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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-DGC  
**GOVERNMENT’S SUPPLEMENTAL  
NOTICE OF 404(B) EVIDENCE**

15 The United States, through undersigned counsel, provides this supplemental notice of its  
16 intent to introduce evidence of other crimes, wrongs, or acts of Defendant in its case-in-chief.  
17 The United States already notified Defendant through counsel in an August 18, 2010, letter that  
18 it would introduce under Fed. R. Evid. 404(b) evidence from the discovery relating to  
19 Defendant’s failure to pay state and federal taxes outside of the charged years. The United States  
20 provides this supplemental notice simply for clarity.

21 **I. LAW & ARGUMENT.**

22 Rule 404(b) allows the United States to introduce evidence of “other crimes, wrongs, or  
23 acts” committed by a defendant, so long as the evidence is not used merely to show propensity:

24 Evidence of other crimes, wrongs, or acts is not admissible to prove the character  
25 of a person in order to show action in conformity therewith. It may, however, be  
26 admissible for other purposes, such as proof of motive, opportunity, intent,  
27 preparation, plan, knowledge, identity, or absence of mistake or accident, provided  
that upon request by the accused, the prosecution in a criminal case shall provide  
reasonable notice in advance of trial, or during trial if the court excuses pretrial

1 notice on good cause shown, of the general nature of any such evidence it intends  
2 to introduce at trial.

3 *Id.*

4 The Ninth Circuit has specified that “Rule 404(b) is a rule of inclusion.” *United States*  
5 *v. Alfonso*, 759 F.2d 728, 739 (9<sup>th</sup> Cir. 1985). “Thus, evidence of past wrongful acts is admissible  
6 if it is relevant to an issue other than the defendant’s character or criminal propensity.” *Id.* Put  
7 another way, “[u]nless the evidence of other crimes tends *only* to prove propensity, it is  
8 admissible.” *United States v. Jackson*, 84 F.3d 1154, 1159 (9<sup>th</sup> Cir. 1996) (emphasis added).  
9 Factors bearing on the admissibility of evidence under Rule 404(b) include “whether the  
10 evidence proves a material element of the offense charged, whether it is similar to the offense  
11 charged, whether there is sufficient evidence of the prior conduct and temporal proximity.” *Id.*

12 Here, the United States has provided discovery of Defendant’s efforts to evade taxes in  
13 years prior and subsequent to the charged tax years, in which Defendant used much of the same  
14 conduct described in the Indictment. These wrongful acts are probative of, among other things,  
15 Defendant’s knowledge, planning, and willfulness in evading the assessment and collection of  
16 taxes. In addition, the continued violation of state and federal tax requirements, even after  
17 receiving warnings from the IRS and the Arizona Department of Revenue, shows that her  
18 evasion of assessment during the time period alleged in the Indictment was willful, and not the  
19 result of ignorance or mistaken beliefs about tax requirements.

20 Courts have consistently held that defendants’ taxpaying records such as these are  
21 probative of willfulness. *See, e.g., United States v. Daraio*, 445 F.3d 253, 264-65 (3<sup>rd</sup> Cir. 2006)  
22 (holding that evidence of defendant’s prior non-compliance with tax laws is admissible in tax  
23 evasion prosecution to show willfulness); *United States v. Bok*, 156 F.3d 157, 165-66 (2<sup>nd</sup> Cir.  
24 1998) (holding that evidence of failure to file state and federal individual and corporate returns  
25 in years prior to charged offenses is admissible in tax evasion prosecution as “indicative of an  
26 intent to evade the tax system”); *United States v. Upton*, 799 F.2d 432, 433 (8<sup>th</sup> Cir. 1986)  
27 (“Evidence of Upton’s questionable compliance with tax laws, both in the years prior to and

1 subsequent to [the tax years alleged in the indictment], is probative of willfulness in the present  
2 context.”); *United States v. Bergman*, 813 F.2d 1027, 1029 (9<sup>th</sup> Cir. 1987) (holding that false W-  
3 4 forms is admissible under Fed. R. Evid. 404(b) in prosecution for failure to file tax returns to  
4 show willful evasion of tax laws).

5 **II. CONCLUSION.**

6 Accordingly, the United States provides this supplemental notice of its intent to introduce  
7 the foregoing evidence pursuant to Fed. R. Evid. 404(b).

8  
9 Respectfully submitted this 31<sup>st</sup> day of March, 2011.

10 DENNIS K. BURKE  
11 United States Attorney  
12 District of Arizona

13 *s/ James Knapp*

14 FRANK T. GALATI  
15 JAMES R. KNAPP  
16 Assistant U.S. Attorneys

17 Certificate of Service

18 I hereby certify that on 3/31/2011, I electronically transmitted the attached document to the  
19 Clerk’s Office using the CM/ECF system for filing and transmittal of a Notice of Electronic  
20 Filing to the following CM/ECF registrants:

21 Susan Anderson

22 In addition, a copy of the attached document will be mailed to the following:

23 Janice Sue Taylor  
24 3341 Arianna Ct.  
25 Gilbert, AZ 85298  
26  
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