

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

Case No. 10-1824

PETER E. HENDRICKSON; DOREEN M. HENDRICKSON

Defendant-Appellants,

v.

UNITED STATES OF AMERICA

The Plaintiff-Appellee

**APPEAL OF THE DISTRICT COURT'S DENIAL OF OUR MOTION TO
VACATE AND GRANTING OF THE PLAINTIFF'S MOTIONS FOR
CONTEMPT**

Peter E. Hendrickson
Doreen M. Hendrickson
Proceeding Pro Se

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Mr. and Mrs. Hendrickson request oral argument.

INTRODUCTION

PETER E. HENDRICKSON and DOREEN M. HENDRICKSON hereby appeal the District Court's denial of our Motion to Vacate in the above-entitled action, move this Honorable Court, under Fed. R. Civ. P., Rules 60(b)(3), 60(b)(4), 60(b)(6) and 60(d)(3) to set aside the judgment, and further move this Honorable Court, under Fed. R. Civ. Proc., Rule 12(h)(3), to dismiss the action with prejudice.

This also constitutes our appeal of the judgment in this action holding us in contempt of the District Court for failing or refusing to comply with an order that we submit amended tax returns that are dictated by the government and the District Court, on the grounds that such an order emanates from intrinsic and extrinsic fraud, is both immoral and unsupported by factual evidence and law, and would, if enforced, violate our Constitutional rights to freedom of speech and deprive us of liberty and property. We have already, as a result of DOJ and District Court malfeasance, been deprived of our Constitutional rights to a fair and speedy trial, to due process, to petition the government for redress of grievances, and to speak truthfully in freedom of oppression, and we ask this Honorable Court to act with judicial integrity and put an end to this outrage. This appeal is based upon the

record in this case, upon the following points of fact and legal authority, and upon all matters subject to judicial notice.

JURISDICTION

This is an appeal of final decisions of the United States District Court of the Eastern District of Michigan, *United States v. Hendrickson*, Case No. 2:06-CV-11753, and thus general jurisdiction lies with this Honorable Court pursuant to 28 U.S.C. §1291 and §1294(1).

STATEMENT OF ISSUES

The District Court issued summary judgment in the underlying lawsuit in this case despite no jurisdictional facts having been supported by evidence, as explicitly required by statutes – particularly the statutory requirements of 26 U.S.C. §7401, §6201(d) and §7491. Such supporting evidence is also required by the basic principles of due process, of course. It is our contention, and an issue of this appeal, that the judgment issued by the District Court was and is therefore void and invalid, and the District Court should have granted our Motion to Vacate that judgment, and should be ordered to do so now by this Honorable Court.

Additionally, the District Court ordered us under threat of fines and imprisonment to sign documents containing testimony dictated by the Court and the Plaintiff, and calculated to benefit the Plaintiff. We believe, and place as an issue in this appeal, that this order is and was invalid and void, and outside the

authority of the District Court, and the order holding us in contempt for refusing this invalid command, and holding us liable for fines for our refusal, should be ruled invalid and void, as should be the order commanding us to execute Court-dictated testimonial documents.

Additionally, the District Court ordered us to submit to a search of our finances by the United States under threat of fines and imprisonment, in furtherance of, and relying upon, the invalid judgment issued by the District Court. We believe, and place as an issue in this appeal, that this order is and was invalid and void, and outside the authority of the District Court, and the order holding us in contempt for refusing this invalid command, and holding us liable for fines for our refusal, should be ruled invalid and void, as should be the order commanding us to submit to this search.

STATEMENT OF THE CASE

In April, 2006, the Plaintiff United States brought suit against us alleging authorization for doing so pursuant to 26 U.S.C. §7401. We challenged that allegation of authorization, and our challenge has never been answered with evidence supporting the satisfaction of this basic jurisdictional requirement. The Plaintiff United States was allowed by the District Court to proceed nonetheless, and did so – alleging we owed tax debts to it based on unsupported third-party assertions. We had already rebutted those assertions in the manner specified by the

United States itself for challenging such assertions, and rebutted them again with sworn affidavits in response to this lawsuit. The Plaintiff United States failed to respond with any evidence supporting these allegations, despite being explicitly required to do so under its own rules (as well as the basic principles of due process).

Nonetheless, the District Court entertained the Plaintiff's Motion for Summary Judgment in its favor, and, 9 ½ months after receiving and sitting on our Motion to Dismiss the suit on jurisdictional grounds, denied our Motion and granted that of the Plaintiff on the same day, finding all of the Plaintiff's allegations to be facts without explanation, holding us indebted to the Plaintiff, and declaring as an equitable remedy to the Plaintiff an injunction ordering us to testify as the Plaintiff dictates, and to its benefit, "enjoining [us] from filing [tax returns]...contrary to third-party information." (From page 4 of the Plaintiff's Response to our initial appeal of the District Court ruling).

STATEMENT OF FACTS

On June 10, 2010, District Court Judge Nancy Edmunds denied our Motion to Vacate her previous May 2, 2007 summary judgment and related rulings and orders, without a hearing, explanation or comment (RE #67). The same day, after a hearing on these alone, Judge Edmunds granted the Plaintiff's Motions to have us held in contempt and subjected to fines and imprisonment for refusing to adopt the

conclusions of law and fact arrives at by others as our own, and swear them to be true to the best of our knowledge and belief, which conclusions we DO NOT believe to be true and correct; and for refusing to reveal the contents of our papers and effects to the causeless scrutiny of the Plaintiff (RE #68).

The summary judgment issued by Judge Edmunds was predicated on her unexplained “finding” of the mere unsupported allegations of non-testifying third parties presented by the Plaintiff to be “facts.” Those allegations assert that we had engaged in activities of a peculiar character such as to cause a debt to the Plaintiff to arise. We had rebutted these allegations at the time they were first made by the third parties,¹ and did so again in response to being served with the Complaint in this action, (along with making a number of other jurisdictional and other challenges, as well, see RE #4 and 8), and then yet again in response to the Plaintiff’s Motion for Summary Judgment (RE #13). All of our rebuttals were in the form of sworn affidavits. As is shown in the record, the Plaintiff had never produced any support for its allegations whatever, nor cured any of its other jurisdictional and standing defects. Thus, all the judgments, orders and rulings issued by Judge Edmunds are, and have always been, invalid and void.

We have for years been mystified at the behavior of Judge Edmunds in this case, but during the June 10, 2010 hearing we gained some insight, even if a

¹ IRS Form 4852, Substitute for Form W-2, Wage and Tax Statement.

disturbing one. Judge Edmunds revealed that she had operated on the bizarre premise that our initial rebuttals of the third-party allegations, which are the sole, unsupported basis for the Plaintiff's Complaint, constitute an agreement or validation of the very allegations we are disputing! This notion proved to be very convenient for the Plaintiff but contemptuous of the Rule of Law. The very principle of judicial process and authority is destroyed by this pernicious postulation. Why bother with the pretense of a judiciary if the pleadings of one party are to be construed against it? This is grossly wrong. We are not the Plaintiff's creatures, nor those of any Court; our words and acts mean what WE intend, and nothing else.

Judge Edmunds also reveals a profound misunderstanding of federal taxing authority in the June 10 hearing. That error, and the others previously mentioned, and the never-cured defects rendering all judgments, rulings and orders in this case invalid and void are discussed in the following memorandum of law and fact.

ARGUMENT

A. Plaintiff Never Introduced Any Evidence to Substantiate Its Complaint, and the District Court Therefore Never Had Jurisdiction

1. Plaintiff's case is founded on unsupported, long-since rebutted allegations that during 2002 and 2003, we received "wages" and "non-employee compensation." Absent proof these allegations are true, Plaintiff's claims that we owe it a tax for those years, or that the documents we filed are in any way

inaccurate, or that it has suffered harm or is likely to suffer harm entitling it to injunctive relief, or that it has any “equity” relationship or claim on us of any kind, are all entirely without foundation and always have been, and the Court has always lacked jurisdiction. “[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective” and “The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action.” *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992).

2. The sole “evidence” identified by Plaintiff in support of its allegations are four pieces of paper – two Forms W-2 and two Forms 1099-MISC – alleging payments to us of “wages” and “non-employee compensation” during 2002 and 2003. These pieces of paper were all created by third parties, and neither Plaintiff nor the Court have any knowledge of the veracity and accuracy of what is said on these pieces of paper.

3. We introduced sworn affidavits of first-hand knowledge specifically rebutting Plaintiff’s allegations and those made on the third-party pieces of paper upon which Plaintiff exclusively relies in bringing this action.

4. The statutes to which Plaintiff and the Courts are subject require Plaintiff’s production of additional fact evidence beyond the allegations on Plaintiff’s third-party pieces of paper once those allegations have been rebutted.

26 U.S.C. §6201(d) and §7491. The invalidity of favoring third-party forms such as these without further evidence once rebutted has been repeatedly recognized by the courts. *Portillo v. CIR*, 932 F.2d 1128 (5th Cir., 1991); *Mason v. Barnhart*, 406 F.3d 962 (8th Cir., 2005); *Rendall v. CIR*, 535 F.3d 1221 (10th Circ., 2008) and cases cited; *Perez v. CIR*, T.C. Summary Opinion 2009-94. Without additional factual evidence in the record, Plaintiff's claim is based entirely on unsubstantiated hearsay and is therefore without any basis, and the Court is deprived of jurisdiction. Jurisdiction does not arise simply because Plaintiff asserts a claim. *U.S. v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *U.S. v. Isaac*, 968 F.2d 1216 (6th Cir., 1992). Plaintiff must demonstrate with positive evidence that we could be liable for the taxes it alleges to be due in order for any judicable matter involving us to be properly before the Court. Absent such evidence connecting us to a cognizable claim by the government of a debt owed to it and damages suffered by it, the government lacked standing to bring the suit, and the District Court had the obligation to dismiss the case, even *sua sponte*, but certainly in response to our Motion. *Days Inns Worldwide, Inc. v. Patel*, 445 F.3d 899 (6th Cir. 2006), *In re Lewis*, 398 F.3d 735, 739 (6th Cir., 2005); *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee* ("Bauxites"), 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

“[T]he rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court,

of its own motion, to deny its jurisdiction and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record.”

Mansfield, Coldwater & Lake Michigan Railway. Co. v. Swan, 111 U. S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884); *Fiedler v. Clark*, 714 F.2d 77, 78-79 (9th Cir.1983). See also, Fed. R. Civ. P., Rule 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action”). A court’s lack of subject matter jurisdiction cannot be waived by the parties, nor can it be conferred upon the district court by agreement of the parties. *Mitchell v. Maurer*, 293 U.S. 237, 243, 55 S.Ct. 162, 164-65, 79 L.Ed. 338 (1934); *Bauxites*, 456 U.S. 694, 702.

5. Plaintiff is DENIED any presumptions in its favor BY STATUTE, and is, in fact, REQUIRED by statute to produce additional fact evidence in support of its allegations (and those made on third-party “information returns). See 26 U.S.C. §6201(d) and §7491; and see *Portillo, supra* at 932 F.2d 1128; *Mason v. Barnhart, supra* at 406 F.3d 962; *Rendall, supra* at 535 F.3d 1221 and cases cited; *Perez v. CIR, supra*. See also Fed. R. Ev., Rule 301. Because it failed to do so, the courts were deprived of jurisdiction and the judgment of the District Court is void. *One 1972 Cadillac, supra* at 355 F.Supp. 514-15. See also *U.S. v. Isaac, supra* at 968 F.2d 1216; *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999); *Elliott v. Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L.

Ed. 164 (1828); *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). Also see Fed. R. Civ. P, Rule 60(b)(4).

6. WE, on the other hand, ARE entitled to such presumptions, both as defendants in this action, and as respondents more generally to the initial third-party allegations of payments to us of “wages” and “non-employee compensation” upon which the United States rests its assertions of our having a tax liability (and that therefore the return of our property was “refund of tax” and “erroneous”). Absent fact evidence proving the contrary, the District Court was, and remains, obliged to presume our declarations of having received no “wages” and/or “non-employee compensation” to be true and correct, to recognize Plaintiff’s failure to properly assert the Court’s jurisdiction, and to dismiss the case. *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992).

7A. All earnings DO NOT qualify as “taxable,” and there is NO circumstance in which any payment to anyone can be determined to qualify as “wages” and/or “non-employee compensation” and subject to tax absent additional factual evidence. Even payments made to federal workers and office-holders by the government office or department for which they work do not automatically qualify as taxable “wages.” Both the definition of “wages” at 26 U.S.C. §3401(a) and the “employment” definition at §3121(b) upon which the definition of “wages” at

§3121(a) hinges contain a vast number of exceptions listing payments “for services rendered” which DO NOT QUALIFY as “wages,” and upon which NO TAX LIABILITY arises. Plaintiff’s own Department of Treasury has helpfully explained this (emphasis is added):

§ 31.3121(b)-4 Employment; excepted services in general.

(a) Services performed by an employee for an employer do not constitute employment for purposes of the taxes if they are specifically excepted from employment under any of the numbered paragraphs of section 3121(b). Services so excepted do not constitute employment for purposes of the taxes even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft, or are performed outside the United States by a citizen of the United States for an American employer. ...

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services in an excepted class rendered by the employee.

***Example.* A is an individual who is employed part time by B to perform services which are specifically excepted from employment under one of the numbered paragraphs of section 312(b). A is also employed by C part time to perform services which constitute employment. While no tax liability is incurred with respect to A’s remuneration for services performed in the employ of B (the services being excepted from employment), the exception does not embrace the services performed by A in the employ of C (which constitute employment) and the taxes attached with respect to the wages (see §31.3121(a)–1) for such services.**

§ 31.3401(a)-2 Exclusions from wages.

(a) In general. (1) The term “wages” does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a).

§ 31.3401(c)-1 Employee.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not

constitute wages within the meaning of section 3401(a).

7B. Just as NO payment can be taken to be “wages,” even if labeled as such by a payer, absent additional fact evidence once that characterization has been controverted, the treatment of any payment as “wages” by a payer – such as by “withholding” amounts from it – can’t be taken as evidence of the payment actually being a payment of “wages.”² Nor can calling an amount withheld from any payment a “tax” constitute evidence that such a payment actually was a payment of “wages” or that a tax was or could be due, any more than calling the payment “wages” makes it so. Once the characterization of a payment as “wages” has been rebutted, all such treatments and labels must be deemed errors and of no more substance than merely calling a payment “wages,” until proven otherwise.

7C. Just as the treatment of a payment as though it were “wages” such as by withholding amounts from it, doesn’t make the payment “wages,” declaring that an amount was withheld from a payment doesn’t make the payment “wages.” Similarly, declaring that an amount was withheld from a payment “as tax” doesn’t make the payment “wages,” or subject to the tax, nor does it make the amount withheld into an actual amount of tax.³

² ...any more than your credit card being charged constitutes incontrovertible evidence that you really did buy lingerie from that company in East Slovenia...

³ ...any more than listing the bogus charge that showed up on your credit card as a charge for “East Slovenia lingerie” on the “VISA Disputed Transaction Form”

7D. Payments of “non-employee compensation,” even if accurately reported themselves, something which is impossible to determine in the face of rebuttal without the introduction of additional fact evidence beyond a mere declaration (subject as they are to the accuracy of the payer’s belief that he is making the payment actually in the course of a “trade or business” as defined in the law, see 26 U.S.C. §7701(a)(26)), find their application to the tax when qualified as “self-employment income.” There is NO circumstance in which any payment to anyone can be determined to qualify as “self-employment income” absent additional factual evidence. As Plaintiff’s own Department of Treasury has helpfully explained this (emphasis is added):

§ 1.1401-1

(c) In general, self-employment income consists of the net earnings derived by an individual (other than a nonresident alien) from a trade or business carried on by him as sole proprietor or by a partnership of which he is a member, including the net earnings of certain employees as set forth in §1.1402(c)–3, and of crew leaders, as defined in section 3121(o) (see such section and the regulations thereunder in part 31 of this chapter (Employment Tax Regulations)). See, however, the exclusions, exceptions, and limitations set forth in §§1.1402(a)–1 through 1.1402(h)–1.

§ 1.1402(a)-1 *Definition of net earnings from self-employment.*

(a) Subject to the special rules set forth in §§1.1402(a)–3 to 1.1402(a)–17, inclusive, and to the exclusions set forth in §§1.1402(c)–2 to 1.1402(c)–7, inclusive, the term “net earnings from self-employment” means:

(1) The gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by chapter 1 of the Code which are attributable to such trade or business, plus

means that you really did purchase that black silk negligee... Also see *Rosenman v. U.S.*, 323 U.S. 658 (1945).

