

1 Janice Sue Taylor
2 3341 Arianna Court
3 Gilbert, Arizona
4 County of Maricopa
5 Pursuant to U.S.C. 28 §1746 (1)
6 Without the United States

7 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

8 UNITED STATES OF AMERICA,) Case No.: CR-10-400-PHX-MHM
9 Alleged Plaintiff,)
10 vs.) Alleged Defendant's reply to
11 Janice Sue Taylor,) Alleged Plaintiff's opposition
12 Alleged Defendant) to motion to dismiss.
13) Motion to dismiss for void for vagueness

14 COMES NOW, above named Alleged Defendant, seeking to oppose Alleged Plaintiff's reply
15 (doc #133) to her motion to dismiss filed October 7, 2010, (doc #119) wherein it was shown that
16 26 USC § 83(a) separates "the value of any money or property paid for property to which § 83
17 applies" from gross income. Alleged Plaintiff has responded to Alleged Defendant's claim under
18 26 USC § 83(a) by arguing that the statute is inapplicable to her compensation for services in the
19 form of commissions earned as a real estate agent.

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

23 *Title 26 U.S.C. § 83 addresses instances where property is used to compensate another for*
24 *performing a service. For these situations, it provides a method to calculate the property recipient's tax*
25 *liability.* (footnote omitted)

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

See Alleged Plaintiff's reply to motion to dismiss.

1 It is of primary importance to pause and ponder Alleged Plaintiff's treatment of 26 USC
2 § 83 in its reply to Alleged Defendant's motion. The Alleged Plaintiff states that "§ 83 addresses
3 instances where property is used to compensate another for performing service." The Alleged
4 Plaintiff continues, "For these situations, it provides a method to calculate the property
5 recipient's tax liability." This casual utterance reveals Alleged Plaintiff's long standing evasion
6 of placing an interpretation of 26 USC § 83(a) onto the record as it applies to compensation for
7 personal services. When truthfully described, § 83(a) governs whether or not the recipient of
8 such compensation, including commissions, has received gross income, it does not provide a
9 method so much as it mandates the sole standard for determining what is and what is not "gross
10 income." The Alleged Plaintiff then tells the Court that, "the indictment does not allege that Ms.
11 Taylor received property in exchange for her services."

12 26 USC § 61. Gross income defined.-

13 (a) General definition. Except as otherwise provided in this subtitle, gross income means all
14 income from whatever source derived, including (but not limited to) the following items:

15 (1) *Compensation for services, including* fees, *commissions*, fringe benefits, and similar items;

16 Let the record reflect that the Alleged Plaintiff does not deem "commissions" to be
17 property transferred in connection with the performance of services. How many convictions does
18 this approach overturn? Is Ray Gebauer now to be se free? Internal Revenue Service agent, Sue
19 Ann Besson (EIN 1000276944) has worked for the IRS for 21 years and claims to have
20 conducted approximately 500 examinations of individual 'taxpayers' over that time as a person
21 responsible for "determining" tax liabilities under tax law and deciding which ones to
22 recommend for prosecution and which ones to merely forward to an IRS officer for collection;
23 that's the difference between and agent and an officer. On **August 9, 2007**, in U.S. District
24 Court, Seattle Division, Ms. Besson was asked by counsel Allen Ritchie, "What role did § 83
25 play in your determination that the Alleged Defendant had a tax liability on his compensation?"
26 To which Ms. Besson replied, "I am unfamiliar with § 83." (See *United States v. Ray Gebauer*,
27 #CR06-122JLR, see transcript of 8/9/07 at 9:55 a.m. in 26 USC § 7201 tax evasion trial).

