Thomasita E. Taylor
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Defendant *Pro Se*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMASITA E. TAYLOR,

Defendant.

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

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

(Oral Argument Requested)

Defendant Thomasita E. Taylor ("Ms. Taylor") hereby submits her Reply to 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 ("Opposition").

Ms. Taylor incorporates by reference Defendant's Motion to Set Aside Default Judgment and Motion to Dismiss dated September 3, 2010, as if fully set forth herein.

Ms. Taylor will attempt to respond in accordance with the headings set forth in the United States ("United States") Opposition, as follows:

I. BACKGROUND

The United States asserts that in the motion to dismiss and motion to set aside the default judgment, Ms. Taylor raises multiple "frivolous arguments." In fact, the United States mentions the words "frivolous arguments" five times in its Opposition. What a completely

and utterly absurd argument.

First, Ms. Taylor asserted that she did not respond to the United States' complaint because she did not have any money to pay her attorney and that what advice she did receive from her attorney was extremely prejudicial and detrimental to Ms. Taylor. This is completely true. It is certainly not a "frivolous argument" and it is irrational and insulting for the United States to suggest that somehow it is. Further, Ms. Taylor never would have attempted to do battle with such a rogue, corrupt and lawless entity such as the Internal Revenue Service without an attorney had she had the money to hire one. It is immaterial and irrelevant that the attorney she did hire and paid $240 gave her bad legal advice.

Second, Ms. Taylor asserted that the Court does not have jurisdiction under Title 26 of the United States Code and that there is no express act of Congress or Executive Order providing the Internal Revenue Service ("IRS") jurisdiction to operate in the United States.

Ms. Taylor could find no such organization within the Department of the Treasury known as the "Internal Revenue Service." The U.S. Department of the Treasury was organized by statutes now codified in Title 31 of the United States Code, abbreviated "31 U.S.C." Title 31 U.S.C. is "Money and Finance" and therein are published the laws pertaining to the Department of the Treasury ("DOT"). Title 31 U.S.C., Chapter 3, is a statutory list of the organizations of the DOT. Internal Revenue Service is not listed within Title 31 U.S.C. as an agency or organization of the Department of the Treasury. They are referenced as "to be audited" by the Controller General in 31 U.S.C. Section 713. The only mention of the IRS *anywhere* in 31 U.S.C. §§ 301-310 is an authorization for the President to appoint an Assistant General Counsel in the U.S. Department of the Treasury to be the Chief Counsel for the IRS. See 31 U.S.C. 301(f) (2).

At footnote 23 in the case of *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979), the U.S. Supreme Court admitted that no organic Act for the IRS could be found, after they searched for such an Act all the way back to the Civil War, which ended in the year 1865 *A.D.* The Guarantee Clause in the U. S. Constitution guarantees the Rule of Law to all Americans (we

are to be governed by Law and not by arbitrary bureaucrats). See Article IV, Section 4. Since there was no organic Act creating it, IRS is not a lawful organization.

In addition, a search of the records of the Arizona Corporation Commission revealed no listing for the Internal Revenue Service, so it does not appear the Internal Revenue Service is licensed to do business in Arizona.

Third, Ms. Taylor asserted that the IRS has not provided her or this Court with validation of her federal income debt pursuant to 15 U.S.C. §1692(g). *Id.* at ¶3. Whether or not taxes are referred to as a "debt," the Internal Revenue Service is nothing more than a collection service for the Internal Revenue, working for foreign banks and operating out of Puerto Rico under color of the Federal Alcohol Administration ("FAA"). However, the FAA was promptly declared unconstitutional inside the 50 States by the U.S. Supreme Court in the case of *U.S. v. Constantine*, 296 U.S. 287 (1935), because Prohibition had already been repealed. As discussed below, Ms. Taylor is entitled to know which taxable activity Ms. Taylor's assessment is based on that made her liable for the amount of tax it claims is owed.