...

§ 1.1402(c)-1 Trade or business.

In order for an individual to have net earnings from self-employment, he must carry on a trade or business, either as an individual or as a member of a partnership. Except for the exclusions discussed in §§1.1402(c)-2 to 1.1402(c)-7, inclusive, the term “trade or business,” for the purpose of the tax on self-employment income, shall have the same meaning as when used in section 162. An individual engaged in one of the excluded activities specified in such sections of the regulations may also be engaged in carrying on activities which constitute a trade or business for purposes of the tax on self-employment income. Whether or not he is also engaged in carrying on a trade or business will be dependent upon all of the facts and circumstances in the particular case.

8A. Because no payment can ever be deemed one of “wages” or “non-employee compensation,” or one giving rise to a corresponding tax liability “as a matter of law” simply by virtue of having been made (or purportedly made), it follows inescapably that mere records declaring payments cannot serve as evidence of the payment of “wages” or “non-employee compensation,” or in support of the existence or arising of a tax liability. This is true no matter how such payments are labeled, how they have been treated, or by whom the record has been made. This Court may take judicial notice of the fact that it is not information returns that give rise to tax liability, but privileged activity.

“The income tax... ..is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce.”

F. Morse Hubbard, legislative draftsman for the U.S. Treasury Department, in testimony before Congress, House Congressional Record, March 27, 1943, page

2580. Judicial notice may also be taken of the fact that companies reporting payments as “wages,” for example, are not infallible and can make mistakes both in amounts paid and also in the character of the payments themselves.

8B. Whether any payment is or is not “wages” or “non-employee compensation,” or “taxable” in the context of the relevant laws is an intricate matter of both law and fact. The factual character of some payments causes them to legally qualify as “wages,” “non-employee compensation,” and “taxable” in the context of federal internal revenue laws and the factual character of other payments causes them to NOT qualify as “wages,” “non-employee compensation,” or “taxable” in that context, as a matter of law. *United States Constitution*, Article 1, Section 9; *Pollock v. Farmer’s Loan & Trust*, 157 U.S. 429 (1895); *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916); *Peck v. Lowe*, 247 U.S. 165 (1918); *South Carolina v. Baker*, 485 U.S. 505 (1988); 26 U.S.C. §3401(a) and §3121(b); 26 CFR §31.3121(b)-4, §31.3401(a)-2, §31.3401(c)-1, §1.1401-1, §1.1402(a)-1 and §1.1402(c)-1.

These distinctions remain no matter the nature of the individual receiving the payments, or that of the payer, or what the payments may have been called by the payer or by the government, or how they may have been treated by the payer, or whether the manner in which the payer labeled or treated the payments is described or reported by anyone else. Therefore, whatever is reported by anyone on a tax-

related document as to payments (or receipts) is necessarily a conclusion as to how certain facts related to the payment mesh with certain provisions of law, and is not objective data. This is why the instructions for the reporting forms such as W-2s and 1099s do NOT ask for reports of objective data such as, “how much money was paid,” but only ask for conclusory reports of “how much was paid that meets the qualifications specified in the relevant law.” 26 U.S.C. §6041 and §6051.

8C. Conclusions reflected on reporting forms such as W-2s and 1099s can not only be simply wrong, but can be entirely empty, as, for instance, when those making the reports are unaware that some payments DO NOT qualify as “wages” or “non-employee compensation,” and are not subject to reporting at all, but instead mistakenly imagine that all payments qualify, and report all payments accordingly. Absent knowledge of the facts involved in any payment, the fitness, true character and accuracy of any report cannot be known by Plaintiff or the Court. Indeed, we have furnished the Court with sworn testimony of the person responsible for producing the W-2s relied upon by Plaintiff in this case, in which that person admits to having no knowledge of the laws under which such conclusions are properly drawn, and reports are properly made (RE #58); and testimony of the comptroller of the same company to the effect that the company’s practice is simply to do what it thinks the IRS wants it to, out of fear (RE #58).

8D. Absent the introduction of additional fact evidence in the face of a

dispute over the legal character and “taxable” status of any alleged payment of “wages,” or “non-employee compensation,” a court lacks the knowledge by which to make a determination; is prohibited from doing so by law (26 U.S.C. §6201(d) and §7491); and is without jurisdiction. *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992). Plaintiff introduced ZERO additional factual evidence to support the third-party reports upon which its entire claim, suit, and request for injunctive relief are based, and thus failed to establish standing in this case and failed to establish the Court’s subject matter jurisdiction. *Id.* Further, since the issue is a fact-issue, not an issue of law, and thus is the province of a jury, the Court would be unable to make such a determination in any event, absent our agreement to waive our right to a jury trial. *United States Constitution*, Amendment VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”)

B. Our Instruments of Rebuttal DO NOT Furnish the Missing Support for Plaintiff’s Allegations

9A. Our use of Forms 4852 and 1040 DO NOT constitute evidence that payments made to us were “wages” and/or “non-employee compensation.” Our forms explicitly declare that we DID NOT receive such payments. It is absurd for

the District Court judge to suggest that our use of the forms says or means the opposite of what we have explicitly used the forms to say. It is equally absurd to say (or conclude), as the judge did, that simply by filing such forms we “admit” or “acknowledge” that any payments made to us constituted payments of “wages” and/or “non-employee compensation” (and of specific amounts, as well!), and even more so when what we have said on the forms is that we DID NOT receive such payments.

9B. It would be an obvious violation of the Fifth Amendment protection against self-incrimination for a court to presume someone’s effort to say one thing is actually an “admission” or “acknowledgement” of something else, and particularly something adverse to that person’s intended meaning or interests. Anyone can be convicted of anything, or be made the loser in any litigation, if the government or a court can ascribe the testimonial meaning it prefers to things that person has done. This truly Stalin-esque notion is prohibited in the civil realm, as well, in that it would also be a violation of Fed. R. Ev., Rule 301, which requires that relevant underlying facts be proven before presumptions can be entertained. As the Advisory Committee to the Federal Rules Of Evidence put it:

*“Presumptions governed by this rule are given the effect of placing upon the opposing party the burden of establishing the nonexistence of the presumed fact, **once the party invoking the presumption establishes the basic facts giving rise to it.**”*

Notes of Advisory Committee to Fed. R. Ev., Rule 301 (emphasis added.) Any

presumption as to the meaning of our use of these forms must be supported by proof of underlying facts exclusive of our use of these forms. Plaintiff has offered no such proofs, and our own words in the record flatly controvert the presumption being invoked.

9C. There are no hidden implications of meaning to the effect that the use of Form 4852 amounts to “acknowledgement” or “admission” of the receipt of “wages” and /or “non-employee compensation.” Form 4852 is explicitly intended to be used to rebut inaccurate assertions of “wage” payments. As the pre-printed declaration on the form itself puts it:

4. Please fill in the year at the end of the statement. I have been unable to obtain (or have received an incorrect) Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-sharing Plans IRA's, Insurance Contracts, etc., from my employer or payer named below.

9D. There are no hidden implications of meaning to the effect that the use of Form 1040 amounts to “acknowledgement” or “admission” of the receipt of “wages” and /or “non-employee compensation.” Form 1040 is explicitly intended to be used to rebut allegations of tax liability (and thus the allegations of the conduct of taxable activity on which such liabilities arise), and to claim the return of amounts improperly withheld:

“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*. The tax law sets forth provision for claiming a refund of overpayments of amounts paid as tax in the event the self-assessment demonstrates no tax liability:

Section 6401- Amounts treated as overpayments

(b) Excessive credits

(1) In general

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, and G of such part IV), the amount of such excess shall be considered an overpayment.

(c) Rule where no tax liability

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

Section 6402. - Authority to make credits or refunds

(a) General rule

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e) [*deductions for past due obligations to federal or state agencies*] refund any balance to such person.

26 C.F.R. Sec. 301.6402-3 Special rules applicable to income tax.

(a) In the case of a claim for credit or refund filed after June 30, 1976 –

(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

...

(5) A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall

constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or amended return).

And, from the instructions for the 2002 Form 1040:

“Even if you do not otherwise have to file a return, you should file one to get a refund of any Federal income tax withheld.”

