

1 KATHRYN KENEALLY
Assistant Attorney General

2 CHARLES M. DUFFY
3 Trial Attorney, Tax Division
4 U.S. Department of Justice
5 P.O. Box 683
6 Ben Franklin Station
7 Washington, D.C. 20044-0683
8 Telephone: (202) 307-6406
9 Email: charles.m.duffy@usdoj.gov
10 Western.taxcivil@usdoj.gov
11 *Attorneys for the United States of America*

12 JOHN S. LEONARDO
13 United States Attorney
14 District of Arizona
15 *Of Counsel*

16 IN THE UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 JOSEPH J. LIPARI, EILEEN H. LIPARI and
22 EXETER TRINITY PROPERTIES, L.L.C.,

23 Defendants.

Civ. No. 10-CV-08142-JWS

**UNITED STATES MOTION FOR
DEFAULT JUDGEMENT AGAINST
DEFENDANT EXETER TRINITY
PROPERTIES, L.L.C.**

24 Pursuant to the Court's April 4, 2013 order, the United States hereby moves for default
25 judgment against Defendant Exeter Trinity Properties, L.L.C. Support for this motion is set forth
26 in the Memorandum in Support, which is filed herewith. A proposed Entry of Judgment and Order
27 of Foreclosure and Decree of Sale that sets forth the default judgment and permits the United States
28 to sell the real property at issue in this case to partially pay the federal tax and other liabilities owed

1 by defendants Joseph and Eileen Lipari is attached to the Memorandum in Support as Exhibit A.

2 DATED this 23rd day of April, 2013.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KATHRYN KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

By: /s/ Charles M. Duffy
CHARLES M. DUFFY
Trial Attorney, Tax Division

Of Counsel:

JOHN S. LEONARDO
United States Attorney
(Attorneys for the United States)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2013, I served the subject document through the Court's CM/ECF system and, on the same day, I mailed by U.S. Postal Service the foregoing to the following:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

Exeter Trinity Properties, LLC
Elmer P. Vild
989 S. Main Street, #A-269
Cottonwood, AZ 86326

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 KATHRYN KENEALLY
Assistant Attorney General

2 CHARLES M. DUFFY
3 Trial Attorney, Tax Division
4 U.S. Department of Justice
5 P.O. Box 683
6 Ben Franklin Station
7 Washington, D.C. 20044-0683
8 Telephone: (202) 307-6406
9 Email: charles.m.duffy@usdoj.gov
10 Western.taxcivil@usdoj.gov
11 *Attorneys for the United States of America*

12 JOHN S. LEONARDO
13 United States Attorney
14 District of Arizona
15 *Of Counsel*

16 IN THE UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 JOSEPH J. LIPARI, EILEEN H. LIPARI and
22 EXETER TRINITY PROPERTIES, L.L.C.,

23 Defendants.

Civ. No. 10-CV-08142-JWS

**MEMORANDUM IN SUPPORT OF THE
UNITED STATES MOTION FOR
DEFAULT JUDGEMENT AGAINST
DEFENDANT EXETER TRINITY
PROPERTIES, L.L.C.**

24 **I.**

25 **STATEMENT**

26 In the complaint filed herein, the United States is seeking to reduce certain federal income tax,
27 penalty and interest assessments made against Defendants Joseph and Eileen Lipari (“the Liparis”)
28 to judgment and foreclose its federal tax liens against the Liparis’ residence (“the residence”). The
tax and other assessments at issue in the complaint relate to the: (a) the Liparis’ 1993 and 1998
through 2004 tax years; (b) Joseph Lipari’s 1994 through 1997 tax years; and (c) Eileen Lipari’s
1994 through 1997 tax years. *See* the first through third claims in the complaint.

As set forth in the complaint, the Liparis purchased the residence in 1989 and they transferred

1 it to the Ponderosa Trust (“Ponderosa”) in 1993. *See* the complaint, at ¶¶ 9-10. In 1999, Ponderosa
2 transferred the residence to Exeter Trinity Properties, LLC (“Exeter”). *Id.*, at ¶ 11. The United
3 States asserted in the complaint that it was entitled to foreclose its tax liens based on nominee/alter
4 ego and fraudulent conveyance theories. *See* the third through sixth claims in the complaint.

