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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-10-00400-PHX-MHM

**GOVERNMENT’S RESPONSE TO
MOTION TO DISMISS
INDICTMENT**

15 The United States, through undersigned counsel, responds to the Motion to Dismiss
16 Indictment by Janice Sue Taylor (doc. 119).

17 **I. Argument.**

18 Taylor argues that the indictment should be dismissed because the government has
19 miscalculated her “compensation as gross income.” Motion, at 1. Taylor bases her argument
20 upon a gross misunderstanding of 26 U.S.C. § 83.

21 Title 26 U.S.C. § 83 addresses instances where property is used to compensate another
22 for performing a service. For these situations, it provides a method to calculate the property
23 recipient’s tax liability. § 83(a)(1)-(2).^{1/}

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26 The general rule of §83 is stated in its first subsection, as follows:

27 **§ 83. Property transferred in connection with performance of services (a) General rule.**--If, in
28 connection with the performance of services, property is transferred to any person other than the person
for whom such services are performed, the excess of--

(continued...)

1 The Indictment, at paragraphs 5 and 6 and elsewhere, alleges that defendant earned
 2 income and evaded assessment upon income obtained from (1) commissions earned by
 3 defendant for real estate sales and (2) profits earned by defendant from sales of real estate.
 4 Clearly, § 83 is inapplicable to these allegations because the indictment does not allege that
 5 Ms. Taylor received property in exchange for her services. Should Taylor believe that §83 is
 6 applicable to the existence of her alleged tax liability or the calculation of tax due and owing,
 7 she may cross examine the witnesses we will call to prove her tax liability or may present her
 8 own *competent* witnesses to testify concerning Taylor’s alleged tax liability. Nonetheless,
 9 Taylor’s claim that at this stage of the proceedings, §83 provides justification for dismissing
 10 the indictment is groundless.

11 **II. Conclusion.**

12 For the above-stated reasons, Taylor’s Motion to Dismiss should be denied.

13 Respectfully submitted this 22nd day of October, 2010.

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 15 DENNIS K. BURKE
 United States Attorney
 District of Arizona

16 *s/ Frank T. Galati*

17 FRANK T. GALATI
 18 JAMES R. KNAPP
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19 _____
 20 ^{1/} (...continued)

21 (1) the fair market value of such property (determined without regard to any restriction other than a
 22 restriction which by its terms will never lapse) at the first time the rights of the person having the
 23 beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture,
 whichever occurs earlier, over

24 (2) the amount (if any) paid for such property, shall be included in the gross income of the person who
 25 performed such services in the first taxable year in which the rights of the person having the beneficial
 26 interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever
 27 is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such
 28 property in an arm's length transaction before his rights in such property become transferable or not
 subject to a substantial risk of forfeiture.

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Certificate of Service

I hereby certify that on 10/22/2010, I mailed copies of the attached document to the following:

Janice Sue Taylor
3341 Arianna Ct.
Gilbert, AZ 85298

s/ Michelle L. Colberg