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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,

12 v.

13 Janice Sue Taylor,
14 Defendant.

No. CR-10-0400-PHX-MHM

**GOVERNMENT’S RESPONSE TO
MOTION TO DISMISS FIRM
OFFER TO SETTLE**

15 The United States, through undersigned counsel, responds to the Motion to Dismiss Firm
16 Offer to Settle by Janice Sue Taylor (doc. 112). As explained below, Ms. Taylor articulates no
17 legal basis for dismissing the indictment for lack of standing or on the basis of her good-faith
18 defense.

19 **I. Argument.**

20 In this and other motions, Ms. Taylor has repeatedly argued that the government lacks
21 capacity to indict or sue. She also argues that a defense of good-faith merits dismissal of the
22 indictment. Her arguments rely on misinterpretation and misapplication of legal principles
23 governing a party’s standing and judicial procedure. Accordingly, this motion should be denied.

24 **A. Standing**

25 Ms. Taylor argues that the government has neither standing nor capacity to indict her.
26 She apparently claims the defect in the prosecution is lack of standing resulting from the United
27 States failing to initiate this action against her under the Sherman Act.
28

1 The government’s standing is not dependent the Sherman Act, which has no applicability
2 to this prosecution. The indictment alleges violations of 26 U.S.C. §§ 7201 and 7203, which are
3 tax offenses against the United States. The U.S. Attorney’s Office for the District of Arizona has
4 the duty, under 28 U.S.C. § 547(1), to prosecute offenses against the United States. Accordingly,
5 the government has standing to indict and prosecute Ms. Taylor for alleged tax violations.

6 B. Good Faith Defense

7 Ms. Taylor argues that the Court should dismiss the indictment because she filed her
8 returns to the best of her ability. To the extent that defendant seeks to present a *Cheek* defense,
9 it is a matter for jury resolution.

10 Willful failure to file a tax return and evasion of tax assessment both require willful
11 conduct. 26 U.S.C. §§ 7201, 7203. In the context of tax law, a defendant’s conduct is not willful
12 if it resulted from “ignorance of the law or a claim that because of a misunderstanding of the
13 law, he had a good-faith belief that he was not violating any of the provisions of the tax laws.”
14 *Cheek v. United States*, 498 U.S. 192, 202 (1991). “[A] jury considering a good faith belief claim
15 would be free to consider any admissible evidence from any source showing that [the taxpayer]
16 was aware of his [duties under the tax laws], including evidence showing his awareness of the
17 relevant provisions of the Code or regulations, of court decisions rejecting his interpretations of
18 the tax law, of authoritative rulings of the Internal Revenue Service, or of any contents of the
19 personal income tax return forms and accompanying instructions.” *Id.*

20 Ms. Taylor may seek to introduce relevant and admissible evidence at trial that supports
21 her good-faith claim. A jury will appropriately determine questions of fact relevant to her
22 defense. Accordingly, her request that this Court grant a preliminary motion to dismiss on the
23 basis of a good-faith defense is without merit.

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II. Conclusion.

For these reasons, the Motion to Dismiss should be denied.

Respectfully submitted this 20th day of October, 2010.

DENNIS K. BURKE
United States Attorney
District of Arizona

s/ Frank T. Galati

FRANK T. GALATI
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Certificate of Service

I hereby certify that on 10/20/2010, I mailed copies of the attached document to the following:

Janice Sue Taylor
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s/ Michelle L. Colberg