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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
v.	§	
	§	**Case No. 2:06-CV-11753**
PETER ERIC HENDRICKSON and	§	**Judge Nancy G. Edmunds**
DOREEN M. HENDRICKSON,	§	
Defendants.	§	
	§	

DEFENDANTS' RESPONSE TO THE MAGISTRATE'S "REPORT AND RECOMMENDATION" REGARDING THEIR MOTIONS TO DISMISS AND FOR OTHER RELIEF

BACKGROUND

On June 23rd, 2004 and September 15th, 2004 the Internal Revenue Service, Secretary of the Treasury and the Attorney General of the United States, filed suit against Defendant(s) under the guise of investigating "the promotion of abusive tax shelters" pursuant to I.R.C. § 6700, which were subsequently withdrawn upon Answer. The purpose of those earlier failed actions was the plain suppression of information the Plaintiff finds it inconvenient for American citizens to have. The instant action is another such attempt, with the added purpose of intimidating into paralysis the vast number of Americans who have already come into possession of this information.

The simple fact is, Defendant Peter Hendrickson has exhaustively researched the depths of the income tax laws and learned the liberating truth about the tax. At the same time, he also learned the disturbing truth about how general ignorance of those depths is

exploited by an utterly unscrupulous, very nearly lawless Internal Revenue Service to apply the tax where no taxable activity has actually been engaged in, and to collect money with no more connection to the income tax system than that its proper owners have been gulled into declaring it to be subject to the tax, in perfect ignorance of the legal effect of every step they take in the process. Applying his new knowledge, Hendrickson promptly became the first American in history to receive the return of every penny withheld from him and paid over to the federal government against the possibility of an income tax liability-- Social Security and Medicare taxes included.

Defendant Peter Hendrickson also wrote a book, sharing his new knowledge of the reality of the law and of the intricacies of the scheme to exploit ignorance about that law. That book, 'Cracking the Code- The Fascinating Truth About Taxation In America', is now in the hands of Americans all across the country (and is being read by freedom-loving and rule-of-law-respecting people in many other countries, as well). Since the book's publication 3 ½ years ago, thousands of Americans have acted on the knowledge it reveals and have also claimed and received the return of every penny withheld from their often very considerable earnings and given over to the federal government against the possibility that an income tax liability might prove to exist at the end of the year.

Readers who have acted on their now comprehensive and accurate understanding of American income tax law come from all walks of life, including doctors, lawyers, CPAs teachers, truck drivers, nurses, IT specialists, and every other variety of productive person. The single-year amounts reclaimed by these good folks of which Defendants are aware (and evidences of which are posted on Defendant Peter Hendrickson's website,

www.losthorizons.com) range from more than $168,000 (withheld from correspondingly high earnings) down to as little as $1.

Many of those who have learned the truth by reading this book have claimed and enjoyed the return of property withheld from them year after year now, and many have gone back as far as the law allows to reclaim property invalidly withheld from them in years past. Many more readers of this unique book have had no withholding to reclaim, but have used their knowledge of the law to legally establish and record the fact that they owe no tax on their earnings, and have secured IRS documentation acknowledging the same. Twenty-two state and local governments now routinely return all withheld property to readers of 'Cracking the Code- The Fascinating Truth About Taxation In America' as well.

The purpose of this bogus "lawsuit" is nothing more and nothing less than to discourage other Americans from equipping themselves with the knowledge of the law revealed in 'Cracking the Code-...' (and the power that knowledge gives); and to discourage those already so equipped from freely and accurately testifying on, and by way of, their own income-tax-related legal instruments. This purpose is expected to be accomplished by the implicit threat to all such Americans that should they gain and act upon this knowledge, they too might be victimized by a legally unsound, but burdensome and obnoxious "lawsuit" of the same sort as that to which Defendants are now being subjected.

That this is so is made perfectly clear by any honest review of the facts and filings in this case, and by the simple fact that despite the Plaintiff's legally meaningless, non-testimonial, but nonetheless endless repetitions of "false and fraudulent" in regard to

Defendants' claims for the return of their property in the instant action, Plaintiff continues-- to this very day-- to quietly honor precisely the same kind of claims. The most recent such honored claim of which evidence was posted on losthorizons.com was dated by the Internal Revenue Service on February 5, 2007-- THE VERY DAY MAGISTRATE WHALEN SIGNED HIS "REPORT AND RECOMMENDATION"!

Indeed, in the time since the Plaintiff filed this "lawsuit" with great fanfare, national press releases, and carefully affected dudgeon, it has-- as quietly as it has been allowed to do so-- returned, or, by notice, formally abandoned its own previously asserted interest in well over $600,000.00 in response to precisely the same kind of claims as those made by the Defendants and which the Plaintiff so hyperbolically assails in the instant action. This amount only reflects that portion of the greater total of which evidence has been graciously and courageously made public by the claimant for the benefit of the American people; further, this amount does not include the total value of straightforward, immediate IRS acknowledgements, in cases in which nothing had been withheld, of no tax owed or owing.

An untold multitude of such claims are routinely being received and honored by the Plaintiff at all times now, a fact which, by itself, puts the lie to Plaintiff's corrupt efforts in this instant action. Plaintiff's concrete behavior each and every day reflects its own acknowledgement of the accuracy of the information which it wishes to suppress, as does its pretense of disputing and disparaging that information throughout its filings in this case while actually only disputing and disparaging a deliberate misrepresentation thereof. It is hard to conceive of more powerful evidence of bad faith. There IS fraud

involved in this case-- it is the fraud the Plaintiff is attempting to perpetrate upon this Honorable Court.

Happily, the same evidence that emphasizes the Plaintiff's bad faith also emphasizes that its corrupt effort is, and will remain, a failure. American men and women are not the timid little creatures the Plaintiff wishes they would be, and are not dropping their eyes in the face of the Plaintiff's threats. This is no surprise. American men and women are not timid. More to the point, American men and women are honorable, and as inconvenient as it may be to Plaintiff's purposes, once someone honorable has learned the truth, there's no going back to the lie.

RESPONSE

DEFENDANTS GENERALLY AND COMPREHENSIVELY OBJECT TO THE MAGISTRATE'S RECOMMENDATIONS

We are instructed in the Magistrate's filing that this response is our opportunity to object individually and specifically to each aspect *of his recommendation,* or forfeit future opportunities to do so. We take this as written, and presume that our response here does not compromise or affect in any way our opportunities to object to, or appeal, the actual district court ruling on our motions when they are issued. We WILL nonetheless endeavor to respond to the magistrate's recommendations individually and specifically here as best we are able, but, given the constraints of permitted response length, the fact that the Magistrate has blended numerous disparate elements into certain subdivisions of his recommendations in a highly confusing manner, and the fact that unlike the Plaintiff in this action, we do not have a staff of attorneys paid with other

people's money to write instruments like this one full time, we will also state for the record that we broadly and comprehensively object to each and every conclusion reached and recommendation made by the Magistrate, and, insofar as is possible under whatever doctrine or rules govern responses of this kind, incorporate into this response by reference each and every point, argument and piece of evidence included or referenced in all of our filings already on record with the with the court in connection with this action thus far.

SPECIFIC OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS

Regarding Recommendation Subpart A

Magistrate Whalen dwells on the issue of "subject matter" jurisdiction at some length, but in doing so largely misses the point of our motion in regard to jurisdiction. The chief issues therein are that the Plaintiff has brought this action explicitly claiming jurisdiction under the provisions reflected at 26 USC 7405 which provide (and impose generally) that a suit of this kind can only be brought in connection with an erroneous refund of tax; and that the remedy explicitly sought by the Plaintiff is a change in Defendants sworn testimony by means of coercion, and an injunction to the same effect into the future.

We also took issue with the gratuitous adoption by the Plaintiff of the dignified title of "United States of America", due to the fact that the nature of its complaint makes clear that it is nothing but an outfit based in DC alleging (wrongly) to have had a business relationship with us under the terms of which it claims entitlement to some of our property; and due to the fact that the statutes under which it is acting clearly and

unambiguously instruct it to use the more prosaic and accurate "United States". We will spend no more time addressing Magistrate Whalen's recommendations in regard to that aspect of our combined motion other than to reiterate what we have already expressed in earlier filings: If, as the Plaintiff asserts in its reply to our motion, there is no difference between the two names, we can see no reason for Plaintiff to not follow the letter of the law and bring actions such as this one in the specified name of "the United States".

As to the other points: Contrary to what Magistrate Whalen appears to believe, the existence of an income tax debt is not determined, and allegations of such a debt are not supported, merely because a clerk like Kim Halbrook in a "Human Resources" department says she has seen records alleging payments which partake of a particular legal character to someone else. An income tax debt is determined by an explicit legal process usefully summarized for purposes of this case by the following statutory language:

> *Section 93 of The Revenue Act of 1862*
> *"Sec. 93. And be it further enacted,... that any party, in his or her own behalf,... shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,... liable to be assessed,... and the same so declared shall be received as the sum upon which duties are to be assessed and collected."*

That the process specified in this statute remains intact and in force is illustrated by the following IRC and CFR sections:

> *26 USC § 6201*
> *(a) Authority of Secretary*
> *The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time*

and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

6 CFR 301.6203-1 Method of assessment.

...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown...

This process has been scrupulously adhered to in matters concerning the instant case, and has resulted in a conclusive legal determination by both the Defendants AND the Plaintiff that Defendants owe the Plaintiff nothing. The same process resulted in a conclusive legal determination by both the Defendants AND the Plaintiff that Plaintiff owed Defendants the return of all of the Defendants' property that had been put into its keeping against the possibility of a tax debt to Plaintiff having arisen during the years involved.

It is not necessary to go into what it is that causes an income tax debt to the federal government to arise in the first place, here and now. Absent an assessment of tax, there is no debt; further, having not been determined to have been so pursuant to the process outlined in the law (by either the Defendants OR the Plaintiff), the amounts withheld from, and returned to, Defendants in the instant case were not, and cannot be characterized to have been, amounts of "tax". Consequently, Plaintiff can allege no offense (which would have no proper place in a civil action of this kind in any event), and has no claim to pursue, no remedy to seek, nor jurisdiction to invoke.

Further, as has been elaborately observed in our motion (the relevant content of which is again incorporated herein by reference), it is only by a change in the testimony on our return that a lawful claim in favor of the Plaintiff could arise. This simple fact is made unambiguously clear by the law cited above, and is implicitly acknowledged quite

clearly by the Plaintiff itself, by way of its utterly corrupt proposal to the court to coerce such a change from us retroactively, and its prayer to the Court to the same effect regarding our future testimony. As this "remedy" cannot be afforded to the Plaintiff, Plaintiff has failed to state a claim for which relief can be granted. When a court is unable to afford the relief sought, it has no jurisdiction, regardless of any other aspect of the matter in question.

The magistrate goes on to make the bizarre suggestion that we assert that we are not obligated to pay income taxes in some generic sense. We are at a complete loss as to how this notion was arrived at. We are certainly obliged to pay income taxes when and if we engage in activities under which such tax obligations can arise, just as is true of anyone else. The fact that we had no such obligations for the years involved in the instant case does not mean that we can never have such obligations, and nothing we have said suggests the contrary. We don't happen to owe J.C. Penney any money right now, either, but we certainly might in the future.

Magistrate Whalen continues with equally mystifying comments to the effect that we refuse "to acknowledge the existence of the "United States of America", and that under this incomprehensibly ascribed belief we imagine ourselves able to "skirt [our] tax obligations"?! Again, we are at a complete loss, having said, suggested or implied no such things. We fear Magistrate Whalen may have mixed our filings up with those of some kind of "tax protestor".