5 The United States filed a motion for summary judgment on December 1, 2011 regarding both
6 the assessment and foreclosure claims. In support of the motion, the United States established *inter*
7 *alia* that:

- 8 -- The Liparis owned the residence - which they purchased for \$105,000.00 - free and
9 clear of any mortgage or debt at the time they transferred it to Ponderosa (*see* the
10 United States’ Statement of Material Facts filed on December 1, 2011 (“U.S. Facts”),
11 at ¶¶ 3-5;
- 12 -- The only thing of value that the Lipari received from Ponderosa for the residence was
13 ten dollars (*id.*, at ¶¶ 7-8);
- 14 -- Jimmy Chisum, a known tax defier who was convicted of federal tax evasion and was
15 affiliated with Ponderosa, made the decision to transfer the residence from Ponderosa
16 to Exeter (*id.*, at ¶¶ 5-7, 9, 28-36 and 41);
- 17 -- Chisum was an advisor to the Liparis and Eileen Lipari was a student of Chisum who
18 testified that she did “whatever [Chisum] told [her] to do” (*id.*, at ¶¶ 17, 18 and 26);
- 19 -- Eileen Lipari and Jimmy Chisum were also both affiliated with Exeter (*id.*, at ¶ 42);
- 20 -- The Liparis have espoused tax defier positions in court cases and otherwise (*id.*, at ¶¶
21 19-24);
- 22 -- The Liparis continued to live in the residence for many years after they transferred it
23 to Ponderosa and Mr. Lipari’s business was located there, but the Liparis never paid
24 rent to Ponderosa or Exeter (*id.*, at ¶¶ 10, 14);
- 25 -- The Liparis did not file their 1994 through 2004 tax returns until 2007, which was long
26 after the returns were due (*id.*, at ¶ 25);
- 27 -- When the Liparis finally filed their 1994 through 2004 returns, such returns set forth
28

1 unpaid tax amounts due and owing (*id.*, at ¶ 26);

2 -- The Liparis depreciated the residence on their 1999 through 2002 individual income
3 tax returns even though they had supposedly transferred the residence in 1993 (*id.*, at
4 ¶ 12); and

5 -- The IRS filed nominee tax liens against Exeter as the nominee, transferee, and/or alter
6 ego of the Liparis (*id.*, at ¶¶ 43-45).

7 Exeter, through its then-attorney filed a response to the Government's summary judgment
8 motion. The Liparis did not oppose the motion.

9 In its March 12, 2012 order, the Court entered judgment for the United States and against the
10 Liparis for all of the tax and other assessments in question except for those relating to the 1997 year.
11 In this regard, the Court ruled that the Joseph Lipari owed \$401,670.44 for his 1994 through 1996
12 tax years, Eileen Lipari owed \$142,384.88 for her 1994 through 1996 tax years and the Liparis
13 jointly owed \$300,454.63 for their 1993 and 1998 through 2004 tax years. *See* the March 12, 2012
14 order, at 4. The balances were owed as of November 1, 2011. *See* U.S. Facts, at 85 and the United
15 States' December 1, 2011 memorandum in support, at 3:8-4:6.

16 The Court denied the United States' summary judgment on the foreclosure claims, ruling that
17 there was a question of fact whether the Liparis' transfer of their residence - which they owned free
18 and clear - was for legitimate estate tax planning purposes rather than to evade taxes. *See* the March
19 12, 2012 order.

20 The Court later dismissed, without prejudice, the assessment claims against the Liparis for
21 their separate 1997 tax years based on a motion filed by the United States. *See* the Court's July 31,
22 2012 order.

23 Exeter has attempted to appear in this matter without counsel on various occasions but the
24 Court denied such attempts. *See* the Court's September 10, 2010, September 29, 2010 and
25 September 11, 2012 orders. At some point, Exeter retained an attorney but, on April 4, 2013, the
26 Court allowed the subject attorney to withdraw. *See* Court docket number 104. On April 4, 2013,
27 the Court also entered a separate order stating that Exeter "shall cause an attorney to appear to
28

1 represent it in this [matter] within 14 days from this order” and “[i]f no attorney appears for Exeter,
2 [the United States] shall promptly move for its default as to all remaining issues.” *See* Court docket
3 numbers 104 and 105).

4 The fourteen day period has expired and Exeter is still not represented by counsel in this
5 matter.

6 **II.**
7 **DISCUSSION**

8 The Court, relying on *Rowland v. California Men’s Colony*, 506 U.S. 194, 201-02 (1993) has
9 made it abundantly clear that Exeter must be represented by counsel to participate in this case. *See*
10 the Court’s September 10, 2010, September 29, 2010 and September 11, 2012 orders. Because
11 Exeter has not retained counsel to continue in this matter, default judgment is proper. *See e.g.*,
12 *Carlone v. Lion & Bull Films, Inc.*, 861 F.Supp.2d 312, 318-319 (S.D.N.Y. 2012). The basis of this
13 rule is that a “cavalier disregard for a court order [to appear through counsel] is a failure, under Rule
14 55(a), to ‘otherwise defend as provided by these rules.’” *See Eagle Associates v. Bank of Montreal*,
15 926 F.2d 1305, 1310 (2d Cir. 1991) (quoting *Shapiro, Bernstein & Co. v. Continental Record Co.*,
16 386 F.2d 426, 427 (2d Cir. 1967)).

17 Attached hereto as Exhibit A is a proposed Entry of Judgment and Order of Foreclosure and
18 Decree of Sale. The proposed Judgment/Order reflects the Court’s previous rulings in this case and
19 the requested default judgment against Exeter.

20 If the Court enters the proposed Judgment/Order, the United States would be entitled to sell
21 the residence and apply the proceeds from the sale to the Liparis’ federal tax liabilities. It should be
22 noted that the only other debt regarding the residence - other than the associated federal tax liens -
23 would be local real estate taxes that are owed.

1 **III.**

2 **CONCLUSION**

3 The Court should enter the proposed Entry of Judgment and Order of Foreclosure and Decree
4 of Sale that is attached hereto.

5 DATED this 23rd day of April, 2013.

6
7 KATHRYN KENEALLY
8 Assistant Attorney General, Tax Division
9 U.S. Department of Justice

10 By: /s/ Charles M. Duffy
11 CHARLES M. DUFFY
12 Trial Attorney, Tax Division

13 Of Counsel:

14 JOHN S. LEONARDO
15 United States Attorney
16 (Attorneys for the United States)
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2013, I served the subject document through the Court's CM/ECF system and, on the same day, I mailed by U.S. Postal Service the foregoing to the following:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

Exeter Trinity Properties, LLC
Elmer P. Vild
989 S. Main Street, #A-269
Cottonwood, AZ 86326

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH J. LIPARI, EILEEN H. LIPARI and
EXETER TRINITY PROPERTIES, L.L.C.,

Defendants.

Civ. No. 10-CV-08142-JWS

**ENTRY OF JUDGMENT AND ORDER
OF FORECLOSURE AND DECREE OF
SALE**

Pursuant to 28 U.S.C. §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403, IT IS HEREBY ORDERED THAT:

1. JUDGMENT is hereby entered in favor of the United States of America and against defendant Joseph Lipari and Eileen Lipari on the First Claim in the complaint, for the tax and related assessments made against them for their 1993 and 1998 through 2004 income tax years in the amount of \$300,454.63, as of November 1, 2011, plus statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601, 6621 and 6622 and 28 U.S.C. § 1961(c) and other statutory additions, less any payments and credits.

2. JUDGMENT is hereby entered in favor of the United States of America and against defendant Joseph Lipari on the Second Claim in the complaint, for the tax and related assessments made against him for his 1994 through 1996 income tax years in the amount of \$401,670.44, as of November 1, 2011, plus statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601, 6621

1 and 6622 and 28 U.S.C. § 1961(c) and other statutory additions, less any payments and credits.

2 3. JUDGMENT is hereby entered in favor of the United States of America and against
3 defendant Eileen Lipari on the Third Claim in the complaint, for the tax and related assessments
4 made against her for her 1994 through 1996 income tax years in the amount of \$142,384.88, as of
5 November 1, 2011, plus statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601, 6621
6 and 6622 and 28 U.S.C. § 1961(c) and other statutory additions, less any payments and credits. .

7 4. DEFAULT JUDGMENT is also entered against Exeter Trinity Properties, L.L.C.
8 (“Exeter”), a corporation, since it must have counsel to participate in this matter. *See Rowland v.*
9 *California Men’s Colony*, 506 U.S. 194, 201-02 (1993); *see also Carlone v. Lion & Bull Films, Inc.*,
10 861 F.Supp.2d 312, 318-319 (S.D.N.Y. 2012) and *Eagle Associates v. Bank of Montreal*, 926 F.2d
11 1305, 1310 (2d Cir. 1991). Thus, it is adjudged that Exeter, anyone associated with Exeter and/or
12 Exeter’s assignees or transferees has/have no interest in the real property described below and at
13 issue in paragraph 8 of the complaint filed herein.

14 5. The parcel of real property upon which foreclosure is sought in this case is residential
15 real property located at is 1001 S. 6th Street, Cottonwood, Arizona (hereafter “the real property”) and
16 bears the following legal description:

17 The West one-half of the West one-half of Lot 9, VERDE PALISADES, PLAT 2,
18 according to the plat of record on file in the office of the County Recorder of Yavapai
19 County, Arizona, in Book 7 of Maps, page 31.

20 Except all oil, minerals, ores and metals of every kind, as reserved in Deed recorded
21 in Book 187, page 331, records of Yavapai County, Arizona.

22 6. The United States has valid and subsisting tax liens on all property and rights to
23 property of Joseph and Eileen Lipari - including the real property - arising from the assessments
24 described above, which tax liens are effective as of the dates of those assessments.

25 7. The United States’ federal tax liens against the real property are hereby foreclosed.
26 The United States Marshal for the District of Arizona or his/her representative (“the Marshal”) or
27 an Internal Revenue Service Property Appraisal and Liquidation Specialist (“PALS”) representative
28 is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the

1 real property under this Order of Foreclosure and Decree of Sale and shall make the arrangements
2 for any sale as set forth in this Order.

3 8. The United States may choose either the Marshal or a PALS representative to carry
4 out the sale under this Order. The Marshal, his representative, or a PALS representative, is
5 authorized to have free access to the real property and to take all actions necessary to preserve the
6 real property, including, but not limited to, retaining a locksmith or other person to change or install
7 locks or other security devices on any part of the property, until the deed to the real property is
8 delivered to the ultimate purchaser(s).

9 9. The terms and conditions of the sale are as follows:

10 a. Except as otherwise stated herein, the sale of the real property shall be by public
11 auction to the highest bidder, free and clear of all liens and interests;

12 b. The sale shall be subject to building lines, if established, all laws, ordinances,
13 and governmental regulations (including building and zoning ordinances) affecting the real
14 property, and easements and restrictions of record, if any;

15 c. The sale shall be held at the courthouse of the county or city in which the real
16 property is located, on the premises of the parcel of real property being sold, or at any other
17 place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time
18 announced by the Marshal, his/her representative, or a PALS representative;

19 d. Notice of the sale shall be published once a week for at least four consecutive
20 weeks before the sale in at least one newspaper regularly issued and of general circulation in
21 Yavapai County, Arizona, and, at the discretion of the Marshal, his representative, or a PALS
22 representative, by any other notice deemed appropriate. **State law notice requirements for
23 foreclosures or execution sales do not apply to this sale under federal law.** The notice
24 shall contain a description of the real property and shall contain the material terms and
25 conditions of sale in this order of sale;

26 e. The minimum bid will be set by the Internal Revenue Service. If the minimum
27 bid is not met or exceeded, the Marshal, his or her representative, or a PALS representative
28

1 may, without further permission of this Court, and under the terms and conditions in this order
2 of sale, hold a new public sale, if necessary, and reduce the minimum bid or sell to the
3 highest bidder;

4 f. Bidders shall be required to DEPOSIT at the time of sale with the Marshal or
5 a PALS representative a minimum of ten percent of the bid with the deposit to be made by
6 a certified or cashier's check payable to the United States District Court for the District of
7 Arizona. Before being permitted to bid at the sale, bidders shall display to the Marshal or a
8 PALS representative satisfactory proof of compliance with this requirement;

9 g. The balance of the purchase price of the real property in excess of the deposit
10 tendered shall be paid to the Marshal or a PALS representative within thirty (30) days after
11 the date the bid is accepted by a certified or cashier's check payable to the United States
12 District Court for the District of Arizona. If the successful bidder fails to fulfill this
13 requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the
14 sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to
15 be applied to the federal tax liabilities owed by Joseph Lipari and/or Eileen Lipari that are
16 at issue herein. The real property shall be again offered for sale under the terms and
17 conditions of this Order of Foreclosure and Judicial Sale. The United States may bid as a
18 credit against its judgment without tender of cash;

19 h. The sale of the real property shall not be final until confirmed by this Court.
20 The Marshal or PALS representative shall file a report of sale with the Court, together with
21 a proposed order of confirmation of sale and proposed deed, within 30 days from the date of
22 receipt of the balance of the purchase price;

23 i. Upon confirmation of the sale, the Marshal or a PALS representative shall
24 promptly execute and deliver a deed of judicial sale conveying the real property to the
25 purchaser;

26 j. Upon confirmation of the sale, the interests of, liens against, or claims to the
27 real property held or asserted by the United States in the Complaint and any other parties to
28

1 this action or any successors in interest or transferees of those parties shall be discharged and
2 extinguished. The sale is ordered pursuant to 28 U.S.C. § 2001. **Redemption rights under**
3 **state law shall not apply to this sale under federal law;** and

4 k. Upon confirmation of the sale, the purchaser shall have the recorder of deeds
5 or Office of the County Clerk, Yavapai County, Arizona cause transfer of the real property
6 so it is reflected upon that county's register of title.

