

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACQUELINE R. HOWARD,

Defendant.

OPINION AND ORDER

21-cv-310-wmc

In this civil lawsuit, plaintiff the United States of America seeks payment of federal income tax liability, including penalties and interests, for the years 2005 through 2017, against defendant Jacqueline R. Howard. Initially, Howard appeared *pro se*, answered the complaint, and indicated that she had been in the process of working out a payment arrangement with a local IRS agent at the time this lawsuit was filed. (Answ. (dkt. #4).) However, Howard failed to respond timely to plaintiff's motion for summary judgment. The court then provided Howard another opportunity to respond (dkt. #12), but she failed to meet that May 3, 2022, deadline as well. Nor did Howard otherwise contact the court to indicate that she needed additional time or intended to respond. These repeated failures to participate in this lawsuit all occurred despite the court having expressly warned defendant in its earlier order that if she did not respond, "the court will treat her lack of response as a concession of liability and will enter judgment in plaintiff's favor in the amount requested." (*Id.*)

OPINION

In its proposed findings, plaintiff sets forth Howard's tax history, including her filing

history for each of the tax years, the amount assessed for federal income tax, penalties and interest, and her payment history. (Pl.'s PFOFs (dkt. #10) ¶¶ 2, 3, 5.) In addition, plaintiff also provided notices of the assessments and demands for payments provided to Howard by the IRS in Forms 4340 over the years. (*Id.* ¶ 4.) The records show that as of February 1, 2022, the unpaid balances, including interest, penalties and accounting for any payments, totaled \$453,700.18. (*Id.* ¶ 7.)

Moreover, as set forth in the government's motion for summary judgment, the certified Form 4340s are presumptive proof that (1) a delegate of the Secretary of the Treasury made valid assessments against a taxpayer and (2) proper notices and demands for payment were sent. *See, e.g., Heft v. IRS*, 8 F.3d 1169, 1172 (7th Cir. 1993). A certified Form 4340 is also a "business record and as such valid evidence." *United States v. Miller*, 661 Fed. App'x 445, 448 (7th Cir. 2016) (internal citations omitted). While these forms do not show the *current* balances due because they do not contain further, statutory accruals, IRS Revenue Officer Kurkiewicz calculated the total tax liabilities including interest and penalties. (Kurkiewicz Decl. (dkt. #11).)

Since the court sees no error in the forms themselves, nor in Officer Kurkiewicz's calculations, plaintiff has demonstrated on this record, and defendant has conceded by repeatedly failing to respond to plaintiff's motion, that defendant: (1) did not file tax returns for five of the years at issue; and (2) did not comply with her obligation to pay federal income taxes, including penalties and interest, for tax years 2005 through 2017. Accordingly, the court will grant plaintiff's motion and direct entry of judgment in its favor.

ORDER

IT IS ORDERED that:

- 1) The United States of America's motion for summary judgment (dkt. #8) is GRANTED.
- 2) Judgment is granted in plaintiff's favor against defendant Jacqueline R. Howard in the amount of \$453,700.18 plus statutory additions that have accrued since February 1, 2022, and will continue to accrue by law.

Entered this 11th day of May, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge