IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 07-1510

PETER E. HENDRICKSON; DOREEN M. HENDRICKSON

Defendant-Appellants,

v.

UNITED STATES OF AMERICA

Plaintiff-Appellee

ON APPEAL FROM ALL RULINGS, ORDERS AND JUDGMENTS BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
HON. NANCY G. EDMUNDS, DISTRICT JUDGE PRESIDING

APPELLANTS' REPLY BRIEF

Peter E. Hendrickson
Doreen M. Hendrickson
Proceeding Pro Se

STATEMENT REGARDING ORAL ARGUMENT

Defendant-Appellants respectfully request oral arguments in this matter.

REGARDING REFERENTS AND LABELS AS USED HEREIN

References herein to “rogue agency”, “the IRS”, “the executive”, “Plaintiff” and others obvious by context all refer to Plaintiff-Appellee. “We”, “our”, “Hendricksons”, and so forth refer to Defendant-Appellants.

SUMMARY OF CASE

> Senator Danaher: *"Of course, you withhold not only from taxpayers but nontaxpayers."*
>
> Mr. Hardy: *"Yes."*
>
> ...
>
> Senator Danaher: *"I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?"*
>
> Mr. Friedman: *"You're thinking of a corporation or an individual?"*
>
> Senator Danaher: *"I am talking about an individual."*
>
> Mr. Friedman: *"An individual will file an income tax return, and that income tax return will constitute an automatic claim for refund."*
>
> From hearing on withholding provisions of 1942 Revenue Act before subcommittee of Committee on Finance, US Senate, during 77th Congress, Second Session, August 21, 22, 1942. Connecticut Senator John A. Danaher and testifying witnesses Charles O. Hardy, Brookings Institution, and Milton Friedman, Treasury Department Division of Tax Research.

****

Q. How many legs does a dog have, if you call his tail a leg?
A. Four. Calling a tail “a leg” doesn’t make it one.

***

The IRS alleges we paid certain amounts as taxes during 2002 and 2003, which, it further alleges, were subsequently refunded "erroneously". Plaintiff asserted standing to bring suit for "recovery" of these amounts based on these allegations, and provisions of law reflected at 26 USC 7405, at which only authority for suits to recover an (erroneously) issued **refund of tax** is provided.

There are necessary, inescapable precursor elements which must be established BEFORE such allegations can even possibly be true (that is, before Plaintiff can have standing to file a complaint, much less sustain its claims). At minimum, these include:

- that we received proceeds (in amounts above statutory exemptions) from conducting taxable activities of some kind during 2002 and 2003, and that those proceeds, or that conduct, are in fact taxed by law (else no liability can exist or be defined under any circumstances);
- that tax liabilities for those years have (and had) actually been legally defined (else no tax is, or was, owed, and no amount can have been paid in as tax and then refunded, erroneously or otherwise);
- that if, in fact, proceeds of sufficient magnitude from the conduct of taxable activities were received, and tax liabilities have (and had) been defined, those liabilities have (and had) not been satisfied exclusive of the amounts returned to us.

To hold that these elements are not precursors, but can await proof offered as a suit proceeds is to render the law reflected at 26 USC 7405, providing for suit to recover **"refunds of tax" "erroneously made"**, utterly meaningless. Both that a return of

deposited property is a "refund of tax" and is "erroneous" necessarily presuppose, and rely upon, establishment of these precursor elements.

Further (and in any event), absent established existing liabilities-- which require prior establishment of actual conduct of taxable activity (as measured by dollars received thereby-- hereinafter referred to as "income"), and in excess of statutory exemption amounts-- Plaintiff simply has no claim to pursue. Thus, even without regard to 7405's limitations, Plaintiff bears the burden of proving every one of these elements.

Further still, since Congress has directly provided that the "income" amount reported by a filer on his annual return shall be received as the amount upon which the tax is to be assessed and collected, Plaintiff also bears the burden of proving how and why that explicit prescription (for which no exceptions are provided in the law) can be disregarded. THIS burden must be met before Plaintiff can establish that it even theoretically *could* have a claim to pursue, and that the courts *could* have relevant jurisdiction.

Plaintiff has met none of these burdens. This failure was made clear in proceedings before the District Court, which nonetheless simply waived Plaintiff's burdens and decreed that upon its mere claim, Plaintiff is awarded ownership of our property. The District Court even commanded us to testify to the validity of Plaintiff's claim.

Unable (and never obliged) to present a real case, Plaintiff has never bothered to try to do so, and still does not. Instead, Plaintiff has danced from contention to contention, from one fanciful sophistry to the next vague implication, with each "argument" littered with incomplete scraps of statutes carefully selected to mislead (such

as its carefully incomplete presentation of the definition of "wages" for purposes of FICA taxes on page 27 of its brief-- see the attached Memorandum of Law for the entire definition), and numerous case citations furnishing an appearance of substance to its filings, but which are actually entirely inapposite, irrelevant, or stand against Plaintiff's "arguments" when read through.

For instance, on page 30 of its brief Plaintiff declares that we *"...never disputed that the amounts paid to them were to compensate them for services they performed..."* This sly, compound misrepresentation not only seeks to dance around the insufficiency of Plaintiff's evidence that we received "wages" and "self-employment income" (now Plaintiff speaks merely of "amounts paid"), but also suggests that we must not only dispute what Plaintiff actually DID allege in its complaint and motion for Summary Judgment, but dispute what it did not, or bear some burden of proving we DIDN'T receive "income", in order for Plaintiff to not be simply handed title to our property by the Court.

Plaintiff plays this game promiscuously, morphing "wages" into "taxable compensation" (which then morphs yet again into mere "earnings" in the very same sentence in at least one place, on page 24 of its brief). Later (again on page 30)-- while carefully and tellingly avoiding a positive declaration of its own as to the taxability of anything-- Plaintiff says, *"Their argument that this compensation* (the existence of which Plaintiff has still never established...) *is not taxable because it was privately earned has been soundly rejected."*

Wrong. We haven't made ANY argument regarding the taxability of ANYTHING in these proceedings, BECAUSE WE DON'T HAVE TO. We don't have to prove or argue ANYTHING in this affair. Plaintiff bears EVERY burden of proof.

In any event, Plaintiff promptly backtracks with a recitation of its favorite vague definitions-related-non-statement of the Latham Court that *"[argument] that under 26 USC §3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute"* (which, however awkwardly expressed, DOES NOT say the category of 'employee' under 26 USC §3401(c) INCLUDES ALL WORKERS-- which it doesn't, or "employee" wouldn't have a definition provided, as any freshman law school student understands-- and which doesn't even clarify what is meant by "privately employed wage earners", a "depends-on-what-the-meaning-of-"is"-is escape hatch big enough to navigate a bound edition of the tax code through). (The attached Memorandum of Law addresses the meaning of the term "includes", misunderstanding of which led to the Latham pretzel.)

Plaintiff then lists other cases notable only for the fact that not one of them flatly says, *"All earnings of anyone are taxable"* (or anything remotely like it), finally reversing itself entirely by declaring our never-made *"argument that their earnings are not taxable as "wages""* to be "frivolous"! Thus, Plaintiff inescapably acknowledges what it is struggling to obscure.

The fact is, throughout hundreds of pages of briefs and other filings in this case, Plaintiff, a massively funded, massively staffed organization which views this matter as:

> *"...hav[ing] significant administrative importance to the enforcement of the internal revenue laws, [which] has been designated within the Department of*

> *Justice, Tax Division, as a high priority case" "requir[ing] greater than average time and attention"* and *"an extra level of review within the Tax Division."*

according to its motion to this Court for extended briefing time, has NOT ONCE quoted a single ruling or statute which declares that all earnings, or all receipts, or all "amounts paid" are "wages", or "income", or are taxable-- thus effectively conceding that this is not true. Knowing the falseness of this proposition hasn't stopped Plaintiff, of course, which should, by itself, cause this case to be dismissed with prejudice, if not with severe sanctions for being the utterly frivolous and vexatious action that it clearly is.

When Plaintiff isn't ducking and weaving, it merely lies. For example, on Page 23 of its brief, Plaintiff asserts that *"First, it is not disputed by taxpayers that, on their 2002 and 2003 tax returns, they claimed refund of the taxes withheld..."* This assertion is breathtakingly mendacious The very opening line in our Reply to Plaintiff's motion for summary judgment is:

> ***"NO TAX WAS DUE, NO TAX WAS REFUNDED, THUS PLAINTIFF HAS NO STANDING TO BE MAINTAINING THIS "SUIT"!***

We testified by affidavit that:

> *"As a result of this process, our 1040s constituted claims for the return (refund) of the property which had been diverted to the keeping of the United States..."*

and that:

> *"No federal income tax was or is due and owing from Doreen M. Hendrickson/[Peter E. Hendrickson] or myself for the years 2002 and 2003 except as is indicated on the tax returns she and I filed for those years.*

Our sworn tax returns for 2002 and 2003, also included as affidavits with our reply to Plaintiff's motion, declare that no "income" was received and no tax is due. Thus, nothing was "paid in as tax", and calling a tail a leg doesn't make it one.

Plaintiff has included this particular lie due to its unavoidable acknowledgment of the fact that the authority to sue reflected at 26 USC 7405 extends ONLY to suits pursuing erroneous REFUNDS OF TAX. By this lie, Plaintiff hopes to mislead this Honorable Court into imagining that everyone agrees that the property returned to us legally qualified as a "tax refund", and therefore this suit was authorized. Nothing could be further from the truth.

(At the same time, Plaintiff repeatedly quotes a sloppy, misleading "three-part test" of elements required for a 7405 lawsuit, the first of which ambiguously reads, *"(1) that a refund of a sum certain was made to the taxpayer."* Obviously, this element should read, *"(1) that a **tax** refund of a sum certain was made to the Defendant."*-- who may or may not be a "taxpayer" of course-- even "taxpayers" can get refunds that are not "of tax".)

REGARDING PLAINTIFF'S SPECIFIC FAILURES IN EARLIER PROCEEDINGS AND ITS BRIEF TO THIS COURT

PLAINTIFF HAS FAILED TO OVERCOME ITS JURISDICTIONAL INFIRMITIES

1. As we have clearly and repeatedly pointed out throughout all proceedings in this case, the relevant law provides that:

> *"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."*** Section 93 of The Revenue Act of 1862 (Emphasis added)

Plaintiff bears the burden of proving the existence of a statute contradicting this explicit specification in order to even begin to overcome its other jurisdictional and evidentiary infirmities. "Shall be received" means shall be received. It means that no

one-- no agency, no party, and no court-- has the latitude or jurisdiction to declare that a tax shall be assessed and collected from the filer other than according to what has been so declared. No volume, or creative selection, of case citations-- regardless of their content, or what they may appear (or can be construed or tortured) to suggest or imply-- are relevant to this burden in the absence of such a contrary statute.

> *"When the words of a statute are unambiguous, the first canon of statutory construction [that courts must presume that a legislature says in a statute what it means and means in a statute what it says there] is also the last, and judicial inquiry is complete."* U.S. Supreme Court, Connecticut National Bank v. Germain, 503 US 249 (1992)

Plaintiff has not even alleged the existence of any such statute. Instead, it has sought to evade this insurmountable statutory obstacle to its case by simply acting as though it does not exist, leapfrogging in its filings and motions throughout this affair to a bewildering and mendacious confusion of constantly shifting nonsense, frequently self-contradictory and all inapposite in light of both Plaintiff's ongoing failure to overcome its obligation to receive our 1040 testimony as dispositive, and its additional complete failure to prove its core allegation that we received "income" upon which any tax liability can have arisen. Plaintiff has thus tacitly admitted that there is no such contrary statute, and its action (which is thereby revealed as frivolous and vexatious, and brought in gross bad faith) must be dismissed for that reason alone.

Frankly, even if Plaintiff HAD proposed a statute purportedly contradicting section 93 quoted above, it would not have mattered. As the U.S. Supreme Court has unambiguously declared, in regard to ambiguity in tax law,

> *"In case of doubt they are construed most strongly against the government, and in favor of the citizen."* U.S. Supreme Court, Gould v. Gould, 245 US 151 (1917)

But again, Plaintiff has proposed the existence of no such statute.

2. Even were our sworn return testimony NOT pre-emptively dispositive as a matter of law, Plaintiff would nonetheless be obliged to somehow prove, not merely allege, that we received "income"-- that is, payments specifically subject to tax (and in sufficient amounts to create liabilities)-- in the face of our explicit testimony to the contrary. Plaintiff would also be obliged to prove that corresponding liabilities had actually been defined, in order to satisfy the jurisdictional gatekeeping provisions of 26 USC 7405, something it is simply incapable of doing (particularly in the face of our returns), and **has not done.**

Although the fact doubtless sticks tightly in Plaintiff's craw, it is worth noting that this obligation emphasizes, partakes of, and is in complete harmony with, the dispositive character of the 1040 discussed above which Plaintiff strenuously seeks to evade. This simple legal reality has been explicitly recognized by the U.S. Supreme Court, the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Circuit Courts, and innumerable District Courts, unambiguous rulings in regard to which are extensively cited, quoted, and discussed in our Opening Brief at pp. 9 - 13. Briefly stated, Plaintiff can only bring an action under 7405 in regard to a **refund of tax**. That any refund was in fact **a refund of tax**, and not simply the refund of deposited funds in connection with which no outstanding liability has come to be defined, must therefore be established before such a suit can be entertained. As this Court points out in Ameel v. United States, 426 F.2d 1270 (6th Cir. 1970), *a remittance that does not satisfy **an asserted tax liability** should not be treated as the ´payment' of a tax;"* (emphasis added).

Tax liabilities are "asserted" by the formal application of the rate of tax to the "income" shown on a filer's return, whether directly by the filer upon the instrument

itself, or through assessment by the Secretary of taxes *"as to which returns or lists are made under this title"* 26 USC §6201(a)(1).

> *"The key here is that something, other than the mere remittance of money, must happen to define the amount of the obligation. That could be an official assessment by the IRS, or a tax return or other official document signed by the taxpayer which acknowledges the amount of the obligation."* Ewing v. United States, 711 F. Supp. 265 (W.D.N.C. 04/19/1989)

> *"It is the view of the Court that the transfers of money made by the taxpayer in the instant case did not have the status of 'payment' until the tax deficiencies were formally assessed by the Commissioner."* United States v. Dubuque Packing Co., 233 F.2d 453 (8th Cir. 1956)

The limited authority of "the Secretary" to make returns himself is extensively laid out in our opening brief at pp. 3 - 6, and a "deficiency" is nothing more than the difference between the amount by which the tax actually imposed per several specific statutes upon the gross "income" declared by the filer, accurately calculated, exceeds the tax inaccurately calculated and shown upon his or her return:

> *Sec. 6211. - Definition of a deficiency*
> *(a) In general*
> *For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of -*
> *(1) the sum of*
> *(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus*
> *(B) the amounts previously assessed (or collected without assessment) as a deficiency, over -*
> *(2) the amount of rebates, as defined in subsection (b)(2), made.*

The Secretary is authorized to determine the proper amount of tax, not the starting quantity of "income" to be taxed (which is self-evident since "the Secretary" is incapable of subscribing a sworn return as to that latter figure...). Plaintiff acknowledges this reality when, in a rhetorical reference to the limitations of "deficiency" assessment

procedures on page 35 of its brief it uses the careful language, *"A tax deficiency resulting from the underreporting* ***of income tax*** *on a return..."* (emphasis added). Note that Plaintiff doesn't suggest that "deficiency procedures" can comprehend addressing an asserted *"underreporting of INCOME"*, but only an underreporting *"OF INCOME TAX"*. Plaintiff fully understands its limitations in this regard.

Thus, it is ultimately the declaration on a 1040 that establishes what liability can be defined. When less than the exemption amount of "income" is declared on a sworn return, no liability can be defined (since the tax due will be $0), and thus the provisions of 7405 clearly emphasize, and harmonize with, the dispositive character of a filed return as provided for in section 93 of the 1862 act. It is important to keep in mind that this isn't a situation where Plaintiff has sent out some of its own property which it has since decided was sent out in error, and wishes to reclaim. The money returned ***belongs to us***, unless and until we abandon our claim, and legitimize the claim of another. **When a refund has been claimed or issued, the government's right to challenge or refuse the claim, or to subsequently attempt to recover an issued refund, must be based on an established and legitimate claim *of its own* to the property in question.**

Plaintiff seeks to evade these straightforward legal realities in several ways. For instance, it presents a sonorous declaration, and tedious argument, that, *"liability arises as a consequence of realizing income"* (Plaintiff's brief pp. 35 et seq.). But, of course, such "arisings" are nothing but theoretical fog unless and until the alleged liability is written down (and sworn to) by someone. Plaintiff should save this nonsense for its next late-night lawschool-dormitory bull session.

Furthermore, proving that we "realized income" during the years in question (other than as declared on our returns) is, of course, something that Plaintiff has never done. (Nor could ever do, since it is simply not true.)

Plaintiff scrambles next to grossly misrepresenting the substance of the Rosenman ruling as being nothing more than a characterization of paid-in funds as deposits for purposes of 26 USC §6511(a). Perhaps Plaintiff missed the portion of that ruling which observes that,

> *"where taxpayers have sued for interest... ...the Government has insisted that the arrangement was merely a 'deposit' and not a 'payment'... If it is not payment in order to relieve the Government from paying interest... ...it cannot be payment to bar suit by the taxpayer for its illegal retention. It will not do to treat the same transaction as payment and not as payment, whichever favors the Government."*

Plaintiff then shamelessly avers that, *"It is worth noting in this regard that the no-payment-prior-to-assessment argument [of Rosenman] has been squarely rejected,"* and cites Baral v. United States, 528 U.S. 431, a case distinguished from Rosenman and its progeny by actually being exclusively and explicitly about **only** the provisions of 6511 (*We are called upon in this case to decide when two types of remittance are "paid"* ***for purposes of this section****"*)! (See page 12 of our Opening Brief for a more extensive quotation and discussion of Baral.) As is shown, unlike Baral, Rosenman is a broad (and common-sense) ruling, endorsed and re-iterated by an army of other courts (see our brief pp. 9 - 13).

Plaintiff concludes its attempt to evade the realities of 7405 with an irrelevant observation (on page 37 of its brief) to the effect that courts have held that,

> *"where the IRS determines after year end that it has assessed too little tax because of incorrect information supplied on a taxpayer's return, with the result*

> *that withholdings were improperly refunded and a tax "deficiency" exists... ...the Government has the option of immediately pursuing recovery in an erroneous-refund suit..."*

followed by the citation of several cases. It winds up this strawman ploy by declaring that,

> *"Thus, the Government's authority under IRC § 7405 to bring an action in federal district court to recover an erroneous refund of tax is not limited to actions seeking recovery of previously assessed taxes."*

and that we are wrong in asserting that, *"only the Tax Court has potential jurisdiction in this situation"*. As we have demonstrated above, the "determinations" within the authority of the IRS do not extend to the gross amount of "income" upon which the tax is to be calculated, and in any event, absent a defined liability (whether Plaintiff calls it an "assessment", a "tail" or otherwise), no refund can qualify as having been a refund of tax.

The inapposite character of Plaintiff's cited cases reflect these realities. For instance, Plaintiff cites Beer v. Commissioner, (6th Cir. 1984). Why?

Beer had declared "income" well over the exemption amount on his returns. He then failed to accurately apply the rate of tax to that acknowledged "income", resulting in a much smaller tax figure than the return-defined liability, and claimed a refund of withheld property accordingly. The IRS undertook deficiency assessment proceedings to recover so much of the refund as an accurate application of the rate of tax to Beer's avowed "income" receipts indicated.

7405 only enters this story because Beer tried to argue that a 7405 suit (for which it was too late), rather than the deficiency procedure, was the Commissioner's only legal option for recovering the erroneous refund. This ruling is irrelevant to the issue of the legitimacy of a suit under 7405 where there is no defined liability.

Plaintiff then cites United States v. Farley (3d. Cir. 2000). Why? The Farleys did not argue that the refund in question in this case was not a refund of tax, only that it was not refunded in error.

Plaintiff goes on to cite Singleton v. United States, (4th Cir. 1997). Why? Singleton is the plaintiff-- obviously the authority to sue under 7405 is not an issue in this case. Instead, as the Court explains in its ruling,

> *"The issue on appeal is whether the IRS was required by statute to issue a notice of deficiency to the Singletons prior to making its 1991 supplemental assessment."*

and

> *"the government explains that no notice of deficiency was required because, by definition, no deficiency existed."*

The only mention of 7405 in this ruling is the following rumination:

> *"If, on the other hand, the taxpayer`s reported liability is less than the amount paid to the Treasury, the IRS will issue a refund. [Citation omitted] Occasionally, the IRS makes mistakes... ...miscalculating the refund or by issuing the refund check twice. In these cases, the IRS can reclaim the erroneous refund in one of two ways. First, the IRS can bring an erroneous refund suit under 26 U.S.C. § 7405, within two years after the refund was made."*

Thus, even this mere dicta only concerns refunds made in which the IRS made a math error or issued duplicate checks, and has nothing to do with the issue of suing under 7405 in the absence of a defined liability.

Are these cases cited as a joke? Sadly, they are not. Instead, they are cited in a plain effort to defraud this Honorable Court, because Plaintiff can find no actual support for its absurd, inherently corrupt arguments and claims.

3. Just as it has no answer to the dispositve nature of a sworn 1040 (and offers none, thus conceding this case right there) or to its inability to demonstrate that a return

of deposited property qualifies as a "refund of tax" (much less an "erroneous" one) in the absence of a defined liability, Plaintiff has no answer to our jurisdictional challenge under the Declaratory Act. So, it hazards none-- but instead tries to call a tail a leg with the ridiculous declaration on page 38 of its reply brief that,

> *"The Government here did not seek or receive a declaratory judgment; rather, it obtained a money judgment in the amount of the erroneous refund, plus interest, and an injunction..."*

It is hard to imagine a more clear-cut example of declaring the rights and other legal relations of parties than declaring that one party has engaged in conduct by which he has become indebted to the other, and is presently so indebted; or that one party is under a legal obligation to testify to the other party's benefit on sworn instruments; such as has been done by the District Court in the instant action. Indeed, as is observed by the Supreme Court and by Plaintiff as well, when its purposes are served by accuracy rather than mendacity (our Opening Brief, page 15), injunctions are inherently declarations of rights and legal relations. After all, whence comes the authority to command or prohibit an act, other than as a consequence of one of the two party's rights, or an established legal relationship between them?

4. Again, having no answer to our observation that Congress has exclusively vested Tax Court with what limited jurisdiction exists for adjudicating "determinations" and assessments (our brief, pages 15 - 17), Plaintiff simply stands silent and concedes the error (and the case).

5. Plaintiff has "responded" to our observation (on pages 17 - 18 of our brief) of District Court error in regard to Executive Order no. 12988(1)(a) by declaring the order

to be mere empty rhetoric (page 39 of Plaintiff's brief). This insult to Plaintiff's own branch of government is an effort to evade the substance of our observation, which is that by law, the Department of Justice can only commence an action in accordance with specific authorizations and procedural steps (the very first of which should have been notifying us of its alleged claims to our property long before initiating a lawsuit...).

Among those required authorizations is one from the Secretary of the Treasury (which is NOT mere empty rhetoric, and which necessarily presumes the existence of a defined liability):

> *26 USC 7401 Authorization*
> *No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.*

Our citation of Ex. Ord. No. 12988 is not to suggest that its casual violation by Plaintiff is itself actionable (nor are we aware of any suit we have commenced against anyone in this regard, leaving us wondering what might be Plaintiff's point in citing section 7 of the order...). Rather, our point is that the District Court's failure to enforce our motion for a more definite statement in regard to this authorization-- filed immediately upon being served with Plaintiff's "complaint" and demanding written proof of these required authorizations-- constitutes an abandonment of its responsibility to hold Plaintiff to the order's requirements.

It is self-evident that this statutory requirement is not met by the mere fact that the DOJ has brought suit, or that the action relates to the Department of Treasury. Were these sufficient, the statutory provision would be absurdly superfluous. These authorizations must be positively expressed, and they form an element of the

jurisdictional legitimacy of this action-- in part due to the requirements of Ex. Ord. No. 12988.

Further, in failing to require these proofs of Plaintiff, the District Court demonstrates a profound improper bias in favor of Plaintiff-- whose mere unsworn (and challenged) averments in its complaint are being taken as evidence. The District Court's demonstrated bias, and related failures, are egregious reversible errors.

6. As is extensively discussed in our Reply to Response to Motion (R. 8), our Response to Motion for Summary Judgment (R. 13), our Objection to Report and Recommendation (R. 19), our Motion for Reconsideration (R. 27) and our brief to this Court, Plaintiff has introduced into the record a single piece of "evidence" upon which it rests its entire case: the "Declaration of Kim Halbrook". We have pointed out that Halbrook is not personally competent to testify to anything regarding the years involved in Plaintiff's "complaint" due to not even being present at Personnel Management for the entire time; nor in a position to have relevant knowledge, once there.

Plaintiff now bizarrely attempts to evade this fact, claiming, on page 34 of its brief, that,

> *"Halbrook, however, declared that she was the payroll manager at PM during relevant times..."*

No, she didn't, actually...

Halbrook actually declares nothing more than that, *"I **am** the payroll/Human Resources Manager..."* (R. 9, Declaration of Kim Halbrook) (emphasis added). At no point does she contend that she was at PM in any capacity whatever during 2002 and 2003. On the basis of our own memory, corroborated by inquiries made since the

initiation of this "lawsuit", we believe that Halbrook did not begin working at PM until well into 2002, and then as a mere intern in the payroll department. Thus, Plaintiff's contention that Halbrook has "personal knowledge" of anything relevant to this case is flatly wrong.

Furthermore, even aside from Halbrook's incompetence to testify, all that she purports to offer that might otherwise have been relevant to the instant case amounts to mere legal conclusions, even if (indeed, particularly if) she is understood to use the statutorily-defined terms "wages", "employee" in her "declaration". Thus, Halbrook's "testimony" fails to meet the standards of FRCP 56. (If she is not using the statutory terms, then her "declaration" hasn't even a pretense of relevance to Plaintiff's case).

The "declarations" of Shauna Henline and "Terri Grant" as to anything related to Hendrickson-- including anything concerning any alleged payments to him and any conclusions related to either subject, such as conclusions about what should or should not have appeared on any forms, and so forth-- are of even less legitimacy (as extensively observed in our Response to Motion (R. 13). Not only would all such also be nothing more than legal conclusions at best, but Henline and "Grant" have no competent knowledge of anything related to these subjects. Every single word of either of these two declarants is legally prefaced by the phrase, *"Halbrook (or somebody else) says "___"; **if this is true**, then I conclude that..."*

Plaintiff knows this, of course; its presentation of the "testimony" of these two is for no purpose but to confuse the Courts as part of its ongoing bad faith in initiating and maintaining this frivolous and vexatious action. Indeed, "Grant" carefully declares that her "report" doesn't *"constitute a formal audit or examination"* (R. 9, Declaration of

"Terri Grant", page 2; R. 13 pp. 6 - 7). In other words, a "declaration" that would under any circumstances be nothing more than legal conclusions about matters of which she has no personal knowledge whatever isn't even alleged to be anything more than vague speculations!

One wonders if Plaintiff's learned counselors would take the same view of Kin Halbrook's infallibility were she to create, or testify about, W-2s alleging payments of "wages" to each of them, upon which taxes are alleged to be due and owing. Would they conclude that it must be true, and that related calculations by Shauna Henline and Terri Grant regarding resultant liabilities must also be true? That their tax returns must perforce include testimony to this effect?

Would they accept being barred from testifying to the contrary for the sake of "the public fisc" (or any other reason), or buy into the notion that if they DID testify to the contrary, there would be "no issue of material fact" raised thereby, and Halbrook's assertions would properly and summarily rule the day? We think not.

7. Plaintiff continues to assert that Doreen Hendrickson received "income", but continues to offer not even a pretense of "evidence" to this effect. Despite this egregious (and, indeed, dispositive) failure, the rogue agency, and the District Court as well, have nonetheless calculated Plaintiff's "claims" as though it has somehow established that Doreen did receive "income", even in the face of Doreen's explicit sworn denial of having done so, which remains THE ONLY EVIDENCE IN THE RECORD RELEVANT TO THIS SUBJECT.

8. Similarly, Plaintiff has offered, and continues to flog, nothing but an elaborately contrived allegation that we engaged in fraud or misrepresentation on our tax returns, but has sought to use that allegation to stretch its entirely invalid invocation of 26 USC §7405 to the year 2002-- a year which would be time-barred from suit even if 7405 DID otherwise apply in this case. The sole "evidence" upon which this allegation rests is the same upon which all of Plaintiff's creative allegations rest-- the vague, incompetent assertions of Kim Halbrook. Unless and until those assertions (or what Plaintiff suggests those assertions mean) are proven true, what we have done on our tax returns cannot even be alleged to be *wrong*, much less meet the definition of fraud or misrepresentation.

In service to this contrivance, Plaintiff contends that the return of our deposited property was occasioned by some manner of executive department naiveté... This absurd and deceitful contention is discussed at length in our reply to Plaintiff's motion for summary judgment (see R. 13, pp. 4 - 5), as is the fact that even Plaintiff's own Shauna Henline refuses to declare our returns to be false, fraudulent or misrepresentative. Henline carefully says only that IF Plaintiff's contentions about our receipts are taken as true, certain aspects of our returns would have been erroneous (see R. 13, pp. 7 - 12). And IF a tail WERE a leg, then a dog WOULD have five legs...

Thus, Plaintiff offers no evidence to support its wild accusations of "falseness", "fraud" or "misrepresentation", and cannot sustain its claim of standing concerning 2002 under any circumstances, even if COULD somehow otherwise sue under 7405. Conclusory, unsupported allegations do not meet Plaintiff's burdens. Every other element of Plaintiff's complaint and arguments involving or invoking "falseness",

"fraud" or "misrepresentation", and the related dispositions by the District Court, likewise fail.

9. Plaintiff airily dismisses the District Court's error in denying us the jury trial we demanded immediately upon the denial of our initial Motions to Dismiss, declaring that,

> *"Where, as here, the party opposing summary judgment has raised no genuine issue to be tried, judgment may be entered as a matter of law for the moving party, pursuant to the federal rules and without Seventh Amendment implications."*

This is actually not true even merely under FRCP 38, which says, unambiguously and without exception:

> *"The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."* Fed. Rules of Civ. Proc. 38(a).

Nonetheless, Plaintiff tries to suggest that this right is really just something *allowed* to an American at the discretion of a court, upon that court's unilateral decision as to whether "genuine issues to be tried" exist. Such is the contempt Plaintiff has for the Constitution-- the sole authority for its own existence (and that of the federal courts, as well).

The fact is, unless a party simply stands silent in the face of the other's allegations, there is only one circumstance in which it can credibly said that "no genuine issue to be tried" exists such that a demand for trial by jury can be disregarded, and that is when the affected party has stipulated that AS HE OR SHE SEES THE MATTER, no such issue exists. Otherwise, the Seventh Amendment would be a meaningless Constitutional provision.

After all, the right recognized in the Seventh Amendment is OUR RIGHT. It is not a privilege to be granted or withheld from us depending on a judge's perception of its "application" in any given case. We exercise our rights at OUR discretion, without let or hindrance. Plaintiff's contention to the contrary, and the District Court's disregard of our demand in this case, are pernicious in the extreme.

10. As in the matter of the statutorily dispositive character of a 1040 and the additional jurisdictional issues related to the Declaratory Act and Tax Court, Plaintiff has no answer to our arguments regarding the District Court's improper construction of the record against us, the non-moving party, in its disposition of Plaintiff's motion for summary judgment; and the District Court's errors in allowing to go forward a suit inherently and inextricably entwined with matters barred from litigation under the provisions of Rule 41 of the Federal Rules of Civil Procedure (see our brief pp. 22 - 25). Thus, it makes none, and concedes the case.

Numerous other procedural errors were committed by the District Court. These include a 9-month delay before ruling on our Motions to Dismiss and for other relief, and then denying those motions on the same day Plaintiff's Motion for Summary Judgment was granted (which included the denial, in specific violation of FRCP 9(b), of our Motion for More Definite Statement). This timing, and the FRCP 9(b) violation, prevented us from formulating an answer to the complaint, conducting discovery, and making use of other available responsive mechanisms. Details of these errors, and relevant points of law and holdings by the courts, are presented in the attached Memorandum of Law.

11. Plaintiff wraps up urging the Court to rubber-stamp the District Court's Constitutionally and statutorily impermissible injunctions, for reasons of public policy, rather than law-- demonstrating that patriotism is also the last refuge of litigating scoundrels. Plaintiff suggests "the public fisc" is threatened should it not be allowed to dictate the content of our tax return testimony at gunpoint. Plaintiff suggests the coercive testimonial injunction sought merely *"prohibit(s) them from filing returns... ...contrary to third-party information..."* and otherwise requires us to *"act in accordance with the internal revenue laws..."*.

You know what? In all its filings, where its huge staff has unquestionably taken its very best shot, Plaintiff has cited NOT ONE LAW requiring a 1040 filer to simply accept and adopt third-party information and NOT ONE LAW prohibiting a filer from disputing such information. There ARE no such laws regarding third-party information, nor could there be. Any such law would profoundly offend due process principles and conflict with numerous specific tax-related statutes, including many which explicitly require freely-given testimony to the best of the filer's knowledge and belief and others which explicitly provide for a filer disputing third-party information.

Moreover, Plaintiff has cited NOT ONE LAW, "internal revenue" or otherwise, which it seeks to enforce, defend or support in any manner here, or which is implicated or offended by our actions in any fashion. There is no such law.

Thus, Plaintiff's argument that courts have authority *"to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute,"* is entirely (and deliberately) irrelevant to this action. While there may be judicial doctrine supporting injunction on vague grounds, it is undeniable that some statutory

provision of "tax enforcement", or otherwise, must demonstrably be affected by the enjoined behavior. There is (and can be) no provision obliging anyone to adopt third-party testimony, or prohibiting free testimony, on a return, and so Plaintiff's requested injunction is entirely lawless in any event. Plaintiff's dog still has only four legs and a tail-- and it won't hunt, either.

It's this simple: Plaintiff is trying to EVADE THE LAW here. We have clearly demonstrated that seeking to coerce the testimony on our tax returns, and to undo our testimony as presented and reverse its effects, violates at least §93 of the 1862 Revenue Act and additional statutes reflected at 26 USC §§ 31, 6020, 6201, 6203, 6211, 6401 and 6402. In using this "lawsuit" to further this corrupt effort, Plaintiff also violates at least the laws reflected at 26 USC §§7405 and 6201; 28 USC §2201; Executive Order 12988; and FRCP rules 9(b), 41 and 56, and has invited the Courts to do the same.

CONCLUSION

As noted above, Plaintiff disingenuously and hyperbolically suggests that "the public fisc" is threatened, and the rule of law should be chucked overboard as an interest of secondary importance. The alleged "threat" is, of course, complete and arrant nonsense, but even if it were not, it would be irrelevant. After all, the reason we authorized a "public fisc" in the first place, and created the Plaintiff, and the Courts, is to defend and uphold the rule of law. We are sure that this Honorable Court agrees.

WHEREFORE

DEFENDANT-APPELLANTS ONCE AGAIN PRAY THIS HONORABLE COURT:

1. Vacate, reverse or otherwise undo all rulings, orders and judgments of the District Court.
2. Dismiss Plaintiff-Appellee's complaint with prejudice.
3. Grant Defendant-Appellants such other relief, including the costs of this action, as is just and equitable.

Dated this the 13th day of September, 2007.