Regarding Recommendation Subpart B

Reporting $0.00 in "wages" on a 1040 does not amount to fraud-- the very proposition is as ridiculous as the implied proposition that everyone everywhere, and in every year, has received "wages". A failure to adopt the testimony of an "information return" preparer on one's tax return does not amount to fraud either, although this (and the preceding) is Plaintiff's (and apparently Magistrate Whalen's) intended meaning in the deployment of the term "fraud". More broadly put, Plaintiff intends it to be understood that the assertions of others as to the legal character of our receipts (and the amounts thereof) are dispositive as to that legal character, and thus our failure to adopt those assertions constitutes "fraud".

The relevant statutory language (which we presented in our response to Subpart A of the Magistrate's recommendations and which we incorporate here by reference) makes clear that this is simply not the case as a matter of law. Further, it cannot be the case, as a matter of principle-- the fact that to ADOPT someone else's testimony on a tax return DOES constitute a crime; and the fact that for anyone to suggest that some penalty, legal infirmity, or vulnerability to suit attends a failure to testify to ANYTHING other than the filer's own knowledge and belief is also a crime, serve to illuminate this principle.

"Fraud" in the context of a tax return consists of the creation of false expense receipts and the like, on the basis of which deductions to which one is not legitimately entitled are claimed. Claiming a refund of more than was actually withheld (or was withheld from another) could also amount to fraud, of course, but claiming a refund of what WAS withheld against a possible tax liability that did not, in fact, arise, cannot.

If Plaintiff wishes to allege "fraud" (and leaving aside the issue of whether the instant action is the proper place to be doing so, or the question of whether such allegations are simply being deployed as a pretext to give color to its claim of legitimacy in bringing this action at all, which is clearly the case), it must produce the "fraudulent instruments" and explain with particularity the evidence upon which it relies in asserting that such instruments are fraudulent.

We are at a loss to imagine what the Plaintiff might cast about for in this regard. The Plaintiff's own sole "witness", Kim Halbrook (upon the legitimacy and pertinence of whose testimony that of all other testimony Plaintiff has presented throughout the conduct of this case so far is entirely dependent) asserts that the amounts withheld from Defendant Peter Hendrickson were precisely as reported on the Forms 4852 which Plaintiff makes so much of in its complaint. Thus, there is no dispute whatsoever as to those amounts, or that they were indeed withheld from the Defendants.

The only other instrument attached to, or incorporated within, Defendants' tax returns were affidavits from Defendant Doreen Hendrickson rebutting testimony made on, and by way of, 1099 "information returns" created about her, and in connection with which no amounts had been withheld, or were reclaimed. No deductions or exemptions were taken on the returns at all (the standard automatic deduction and personal exemptions were noted on the returns, but had no actual application, as the amount of income received was below the minimum tax threshold anyway, and require no documentation in any event).

Magistrate Whalen quotes the non-testimonial rhetoric of the Plaintiff in this subpart of his recommendation regarding our reporting *"'zero' or no wages"*, and to the

effect that we *"reported, incorrectly, federal income tax withheld..."*, but this rhetoric is nothing more than just that. He asserts that "Plaintiff has provided an abundance of information to support its allegations of fraud", but we see nothing but the bare, unsupported allegations.

Regarding Recommendation Subpart C

In this subpart, Magistrate Whalen addresses our request that, should this "lawsuit" not be dismissed on one or more of the grounds previously discussed, the Court order stricken from the complaint:

> *a. The pejorative term "bogus" in paragraph 7.*
> *b. The pejorative term "brags" in paragraph 8.*
> *c. The frivolous phrase "tax fraud promotional materials" in paragraph 18.*
> *d. Paragraph 30 in its entirety.*
> *f. The fraudulent and misleading words "of America" appended to "United States in the first sentence of paragraph 32.*

In doing so, we observed that:

> *The foregoing terms, paragraph and words are included by the government solely to malign the Defendants and inflame the passions (against Defendants) of any person who happens to read the complaint. Furthermore, they are irrelevant, immaterial, impertinent, scandalous and without any basis in law or fact.*

In response to Magistrate Whalen's recommendation, we simply reiterate the above, and particularly as regards "Paragraph 30". It is not necessary to discuss the gross misrepresentations of the events of 17 years ago of which that paragraph consists to make clear to any objective consideration that this paragraph contains nothing relevant to Plaintiff's asserted claims, and that this paragraph is included solely to do just what we say in our motion-- prejudice a reader of this complaint against us, as well as to serve the real purpose of this "lawsuit", which is to function as a corrupt "public relations" tool.

Regarding Recommendation Subpart D

Finally, Magistrate Whalen addresses our request for sanctions under Fed. R. Civ. P. 11, in which we say:

> *Attorneys for the government, namely Stephen J. Murphy, III, William L. Woodard, Robert D. Metcalfe, Anne Norris Graham, and Stephen J. Schaeffer have made the following false representations, under signature, to the Court in their Complaint in Violation of FRCP Rule 11:*
>
> a. *That the Hendricksons were issued refunds of "taxes".*
> b. *That Peter Hendrickson asserts that the payment of federal taxes is voluntary.*
> c. *That Peter Hendrickson asserts that "wages are not income".*
> d. *That Peter Hendrickson asserts that "only federal workers are required to pay income taxes";*
> e. *That Peter Hendrickson asserts that "wages and income for federal income tax and withholding purposes means only wages and income of government employees".*
> f. *Every assertion that Peter and Doreen Hendrickson did anything false or fraudulent.*
> g. *That Peter Hendrickson has been or is involved with tax-fraud promotion.*
>
> *Furthermore, the government has commenced this action for an improper purpose and to harass the Defendants. The allegations detailed in paragraph 12 are not factual and have no evidentiary support.*

In response to the Magistrate's recommendation we reiterate this declaration and request verbatim, and, in regard our item "a." above, direct the Court's attention to our relevant discussion in this response and our previous filings. In regard to item "b.", we offer for the Court's attention the very first three sentences of 'Cracking the Code- The Fascinating Truth About Taxation In America':

> Let's get this said loud and clear right at the outset: IF YOU HAVE TAXABLE INCOME, YOU ARE SUBJECT TO THE INCOME TAX. Section 1(a) of the Internal Revenue Code says: *"There is hereby imposed on the taxable income of-* ... [a tax of varying percentages]" Pretty straightforward.

Regarding items "c.", "d." and "e." we offer for the Court's attention the following from page 75 of 'Cracking the Code- The Fascinating Truth About Taxation In America':

Sec. 3401. - Definitions

(a) ***Wages***

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an ***employee*** *for his employer, ...*

c) ***Employee***

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation. [A "United States Corporation", defined in Sec. 207 of the Public Salary Tax Act as, *"a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States... ".* However, we are instructed by the IRS in Pub. 15A that such officers are only to be considered "employees" if they are paid as a consequence of their positions.]

...from page 77:

Sec. 3121. - Definitions

(a) ***Wages***

For purposes of this chapter, the term "wages" means all remuneration for ***employment****, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include - ...*

[various pre-tax deductions]

(b) ***Employment***

For purposes of this chapter, the term "employment" means any ***service****, of whatever nature, performed*

(A) by an employee for the person employing him, irrespective of the citizenship or residence of either,

(i) ***within the United States****, or*

(ii) on or in connection with an American vessel or American aircraft... or

(B) outside the United States by a ***citizen or resident of the United States*** *as an employee for an* ***American employer*** *(as defined in subsection (h)), ...*

(e) State, United States, and [Puerto Rican] *citizen*

For purposes of this chapter -

(1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

The term "United States" ***when used in a geographical sense*** *includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.*

...