Fourth, Ms. Taylor asserted that Form 4340 submitted by the United States was invalid because it was not signed by a duly authorized certifying officer "under penalty of perjury" pursuant to IRC 6065 and *Brafman v. US*, 384 F.2d (1967). *Id.* at ¶4. Ms. Taylor addresses this issue further on in this Reply.

II. ARGUMENTS

The United States asserts that Ms. Taylor's two motions lack any merit and raise many of the same frivolous arguments. The United States would have Ms. Taylor and this Court believe that the law itself is frivolous, because Ms. Taylor's arguments are in fact based upon the law. Ms. Taylor's primary motivation is not to delay, hinder, and obstruct the IRS's ability to collect federal taxes allegedly owed by her, but to force the United States to follow the law.

The United States asserts that Ms. Taylor has failed to meet the standard to set aside a default judgment under Fed. R. Civ. P. 55(c), which states:

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

Rule 60(b) states:

(b) Grounds for Relief from a Final Judgment Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief

Ms. Taylor has met several of these standards for relief from the Default Judgment including (1), (3), (4), and (6) and the Default Judgment should be set aside and the matter set for trial before a jury.

A. Defendant Taylor has not demonstrated "for good cause shown" as required under Fed. R. Civ. P. 55(c).

Ms. Taylor clearly has demonstrated "for good cause shown" as required under Fed.R.Civ.P. 55(c). The United States asserts that, in deciding whether to set aside an entry of default judgment, there are three factors the Court must consider conjunctively with the decision of whether to set aside a default judgment:

(1) whether the plaintiff will be prejudiced if the Court sets aside the default judgment;

The United States will not be prejudiced by the setting aside of the Default Judgment. It is Ms. Taylor who will be forever and unalterably damaged and severely prejudiced by the Court's failure to set aside the Default Judgment.

(2) whether the defendant has a meritorious defense; and

Black's Law Dictionary, 6th Edition, defines meritorious defense as follows:

> Meritorious Defense. One going to the merits, substance, or essentials of the case, as distinguished from dilatory or technical objections. For purposes of vacating default judgment is defense presumptively established when allegations of defendant's answer, if established on trial, would constitute a complete defense to the action, and *defendant need not establish its defense beyond doubt in its pleadings. Hritz v. Woma Corp, C.A.P.a.,* 732 F.2d 1178, 1181. (emphasis added)

Because Ms. Taylor was naive enough to listen to her attorney, the United States was able to obtain a Default Judgment against her without having to provide evidence of the alleged debt as is required by a debt collector.

By Black's Law Dictionary's definition and by her pleadings, Ms. Taylor has met her burden of establishing a meritorious defense "beyond doubt."

(3) whether culpable conduct of the defendant led to the default.

Black's Law Dictionary, 6th Edition, defines culpable conduct as follows:

> Culpable conduct. Blamable; censurable; criminal; at fault; involving the breach of a legal duty or the commission of a fault. That which is deserving of moral blame.
>
> Such conduct normally involves something more than simple negligence and implies conduct which is blamable, censurable, involving the breach of a legal duty or the commission of a fault. It implies that the act or conduct spoke of is reprehensible or wrong, but not that it involves malice or a guilty purpose.

By no stretch of the imagination can any portion of this definition be attributable to Ms. Taylor. It is unfortunate that Ms. Taylor followed the advice of counsel, but that certainly does not equate to "culpable conduct" on the part of Ms. Taylor.

Contrary to the United States' assertions, none of the three factors weigh heavily against Ms. Taylor. In fact, all three factors definitely weigh heavily in her favor.

Again, Ms. Taylor's motion to set aside the default judgment is not an attempt to delay, hinder or obstruct the IRS from collecting federal taxes owed by her, but rather is an attempt to

force the United States to follow the law in its efforts to collect a debt and allow Ms. Taylor her due process of a trial before a jury.

B. Defendant Taylor does not raise a meritorious defense to her federal income tax liability

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

In 1956, the Eisenhower administration commissioned the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States. The pertinent portion of the report states:

> "It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal government possess no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the States, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights with respect to the use, protection, and disposition of its property."

