

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No.: 1:14-cv-22441-CMA
)	
SALLY JIM)	
Defendant.)	

UNITED STATES’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the Court’s direction at the close of evidence, the United States submits the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. On the dates and in the amounts set forth below, a delegate of the Secretary of Treasury made assessments against Sally Jim for federal income tax liabilities, penalties, and interest for tax year 2001.

<u>Tax Year</u>	<u>Date Assessed</u>	<u>Tax Assessed</u>	<u>Penalties Assessed</u>	<u>Interest Assessed</u>
2001	09/13/2004	\$15,498.00	\$2,551.95* \$1,644.59** \$430.55***	\$1,783.72
	06/26/2006		\$1,190.91**	
	12/31/2012	\$95,823.00	\$21,560.18* \$3,833.70***	

*late filing penalty – 26 U.S.C. § 6651(a)(1)
 **failure to pay penalty – 26 U.S.C. § 6651(a)(2)
 ***estimated tax penalty – 26 U.S.C. § 6654

ECF No. 168 (Pretrial Stipulation), ¶ 1, Ex. 68. Despite notices and demands for payment, Ms. Jim failed to pay her federal income tax liabilities in full. ECF No. 168, ¶ 2; Ex. 68. Ms. Jim continues to accrue interest, penalties, and statutory additions. ECF No. 168, ¶ 2; Ex. 68. As of

April 9, 2015, Ms. Jim is indebted to the United States for her federal income tax liabilities for tax year 2001, in the amount of \$278,758.83. Ex. 71.

2. In 2001, Sally Jim was a member of the Miccosukee Tribe of Indians (“the Tribe”). ECF No. 168, ¶ 3. As a member of the Tribe, Sally Jim received quarterly distributions in per capita amounts based on the number of members in her household. Sally Jim Testimony; ECF No. 168, ¶ 7.

3. In 2001, Sally Jim received quarterly distributions from the Tribe totaling \$272,000. ECF No. 168, ¶¶ 7-8.

4. Sally Jim had complete dominion over distributions that she received, and she had absolute discretion how to spend her distributions. Sally Jim Testimony; Ex. 7, p. 27.

5. Parents retained the right to receive children’s distributions despite the Tribe’s awareness that parents could and did use children’s distributions for their personal benefit. Ex. 20, p. 66; Ex. 50, p. 19.

6. In January of 2015, Sally Jim attempted to submit a belated 2001 tax return to the IRS; in that return, she stated that she received \$272,000 in benefits from the Miccosukee Tribe of Indians which she listed as “other income” but “excluded from gross income” as Indian general welfare benefits. ECF No. 168, ¶ 11; Ex. 67.

7. Sally Jim also received wages of \$25,990 in 2001 from her employment in the Tribe’s healthcare facility. ECF No. 168, ¶ 9.

8. Sally Jim admits to having gambled in 2001. She has no documentary evidence or specific recollection substantiating any losses that may offset gambling winnings. Sally Jim Testimony.

9. Sally Jim did not file a tax return when due for the 2001 tax year. Apart from a small amount of tax withheld from her wages, Sally Jim failed to make estimated payments of tax or pay her tax liability when due. Ex. 68. ECF No. 168, ¶ 10.

10. Around 1990, the Tribe started operating its gaming facility referred to as the Bingo Hall or MIBG. The Tribe's gaming facility offers so-called class II gaming, including high-stakes bingo, poker, and video pull-tab machines. ECF No. 168, ¶ 12.

11. When its gaming facilities began generating large amounts of income, the Tribe's ability to distribute large sums of money to its members increased. Billy Cypress Testimony; Ex. 7, p. 6 (noting that NTDR payments were "in accordance" with revenue at Micosukee Indian Bingo).

12. In response to the passage of 26 U.S.C. § 3402(r), which required tribes to withhold federal income tax from distributions of net gaming revenue, the Tribe devised a scheme to argue that its distributions did not constitute "net revenue" from gaming for purposes of the statute. Ex. 3, p. 5 (noting new law placing taxation on payments of gaming revenue). Specifically, the Tribe enacted a so-called "gross receipts tax" or "gross receipts license fee" which it applied to its gaming facility. Ex. 1; Ex. 3, p. 5. The Tribe's license fee is a percentage of the gross revenue of the Bingo Hall. ECF. No. 168, ¶ 13. The Tribe places the license fee into what it terms a NTDR ("non-taxable distributable revenue") account. ECF No. 168, ¶ 14.