28 Mr. Gebauer's commissions from multi level marketing sales were deemed property
received in exchange for services. The only alternative, if the indictment does not concern such
compensation as Alleged Plaintiff claims in its reply, is to deem the amounts in controversy to be
gross income in the form of capital gains (26 USC §§ 1(h), 61(a)(3) "gains derived") which one

1 does not “earn,” but rather “derives,” as Alleged Defendant understands it. Alleged Plaintiff’s
 2 claim that the indictment does not concern property received in exchange for services has already
 3 been addressed by the courts, apparently.¹

4 This entire controversy relates only to “profits” and “commissions” which were “earned”
 5 by the Alleged Defendant. This entire controversy concerns only “earnings” which are
 6 “compensation for services including commissions,” the tax liability attaching to such is
 7 primarily governed by the terms of 26 USC § 83(a). (Compare § 61(a)(1), Indictment at ¶ 5). The
 8 Alleged Plaintiff has clearly classified all amounts it claims was gross income received by the
 9 Alleged Defendant as “earnings” from performing services as a real estate agent or broker. (See
 10 Indictment at ¶ 5). The indictment indeed does allege tax liabilities arising from the Alleged
 11 Defendant’s receipt of “commissions” earned from personal services rendered as a real estate
 12 agent; Alleged Defendant’s occupation. (See Indictment at ¶ 5, 8A, 8B, 8C, 10A, 10B, 10C,
 11A, 11B, 11C, 14A, 14B).

13 “Section 83(a) explains how property received in exchange for services is taxed.”² Tax
 14 Code (26 USC) § 83 applies to all compensation paid for services of corporations, and for the
 15 services of individuals.³

16
 17 “Petitioners rest their entire case on the proposition that Elovich and Cohn and/or Mega were “independent
 18 contractors” and not employees of the Integrated and that, therefore, section 83 does not apply to the
 19 acquisition of the shares from Integrated. They rely on the legislative history surrounding the statute to
 20 support their proposition that section 83 was intended to apply only to restricted stock transferred to
 21 employees. ***Respondent contends that the words “any person” in section 83(a) encompass independent
 22 contractors as well as employees. We agree with Respondent. . . . We reject petitioner’s argument. While
 23 restricted stock plans involving employers and employees may have been the primary impetus behind the
 24 enactment of section 83, the language of the section covers the transfer of any property transferred in
 25 connection with the performance of services “to any person other than the person for whom the services
 26 are performed.” (Emphasis added.) The legislative history makes clear that Congress was aware that the
 27 statute’s coverage extended beyond restricted stock plans for employees. H.Rept. 91-413 (Part 1) (1969),
 28 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. The regulations state that that section
 83 applies to employees and independent contractors (sec. 1.83-1(a), Income Tax Regs.). There is no
 question but that, under the foregoing circumstances, these regulations are not “unreasonably and plainly
 inconsistent with the revenue statutes.” Consequently, they are sustained. (cites omitted)”***

See (U.S. Tax Court) *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).

¹ See *Tyler v. Carter*, 151 F.R.D. 537 (S.D.N.Y. 1993), “Plaintiff contends she is a cyborg[.]” Civil action dismissed as “fantastic and delusional.”

² See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992).

³ See 26 CFR 1.83-3(e), (f); *MacNaughton v. C.I.R.*, 888 F.2d 418 (CA6 1989); *Pledger v. C.I.R.*, 641 F.2d 287 (CA5 1981); *Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984); *Klingler Electric Co. v. C.I.R.*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991); *Robinson v. C.I.R.*, 82 USTC 444 (1984); *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).

1 The Alleged Plaintiff has in error clearly classified Alleged Defendant's compensation
 2 for personal services, paid to her in the form of "commissions," as capital gains, but at the same
 3 time calls such sums amounts which she "earned"; 26 USC § 83(a) governs.

4
 5 26 USC § 83 "Property Transferred in Connection with the Performance of Services.

(a) If, in connection with the performance of services, property is transferred..., *the excess of-*

6 (1) the fair market value of such property...*over,*

7 (2) *the amount (if any) paid* for such property . . . shall be included in the gross income of the
 person who performed such services . . ."

8 Labor is Property. ⁴ Tax Code § 83(a) requires that, when compensation is received in
 9 [exchange] for services, from the FMV of the compensation, the excess over the "amount paid"
 10 (cost) is to be included in gross income.

11
 12 To figure one's cost ("amount paid"), one can also proceed to 26 CFR 1.83-3(g) which
 13 says that the term "amount paid" in § 83 refers to the value (the FMV/contract value) of any
 14 property paid (Labor) for the compensation.