Legal or subject matter jurisdiction involves a government's authority over itself and its own creations. Such jurisdiction does not involve (or establish) coercive authority to burden – by taxation or otherwise – any natural person in the exercise of his or her Rights.

> "It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. *Murdock v. Pennsylvania*, 319 U. S. 105, 480-487 (1943), United States Supreme Court.

Further, there is no express act of Congress or Executive Order providing the Internal Revenue Service ("IRS") jurisdiction to operate in the United States. If the United States or its attorney has evidence to the contrary, please provide it to Ms. Taylor and this Court post-haste. Ms. Taylor discussed this matter in more detail under Section I. Background, above.

2. Defendant Taylor's wages are income and subject to federal income tax

The United States asserts that "As every hard-working and honest taxpayer knows, wages are income and the requirement to pay income taxes is not voluntary." This is one of the most preposterous statements made by the United States and its attorney, in addition to being totally offensive to Ms. Taylor by suggesting that she is not a hard-working and honest taxpayer, as well as being factually incorrect.

If you search the entire text of Title 26 USC for the words "liable for" or "subject to," the only three activities that are excisable (read taxable) as far as income tax owed are activities involving alcohol, tobacco, or firearms. The United States has not stated with particularity which taxable activity Ms. Taylor's assessment is based on that made her liable for the amount of tax it claims is owed.

It is the activity which produces the property we commonly call "income" which is being taxed. The income enters into the picture only as a means of measuring the amount (or value) of the taxable activity.

> "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax." ~ F. Morse Hubbard, Treasury Department legislative draftsman (House Congressional Record, March 27, 1943, p. 2580.)

> "When a court refers to an income tax as being in the nature of an excise, it is merely stating that the tax is not on the property itself, but rather it is a fee for the privilege of receiving gain from the property. The tax is based upon the amount of the gain, not the value of the property." ~ John R. Luckey, Legislative Attorney with the Library of Congress, "Frequently Asked Questions Concerning The Federal Income Tax." (C.R.S. Report for Congress 92-303A (1992)

Second, nowhere in the Internal Revenue Manual is the word "mandatory" used. In fact, the word **voluntary** is very prevalent whenever the federal income tax is described or discussed by government officials. You have to wonder why the IRS manual uses the word

voluntary in these phrases and sentences when the word serves no apparent purpose? Why does the IRS instruct its employees in "securing a valid **voluntary** income tax return from the taxpayer instead of just "securing a valid income tax return"? It has been propounded that since the 5th Amendment to the Constitution guarantees that a citizen cannot be compelled in any criminal case to be a witness against himself, and information on a return is routinely shared with prosecutors in the Department of Justice and other law enforcement agencies in the United States and around the world, any law requiring a citizen to file a return would be unconstitutional.

The United States further states that for federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services.

The Supreme Court rejected that contention of the government when it said, "We just reject . . . the broad contention submitted in behalf of the government that all receipts – everything that comes in – are income . . . ." *So. Pacific v. Lowe*, 247 U.S. 330 (1918), United States Supreme Court.

The United States purports that, according to Forms 4340 and the declaration by IRS Technical Advisor Charles Reynolds, Ms. Taylor earned wages that are subject to federal tax. According to IRC 6065 and *Brafman v. U. S., 384 F.2d 863 (1967)*, Certifying Officer Enid L. Stanger must sign "under penalty of perjury" in order for the Certificate of Assessments, Payments, and Other Specified Matters to be proper. Officer Stanger merely certified that it is a "complete transcript" but fails to certify "under penalty of perjury" that there is a specific liability for income taxes imposed upon Ms. Taylor, which she must do. The alleged Certificate of Assessments, Payments, and Other Specified Matters filed herein is nothing more than unsworn hearsay and cannot be used to assess any amount of deficiency of taxes against this Defendant. By statutory definitions, without a proper assessment there can be no deficiency.