13. The Tribe initially set the license fee at 6.5% of gross revenue in 1995. Ex. 1. The Tribe later increased the fee to approximately 7.75% during 2001. Ex. 46 at 14. Since its establishment, the Tribe has made per capita distributions to tribal members from its NTDR account. Ex. 5.

14. All of the Tribe's distributions constitute in substance distributions of net gaming revenue. Ex. 46, at 2 (stating total trust fund distributions for year ending September 30, 2001 were \$36,268,000), 14 (stating gross receipts license fee for Miccosukee Indian Bingo and Gaming was \$32,103,681 and for Miccosukee Resort and Convention Center was \$546,810 for year ending September 30, 2001); Ex. 52, at 3, 11 (showing Miccosukee Indian Bingo and Gaming subsidized Miccosukee Resort and Convention Center); Ex. 53, at 3 (showing total trust fund distributions for year ending September 30, 2002, were \$36,335,300), at 13 (showing Miccosukee Indian Bingo and Gaming paid \$37,462,023 in gross receipts license fee for year ending September 30, 2002).

15. Though the NTDR account was funded with the gross receipts tax on the gaming center, the actual amount of distributions depended on "cash flow" to the NTDR account from the gaming center. Colley Billie designation. Thus, if the gaming center had a large payout, the NTDR distributions would be reduced. *Id.*

16. Miccosukee Indian Bingo paid rent to the Miccosukee Resort and Convention Center. Ex. 52, at 3.

17. The Tribe produced no documentary evidence substantiating its claims that sources other than Miccosukee Indian Bingo and Gaming contributed to the NTDR account. Billy Cypress Testimony; Ex. 46 at 13-14 (not showing tribal leases and rentals paying any gross receipts license fee). The Tribe further failed to elicit any testimony on this point. Billy Cypress Testimony (indicating he could not suggest a percentage of the NTDR account deposits derived from non-gaming sources).

18. The Tribe makes decisions through its Business Council and its General Council. The General Council of the Tribe consists of every member of the Tribe over 18. The General Council meets quarterly. ECF No. 168, at ¶ 16.

19. Sally Jim attended numerous General Council meetings. ECF No. 168, at ¶ 17. For those she did not attend, she sometimes learned of the substance of the meetings from her sisters and her clan. Sally Jim Testimony.

20. At each meeting, the finance director or treasurer reports to the General Council that funds are available in the NTDR account for distribution. ECF No. 168, at ¶18. The General Council then approves making a distribution and sets a distribution date, usually about 30 days from the date of the meeting. *Id.* Whether the Tribe made a distribution depended only on whether funds were available for distribution and whether the General Council of the Tribe approved distribution. *E.g.*, Ex. 30, at 24. The General Council approved distributions whenever funds were available. Sally Jim testimony. The amount of distributions depended only on the amount of funds available, which in turn depended on the performance of the Tribe's gaming facility. Colley Billie designation; Ex. 7, at 5 (explaining that NTDR distributions were in accordance with performance of gaming facility).

21. On the date of distributions, the head of household generally picks up a check equal to the per capita amount of the distribution multiplied by the number of members in that person's household. Sally Jim Testimony.

22. The Tribe's distributions are not based on the needs of the recipient, and the only guideline to be eligible for distribution is that the recipient must be a member of the Tribe. ECF No. 168, ¶ 15. The Tribe "cashes" most tribal members' checks immediately, essentially handing out prepared envelopes full of cash. Sally Jim testimony.

23. During 2001, Sally Jim had four eligible members of her household for whom she received per capita distributions. ECF No. 168, at ¶ 19. The per capita distributions were solely within her control. Sally Jim testimony. She testified that she took a portion of her distribution to tribal offices to be placed in a safe owned by the Tribe ostensibly for the benefit of her daughters, though she retained access to the money and eventually spent it on household expenses. Sally Jim testimony.

24. Sally Jim's testimony that she gave a portion of her distribution to her husband conflicts with her testimony that she spent the entirety of distributions from the Tribe on household expenses and conflicts with her submission of a tax return in 2015 claiming \$272,000 in distributions from the Tribe; thus, her testimony is neither reliable nor credible. Ex. 67; Sally Jim testimony. If a portion of Sally Jim's distributions belonged to someone else, she should have alerted the IRS prior to raising this issue in response to the United States' second renewed motion for summary judgment.