*h) **American employer***

For purposes of this chapter, the term "American employer" means an employer which is -

(1) the United States or any instrumentality thereof,

*(2) an individual who is a **resident** of the United States,*

*(3) a partnership, if two-thirds or more of the partners are **residents** of the United States,*

*(4) a trust, if all of the trustees are **residents** of the United States, or*

(5) a corporation organized under the laws of the United States or of any State.

...and from page 89:

We have also seen that the amount of taxable activity engaged in is measured by the receipts it produces, which are themselves misleadingly referred to as "income", and are treated, for all practical purposes, as the thing being taxed. (The convention is meaningless as far as how much tax is paid, but it contributes to the scheme by producing the appearance that the law lays a tax on the receipt of money). Thus, another way of summarizing what is taxed would be:

Remuneration for services (either immediate or deferred)-- or benefits-- paid by the federal government, its agencies, instrumentalities and "State" governments;

and,

The proceeds of, and from, federal corporations and instrumentalities (such as those listed above, as well as national banks, railroads, etc.); and the proceeds of, and from, the conduct of a "trade or business".

Since it is clearly pointed out on pages 75 and 77 that "wages" include remuneration paid to federal workers, and on page 89 that "income" includes remuneration paid to federal workers, among other things, it is clear that Defendant Peter Hendrickson does not say that *"wages are not income"*. The excerpt from page 89 also makes clear that Defendant Peter Hendrickson does not say that *"only federal workers are required to pay income taxes"* or that *"wages and income for federal income tax and withholding purposes means only wages and income of government employees"*. Further, these are only the simplest and most concise examples available-- both the book and the hundreds of

thousands of additional words the Defendant has written on this subject are liberally salted with additional examples of the same.

Regarding item "f.", we can only refer the Court's attention to our various affidavits submitted into the record of this proceeding, the complete failure of the Plaintiff to substantiate any of its scurrilous assertions, and the fact that when our filings were given due consideration against both the W-2s issued by Personnel Management and the 1099s issued by Una Dworkin prior to the conception of this public relations "lawsuit", they were found to be perfectly correct in every particular, resulting in the correct conclusion that we owed, and owe, no tax for the years involved. The Plaintiff's hyperbolic fulminations here notwithstanding, that conclusion remains unaltered to this day, as is evidenced by the official Certificates of Assessment which have been entered into the record of this proceeding.

Regarding item "g.", Plaintiff has on three separate occasions-- two of them in this very district-- moved the Court to dismiss actions it had previously commenced alleging the Defendant Peter Hendrickson was involved in "the promotion of an abusive tax shelter". We believe that this adequately establishes that Plaintiff is acting improperly, abusively and contrary to its own knowledge of the truth in using the phrase "tax-fraud promotion" in its filings.

CONCLUSION

In conclusion, Defendants once again ask this Honorable Court to:

a) Dismiss this Complaint for lack of jurisdiction
b) Subject to a ruling on a), order the Plaintiff to re-plead in conformity with Defendants Motion For A More Definite Statement as detailed in paragraphs 14 and 15.
c) Subject to a ruling on b), order Plaintiff to re-plead in conformity with Defendants' Motion To Strike as detailed in paragraphs 16 and 17.
d) Take Notice of the Violations of FRCP Rule 11 by Plaintiff as detailed in paragraphs 18 and 19.
e) Grant Defendants such other relief, including the costs of this action, as is just and equitable.

Dated this the 15th day of February, 2007

Respectfully submitted

Peter Eric Hendrickson

Doreen M. Hendrickson
232 Oriole Rd.
Commerce Twp, Michigan 48382
(248) 366-6858

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2007 a true and correct copy of the above and foregoing document was served on the Plaintiff as listed below by First Class Mail to:

Robert D. Metcalfe
Trial Attorney Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, DC 20044

and on Magistrate Judge R. Steven Whalen by First Class Mail to:

United States District Court
Eastern District of Michigan
Chambers of
R. Steven Whalen
Theodore Levin U.S. Courthouse
231 West Lafayette Blvd.
Detroit, Michigan 48226

Peter Eric Hendrickson