The United States has provided no evidence that Ms. Taylor is subject to the federal income tax, let alone how the assessed amount was calculated. The United States has

not stated with particularity which taxable activity Ms. Taylor's assessment is based on that made her liable for the amount of tax it claims is owed.

3. The IRS Forms 4340 are valid

The United States alleges that U.S.C. §6065 and *Brafman v. U.S.*, 384 F.2d 863 (1967), do not support Ms. Taylor's claim because U.S.C. §6065 relates to returns and other declarations filed by taxpayers. U.S.C. §6065 states:

> ***§ 6065. Verification of returns***
>
> Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

There is no reference to "taxpayers" in U.S.C. §6065. It refers to **any** "return, **declaration**, statement or other document **required to be made under any provision of the internal revenue laws or regulations** shall contain or be verified by a written declaration that is **made under the penalties of perjury**." (emphasis added) It is inconceivable that U.S.C. §6065 imposes a requirement only on the taxpayer while allowing the IRS to make serious allegations of specific liability for income taxes upon Ms. Taylor without such a requirement. Even Andy Camacho signed his Declaration dated May 22, 2009 in support of the United States' Motion for Entry of Default Judgment Against Thomasita E. Taylor under "penalty of perjury." Unsworn to allegations are nothing more than hearsay and Officer Stanger should be required to swear under "penalty of perjury" that what she is certifying to is correct.

According to *Hughes v. Comm'r.*, 953 F.2d 531, 535-36 (9th Cir. 1992), the court ruled that IRS Form 4340 is presumptive proof of a valid assessment; however, it does not address the issue of whether it needs to be signed under penalty of perjury in order for it to be valid. It would be valid had Ms. Stanger signed it under "penalty of perjury." Enid Stanger merely certifies that Form 4340, Certificate of Assessment, Payments and Other Specified Matters for Thomasita, is a true copy. It does not swear under "penalty of perjury" that the assessment and

payments imposed therein are true and correct and, accordingly, should be considered mere hearsay.

C. Defendant Taylor knew of the United States' complaint for months yet took no action to file a responsive pleading

Ms. Taylor was naïve enough to follow the advice of her counsel not to file an answer and let a default judgment be entered against her. As attorneys, this Court and the United States' attorney can well understand the predicament in which Ms. Taylor was placed. Ms. Taylor was in paralyzing, debilitating fear of being kicked out of her home onto the street at her age with nowhere to go, and losing everything she has worked hard for her entire life, which obviously clouded her judgment. Ms. Taylor should be held neither accountable nor punished for following the advice of her counsel The default judgment should be set aside and Ms. Taylor should be allowed her constitutional right to a trial by jury. Ms. Taylor's conduct was far from culpable.

D. The United States would be prejudiced if the Court sets aside the entry of default judgment against defendant Taylor

The United States has demonstrated no desire to resolve this matter on the merits. Ms. Taylor had entered into an Installment Agreement with the IRS and, because she was late on one payment and sent one payment to the wrong address, this lawsuit was filed. It is Ms. Taylor's contention that the United States in fact breached its contract with Ms. Taylor by filing this lawsuit.

E. Defendant Taylor's motion to dismiss with prejudice complaint to reduce federal tax assessments to judgement [sic] is not properly before the court and should be dismissed

The United States once again dismissively refers to Ms. Taylor's motion to dismiss as "frivolous arguments," which, again, is an absurd argument. The United States asserts that Ms. Taylor's motion to dismiss is procedurally improper. As stated previously in other

pleadings, Ms. Taylor should not be held to the same standard as an attorney and all pleadings should be judged by their function and not form.

CONCLUSION

For all of the foregoing reasons, justice demands that the Default Judgment be set aside and Ms. Taylor should be allowed her day in court before a jury.

DATED this 2nd day of November, 2010.

By: Thomasita E. Taylor

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ORIGINAL AND COPY of the foregoing filed with the Clerk of the Court, and **COPIES** mailed this 2nd day of November, 2010, to:

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