Congress intended that withholding of amounts greater than the taxes due in any given year be refundable by filing the Form 1040 as a claim for refund:

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 Withholding Tax Hearing Before A Subcommittee of The Committee on Finance, United States Senate, 77th Congress, Second Session on: Data Relative to Withholding Provisions of the 1942 Revenue Act, August 21 and 22, 1942 (Printed for the use of the Committee on Finance) United States Government Printing Office, Washington 1942. Connecticut Republican Senator John A. Danaher and testifying witnesses Charles O. Hardy of the Brookings Institution and Milton Friedman of the Treasury Department Division of Tax Research, emphasis added.)

9E. The District Court has no basis for construing our use of Treasury Department forms for their intended purposes as somehow supporting Plaintiff-serving presumptions that what we say on the forms is objectively wrong, or is an “acknowledgement” or “admission” of our receipt of “wages” and/or “non-

employee compensation,” or has any meaning other than what we intended to communicate with the marks we added to the forms. Our use of the forms DOES NOT support Plaintiff’s claims, which remain entirely reliant on nothing but hearsay purporting to report conclusions reached by third-parties, the veracity and accuracy of which has been rebutted and which is unsubstantiated by any additional evidence.

C. The District Court Has Never Had Grounds for Any “Findings of Fact,” Presuming Jurisdiction Thereby, or Reaching Conclusions Regarding the Character of Our Filings, Nor Lawful Authority for Its Injunctions and Orders

10. Our use of various forms for their intended purposes of rebutting allegations about payments made to us and for reclaiming amounts improperly withheld cannot be creatively construed into the evidence that Plaintiff has failed to produce. Therefore, the District Court has always been incapable of any rational knowledge – or even rational speculation – as to whether we did or did not receive “wages” or “non-employee compensation” or anything taxable under any name, and therefore has always lacked any basis for assuming its jurisdiction; for making any findings; for ruling in Plaintiff’s favor in any regard; and for not having dismissed Plaintiff’s complaint upon our initial Motion to that effect. “[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective. Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter.” *United States v. One*

1972 *Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *U.S. v. Isaac*, 968 F.2d 1216 (6th Cir. 1992). Further, since no payment can be deemed “wages” or “non-employee compensation” absent additional fact evidence concerning the payment, of which none was produced by the Plaintiff or can be known to the Court, the Court has never had any basis for conclusions of its own regarding the character of any payments allegedly made to us, and therefore none from which to command us to adopt or declare conclusions with which we disagree as it has done in response to Plaintiff’s pernicious request, even if this “relief” weren’t abhorrent to the *United States Constitution*, Amendment I.

“As we stated in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 319 U. S. 642 (1943), ‘If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.’”

First Unitarian Church v. Los Angeles, 357 U.S. 545 (1958); “The right to speak and the right to refrain from speaking are complementary components of the broader concept of “individual freedom of mind.” *Wooley v. Maynard*, 430 U.S. 705 (1977).

11. The District Court’s order that we complete and execute “amended” tax returns for 2002 and 2003, declaring ourselves to have engaged in taxable activities, and to the extent dictated by the beneficiary the Plaintiff United States, and its order holding us in contempt for failing to do so, is a violation of the First

Amendment's prohibition of any law abridging our right to petition the government for redress of grievances.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

United States Constitution, Amendment I. The “amended” returns we are commanded to create are intended to nullify those we have already long-since submitted (petitions to the government) asserting that property was withheld from us improperly (a grievance) and that we wish it returned (redress).

12. Since Congress could make no law abridging our Rights of Speech, Freedom of Conscience and to Petition the government for Redress of Grievances, the District Court simply cannot have nor find any lawful basis for its orders, no matter how the Plaintiff invites the district courts to overlook this simple fact by blithe references to general and broad statutory grants of jurisdiction in “enforcing the revenue laws.” Since there could be no laws granting the authority assumed here, none will be found, no matter how much looking is done, nor how creatively the laws may be construed. “It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach.” *McCullough v. Com. of Virginia*, 172 U.S. 102 (1898).