15
 16 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations thereunder, the term
 17 "amount paid" refers to *the value of any money or property paid* for the transfer of property to which § 83
 applies.

18 The statute which embraces intangible personal property as a cost is prescribed as the
 19 measure of one's cost when having only sold one's labor. To impose an income tax on the
 20 "amount paid" in 1.83-3(g) is impermissible for the "amount paid" is separated from gross
 21 income. It is also notable that the law does not provide that property within which one has no
 22 basis be excluded from cost; cost equals the FMV of any and all property disposed to obtain
 23 other property, unless expressly excluded under § 83(a). The term "any property" means "any
 24 property" and cannot be construed to provide for any exclusions whatsoever.

25 Alleged Plaintiff's reply to Alleged Defendant's motion is evasion at best, and Alleged
 26 Plaintiff's willingness to dawn the cloak of incompetence to deprive the Alleged Defendant of
 27 her liberty is yawningly typical. An IRS Agent of twenty years is "unfamiliar with § 83," and
 28 "commissions" which are "earned" are not "property transferred in connection with the

⁴ See *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Case*, 83 U.S. 395, 419; 16 Wall. 36-130 (1873);
Adair v. U.S., 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's*, 6th, "property."

1 performance of services,” and “commissions” are capital gains, all of these are mere efforts to
2 avoid the truths revealed by this decision concerning 26 USC § 83(a) as it applies to any and all
3 compensation.

4
5 “Because the issues are purely legal, this case is ripe for summary judgment. Tax protester arguments
6 like the claim that wages are not taxable income also suffice (as an alternative to dismissal, and in the absence
7 of better argument) to justify summary judgment for the respondent. (protester cite omitted). Even if wages
8 are, in effect, an exchange of value for equal value, they are nevertheless taxable income. (protester cite
9 omitted) And even if we apply section 1001, his basis is determined under sections 1011 and 1012 as his cost,
10 not fair market value. *Since he paid nothing for his labor, his cost and thus his basis are zero.* (protester cite
11 omitted) Consequently, even under section 1001, his taxable income from his labor is his total gain reduced
12 by nothing, *i.e.*, his wages.

13 “Petitioner’s primary argument is that section 83, Property Transferred in Connection with the
14 Performance of Services, has the effect of exempting his wages from income tax because it requires us to
15 apply section 1012, which specifies that cost should be used to determine the basis of property (unless the
16 Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts
17 that he “paid” for his wages with his labor and that section 83 allows the value of his labor as a cost to be
18 offset against his wages, thereby exempting them from tax. Section 83 provides that property received for
19 services is taxable to the recipient of the property to the extent of its fair market value minus the amount (if
20 any) paid for the property. In attempting to equate his wages with property for which he has a tax cost,
21 petitioner’s argument is nothing more than a variation of the wages-are-not-income claim frequently
22 advanced by tax protesters, and it is completely without merit. (protester cites omitted) Petitioner’s argument
23 fails for the same reason that other protester’s arguments fail; *the worker’s cost for his services-and thus his
24 basis-is zero, not their fair market value.*”

25 *End quote from *Talmage*.

26
27 This decision reveals the reasoning for excluding personal services, or the value thereof,
28 from consideration as a cost to the employee or the self employed. While articulating the
standard for such an exclusion, Tax Court does not point to a law which supports its exclusion of
the value of personal services from “the value of any money or property paid” for the
compensation as that phrase is found in 26 CFR 1.83-3(g), *supra*. Tax Court states that personal
services are not a cost because the employee or the self employed individual does not first have
to purchase the labor or services before they sell them to their employer or to their client,
customer, etc., but it does not support this exclusion from “any money or property”; the
exclusion is arbitrary, not based upon law, it is policy, it is not Congress.

29 An arbitrary exclusion was held to be impermissible in U.S.’ victories in the U.S.
30 Supreme Court. (See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *United*
31 *States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997);
32 *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing
33 *Gonzalez and Monsanto*).