25. Alex Osceola has never filed a tax return reporting receiving distributions from the Tribe, including for tax year 2001. Alex Osceola testimony. Alexis Osceola did not and has not filed a tax return reporting distributions from the Tribe for tax year 2001. Alexis Osceola testimony.

26. The Tribe was warned in 2003 that its method of making distributions to minors may not adequately protect minors and may not be in compliance with the Indian Gaming Regulatory Act. Ex. 55, at 16 (citing 25 U.S.C. 2710(b)(3)(C)). The Tribe did not alter its distribution scheme in response to such advice. Billy Cypress testimony.

27. From before 1995 to 2009, Billy Cypress was chairman of the Tribe. ECF No. 168, at ¶ 20. Although Chairman Cypress told tribal members that distributions from the Tribe

were not subject to federal income tax and instructed members not to report distributions on their federal income tax returns, Cypress often instructed members at General Council meetings not to disclose that they were receiving distributions to persons outside the Tribe. Billy Cypress testimony. Chairman Cypress's primary message was that tribal members did not have to pay tax on distributions only as long as the IRS did not know about them. Billy Cypress testimony. Sally Jim recalls Billy Cypress stating that "if the IRS were to find out about these monies, then we could end up being taxed." Sally Jim testimony. As part of Cypress's scheme to hide the distributions from the IRS, Cypress repeatedly instructed members not to report distributions on credit applications. Billy Cypress testimony.

28. Sally Jim was aware of these instructions and, following these instructions, did not report distributions as income when applying for financing to purchase a truck. Sally Jim testimony. While Sally Jim stated during trial that she did not report distributions on her credit application because she had other income to report, this testimony lacked credibility, specifically because it conflicted with her deposition testimony in which she said that she did not report distributions based on Billy Cypress's instructions. Sally Jim testimony.

29. Cypress additionally instructed members not to cash their distribution checks in places where they would be reported to the IRS. Billy Cypress testimony; Ex. 30, at 7. He stated that the only way the tribal member's money will not be reported to the IRS is if they cash their checks at the Administration office. Ex. 30, at 7. The White and Case law firm notified the Tribe in 2003 that its procedures for cashing checks could subject the Tribe to criminal and civil penalties for failure to comply with federal bank secrecy laws. Ex. 55, at 42. Cypress stated that if a tribal member also had a banking account (with a substantial amount of money) then this

would be reported and IRS would investigate how the money was obtained. Ex. 30, at 7. Sally Jim was aware of these instructions. Sally Jim testimony.

30. Tribal members were told to allow the Tribe to make large purchases for them so that the IRS could not trace purchases to individual tribal members. Billy Cypress testimony; Ex. 20, at 36. Billy Cypress claimed at trial that this was to avoid state sales tax and to allow the tribe to ensure tribal members were not being taken advantage of. Billy Cypress testimony. This testimony conflicts with the General Council minutes reflecting that the purpose was to avoid large purchases being reported to the IRS and lacks credibility. Billy Cypress testimony.

31. Cypress also notified members that the Tribe would keep a reserve should the members ultimately have to pay taxes on their distributions. Billy Cypress testimony; Ex. 3, at 6. Cypress's statement that distributions were not taxable but that the Tribe would nonetheless establish a reserve raised concerns among tribal members. Colley Billie designations.

32. Cypress discussed on several occasions that other tribes' members were paying tax on distributions. Billy Cypress testimony; Ex. 7, at 5; Ex. 26, at 5. Sally Jim was aware that the Seminole Tribe made distributions and that Seminole members paid tax on their distributions. Sally Jim testimony.

33. Sally Jim lives in a house provided by the Tribe. ECF No. 168, at 21. She additionally has several programs available to her and the members of her household, including programs providing education, medical care, and elder care. *Id.* If tribal members are unable to pay bills such as their electric bill or pay for necessary repairs to their homes, the Tribe will step in and cover those costs. *Id.*

34. Lands generating tribal income are held in trust for the Tribe, and not for Sally Jim personally. Billy Cypress testimony.

35. At her deposition, Sally Jim conceded that she had the paperwork ready to file her tax return for 2001, but “just completely forgot to file that year.” Sally Jim testimony. At trial, Sally Jim testified that she both forgot and thought she did not have to file based on instructions from Dexter Lehtinen. *Id.* This testimony conflicted with her deposition testimony and was not credible. *Id.*

36. Sally Jim at all relevant times was aware of the need to file a tax return, had the ability to file tax returns, and had previously filed tax returns using H&R Block. Sally Jim testimony.

