@usdoj.gov
Western.Taxcivil@usdoj.gov

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, v. THOMASITA E. TAYLOR, Defendant.	Civil No. 2:09-cv-00341-ROS **REPLY IN SUPPORT OF UNITED STATES' MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST THOMASITA E. TAYLOR**

The United States of America, through the undersigned counsel, submits its Reply in Support of United States' Motion for Entry of Default Judgment, and states as follows. The defendant raises three arguments to challenge the United States' Motion for Entry of Default Judgment Against Thomasita E. Taylor. First, the defendant contends that her failure to answer the United States' complaint was for "good cause" or "excusable neglect" because her attorney

purportedly advised her to not answer the complaint, to pay her 2008 federal income taxes, and then to explore bankruptcy options. Second, the defendant contends that the Substitutes for Return ("SFR") submitted by the United States are not valid because they were not signed under penalty of perjury. Finally, the defendant contends that "primary jurisdiction" is with the Internal Revenue Service ("IRS") and that the Court should refer the matter to the IRS.

1. Excusable Neglect

The United States cannot speak to what purported counsel for the defendant, Gregory Robinson, told the defendant other than the representations made by the defendant in her Response and declaration filed in support of the Response. In the defendant's declaration, she claims, "I sought the 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." Dkt. No. 10 at p. 6. Based on those representations, the defendant indicated that she sought the advice of counsel pertaining to this case, received said advice, and made a decision to default in this case. The purported advice is clear and the defendant made a conscious decision to not answer a properly served Complaint, even after receiving multiple notices of the pending case. Dkt. No. 9, Ex. 5. Unlike the defaulting defendant in *Butner v. Neustadter,* Ms. Taylor did not instruct her attorney to answer the complaint nor did she make any attempt to have someone answer the complaint. 324 F.2d 783, 784-85, 787 (9th Cir. 1963). The situation in *Butner* is simply not applicable to the current facts.

The defendant does not claim that she received bad advice nor that the advice was flawed in any way. In fact, the defendant does not even dispute the validity of her federal income tax

liabilities. As such, the defendant's change of heart is not "excusable neglect," and her protestations to the contrary ring hollow.

The United States also questions the defendant's good faith desire to litigate this matter on the merits without resort to tax-protestor-type arguments. In April 2005, the United States Tax Court sanctioned the defendant $2,500 pursuant to §6673 because 1) she instituted or maintained an action primarily for delay or 2) her position in such proceeding was frivolous or groundless. *Thomasita Taylor v. CIR*, T.C. Memo 2005-74, Dkt. No. 14954-03L (April 6, 2005). Here, the defendant appears to have purposely delayed this case and has raised arguments that lack merit.

2. Validity of Substitute for Returns

The defendant complains that the SFRs were not signed under penalty of perjury. To support that argument, the defendant cites to *In re Hatton*, a case that provides the standard for what constitutes a return before it can be accepted as the filed return of a taxpayer. 220 F.3d 1057, 1061 (9th Cir. 2000). *In re Hatton* does not stand for the proposition that a SFR prepared by the IRS must be signed under penalty of perjury. And the defendant does not offer any support for her position.

Even if the defendant's argument were to be interpreted as a challenge to the validity of the SFRs, that challenge would be without merit. The Declaration of Internal Revenue Service Technical Advisor Charles Reynolds clearly states, "Based upon my review of the relevant portions of the IRS administrative file in this matter, I make the representations below pertaining to Ms. Taylor's tax liabilities for the 1993-1996 and 2000-2006 tax years, and if called upon to testify to said facts, I could do so competently." Dkt. No. 7, Ex. 2 at ¶3. In addition, the United

States provided a Form 4340, Certificate of Assessments, Payments, and Other Specific Matters for Thomasita Taylor for each of the tax years in question, including the tax years in which a SFR was prepared. Dkt. No. 8, Exs. 1, 4, 7, & 10. Each Form 4340 is certified by an IRS employee. *See, e.g.*, Dkt. No. 8, Ex. 1 at p. 6. Moreover, a Form 4340 is presumptive proof of a valid assessment. *Hughes v. Comm'r*, 953 F.2d 531, 535-36 (9th Cir. 1992). The Defendant's argument that the SFRs are invalid is without merit, given Mr. Reynolds' Declaration and the Forms 4340 provided in support of the tax liability.

3. Jurisdiction of the Court

The "primary jurisdiction doctrine" is not applicable. "The doctrine's central aim is to allocate initial decisionmaking responsibility between courts and agencies and to ensure that they 'do not work at cross-purposes.'" *Ellis v. Tribune Television Co.*, 443 F.3d 71, 81 (2d Cir.2006) (quoting *Fulton Cogeneration Assocs. v. Niagara Mohawk Power Corp.*, 84 F.3d 91, 97 (2d Cir.1996) (emphasis added)). Application of the doctrine is appropriate where "preliminary reference of issues to the agency will promote that proper working relationship between court and agency that the primary jurisdiction doctrine seeks to facilitate." *Ellis v. Tribune Television Co.*, 443 F.3d 71, 82 (2d Cir.2006) .

Here, the defendant's federal tax liability was examined by the IRS, and then it was referred to the US Department of Justice, Tax Division to commence an action against the defendant to reduce assessments to judgment. This action was commenced pursuant to 26 U.S.C. §§ 7401 and 7403, at the direction of the Attorney General of the United States and with the authorization of the Associate Area Counsel of the Internal Revenue Service, a duly authorized

delegate of the Secretary of the Treasury. The IRS has already spoken on the issue. Moreover, the Court has jurisdiction over the subject matter of this action pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345. The Court's subject matter jurisdiction in this matter is based on express Congressional authority, and this action was brought at the request of the IRS. Again, the Defendant's argument is completely meritless.

* * *

4. Scheduling Conference

The United States is prepared to litigate this case on the merits if the defendant agrees to litigate without resort to frivolous, tax-protestor-type arguments. It is unclear if the defendant has any colorable defenses to the Complaint because she did not not raise a single argument in her Response that disputes the validity of her federal tax liability at issue. However, at the Court's direction, the United States is prepared to participate in a scheduling conference and proceed with this matter on the merits.

Respectfully submitted this 28th day of October, 2009.

DENNIS K. BURKE
United States Attorney

/s/Andy R. Camacho
ANDY R. CAMACHO
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-1481

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the UNITED STATES' REPLY IN SUPPORT OF UNITED STATES' MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST THOMASITA E. TAYLOR haa been made via Certified Mail this 28th day of October, 2009, to the following:

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

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

DENNIS K. BURKE
United States Attorney

/s/ Andy R. Camacho
ANDY R. CAMACHO
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone (202) 307-1481