1 When the Alleged Plaintiff cannot decide between compensation for services which are
 2 “earned” and capital gains which are “derived,” when the Alleged Defendant has to guess
 3 whether her “commissions” are compensation for her personal services or are capital gains, when
 4 the most accomplished of IRS agents are “unfamiliar with” the statute that “explains how
 5 property received in exchange for services is taxed,” and when the Alleged Plaintiff hasn’t one
 6 single solitary public defender to appoint to criminal Alleged Defendants in tax cases who has an
 7 operating knowledge of 26 USC, or § 83 for that matter, why isn’t the prosecution itself moving
 8 for dismissal for the offense upon the *void for vagueness doctrine* to which these proceedings
 9 amount?

10 “We agree with the holdings of the District Court and the Court of Appeals on the due process doctrine of
 11 vagueness. The settled principles of that doctrine require no extensive restatement here. (fn.7) *The doctrine*
 12 *incorporates notions of fair notice or warning.* (fn.8) *Moreover, it requires legislatures to set reasonably*
 13 *clear guidelines for law enforcement officials and triers of fact in order to prevent “arbitrary and*
 14 *discriminatory enforcement.”*(fn.9) Where a statute’s literal scope, unaided by a narrowing state court
 15 interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a
 16 greater degree of specificity than in other contexts. (fn.10) The statutory language at issue here, “publicly...
 17 treats contemptuously the flag of the United States...,” has such scope, e.g., *Street v. New York*, 394 U.S.
 18 576 (1969) (verbal flag contempt), and at the relevant time was without the benefit of judicial clarification.
 19 (fn.11)” *Id.*, at 572.⁵

20 Unless the amounts Alleged Plaintiff claims Alleged Defendant “earned” are capital
 21 gains, 26 USC § 83(a) governs any and all determinations of tax liability, and it does not merely
 22 “provide a method.” The presumption of correctness enjoyed by the Alleged Plaintiff disappears
 23 upon introduction of evidence to the contrary. A “determination” must be the result of a

24 ⁵ See *Smith v. Gougen*, 415 U.S. 566, 572 (1974). Footnotes for this paragraph are as follows:

25 6. Appellant correctly conceded at oral argument that Gougen’s case is the first recorded Massachusetts court reading of this language.
 26 Tr. of Oral Arg. 17-18. Indeed, with the exception of one case at the turn of the century involving one of the statute’s commercial misuse
 27 provisions, *Commonwealth v. R. I. Sherman Mfg. Co.*, 189 Mass. 76, 75 N.E. 71 (1905), the entire statute has been essentially devoid of state
 28 court interpretation.

7. The elements of the “void for vagueness” doctrine have been developed in a large body of precedent from this Court. The cases are
 29 categorized in, e.g., *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). See Note, *The Void for Vagueness Doctrine in the Supreme*
 30 *Court*, 109 U.Pa.L.Rev. 67 (1960).

8. E.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) (“*No one*
 31 *may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what*
 32 *the State commands or forbids*”) (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) (“*[A] statute which either*
 33 *forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as*
 34 *to its application, violates the first essential of due process of law*”) (citations omitted).

9. E.g., *Grayned*, *supra* at 108; *United States v. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921) (“*[T]o attempt to enforce the section*
 35 *would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public*
 36 *interest when unjust and unreasonable in the estimation of the court and jury*”); *United States v. Reese*, 92 U.S. 214, 221 (1876) (“*It would*
 37 *certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside*
 38 *and say who could be rightfully detained, and who should be set at large*”).

10. E.g., *Grayned*, *supra*, at 109; *Smith v. California*, 361 U.S. 147, 151 (1959). Compare the less stringent requirements of the
 modern vagueness cases dealing with purely economic regulation. E.g., *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963)
 (Robinson-Patman Act).

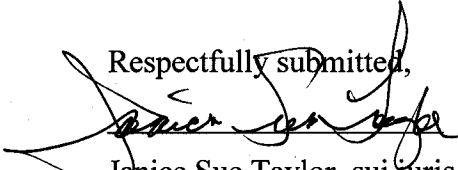
11. See fn. 6, *supra*.