37. Billy Cypress is not a tax expert, and tribal members had no reason to believe that he was. Billy Cypress testimony; Gabriel Osceola designation.

38. Sally Jim did not turn over her children’s distributive shares to them; instead, Sally Jim retained control of them and, only upon request and at her discretion, provided her children with cash. Alexis Osceola Testimony.

39. Sally Jim claims to have spent the entire amount of her distributions for 2001 on household expenses. Sally Jim testimony. The amount of Sally Jim’s distributions vastly exceeds the amount of necessary household expenses for a household of four in Miami during 2001. Sally Jim and Alex Osceola claim to have spent Sally Jim’s children’s portion of her distribution (\$136,000) on her children’s expenses during the year 2001, including clothes and birthday parties. Sally Jim testimony; Alex Osceola testimony. The amount they claim to have spent on their children vastly exceeds the amount needed to provide for two children, especially considering that the Tribe provided housing for Sally Jim and her family, the Tribe provided education for her children, and the Tribe subsidized her children’s healthcare. Sally Jim testimony. Alexis Osceola’s testimony that sometime after 2001 she purchased a car with a

down payment of approximately \$5,000 does not support any claim that Sally Jim reserved a substantial amount of her distributions for use by her children. Alexis Osceola testimony.

40. According to tribal law and custom, the female retains all marital property when couples are separated or divorced. Sally Jim testimony.

41. The Tribe's only specified guideline for the Tribe's distribution scheme is that the recipient must be a member of the Tribe. ECF No. 168, at ¶¶ 15, 22.

42. The Tribe's distribution scheme was not based on need and not designed to meet any specific need of the recipient. *Id.* The distributions made under the distribution scheme were lavish and extravagant. ECF No. 173, at 14.

43. Once a Tribal member received a distribution, the Tribe placed no limitations on the recipient's use of the distribution. Sally Jim testimony. The Tribe attempted to present evidence that a member's share could be in jeopardy if a clan determined that the member was misusing her distributions, but there is no evidence that Sally Jim's distributions were ever in jeopardy or that the Tribe took back distributions from tribal members rather than denying portions of distributions going forward. Billy Cypress testimony.

44. Dexter Lehtinen never represented Sally Jim or any other individual member of the Tribe. He never instructed Jim not to file her federal income tax returns, nor did he instruct her not to pay tax on the distributions she received from the NTDR account. Dexter Lehtinen Testimony.

45. Mr. Lehtinen consistently advised the Tribe to seek the advice of tax attorneys because to determine if withholding requirements applied to the Tribe and imposed a withholding obligation related to the NTDR distributions. Dexter Lehtinen Trial testimony.

46. Mr. Lehtinen never advised the Tribe that individual members do not have to pay income tax on the amounts received from the NTDR. Dexter Lehtinen testimony. Indeed, Dexter was never asked for his legal advice on this point because the Tribal leadership was aware that the opinion would not be favorable to the tribe. *Id.* Furthermore, Lehtinen regularly and consistently informed the Tribe that the IRS disagreed with many of the positions the Tribe was taking, including that the distributions from the NTDR were income derived from the land and that the distributions were not subject to federal income tax withholding. Dexter Lehtinen testimony, Billy Cypress Testimony.

CONCLUSIONS OF LAW

1. Sally Jim is subject to federal income tax on all her income from whatever source derived. 26 U.S.C. §§ 1, 61.

2. Once an assessment is proven, “the taxpayer must then prove that the assessment is erroneous in order to prevail.” *United States v. White*, 466 F.3d 1241, 1248-49 (11th Cir. 2006).

3. Indian tribes are not subject to federal income taxation; however, individual American Indians are subject to the same requirement to pay income taxes as non-Indians, unless specifically exempted by a treaty or agreement with the tribe or an act of Congress. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956); *Doxtator v. Comm’r*, T.C. Memo. 2005-113 (2005) (collecting cases).

4. In 2001, Sally Jim received taxable income, including salary, gambling winnings, and per capita distributions of net gaming revenue, from the Tribe.

5. There is no specific exemption from taxation that applies to the income at issue in this case.

6. Congress explicitly intended for tribal members to be taxed on per capita distributions of gaming revenue.

7. Congress indicated its intent to tax per capita distributions of net gaming revenue in the Indian Gaming Regulatory Act. 25 U.S.C. § 2710(b)(3) and (d)(1)(ii). Section 2710(b)(3) “means the tribe must have an approved plan in effect before making the per capita distributions, not that tribes without such a plan can make tax-free per capita distributions.” *Campbell v. Comm’r*, 28 F. App’x 613, 615 (8th Cir. 2002).

8. Per capita distributions of net gaming revenue are subject to income tax withholding under 26 U.S.C. § 3402(r).

9. The per capita distributions to Sally Jim are not excludable from income as general welfare payments. ECF No. 173, at 14 (“[T]here is no genuine issue of material dispute the tribal distributions derived from gaming revenue are not general welfare payments.”).

10. Longstanding IRS practice excludes general welfare payments, including those from tribes to tribal members, from taxable income. *E.g.*, *Maines v. Comm’r*, No. 14699-12, 2015 WL 1062997, at *9 (T.C. Mar. 11, 2015); *Bailey v Comm’r*, 88 T.C. 1293, 1299-1301 (1987); *Graff v. Comm’r*, 74 T.C. 743, 753-754 (1980), *aff’d per curiam*, 673 F.2d 784 (5th Cir. 1982); *Bannon v. Comm’r*, 99 T.C. 59, 63 (1992).

11. The Tribal General Welfare Exclusion Act, 26 U.S.C. § 139E, codified the existing administrative practices exempting general welfare payments from taxable income.

12. The Tribe’s per capita distributions do not constitute general welfare payments because they are not based upon the needs of the recipients, but are made on a per capita basis based upon the availability of net gaming revenues to the Tribe. 26 U.S.C. § 139E(b)(2)(B).

13. The Tribe's distributions are not excluded from taxable income under the Tribal General Welfare Exclusion Act because the Tribe's distribution scheme is not administered under sufficient specified guidelines as required under 26 U.S.C. § 139E(b)(1).

14. The Tribe's distributions are not excluded from taxable income under the Tribal General Welfare Exclusion Act because the Tribe's distributions are lavish and extravagant. 26 U.S.C. § 139E(b)(2)(C).

15. Per capita distributions of net gaming revenue do not constitute general welfare. *Compare* 26 U.S.C. § 139E *with* 26 U.S.C. § 3402(r) *and* 25 U.S.C. § 2710(b)(3).

16. The per capita distributions to Sally Jim are not exempt from individual income taxation as income from the land. *Squire v. Capoeman*. 351 U.S. 1 (1956); ECF No. 173, at 17 (“[W]hatever percentage of the NTDR distributions was derived from gaming revenues does not constitute income derived directly from the land.”).

17. The exemption for income from the land generally does not apply to personal income from lands held in trust communally for the benefit of the Tribe. *United States v. Anderson*, 625 F.2d 910, 913-14 (9th Cir. 1980) (collecting cases).

18. No treaty or statute exempts the lands in the Tribe's Krome Avenue Reservation, where the Tribe conducts gaming, from federal tax. 25 U.S.C. § 2719 (b)(2), (3), Oct. 17, 1988.

19. The Tribe's distributions are not income from the land because they were derived from net gaming revenue, and not from such activities as farming, ranching, oil and gas leases, or other activities which have been held to constitute income directly derived from the land. *In re Cabazon Indian Casino*, 57 B.R. 398, 402 (9th Cir. 1985) (“The income derived from operating a casino stems in a far more important fashion from card playing, liquor sales and food

preparation, than it does from the land alone.”); *Doxtator v. Comm’r*, T.C. Memo. 2005-113 at *9; *Campbell v. Commissioner*, T.C. Memo.1997–502.

20. The Tribe’s imposition of the gross receipts license fee and deposit of the proceeds of that fee into the NTDR account do not alter the substance of those proceeds as gaming revenues. *Ocmulgee Fields, Inc. v. Comm’r*, 613 F.3d 1360, 1368 (11th Cir. 2010) (“[T]he substance of a transaction rather than the form which it is cast, ordinarily determines tax consequences.”).

21. Section 1750e, Title 25, United States Code is inapplicable to the questions of Sally Jim’s individual income tax liability and to the taxability of the Tribe’s distributions of net gaming revenue. The Tribe has not established that any of the lands exempted from federal tax by § 1750e generated any of the income distributed to members. 25 U.S.C. § 1750e(c)(1)(B).

