

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 15-1072 MV/SCY

MARK AUSTIN, and
CATHERINE AUSTIN,

Defendants.

**ORDER ADOPTING IN PART
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the United States' Motion for Partial Summary Judgment against Mark Austin, filed December 27, 2017. Doc. 46. On March 27, 2018, the Court referred this motion to United States Magistrate Judge Steven C. Yarbrough for entry of proposed findings and a recommended disposition. Doc. 64.

On August 9, 2018, Judge Yarbrough entered his Proposed Findings and Recommended Disposition (PFRD) in which he recommended granting the United States' motion for partial summary judgment against Mr. Austin as to tax years 1999-2002, 2004-2005, 2009-2010 and denying the motion as to tax year 2008. Doc. 65. Judge Yarbrough notified the parties that they had 14 days from the service of the PFRD to file any objections to the PFRD. *Id.* at 11. Mr. Austin did not file any objections to the PFRD, thereby waiving his right to review of the proposed disposition. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).


On August 23, 2018, the United States timely objected to Judge Yarbrough's recommendation that the Court deny summary judgment as to tax year 2008. Doc. 66. The United States argues that the Form 4340 it submitted for tax year 2008 was presumptive proof of

a valid assessment for that tax year, and that Mr. Austin failed to present any evidence to rebut the presumption of correctness. *Id.* at 2. The United States' objection is well-taken. The line items in the Form 4340 for tax year 2008 indicate that the Internal Revenue Service properly followed necessary notice requirements. Mr. Austin has provided no evidence to rebut the reasonable inference drawn from the Form 4340 that the IRS provided Mr. Austin with the notice required by law. Specifically, Mr. Austin did not present any specific facts to the contrary nor did he challenge the United States' motion on this basis. Therefore, the Court declines to adopt the recommendation as to tax year 2008 and instead concludes that the United States is entitled to summary judgment for all tax years at issue.

IT IS THEREFORE ORDERED that:

1. the PFRD (Doc. 65) is adopted in part;
2. the United States' Motion for Partial Summary Judgment against Mark Austin (Doc. 46) is granted;
3. judgment is entered in favor of the United States for \$1,861,642.62, plus any interest, penalties, and other statutory additions accruing from November 6, 2017 under applicable law; and
4. the United States may, in accordance with applicable law, proceed with foreclosure proceedings on the Anasazi Trail Property in San Juan County, New Mexico.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE