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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH R. FRANCIS,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
Defendant.

CASE NO. CV 09-09449 RGK (FFMx)

**ORDER RE COMPLAINT**

**I. INTRODUCTION**

On December 24, 2009, Joseph R. Francis ("Plaintiff") filed an action against United States of America ("Defendant"). Plaintiff has filed the action pursuant to 26 U.S.C. § 7429(b) ("Section 7429(b)"), seeking (1) abatement of jeopardy assessments taken by Defendant against Plaintiff, and (2) release of levies issued on two bank accounts, and return of any funds paid pursuant to those levies. Alternatively, Plaintiff requests that the Court reduce and return the excessive amounts levied.

Section 7239(b)(3) provides that determination of this action shall be made within 20 days from the date the proceeding is commenced. Specifically, the Court must

1 determine whether the jeopardy assessment is reasonable under the circumstances,  
2 and whether the amount assessed is appropriate under the circumstances. Presently  
3 before the Court is the Section 7429(b)(3) determination. For the following reasons, the  
4 Court finds that the relief Plaintiff seeks is unwarranted.

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6 **II. FACTUAL BACKGROUND**

7 The parties allege the following facts:

8 1. Plaintiff and His Affiliated Companies

9 Plaintiff is the founder of a multi-million dollar entertainment business best known  
10 for its production and sale of DVDs under the title *Girls Gone Wild*. The business  
11 operates under Mantra Films, Inc., a U.S. corporation formed in 1998 (“Mantra Films”),  
12 and Sands Media, Inc., a U.S. corporation formed in 2001 (“Sands Media”). Because  
13 Mantra Films and Sands Media have elected S Corporation treatment, the income and  
14 losses of those companies pass through to Plaintiff, as their sole shareholder.

15 In 2000, Rothwell Limited, a Cayman Islands corporation (“Rothwell Ltd.”), was  
16 formed. In July 2001, a Morgan Stanley investment brokerage account was opened on  
17 behalf of Rothwell Ltd. (“Rothwell Account”). Colin Chaffee is listed as the administrator  
18 and/or signatory of the Rothwell Account. However, Plaintiff has admitted that he owns  
19 100% of the interest income generated by the Rothwell Account.

20 On October 4, 2002, Plaintiff established Blue Horse Trading, LLC (“Blue Horse  
21 Trading”). Plaintiff is the sole member of Blue Horse. On November 5, 2002, Blue Horse  
22 purchased a house in Los Angeles, which was then leased to Mantra Films beginning  
23 December 2002. This house is Plaintiff’s personal residence.

24 2. Plaintiff’s Criminal Case

25 On April 11, 2007, a federal grand jury indicted Plaintiff on two counts of felony  
26 tax evasion in connection with his 2002 and 2003 personal tax returns and those of  
27 Mantra Films and Sands Media. On September 23, 2009, in the case entitled *United*  
28 *States v. Joseph R. Francis*, CR 08-494 (U.S.D.C., D.C. Ca.), the parties entered into a

1 binding plea agreement (“Plea Agreement”). Pursuant to the Plea Agreement, the  
2 government dismissed its felony tax evasion charges, and Plaintiff pled guilty to two  
3 misdemeanor tax counts for failing to report interest income on the Rothwell Account in  
4 2003. The agreement also provided for a time-served sentence, a restitution payment of  
5 \$249,705, a \$10,000 fine, and a special assessment fee of \$150. On November 6,  
6 2009, the Court accepted the Plea Agreement and the terms contained therein.

7           3.       *The Government’s Jeopardy Assessments and Levies*

8           On November 6, 2009, the same date the Court entered the Plea Agreement,  
9 Defendant served Jeopardy Assessments on Plaintiff in an amount that exceeds \$33  
10 million. The total assessment amount is for tax years 2001, 2002, and 2003.<sup>1</sup> Defendant  
11 also levied the Rothwell Account, which froze over \$20 million, and a UBS Financial  
12 Services account (“UBS Account”), which froze over \$2.4 million.

13           On November 20, 2009, Plaintiff served a Request for Administrative Review on  
14 the IRS, pursuant to Section 7429(a)(2). As of the date Plaintiff filed the current action,  
15 the Section 7239(b)(1) wait period after which civil proceedings can be filed had been  
16 reached.<sup>2</sup>

17  
18 **II.       JUDICIAL STANDARD**

19           Where a taxpayer is deficient in payment of taxes, and collection of such taxes  
20 may be rendered ineffective or “jeopardized” if collection efforts are delayed, 26 U.S.C.  
21 §§ 6861 and 6862 allow the following: (1) an immediate determination of the taxes due;

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23           <sup>1</sup> In taxes, penalties, and interest, Defendant determined Plaintiff’s deficiencies to  
24 be (1) \$17,658,359 for tax year 2001, (2) \$11,262,006.12 for tax year 2002, and (3)  
25 \$4,932,405.97 for tax year 2003.