1 consideration of all relevant facts and statutes. ⁶ Now that the Alleged Plaintiff and the Court
2 have been redirected at the truth, the Alleged Defendant is entitled to a record which contains a
3 valid and contrary interpretation of § 83(a), or she is entitled to dismissal of the charges in this
4 case, as a matter of the operation of § 83(a) itself, or as a matter of Justice to honor due process
5 rights against statutory vagueness.

6
7 **WITHOUT PREJUDICE**

8 **Pursuant to UCC 1-308: "I reserve my right not to be compelled to perform under any**
9 **contract, commercial agreement or bankruptcy that I did not enter knowingly, voluntarily,**
10 **and intentionally. And furthermore, I do not and will not accept the liability of the**
11 **compelled benefit of any unrevealed contract or commercial agreement or bankruptcy". I**
12 **have made a timely and explicit reservation of my rights and insist that any statutes used in**
13 **my defense shall be construed to be in harmony with the Common Law.**

14 Dated: 11-1-2010

15 Respectfully submitted,
16 
17 Janice Sue Taylor, sui juris,
18 Of one's own right, possessing full social
19 Civil rights, sovereign character and capacity
20 Pursuant to U.S.C. 28 §1746 (1)
21 Without the United States

22
23
24
25
26
27
28 ⁶ See *Hughes v. U.S.*, 953 F.2d 531 (CA9 1992); *Portillo v. Comm'r of IRS*, 932 F.2d 1128 (CA5 1991); *Elise v. Connett*, 908 F.2d 521 (CA9 1990); *Jensen v. Comm'r of IRS*, 835 F.2d 196 (CA9 1987); *Scar v. Comm'r of IRS*, 814 F.2d 1363 (CA9 1987); *Benzvi v. Comm'r of IRS*, 787 F.2d 1541 (CA11 1986); *Maxfield v. U.S. Postal Service*, 752 F.2d 433 (1984); *Weimerskirch v. Comm'r of IRS*, 596 F.2d 358, 360 (CA9 1979); *Carson v. U.S.*, 560 F.2d 693 (1977); *U.S. v. Janis*, 428 U.S. 433, 442 (1975); *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 758-770 (1973); *Pizzarello v. U.S.*, 408 F.2d 579 (1969); *Terminal Wine*, 1 B.T.A. 697, 701-02 (1925); *Couzens*, 11 B.T.A. 1140, 1159, 1179.

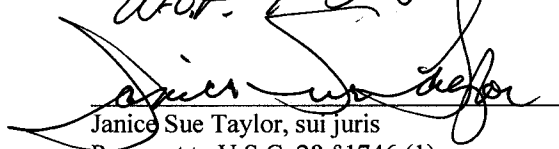
Certificate of Service

I, Janice Sue Taylor, hereby declare and state that I have filed a true and correct copy of the above document Motion in opposition, Motion for void for vagueness. Said Right Extended To Any Attorney, Whether Or Not At Bar, If Providing Or Proposing To Provide "Assistance - Not Force - Of Counsel" with the Clerk of the Court for the [Alleged] United States District Court For The [Alleged] District Of Arizona, said [Alleged] Court Appearing And Existing [Supposedly] As A Possession Of Its Own And NOT Lawfully Existing In The Legal or Organic County of Maricopa, Legal or Organic [Proposed] State of Arizona, and have mailed a copy hereof, postage prepaid thereon, to the Alleged U.S. Attorney's Office at the following addresses set forth below.

Frank T. Galati,
James Richard Knapp,
Office of the Alleged U.S. Attorney
40 N. Central Ave. # 1200
Phoenix, Arizona near 85004

Susan Anderson, Public Defender Office
850 W. Adams Street, Suite 201
Phoenix, Arizona near 85007

RESPONSE TO THIS EXHIBITED NOTICE IS REQUIRED - *Qui Tacit, Consentire Videtur, Ubi Tractatur De Ejus Commodo* (He[She] who is silent is considered as assenting [to the matter in question] when his[her] interest is as stake.)

WOP. L-308


Janice Sue Taylor, sui juris
Pursuant to U.S.C. 28 §1746 (1)
Without the United States
County of Maricopa
1st day of November, 2010 A.D