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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 SCOTT and SHERI WHITTINGTON,

9 Plaintiffs,

10 v.

11 UNITED STATES OF AMERICA,

12 Defendant.

CASE NO. C14-5117 BHS

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

13 This matter comes before the Court on Defendant United States of America's
14 ("Government") motion for summary judgment (Dkt. 14). The Court has considered the
15 pleadings and the remainder of the file and hereby grants the motion for the reasons
16 stated herein.

17 **I. PROCEDURAL BACKGROUND**

18 On February 7, 2014, Plaintiffs Scott Whittington ("Scott") and Sheri Whittington
19 ("Sheri") filed virtually identical suits against the Government under 26 U.S.C. § 7431.
20 C14-5117, Dkt. 1; C14-5118, Dkt. 1. Scott and Sheri allege that the IRS wrongfully
21 disclosed their respective tax return information in violation of 26 U.S.C. § 6103(a).
22 C14-5117, Dkt. 1; C14-5118, Dkt. 1.

1 On May 21, 2014, the Court consolidated the two suits. Dkt. 11.

2 On July 15, 2014, the Government moved for summary judgment. Dkt. 14. Scott
3 and Sheri did not respond.

4 **II. FACTUAL BACKGROUND**

5 Scott and Sheri are married and reside in Washington, a community property state.
6 Dkt. 15, Declaration of Patrick E. McGuire (“McGuire Dec.”) at 2.

7 Between 2006 and 2009, Scott did not file individual income tax returns. *Id.*
8 Unlike her husband, Sheri filed income tax returns between 2006 and 2009. *Id.* at 3.
9 Sheri reported the income she earned, but did not report her one-half share of Scott’s
10 income. *Id.*

11 In January 2010, the IRS audited Scott’s income tax liabilities for the 2006
12 through 2009 tax years. *Id.* at 3. The IRS determined that Scott was liable for the
13 income tax on his unreported income, as well as his one-half share of Sheri’s income. *Id.*
14 Based on these determinations, the IRS sent a deficiency notice to Scott on October 23,
15 2012. Dkt. 16, Declaration of Michael Hatzimichalis (“Hatzimichalis Dec.”), Ex. 1. The
16 notice disclosed Sheri’s one-half share of marital income. *Id.*

17 The IRS also audited Sheri’s income tax liabilities for the 2006 through 2009 tax
18 years. McGuire Dec. at 3. The IRS determined that Sheri was liable for the income tax
19 on her one-half share of Scott’s income. Hatzimichalis Dec., Ex. 2. Based on these
20 determinations, the IRS sent a deficiency notice to Sheri on October 23, 2012. *Id.* The
21 notice disclosed the IRS’s determinations regarding Scott’s one-half share of marital
22 income. *Id.*

1 On January 23, 2013, Scott and Sheri filed petitions to redetermine their proposed
2 tax deficiencies with the U.S. Tax Court. *Scott A. Whittington v. Comm’r*, No. 002060-
3 13; *Sheri L. Whittington v. Comm’r*, No. 002061-13. On December 4, 2013, the IRS sent
4 Sheri trial exhibits. *See* Hatzimichalis Dec., Ex. 6. The trial exhibits included bank
5 records and evidence of Scott’s income. *Id.* On December 5, 2013, the IRS sent Scott
6 trial exhibits. *See* Hatzimichalis Dec., Ex. 10. The exhibits included bank records and
7 evidence of Sheri’s income, including her tax returns. *Id.*

8 III. DISCUSSION

9 A. Summary Judgment Standard

10 Summary judgment is proper only if the pleadings, the discovery and disclosure
11 materials on file, and any affidavits show that there is no genuine issue as to any material
12 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
13 The moving party is entitled to judgment as a matter of law when the nonmoving party
14 fails to make a sufficient showing on an essential element of a claim in the case on which
15 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
16 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
17 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
18 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
19 present specific, significant probative evidence, not simply “some metaphysical doubt”).
20 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
21 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
22 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477

1 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
2 626, 630 (9th Cir. 1987).

3 The determination of the existence of a material fact is often a close question. The
4 Court must consider the substantive evidentiary burden that the nonmoving party must
5 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
6 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
7 issues of controversy in favor of the nonmoving party only when the facts specifically
8 attested by that party contradict facts specifically attested by the moving party. The
9 nonmoving party may not merely state that it will discredit the moving party’s evidence
10 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
11 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
12 nonspecific statements in affidavits are not sufficient, and missing facts will not be
13 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

14 **B. Government’s Motion for Summary Judgment**

15 Scott and Sheri allege that the IRS wrongfully disclosed their respective tax return
16 information in violation of 26 U.S.C. § 6103(a). C14-5117, Dkt. 1; C14-5118, Dkt. 1.
17 The Government moves for summary judgment, arguing that all disclosures were
18 authorized by 26 U.S.C. § 6103(h)(4). Dkt. 14 at 6.

19 Section 6103(a) prohibits the disclosure of confidential tax returns and return
20 information unless a statutory exception applies. 26 U.S.C. § 6103(a); *Aloe Vera of Am.,*
21 *Inc. v. United States*, 699 F.3d 1153, 1156 (9th Cir. 2012). “Return information” is
22 broadly defined and includes “a taxpayer’s identity, [and] the nature, source, or amount

1 of his income.” 26 U.S.C. § 6103(b)(2)(A).

2 Section 6103(h)(4) sets forth various exceptions to the general rule prohibiting
3 disclosure of tax return information. Section 6013(h)(4) provides, in part:

4 A return or return information may be disclosed in a Federal or State
judicial or administrative proceeding pertaining to tax administration . . .

5 (B) if the treatment of an item reflected on such return is directly
related to the resolution of an issue in the proceeding; [or]

6 (C) if such return or return information directly relates to a
7 transactional relationship between a person who is a party to the proceeding
and the taxpayer which directly affects the resolution of an issue in the
proceeding

8 *Id.* § 6103(h)(4)(B), (C).

9 In this case, the Government’s disclosures were proper under 26 U.S.C.
10 § 6103(h)(4)(B). The Government disclosed Scott and Sheri’s respective tax return
11 information during income tax audits and U.S. Tax Court proceedings. Income tax audits
12 are considered administrative proceedings. *See Abelein v. United States*, 323 F.3d 1210,
13 1214–15 (9th Cir. 2003); *Delpit v. Comm’r*, 18 F.3d 768, 770 (9th Cir. 1994). U.S. Tax
14 Court proceedings are judicial proceedings. *See* 26 U.S.C. §§ 7441, 7442.

15 Additionally, the Government’s disclosures directly relate to the resolution of tax
16 liability issues in the audits and tax court litigation. As Washington residents, Scott and
17 Sheri were required to report their one-half share of marital community income on their
18 individual income tax returns. *See* RCW 26.16.030; *see also Comm’r v. Dunkin*, 500
19 F.3d 1065, 1069–70 (9th Cir. 2007). Scott and Sheri, however, failed to report their one-
20 half shares of community income. The IRS audited Scott and Sheri to determine the
21 correct amount of their taxable income. Scott’s return information directly relates to
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1 Sheri's taxable income. Conversely, Sheri's return information directly relates to Scott's
2 taxable income. Section 6103(h)(4)(B) therefore authorized the Government's
3 disclosures.

4 The Government's disclosures were also proper under 26 U.S.C. § 6103(h)(4)(C).
5 As discussed above, the Government disclosed Scott and Sheri's tax return information in
6 administrative and judicial proceedings. Moreover, the disclosed information relates to a
7 transactional relationship between Scott and Sheri that directly affects the audits and tax
8 court litigation. Given the community property nature of their income, a transactional
9 relationship existed between Scott and Shari. This relationship directly affects the
10 amount of Scott and Sheri's taxable income—an issue in both the audits and the tax court
11 litigation. Accordingly, section 6103(h)(4)(C) also authorized the Government's
12 disclosures.

13 IV. ORDER

14 Therefore, it is hereby **ORDERED** that the Government's motion for summary
15 judgment (Dkt. 14) is **GRANTED**. The clerk is directed to close the case.

16 Dated this 22nd day of September, 2014.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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