7 10. Until the real property is sold, the defendants in this matter, anyone associated with the
8 defendants and/or all other persons occupying the real property shall take all reasonable steps
9 necessary to preserve the real property (including all buildings, improvements, fixtures and
10 appurtenances thereon) including, without limitation, maintaining fire and casualty insurance policies
11 on the real property. They shall not commit waste against the real property, nor shall they cause or
12 permit anyone else to do so. They shall not do anything that tends to reduce the value or
13 marketability of the real property, nor shall they cause or permit anyone else to do so. They shall
14 not record any instruments, publish any notice, or take any other action that may directly or indirectly
15 tend to adversely affect the value of the real property or that may tend to deter or discourage potential
16 bidders from participating in the public sale, nor shall she cause or permit anyone else to do so.
17 **Violation of this paragraph shall be deemed a contempt of court and punishable as such.**

18 11. The defendants in this matter, anyone associated with the defendants and/or all other
19 persons occupying the real property shall leave and vacate permanently such property no later than
20 thirty (30) days after this Order is signed each taking with them his or her personal property (but
21 leaving all improvements, buildings, fixtures, and appurtenances) when leaving and vacating. If any
22 person fails or refuses to leave and vacate the property by the time specified in this Order, the United
23 States Marshal's Office or the Sheriff of Yavapai County is authorized to take whatever action they
24 deem appropriate to remove such person or persons from the premises. If any person fails or refuses
25 to remove his or her personal property from the real property by the time specified herein, the
26 personal property remaining on the real property thereafter is deemed forfeited and abandoned, and
27 the Marshal or a PALS representative is authorized and directed to remove and dispose of it in any
28

1 manner he/she sees fit, including sale, in which case the proceeds of sale are to be applied first to the
2 expenses of sale, and then to the tax liabilities at issue herein.

3 12. Notwithstanding the terms of the immediately preceding paragraph, if, after the sale
4 of the real property is confirmed by this Court, the real property remains occupied, a writ of
5 assistance may, without further notice, be issued by the Clerk of Court pursuant to Rule 70 of the
6 Federal Rules of Civil Procedure to compel delivery of possession of the real property to the
7 purchasers thereof.

8 13. If the defendants in this matter, anyone associated with the defendants and/or all other
9 persons occupying the real property vacates the property prior to the deadline set forth in paragraph
10 11, above, such person shall notify counsel for the United States no later than 2 business days prior
11 to vacating the property of the date on which he or she is vacating the property. Notification shall
12 be made by leaving a message for said counsel, Charles Duffy, at (202) 307-6406.

13 14. The Marshal or a PALS representative shall deposit the amount paid by the purchaser
14 into the registry of the court. Upon appropriate motion for disbursement or stipulation, the court will
15 disburse the funds in the following partial order of preference until these expenses and liens are
16 satisfied:

17 a. To the Marshal or IRS, for allowed costs and expenses of sale, including any
18 commissions due under 28 U.S.C. § 1921(c) and including an amount sufficient to cover the
19 costs of any steps taken to secure or maintain the real property pending sale and confirmation
20 by the Court;

21 b. To all taxes unpaid and matured that are owed (to county, city or school district)
22 for real property taxes on the real property;

23 c. To the United States, without reduction for registry fees,¹ in the amount of the
24

25 ¹ “In cases where the United States Government is a party to the action underlying
26 the registry investment, the funds initially withheld in payment of the [registry] fee may
27 be restored to the United States upon application filed with the court by...government
28 counsel.” 56 FR 56356-01; *see also Housekey Fin. Corp. v. Hofer*, 2001 WL 429821 at

1 outstanding federal tax, penalty and related liabilities of Joseph Lipari and Eileen Lipari for
2 the periods at issue in this action. The amount of aggregate amount of such liabilities, as of
3 November 1, 2011, is \$844,509.95 and interest should accrue subsequent to November 1,
4 2011 pursuant to 26 U.S.C. §§ 6601, 6621 and 6622, and 28 U.S.C. § 1961(c); and

5 d. Any balance remaining after the above payments shall be held by the Clerk until
6 further order of the Court.

7
8 IT IS SO ORDERED,

9
10
11 _____
12 DATE

11 _____
12 JOHN W. SEDWICK
13 United States District Judge

14
15
16
17
18
19
20
21
22
23
24 _____
25 *1 (E.D. Cal. March 23, 2001)(ordering the Clerk to disburse all registry funds to the
26 United States “undiminished by any registry fees assessed”). The United States requests
27 the return of any registry fees charged against the registry funds and requests that this
28 amount be included in the funds disbursed to it.