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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	No. CV-09-00341-PHX-ROS
Plaintiff,)	ORDER
vs.)	
Thomasita E. Taylor,)	
Defendant.)	

Before the Court is Plaintiff’s Motion for Default Judgment (Doc. 7) against Defendant Thomasita E. Taylor (“Defendant”). As discussed, the Motion will be granted.

BACKGROUND

On February 19, 2009, Plaintiff filed a Complaint to reduce to judgment outstanding federal tax assessments against Defendant. On August 30, 2009, Plaintiff filed a proof of service of the Summons and Complaint on Defendant. On May 22, 2009, the Clerk entered default based on Defendant’s failure to answer or otherwise respond to the Complaint. On September 22, 2009, Plaintiff filed a Motion for Default Judgment. On October 8, 2009, Defendant filed a response in opposition.

STANDARD

Federal Rule of Civil Procedure 55(b)(2) (“Rule 55(b)”) permits a trial court, upon motion, to enter judgment against a defendant who has defaulted under Rule 55(a). While a Rule 55(a) default constitutes the defendant’s admission of all facts alleged in the

1 complaint and may establish liability, it is the responsibility of the trial court, before entering
2 judgment on a Rule 55(b) motion, to determine whether the complaint states a claim and
3 assess appropriate damages. *See Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir.
4 1977) (*per curiam*) (“The general rule of law is that upon default the factual allegations of
5 the complaint, except those relating to the amount of damages, will be taken as true.”); *Benny*
6 *v. Pipes*, 799 F.2d 489, 495 (9th Cir. 1986) (“Well-pleaded allegations are taken as admitted
7 on a default judgment.”); *cf. Danning v. Levine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978) (a
8 complaint which is not well-pleaded, pursuant to Federal Rule of Civil Procedure 8, cannot
9 support a default judgment).

10 A Rule 55(b) determination falls squarely within the discretion of the trial court. *See*
11 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (*per curiam*) (“The district court’s
12 decision whether to enter a default judgment is a discretionary one.”). However, trial courts
13 are encouraged to look at seven factors: “(1) the possibility of prejudice to the plaintiff, (2)
14 the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum
15 of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6)
16 whether the default was due to excusable neglect, and (7) the strong policy underlying the
17 Federal Rules of Civil Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782
18 F.2d 1470, 1471-72 (9th Cir. 1986).

19 DISCUSSION

20 Defendant first appeared in this action to file a response in opposition to Plaintiff’s
21 Motion for Default Judgment. Defendant does not argue the Complaint fails to state a claim,
22 or that she is not liable for unpaid taxes. Instead, she argues her failure to answer the
23 Complaint was excusable neglect, the substitute for return cited by Plaintiff is not valid, and
24 the Court lacks jurisdiction. These arguments will be considered in turn.

25 Defendant argues her failure to respond is excusable neglect because she was advised
26 by counsel not to file an answer because it would be too costly, and to instead pay the 2008
27 taxes and file for bankruptcy. Given that Defendant does not dispute her underlying tax
28 liability, this may have been good advice. In any case, Defendant does not argue she was

1 given bad advice, or offer an explanation of why she should not have followed the advice.
2 She has not shown good cause for failing to respond to the Complaint.

3 Defendant's second argument is that the substitute for return forms ("SFR's) cited by
4 Plaintiff as evidence of her tax liability are invalid because they are not signed. As noted,
5 Defendant has not disputed her underlying tax liability. The government, moreover, cited
6 additional evidence of her tax liability, including a declaration from an IRS employee.
7 Defendant has not disputed the accuracy of the IRS employee's declaration.

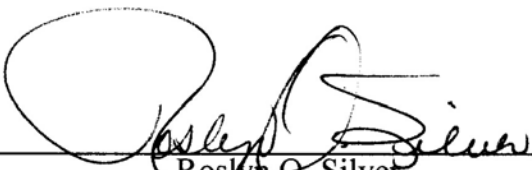
8 Finally, Defendant argues this Court lacks jurisdiction because "primary jurisdiction"
9 is with the Internal Revenue Service. As evidenced by the declaration from an IRS employee
10 certifying that the IRS examined Defendant's tax liability and found she owed unpaid taxes,
11 the IRS already assessed Defendant liable. The Court therefore has jurisdiction under 26
12 U.S.C. § 7402, which allows district courts to render judgments as may be necessary and
13 proper for the enforcement of the internal revenue laws. Because Defendant has not shown
14 good cause for default or otherwise shown a reason why Plaintiff is not entitled to a default
15 judgment, the Motion for Default Judgment will be granted.

16 Accordingly,

17 **IT IS ORDERED** the Motion for Default Judgment (Doc. 7) **IS GRANTED**.
18 Judgment is entered against Defendant in the amount of \$184,564.50, plus interest and other
19 statutory additions as provided by 28 U.S.C. § 1961(c)(1) and 26 U.S.C. § 6621(a)(2) that
20 have accrued since August 14, 2009.

21 DATED this 2nd day of September, 2010.

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Roslyn O. Silver
United States District Judge