

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C14-01265 CRB

Plaintiff,

**ORDER DENYING DEFENDANTS’  
MOTION TO VOID SUMMARY  
JUDGMENT**

v.

KEITH KENNETH KRIEG and LINDA  
NUNES KRIEG,

Defendants.

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On March 19, 2014, the government brought this action against Keith and Linda Krieg (“Defendants”) for neglecting, failing, or refusing to pay federal income taxes, penalties, and interest pursuant to Sections 7401 and 7402 of the Internal Revenue Code of 1986. Complaint (dkt. 1) ¶¶ 1-2, 7-9. In answer, Defendants maintained that they had “not seen or found any evidence of any Act of Congress to allow the IRS jurisdiction or authority over us, whom have live[ed] in the California Republic for the years in question[,]” and that they “did not have any profits or gains from any sources within or without of the Corporate United States . . . .” Answer (dkt. 9) at 2; Case Mgmt. Statement (dkt. 13-1) at 1. On July 3, 2014, the government filed a Motion for Summary Judgment. See MSJ (dkt. 17). When Defendants failed to timely oppose the government’s motion, the Court ordered Defendants to show cause why the government’s motion should not be granted. See OSC (dkt. 20). The Court advised Defendants that “[f]ailure to timely respond to this Order could result in

1 summary judgment being entered for the government.” Id. Defendants failed to timely  
2 respond to the Court’s Order and the Court, finding the matter suitable for resolution without  
3 oral argument pursuant to Civil Local Rule 7-1(b), granted the government’s motion. See  
4 Order MSJ (dkt. 22).

5 On August 12, 2014, Defendants filed the present motion, requesting that the Court  
6 void its Order granting the government’s motion for summary judgment. See Mot. Void  
7 (dkt. 26). Defendants maintain that they “were not home for the time of response” and argue  
8 that the government’s action to collect federal income tax is time-barred. Id. at 2-3. The  
9 Court ordered the government to respond, Response Order (dkt. 27), and the government did  
10 so, Response (dkt. 29). For the reasons stated below, the Court DENIES Defendants’  
11 motion.

12 In granting the government’s motion, the Court noted that it did not grant the motion  
13 because of Defendants’ failure to oppose it, but “because (1) Defendants failed to respond to  
14 the Court’s show cause order, and (2) the Court has not identified either a genuine issue of  
15 material fact or any other reason the government is not entitled to judgment as a matter of  
16 law.” See Fed. R. Civ. P. 56(a); see also Carmen v. San Francisco Sch. Dist., 237 F.3d 1026,  
17 1031 (9th Cir. 2001) (“[t]he district court need not examine the entire file for evidence  
18 establishing a genuine issue of fact, where the evidence is not set forth in the opposing papers  
19 with adequate references so that it could conveniently be found.”). Defendants now argue  
20 that (1) the government’s documents contain inconsistent assessment dates for the tax years  
21 at issue and (2) some of the assessment dates are more than ten years old and thus the  
22 government’s action to collect federal income tax is time-barred. Mot. Void at 2-3; see 26  
23 U.S.C.A. § 6502. Defendants argue that, at minimum, this is “enough to offset the prima  
24 facie evidence presented in the 4340s.” Id. at 3.

25 “The government can usually carry its initial burden . . . merely by introducing its  
26 assessment of tax due. Normally, a presumption of correctness attaches to the assessment,  
27 and its introduction establishes a prima facie case. The presumption does not arise unless it  
28 is supported by a minimal evidentiary foundation.” United States v. Stonehill, 702 F.2d

1 1288, 1293 (9th Cir. 1983) (internal citations omitted). If the government establishes a prima  
2 facie case, Defendants must show, by a preponderance of the evidence, that judgment should  
3 not be entered against them. See Hardy v. Comm’r, 181 F.3d 1002, 1004-05 (9th Cir. 1999)  
4 (explaining burden shift); United States v. Molitor, 337 F.2d 917, 922 (9th Cir. 1964) (“if  
5 [taxpayer] had adduced no evidence contesting the prima facie proof . . . the United States  
6 would have been entitled to judgment”).

7 In this case, the government has submitted Certificates of Assessments and Payments  
8 (Form 4340s) for Mr. Krieg for the 1998 and 2001 tax years, and for Ms. Krieg for the 1997  
9 and 1998 tax years. See Moore Decl. (dkt. 18) Exs. 1-4. The Form 4340s list the assessment  
10 dates for Mr. Krieg as March 22, 2004 and August 14, 2006 and, for Ms. Krieg, as April 26,  
11 2004 and May 3, 2004. Id. These Form 4340s “are admissible evidence that valid  
12 assessments have been made.” See Hughes v. United States, 953 F.2d 531, 540 (9th Cir.  
13 1992). The government has made a prima facie case because the complaint against  
14 Defendants was filed on March 19, 2014, within ten years of the earliest assessment date as  
15 listed on the Form 4340s. See Compl.; See also Moore Decl. Exs. 1-4; Oliver v. United  
16 States, 921 F.2d 916, 919 (9th Cir. 1990).

17 Defendants argue that, due to conflicting dates on other IRS forms, the dates listed on  
18 the Form 4340s are incorrect, and that is sufficient to overcome the government’s prima facie  
19 case. Mot. Void at 3. Defendants point to several documents that list the assessment dates  
20 for Mr. Krieg as January 6, 2003 and March 24, 2003 and, for both of Ms. Krieg’s applicable  
21 tax years, as January 6, 2003, which would time-bar the government’s action. Id. at 2-3; see  
22 26 U.S.C.A. § 6502. Specifically, Defendants point to a “Revocation of Certificate of  
23 Release from Tax Lien,” a “Facsimile Federal Tax Lien Document,” and a “nominee’  
24 Notice of Federal Tax Lien,” that list the 2003 assessment dates. Id.

25 In response, the government argues that the “error in the dates listed . . . is due to the  
26 Substitutes for Return (“SFRs”) that the IRS prepared in 2002 and 2003.” Response at 2;  
27 Norris Decl. (dkt. 30) ¶¶ 24-29. “The Form 4340 Certifications for 1997 and 1998 reflect  
28 that the IRS filed SFRs on 11/20/2002 and recorded \$0 on 01/06/2003.” Response at 2;

1 Norris Decl. ¶ 8. “Mr. Krieg did not file a tax return for 2001, which prompted another SFR  
2 to be filed on 02/06/2003 and \$0 recorded on 03/24/2003.” Response at 2; Norris Decl. ¶¶  
3 25-26. The government notes that four of the eight documents listed by Defendants match  
4 the Form 4340s and thus concludes that “it is evident from a review of the documents that the  
5 IRS employee who prepared [the documents] mistakenly looked at 01/06/2003 and  
6 03/24/2003 . . . and erroneously included these dates as assessment dates on the  
7 document[s].” Response at 2; Norris Decl. ¶¶ 5-6, 24-29.

8 Form 4340s are “official document[s] which establish[] that assessments were made. .  
9 . .” Hughes, 953 F.2d at 535. The Form 4340s in this case demonstrate that the  
10 government’s action to collect Defendants’ income tax is not time-barred. Although  
11 Defendants identify some inconsistencies in the government’s documentation subsequent to  
12 the assessments, they have failed to show by a preponderance of the evidence that the Form  
13 4340s are inaccurate.

14 Accordingly, Defendants’ motion to void this Court’s prior judgment is DENIED.

15 **IT IS SO ORDERED.**

16 Dated: November 4, 2014



17 CHARLES R. BREYER  
18 UNITED STATES DISTRICT JUDGE  
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