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Attorneys for Plaintiff, BILLIE M. MERTES

7
 8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA
 10

11 BILLIE M. MERTES,

12 Plaintiff(s),

13 v.

14 INTERNAL REVENUE SERVICE,

15 Defendant(s).

Case No.

**COMPLAINT FOR
 DECLARATIVE AND
 INJUNCTIVE RELIEF**

16 **Complaint for Injunctive Relief**
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18 1. This is an action under the Freedom of Information Act (FOIA), 5 USC §552, for
 19 injunctive and other appropriate relief and seeking the disclosure and release of agency records
 20 pertaining to Plaintiff, Billie M. Mertes, improperly withheld from her by the Department of
 21 Treasury, Internal Revenue Service.

22 **Jurisdiction and Venue**
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24 2. This Court has both subject matter jurisdiction over this action and personal
 25 jurisdiction over the parties pursuant to 5 USC §552 (a) (4) (B). This Court also has
 26 jurisdiction over this action pursuant to 28 USC §1331. Venue lies in the district under 5 USC
 27 §552 (a) (4) (B) because the records Plaintiff seeks are believed to be in Fresno, CA.
 28



Parties

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2 3. Plaintiff is a resident of Cloverdale, CA.

3 4. The United States Department of Treasury is a Department of the Executive Branch
4 of the United States Government, that includes the Defendant, Internal Revenue Service
5 (“IRS”). The IRS is an agency within the meaning of 5 USC §552 (f) and as defined in Treas.
6 Reg. § 601.702(c)(13).

7
8 Facts

9 5. By letter dated May 21, 2019, addressed to the IRS, Plaintiff’s attorney requested a
10 copy of a fraudulent Form 709-Gift Tax Return for the 2012 year (the “fraudulent Form 709”).

11 6. According to IRS records, in February 2015, it received a tax year 2012 Form 709 it
12 attributed to the Plaintiff and assessed a gift tax of \$1,486,477.

13 7. Neither the Plaintiff, nor anyone acting on behalf of or with the consent of the
14 Plaintiff, prepared or filed that fraudulent Form 709.

15 8. Accompanying the May 21, 2019 request for the fraudulent Form 709 (the “5/21/19
16 Request”) was a properly filled out and dated Form 4506-F (Identity Theft Victim’s Request
17 for Copy of Fraudulent Tax Return), requesting a copy of the fraudulent Form 709.

18 9. In response to the 5/21/19 Request, the Defendant sent a letter dated July 1, 2019,
19 denying the request for “the taxpayer’s Form 709” (the “7/1/19 Denial”), claiming the grounds
20 for denying the request was that Treas. Reg. §601.702(d) provides that requests for records
21 possessed in accordance with routine agency procedures are excluded from FOIA.
22

23 10. Included with the Defendant’s 7/1/19 Denial was a blank Form 4506-T, Request
24 for Transcript of Tax Return, and a suggestion that a request be made for the taxpayer’s
25 “transcripts.”
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27 11. On July 5, 2019, Plaintiff’s attorney submitted to IRS Appeals, Attention FOIA
28

1 Appeals, a request to appeal the 7/1/19 Denial (the “FOIA Appeal”), citing the fact that the
2 5/21/19 Request was not for an actual return of the taxpayer and, under court precedent, the
3 definition of a “tax return” does not include a fraudulent return filed without the knowledge or
4 consent of the taxpayer.

5 12. By letter dated July 10, 2019, the IRS Appeals Office acknowledged receiving the
6 FOIA Appeal.

7 13. On July 11, 2019, the IRS Office of Appeals denied the FOIA Appeal, (again)
8 suggesting that Plaintiff file either a Form 5406 (for a legitimate return), a Form 4506-T (for a
9 transcript), or a Form 4506-F (for a fraudulent return), apparently ignoring the copy of the
10 Form 5406-F accompanying the 5/21/19 Request.

11 14. Prior to the 5/21/19 FOIA Request, by letter dated May 12, 2017, addressed to the
12 IRS, Plaintiff’s attorneys requested copies of (1) all documents pertaining to any and all Forms
13 709 submitted under the Plaintiff’s name or taxpayer identification number for 2012 and 2013,
14 and (2) copies of all documents contained in the administrative files of the Plaintiff for the gift
15 tax periods 2012 and 2013 (the “5/12/17 FOIA Request”).

16 15. In response to the 5/12/17, FOIA Request, by letter dated July 13, 2017, Celeste
17 Neal, Disclosure Manager, Disclosure Office 14, provided a CD to Plaintiff’s attorney, which
18 CD included a copy of a 2012 Form 709 prepared and filed by Plaintiff’s current attorneys in
19 February 2017, to “undo” the assessment of the gift tax the IRS assessed when it received the
20 fraudulent Form 709 in 2015. Unfortunately, that CD did not contain a copy of the fraudulent
21 Form 709.

22 17. Following receipt of Ms. Neal’s July 13, 2017 letter, but prior to August 28, 2018,
23 Plaintiff’s attorney contacted the IRS Taxpayer Advocate Service (“TAS”) in request of
24 assistance in procuring a copy of the fraudulent Form 709.
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1 18. After extensive communications with Plaintiff's attorney, in May 2019, the TAS
2 notified Plaintiff's attorney that they would not be procure a copy of the fraudulent Form 709
3 for the Plaintiff.

4 19. Pursuant to Treas. Reg. § 601.702(c)(10) and Treas. Reg. § 601.702(c)(10),
5 Plaintiff has exhausted the applicable administrative remedies with respect to making a FOIA
6 request.

7 20. Plaintiff has a right of prompt access to the requested records under 5 USC §552
8 (a) (3) (A), and the IRS has wrongfully withheld the sought-after documents.
9

10 **Requested Relief**

11 Wherefore, Plaintiff prays that this Court:

- 12 1. Order Defendant to disclose the fraudulent form 709/requested records in their
- 13 entireties and make copies available to Plaintiff;
- 14 2. Provide for expeditious proceedings in this action;
- 15 3. Award Plaintiff her costs and reasonable attorneys fees incurred in this action; and
- 16 4. Grant such other relief as the Court may deem just and proper.

17
18 DATED: August 30, 2019

19 WAGNER KIRKMAN BLAINE
KLOMPARENS & YOUMANS LLP

20
21 By: /s/ Douglas L. Youmans (as auth. 8/30/19)
DOUGLAS L. YOUMANS

22
23 By: 
24 CHRISTIAN A. SPECK

25 Attorneys for Plaintiff,
26 BILLIE M. MERTES
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