

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 07-1510

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Jun 11, 2008  
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
PETER E. HENDRICKSON; DOREEN M.	)	THE EASTERN DISTRICT OF
HENDRICKSON,	)	MICHIGAN
	)	
Defendants-Appellants.	)	

ORDER

Before: GIBBONS and SUTTON, Circuit Judges; ACKERMAN, District Judge.\*

Peter E. and Doreen M. Hendrickson, pro se Michigan residents, appeal a district court grant of summary judgment for the government in this action to recover erroneous tax refunds filed under 26 U.S.C. § 7405(b). This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Peter E. Hendrickson is a tax protester who pled guilty to reduced charges for his role in a conspiracy to place a firebomb in a post office bin as a tax protest, which resulted in injuries to a postal worker and a bystander. See *United States v. Scarborough*, 43 F.3d 1021, 1023 (6th Cir. 1994). Hendrickson subsequently wrote a book entitled “Cracking the Code: The Fascinating Truth About Taxation in America” in which he apparently advocates improper schemes others have followed to avoid paying federal income tax. See *United States v. Hunn*, No. CV06-1458-PCT-FJM,

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\*The Honorable Harold A. Ackerman, United States District Judge for the District of New Jersey, sitting by designation.

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2006 WL 2663783, at \*3 (D. Ariz. Aug. 18, 2006); *United States v. Hill*, No. CV-05-877-PHX-DGC, 2005 WL 3536118, at \*5 n.2 (D. Ariz. Dec. 22, 2005).

The government filed its complaint on April 12, 2006, seeking to recover amounts refunded to the Hendricksons pursuant to fraudulent tax returns filed for the 2002 and 2003 tax years. In addition, the government sought injunctive relief pursuant to 26 U.S.C. § 7402(a) to compel the Hendricksons to file corrected 2002 and 2003 tax returns and to prohibit them from filing fraudulent tax documents in the future. The Hendricksons moved to dismiss the complaint, and the matter was referred to the magistrate judge. The government responded in opposition to the motion to dismiss, and the Hendricksons filed a reply. In addition, the government moved for summary judgment, the Hendricksons filed a response, and the government filed a reply.

The magistrate judge recommended that the Hendricksons' motion to dismiss be denied and that the government's motion for summary judgment be granted except with respect to the injunctive relief sought, and the Hendricksons filed objections to both recommendations. The district court adopted the magistrate judge's recommendation and denied the Hendricksons' motion to dismiss, and adopted in part the magistrate judge's recommendation that summary judgment for the government be granted, but also granted the government's request for injunctive relief to require amended 2002 and 2003 returns. The government filed a motion to amend the judgment, and the Hendricksons filed motions for relief from judgment and for reconsideration. The government responded in opposition to the motion for relief from judgment, and the Hendricksons filed a reply and a notice of appeal. The district court denied the Hendricksons' motions, but granted the government's motion and entered an amended judgment and order of permanent injunction. The Hendricksons filed a timely amended notice of appeal.

On appeal, the Hendricksons make numerous challenges to the district court's jurisdiction and judgment which fairly can be characterized as plainly baseless tax protester arguments. The government responds that the district court's judgment was proper, and has filed a separate motion for sanctions in the amount of \$8,000.00 pursuant to Fed. R. App. P. 38. The Hendricksons have

not responded to the government's motion. Upon consideration, we grant the motion for sanctions in part, and affirm the district court's judgment.

This court reviews de novo a district court grant of summary judgment, making any reasonable inference in favor of the non-moving party. *United States v. Guy*, 978 F.2d 934, 936 (6th Cir. 1992); *EEOC v. Univ. of Detroit*, 904 F.2d 331, 332 (6th Cir. 1990). Generally, summary judgment is proper where no genuine issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Guy*, 978 F.2d at 936. The burden is upon the moving party to show "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp.*, 477 U.S. at 325. Thereafter, the nonmoving party must present significant probative evidence in support of the complaint to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). The nonmoving party is required to show more than a metaphysical doubt as to the existence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Here, summary judgment for the government was proper.

First, the Hendricksons' jurisdictional challenges lack merit. The United States plainly may sue for return of taxes erroneously refunded pursuant to 26 U.S.C. § 7405(b). *Guy*, 978 F.2d at 938. Moreover, 26 U.S.C. § 7402(a) gives district courts the authority to grant injunctions "necessary or appropriate for the enforcement of the internal revenue laws." *United States v. First Nat'l City Bank*, 379 U.S. 378, 380 (1965). The Hendricksons' initial assertion on appeal, that the district court lacked jurisdiction in this case because another statutory provision, 26 U.S.C. § 6201, authorizes and requires the Secretary of the Treasury to determine and assess taxes, was properly rejected by the district court as irrelevant and patently meritless. The Hendricksons' remaining jurisdictional challenges at least arguably were not asserted in the district court, and should not be considered in the first instance on appeal. *See Weinberger v. United States*, 268 F.3d 346, 352 (6th Cir. 2001) (citing *Foster v. Barilow*, 6 F.3d 405, 407 (6th Cir. 1993)). Nonetheless, it is noted that the challenges are patently meritless. For example, the Hendricksons' assertion that the government lacks standing under 26 U.S.C. § 7405(b) to seek return of taxes not already determined is wholly

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unsubstantiated as is their equally meritless contention that the district court lacks jurisdiction to determine tax liability. Similarly, an executive order that requires “litigation counsel” to attempt to settle a dispute, or to confirm that the referring agency has attempted to settle a dispute before filing suit, while laudable, simply does not deprive the district court of jurisdiction. The Hendricksons’ remaining jurisdictional challenges are equally meritless.

The Hendricksons’ remaining claims also plainly lack merit. First, the Hendricksons contend that the district court improperly weighted the evidence in favor of the government when it found that Peter E. Hendrickson was an “employee” who had been paid “wages,” and that Doreen M. Hendrickson had received “non-employee compensation.” However, this contention is tantamount to a typical tax protester argument that the income at issue is not taxable. *Cf. Weston v. Comm’r*, 775 F.2d 147, 147-48 (6th Cir. 1985). Finally, the assertion that the government is prohibited from suggesting that Peter E. Hendrickson’s book promotes false or fraudulent tax schemes because the subject of the book was addressed in prior litigation is plainly meritless. Accordingly, the Hendricksons’ remaining claims are meritless, and the district court properly granted summary judgment for the government in this case.

Given the patent baselessness of the Hendricksons’ assertions on appeal, the government’s motion for sanctions will be granted, but only in the amount of \$4,000.00. As noted, the government seeks \$8,000.00, an amount it contends is justified by records that show that average costs incurred in frivolous taxpayer appeals in 2004 and 2005 exceeded \$11,000.00. However, this court consistently has awarded \$4,000.00 sanctions in frivolous tax protester appeals. *See Raft v. Comm’r*, 147 F. App’x 458, 462-63 (6th Cir. 2005). Under these circumstances, the government’s motion for sanctions will be granted in the amount of \$4,000.00.

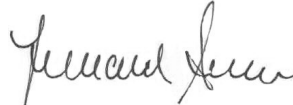
Finally, it is noted that an unrelated non-lawyer, Charles Bassett, has filed an admittedly untimely motion for leave to file an amicus curiae brief in this case pursuant to Fed. R. App. P. 29. Review of the brief reflects only patently meritless tax protester claims, so the brief adds nothing helpful to the disposition of this appeal. For this reason, and because the motion is untimely, the motion is denied.

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For the foregoing reasons, the government's motion for sanctions is granted in the amount of \$4,000.00, and the district court's judgment is affirmed. *See* Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Leonard Green".

Leonard Green  
Clerk

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Leonard Green  
Clerk

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Filed: June 12, 2008

Peter E. Hendrickson  
232 Oriole Road  
Commerce Township, MI 48382-0000

Re: Case No. 07-1510, *USA v. Hendrickson, et al*  
Originating Case No. : 06-11753

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Scott J. Swearingen  
Case Manager  
Direct Dial No. 513-564-7011  
Fax No. 513-564-7096

cc: Mr. Bruce R. Ellisen  
Robert D. Metcalfe  
Mr. John A. Nolet  
Stephen J. Schaeffer  
Mr. Anthony T. Sheehan  
William L. Woodward  
Honorable R. Steven Whalen  
Mr. David J. Weaver  
Charles K. Bassett  
Doreen M. Hendrickson

Enclosure