

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, :
 :
 Respondent/Plaintiff :
 :
 v. : Case Nos. 10-1726; 10-1819
 :
 PETER HENDRICKSON, :
 :
 Appellant/Defendant. :

DEFENDANT'S REPLY

Mr. Hendrickson is facing nearly three years in a federal penitentiary for thinking differently than federal government agents and acting on his exhaustive analysis of the Internal Revenue Code. Instead of responding to the merits of Mr. Hendrickson's analysis, the government once again resorts to callow *ad hominem* attacks and name calling. The government calls Mr. Hendrickson's doggedly principled and self-effacing actions "frivolous." The government's response, however, is worse than frivolous. It is dishonest.

The government knows, from Mr. Hendrickson's allocution, that Mr. Hendrickson does not claim that "wages are not income." He argues that "some" earnings are not Code-defined wages and that only Code-defined wages are "taxable" wages and thus "taxable income." Earnings and wages that are not Code-

defined wages are certainly "income" as the term is commonly understood, they are just not taxable income according to the Internal Revenue Code. Although both the government and Mr. Hendrickson have thrust and parried in the semantic fencing match over "earnings" and "wages" and "income," the core of Mr. Hendrickson's position is that only Code-defined "wages" represent "taxable income" and that his earnings do not fit within the Code's definitions. (Sentencing Transcript, pp. 91-92.)

Mr. Hendrickson correctly observes that the 16th Amendment does not authorize a direct capitation tax on people, but rather an indirect, excise tax on "income." U.S. Const. amend. XVI. In order to trigger any indirect, excise tax obligation there must be an intersection of a taxable subject and an activity that generates "taxable income."

At sentencing, Judge Rosen openly discussed the motive behind the government's hostility toward Mr. Hendrickson and the nakedness of the government's case. Judge Rosen did not deny or refute Mr. Hendrickson's analysis; indeed Judge Rosen specifically on more than one occasion indicated that he believes that Mr. Hendrickson believes in the truth of his filings:

No matter how firmly you hold your beliefs as to the definitions of the tax code and the application of the tax code to your earnings as wages, once those responsible for making decisions, interpreting them, whether you agree with them or not have made their decisions, your obligation is to follow

them or pay the consequences of your decision not to follow them in the only currency we have in a civilized society, which is a criminal sentence.

(Sent. Trans. p. 103-104.) This is an appeal to authority, a logical fallacy and summarizes the government's position. Nowhere in the sentencing transcript does Judge Rosen cite or reference any authority for the implied premise in the government's position: i.e., "all earnings and all wages are taxable income."

Instead, Judge Rosen (and prosecutor Daly) performed an "armchair psychologist diagnosis" of Mr. Hendrickson. (Sent. Trans. p. 104.) Judge Rosen, apparently unaware of the virtue of "perseverance," ironically indicated that he had looked up psychological conditions and discovered that Mr. Hendrickson's behavior was "perseverate." (Sent. Trans. p. 14.) Instead of discussing relevant portions of the Internal Revenue Code, logic, history or even Supreme Court precedent, Judge Rosen repeated this term at least 15 times at the sentencing hearing. Like the 15 shovels full of dirt necessary to dig a hole, Judge Rosen repeatedly and inveterately avoided a substantive challenge to Mr. Hendrickson (e.g. by citing a statute or case that has held that all earnings and all wages everywhere represent United States taxable income), instead choosing to perform an amateur psychological analysis on Mr. Hendrickson.

In his allocution, Mr. Hendrickson, a man with two children who depend on him, pleaded with the government to provide authority that would disprove his

point that only "some," not "all" earnings and wages are taxable. In response, prosecutor Daly also failed to provide a substantive response and instead applied his own psychological analysis, disagreeing with the Court and labeling Mr. Hendrickson's behavior "narcissistic." (Sent. Trans. p. 49.)

The government in its response also claims that the Court did not err in its instruction because of cautions that it gave to the jury after the government's witnesses testified.

The Court's jury instruction plainly vitiated any earlier caution and amounted to the following: "Don't accept this person's testimony as evidence that Mr. Hendrickson was a Code-defined employee whose wages were taxable income, but at the end of the case I will instruct you that everyone is a Code-defined employee and that every dollar everyone earns is Code-defined wages that constitute taxable income and I will further cite the sections of the Code you have asked to see and read for yourselves, sections 3401 and 3121, in support of that proposition." The jury had no choice but to convict Mr. Hendrickson on this record.