26           <sup>2</sup> Section 7429(b)(1) states that a civil action may be brought within 90 days after  
27 the earlier of (a) the day the Secretary notifies the taxpayer of the Secretary’s  
28 determination, or (b) the 16<sup>th</sup> day after the request for review was made. Plaintiff alleges  
in his Complaint that more than 16 days had passed since the filing of his request for  
review. Defendant does not dispute this fact.

1 (2) service of jeopardy assessment upon the taxpayer; (3) immediate demand of  
2 payment; and (4) immediate levying upon the taxpayer's property. See 26 U.S.C. §§  
3 6561 and 6862.

4 Section 7429 provides limited judicial review of such action on an expedited  
5 basis. Upon request of the taxpayer (and compliance with the statutory guidelines), a  
6 court must decide (1) whether the jeopardy assessment is reasonable under the  
7 circumstances, and (2) whether the amount assessed is appropriate under the  
8 circumstances. 26 U.S.C. §§ 7429(b)(3)(A). The burden of proving reasonableness of  
9 the assessment falls on the government. In this context, a "reasonable" assessment is  
10 considered a decision that is more than not arbitrary and capricious and less than  
11 supported by substantial evidence. *Golden ADA, Inc. v. United States*, 934 F. Supp.  
12 341, 344 (N.D. Cal. 1996). As to proving inappropriateness of assessment amount, the  
13 burden falls on the taxpayer.

14 Review of the assessment is made de novo. *Stebco, Inc. v. U.S.*, 733 F. Supp.  
15 1387, 1390 (S.D. Cal. 1990); *Miller v. U.S.*, 615 F. Supp. 781, 785 (D.C. Ohio 1985).  
16 The court may consider not only information available to the IRS at the time of the  
17 assessment, but also any relevant information gathered after that date, and may  
18 consider evidence that would not be admissible at trial. *Stebco, Inc.*, 733 F. Supp. at  
19 1390.

20 If the court determines that the assessment is unreasonable or the amount is  
21 inappropriate, the court may order abatement, redetermination of the assessment, or  
22 other such action as the court deems appropriate. 26 U.S.C. § 7429(b)(3). The court's  
23 determination is not subject to review by any other court. 26 U.S.C. § 7429(f); *Nichols v.*  
24 *United States*, 633 F.2d 829, 830-31 (9<sup>th</sup> Cir. 1980). However, the summary hearing is  
25 not conclusive of the taxpayer's ultimate tax liability, which either party can litigate in a  
26 subsequent proceeding. *Haskin v. United States*, 444 F. Supp. 299, 304 (C.D. Cal.  
27 1977).

28

1 **III. DISCUSSION**

2 Plaintiff argues that Defendant cannot meet its burden of proving that the  
3 assessments and levies were reasonable under the circumstances. Plaintiff also argues  
4 that the assessed amounts are inappropriate. The Court addresses each argument in  
5 turn.

6 **A. Reasonableness of the Assessments and Levies**

7 The IRS Regulations set forth standards for use by the agency in determining  
8 whether to make a jeopardy assessment. The standards state that jeopardy  
9 assessment is appropriate where (1) the taxpayer is, or appears to be, planning to  
10 quickly depart from the United States or to conceal himself; (2) the taxpayer appears to  
11 be planning to place his property beyond reach of the Government by removing it from  
12 the United States, or concealing, transferring or dissipating it; or (3) the taxpayer's  
13 financial solvency appears to be imperiled. See *Bean v. U.S.*, 618 F. Supp. 652, 657  
14 (D.C. Ga. 1985). If any of the three conditions exist, the jeopardy assessment is  
15 reasonable. *Id.*

16 Upon review of the record, the Court finds sufficient evidence showing that the  
17 assessment was reasonable based on the appearance that Plaintiff was planning to  
18 place his property beyond reach of the Government. As stated above, the tax liability  
19 assessed by Defendants totals over \$33 million. Under the Plea Agreement, it appears  
20 that Plaintiff is the 100% beneficial owner of the funds and income derived from the  
21 funds placed in the Rothwell Account. The Rothwell Account currently holds \$20 million,  
22 substantially more than the \$2.4 million held in the UBS Account, which is the only other  
23 bank account Plaintiff appears to own. On December 18, 2009, after Defendant served  
24 the levy, Brian Trowbridge, whose Cayman Island address matches that of Rothwell  
25 Ltd, instructed Morgan Stanley to liquidate the entire account and forward the proceeds  
26 to him. (Stevens Decl., ¶¶ 9 and 10.) These facts, alone, fit squarely into the set of  
27 circumstances that make Defendant's jeopardy assessment reasonable.