22. Section 2210, Title 25, United States Code applies to lands acquired through a land consolidation plan, which does not include any land at issue in this case. It is inapplicable to this case and does not exempt distributions to individual tribal members or income that is not directly derived from the land.

23. Section 459e, Title 25, United States Code applies to lands described in 25 U.S.C. § 459a, which does not include any land belonging to the Miccosukee Tribe.

24. “Gain, lawful or unlawful, constitutes taxable income ‘when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it.’” *United States v. Mueller*, 74 F.3d 1152, 1155 (11th Cir. 1996) (citing *Rutkin v. United States*, 343 U.S. 130, 137 (1952)).

25. The IRS validly assessed Sally Jim unpaid income taxes, interest, and penalties for tax year 2001 on the basis of \$25,990 in wages and \$272,000 in per capita distributions of net gaming revenue.

26. Section 6651(a)(1) imposes penalties for failure to timely file a tax return “unless it is shown that such failure is due to reasonable cause and not due to willful neglect.” 26 U.S.C. § 6651(a)(1). The penalties are equal to 5 percent of the amount of tax required to be shown on the return “with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.” *Id.* Thus, the amount of Sally Jim’s failure to file penalties are determined by statute, and she incurred the maximum amount of the penalties 5 months after her failure to file.

27. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. 26 C.F.R. § 301.6651-1(c)(1).

28. “[T]he term ‘willful neglect’ may be read as meaning a conscious, intentional failure or reckless indifference” to responsibility to file. *United States v. Boyle*, 469 U.S. 241, 244 (1985).

29. Sally Jim’s failure to file a tax return for Tax Year 2001 was not the result of reasonable cause; it was the result of willful neglect. ECF No. 173, at 18 (“[S]imply forgetting to file a return does not constitute reasonable cause.” (citing *Halbin v. Comm’r*, 97 T.C.M. (CCH) 1066, *4 (T.C. 2009)); *e.g.*, *Probandt v. Comm’r*, No. 9539-06., 2016 WL 3962107, at *13 (T.C. July 21, 2016) (“Taxpayers who deliberately omit to file returns must use reasonable care to ascertain that no returns are necessary. Without more, petitioner’s mistaken belief that no return was required does not constitute reasonable cause for noncompliance.”); *Holloway v.*

Comm'r, 103 T. C. Memo. 1756 (T.C. 2012) (finding a taxpayer's claim that he was excused from filing returns not credible given taxpayer received wages).

30. Sally Jim may not rely on Dexter Lehtinen to establish reasonable cause because she did not actually rely on him in failing to file her tax return or pay her taxes, because she did not provide any information to Dexter Lehtinen regarding her tax liabilities, and because she otherwise knew that a return was due. *Thomas v. Comm'r*, No. 02-13565-GG, 2003 WL 21697093, at *11 (11th Cir. Apr. 23, 2003) ("Reliance on a tax adviser is reasonable if the adviser has sufficient expertise to warrant the reliance, if the taxpayer provided the adviser with necessary and accurate information, and if the taxpayer demonstrates actual, good faith reliance on the adviser's judgment."); *James v. United States*, No. 8:11-CV-271, 2012 WL 3522610, at *3 (M.D. Fla. Aug. 14, 2012) (citing *Estate of La Meres v. Comm'r*, 98 T.C. 294, 316-17, 1992 WL 54258 (1992)).

31. Sally Jim's submission of a tax return in 2015, which she claims that she did not read or understand, does not excuse her failure to file a tax return more than 10 years after her failure to file penalties accrued and, in fact, demonstrates willful neglect. Sally Jim testimony.

32. Sally Jim's failure to timely pay the tax owed for Tax Year 2001 was not the result of reasonable cause, nor has she shown that it was not the result of willful neglect.

33. Sally Jim is liable for penalties under 26 U.S.C. §§ 6651(a)(1), (a)(2), and 6654.

34. Sally Jim is liable to the United States in the amount of \$278,758.83 as of April 9, 2015 for unpaid federal income taxes, penalties, and interest assessed against her for the 2001 Tax Year, plus interest and statutory additions accruing after April 9, 2015, until this amount is paid in full.

August 16, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2016, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and that it will be served accordingly on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

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