The government also claims that because Mr. Hendrickson's trial counsel did not object to the Court's decision to deny the jury access to sections 3401 and 3121, that Mr. Hendrickson somehow waived or failed to preserve any objection to

this plain error. The government fails to acknowledge that the Court did not decide the issue of jury instructions until after the trial was complete (Tr. Trans. pp. 688-690) and that Mr. Hendrickson's trial counsel specifically and strenuously objected to the Court's section 3401 and 3121 definitional instructions. (Tr. Trans. pp. 807-08.) The Court denied the jury access to sections 3401 and 3121 and then, after trial, instructed the jury that the statutes said something that they do not say and directly contradicted Mr. Hendrickson's testimony. The government's position is that at the time of the jury's request, Mr. Hendrickson's trial counsel must anticipate that the Court will later erroneously instruct the jury on the contents of sections 3401 and 3121. Not possible. The Court's choice to deny the jury access to the statutes is plain error.

Finally, in response to the government's charge that Mr. Hendrickson has failed to specifically point the Court to the documents and evidence that violated *Melendez-Diaz*, Mr. Hendrickson submits the chart below. The District Court granted Mr. Hendrickson's motion in limine prohibiting the government from relying on any out-of-court conclusions in its case in chief (*see* Tr. Trans. pp. 172-73 and District Court Docket No. 72—transcript of motion in limine hearing).

Evidence	Unsubstantiated Hearsay
Gov. Exhibit Nos. 31, 32, 33, 34, 35, 36 and 37. W-2s	All of these documents contain the out-of-court statement that Mr. Hendrickson earned section 3401 wages.
Govt. Exhibit 7, page 14.	This is an “examination report” concerning 2000. Page 14 of the exhibit is an “Explanation of Items” and shows a change from return report of \$0.00 to “per exam: \$51,666.00, explained as, “We have adjusted your gross wages to agree with the amounts shown on Form(s) W-2”. This exhibit also says, “TP rec’d wages of \$51,666.00 per income transcript”.
Exhibit 8 cert of assessment	Shows “Adjusted gross income” of 51,676.00”-- no source doc identified.
Exhibit 41	IRS describes Mr. Hendrickson as an “employee”
Exhibits 62, 63, 64, 65, 66, 67 and 68.	All of these documents evidence disputes between Mr. Hendrickson and taxing authorities in which the taxing authorities disputed and/or made administrative adjustments to Mr. Hendrickson's tax liability without foundational support.
Exhibit 81	Civil Complaint containing out-of-court hearsay allegations about the taxability of Mr. Hendrickson's earnings.
Exhibit 83	Government's brief in opposition to Mr. Hendrickson's motion to dismiss the civil Complaint, including declarations of witnesses; this is admissible only through the government attorneys who signed it or were involved in its preparation. Declarants must be subject to cross examination. Mr. Hendrickson has a right to confront his accusers and inquire as to how they determined that he was a section 3401(c) employee and/or was engaged in section 3121(e) employment.
Exhibits 86, 90, 91, and 92.	Civil proceedings, including Magistrate's Report and Recommendation and Court's Orders. Government has the power to call Judge Edmunds to the stand and testify how she concluded that Mr. Hendrickson was

	a section 3401(c) employee, was engaged in section 3121(e) employment and why she believes that Mr. Hendrickson's analysis of the Code is "frivolous" and "without merit."
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There is no evidence in the record that Mr. Hendrickson's filings were false or that Mr. Hendrickson believed them to be false. Mr. Hendrickson therefore respectfully requests that the Court order that he be free on bail until his appeal is resolved.

Respectfully submitted,

William B. Butler

Dated: June 28, 2010

By: /s/ William B. Butler
William B. Butler, Esquire
Attorney I.D. No. 227912
William B. Butler PLLC
Suite 4100, 33 South Sixth Street
Minneapolis, MN, 55402
Telephone: (612) 630-5177
E-Mail: bill@libertaslex.com;
butlerpllc@comcast.net

Jack R. Hendrickson, Jr., Esquire
Attorney I.D. No. 29193
3003 Miller, Ann Arbor, MI 48105
Telephone: (734) 276-3572
E-Mail: rhendrickson@starpakgroup.com

ATTORNEYS FOR APPELLANT

Certificate of Service

I hereby certify that on June 28, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Michael C. Leibson
Assistant U.S. Attorney
211 W. Fort St., Ste. 2001
Detroit, MI 48226
Michael.leibson@usdoj.gov

and

Mark F. Daly, MA Bar No. 640581
United States Department of Justice, Tax Division
P.O. Box 972
Washington, D.C. 20530
mark.f.daly@usdoj.gov

/s/ William B. Butler_____