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1           Moreover Defendant has also presented the following evidence: (1) Plaintiff's use  
2 of Blue Horse Trading to purchase his Los Angeles residence; (2) most of Plaintiff's  
3 assets residing in various corporate entities; (3) an existing \$2.8 million civil judgment  
4 against Plaintiff; and (4) felony indictments, albeit dismissed under a plea agreement,  
5 that laid out a complex scheme to evade payment of tax. Without addressing the  
6 sufficiency of this evidence alone, the Court finds that the evidence does, at a minimum,  
7 raise questions as to the IRS's ability to collect the delinquent taxes through ordinary  
8 means. Moreover, the evidence tends to lend further support to the Court's previous  
9 finding of reasonableness.

10           Plaintiff argues that, at the very least, the Court should find Defendant's levy on  
11 the Rothwell Account unreasonable. However, in light of Plaintiff's admissions in the  
12 Plea Agreement, and the implications reasonably inferred, the Court also finds  
13 Defendant's levy of the Rothwell Account reasonable.

14           **B. Appropriateness of Assessment Amount**

15           To adequately satisfy his burden of proof as to the assessment amount, Plaintiff  
16 must show that Defendant's computation of the potential tax liability was factually  
17 defective, irrational, arbitrary or unsupported. *Camp v. C.I.R.*, 635 F. Supp. 585, 588  
18 (E.D. La. 1986).

19           Plaintiff argues that Defendant's assessment amount is inappropriate under the  
20 circumstances. Specifically, Plaintiff contends that the bulk of Defendant's assessment  
21 for 2001 relates to a widely-employed tax strategy, known as "Son of Boss," that was (1)  
22 rule entirely proper by a district court, and (2) widely marketed by reputable accounting  
23 and tax firms and, in Plaintiff's case, supported by a lengthy legal opinion. Therefore,  
24 Plaintiff asserts that the tax adjustments made are improper, as are the fraud penalties,  
25 since Plaintiff relied in good faith on reputable tax advisors. As to tax years 2002 and  
26 2003, Plaintiff argues that Defendant attempts to double-collect on funds already  
27 received under the terms of the Plea Agreement. Moreover, Plaintiff argues that the  
28 fraud penalties assessed for those years are inappropriate because Plaintiff relied on

1 the advice from tax consultants and accountants, counsel and/or legal opinions. To the  
2 extent there is no fraud, Defendant is barred by the statute of limitations from collecting  
3 any taxes for 2001 and 2002. Plaintiff asserts that, to the extent any jeopardy  
4 assessment is reasonable, the maximum amount assessable is approximately \$3.5  
5 million.<sup>3</sup>

6 While Plaintiff makes compelling arguments as to his ultimate tax liability, the  
7 matters of dispute he sets forth are not before the Court at this time. As to tax year  
8 2001, Plaintiff's own evidence shows that Defendant issued a Notice of Final  
9 Partnership Administrative Adjustment ("FPAA Notice"). (Pl.'s Exhibits, Ex. 8.) The  
10 FPAA Notice clearly states Defendant's position as to why the adjustment was made,  
11 and makes a finding that the transactions at issue were sham transactions made for the  
12 sole purpose of avoiding tax liability. *Id.* Both the FPAA Notice and the Notice of  
13 Jeopardy Assessment detail the calculations used to derive the assessment amount for  
14 2001. (Pl.'s Exhibits, Exs. 1 and 8.) Similarly, the Notice of Jeopardy Assessment for  
15 2002 and 2003 also provides a detailed summary of how the assessment amount for  
16 those years were derived. Plaintiff appears to disagree with Defendant's position  
17 regarding the legality of Plaintiff's transactions and the accuracy of Defendant's  
18 computations. Plaintiff also raises a defense to Defendant's allegations of fraud. These  
19 objections raise factual disputes that should be determined in separate litigation  
20 proceedings. The only issue before the Court at this time is the appropriateness of the  
21 assessment under the circumstances. As to this limited issue, Plaintiff has failed to  
22 satisfy his burden of showing that Defendant's method of computing the assessment  
23 amount was fatally defective, irrational, arbitrary or unsupported.

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28 <sup>3</sup> In calculating this amount, Plaintiff excluded the 2001 and 2002 tax year  
assessments as barred by the statute of limitations, and the 2003 fraud penalties.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Court finds that (1) Defendant's jeopardy  
3 assessment and levy of accounts is reasonable under the circumstances, and (2) the  
4 amount of the assessment is appropriate under the circumstances. Therefore, Plaintiff's  
5 Complaint for Abatement of Jeopardy Assessments, Release of Levy on Rothwell  
6 Limited Account, or Alternatively, Reduction and Return of Excessive Amounts Levied is  
7 **DENIED.**

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9 **IT IS SO ORDERED.**

10  
11 January 13, 2010  
12 Dated

  
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13 R. Gary Klausner  
14 United States District Judge  
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