13. The Plaintiff's Motion to Compel Discovery (RE #44) should have been denied by the District Court due to its being in furtherance of what is clearly an invalid original judgment, and in furtherance of a scheme to seize property from us for an asserted debt the Plaintiff had not only failed to substantiate, but seems reluctant to try to substantiate, instead making the specious argument that mere hearsay on "information returns" should be deemed dispositive; making irrelevant and prejudicial *ad hominem* attacks on us; and otherwise trying to evade what should be a simple matter, if its claim had any merit.

For years, the Plaintiff had sat silent, never producing a single bit of evidence in support of the third-party allegations upon which its case entirely rests. This, despite its routine obligation to "prosecute its case," and the statutory mandate that it produce additional fact evidence in support of its allegations. 26 U.S.C. §6201(d) and §7491.

Silence under these circumstances not only deprives the trial Court of jurisdiction, but constitutes evidence that the Plaintiff CANNOT substantiate its claims. The U.S. Supreme Court has held that adverse inferences may be drawn when a party fails to contest assertions, answer questions or provide evidence. See *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). "[A]s Mr. Justice Brandeis declared, speaking for a unanimous Court in the *Tod* case, 'Silence is often evidence of the most persuasive character.'" *Id.* at 319 (quoting *U.S. ex rel.*

Bilokumsky v. Tod, 263 U.S. 149, 153-154 (1923)).

“Failure to contest an assertion...is considered evidence of acquiescence...if it would have been natural under the circumstances to object to the assertion in question.”

Id. (quoting *U.S. v. Hale*, 422 U.S. 171, 176 (1975)). Silence creates estoppel by acquiescence. Silence is a species of conduct, and constitutes an implied representation of the existence of the state of facts in question, and the estoppel is accordingly a species of estoppel by misrepresentation. *Carmin v. Bowen*, 64 A. 932 (1906).

This, in turn, is evidence of bad faith, and a fraud upon the court. Black’s Law Dictionary, 6th Ed, entry for “fraud.” See, also, *Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (1993, Reh. Den’d 1994). Note that the federal judiciary and the U.S. Attorney’s Office are held to an objective standard of constructive knowledge of the law, reasonableness and good faith. See *Wood v. Strickland*, 420 U.S. 308, 321, 95 S.Ct. 992, 1000 (1975) and *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 820, 102 S.Ct. 2727, 2738-39 (1982); see also *Bothke v. Fluor Engineers & Constructors*, 713 F.2d 1405 (1983).

“Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . .”

U.S. v. Tweel, 550 F.2d 297, 299 (1977), quoting *U.S. v. Prudden*, 424 F.2d 1021, 1032 (1970). A judgment induced by fraud is void. A void judgment is one that

has been procured by extrinsic or collateral fraud, or entered by a Court that did not have jurisdiction over subject matter or the parties, *Rook v. Rook*, 353 S.E. 2d 756 (Va. 1987);

“[F]raud vitiates judicial proceedings even where they appear to be regular in form.” *Corvin v. Commonwealth*, 108 S.E. Rptr. 651, 654 (S.Ct. Va. 1921);

“When however the adjudication has been procured by fraud it is without . . . effect and the judgment will be treated as void.” *Id.* at 654, quoting *Magowan v. Magowan*, 57 N.J. Eq. 322, 42 Atl. 330, 73 Am. St. Rep. 645. The District Court should have granted Our Motion to Vacate (RE #58) and denied the Plaintiff’s Motion for Contempt.

D. The District Court Denied Us Even a Pretense of Due Process, and its Judgments Are Therefore Void

14. The District Court entertained the Plaintiff’s Motion for Summary Judgment before ruling on the Motions to Dismiss for Lack of Jurisdiction and for Failure to State a Claim upon which Relief May be Granted, Motions for a More Definite Statement and to Strike, and the Notice of Violation of Fed. R. Civ. P., Rule 11. We filed in immediate response to the Plaintiff’s Complaint (RE #4). It then granted the Plaintiff’s Motion and denied all of ours on the same day (9 ½ months after our Motions were filed), and without conducting a hearing at any time. See Order and Judgment, both dated February 26, 2007, RE #s 20, 21, and 22.

15. In failing to respond to our Motions before granting the Plaintiff's Motion for Summary Judgment and dismissing the case, the District Court denied us any opportunity to formulate and make a Reply to the Complaint, to conduct discovery, to file additional motions, and to otherwise conduct ourselves effectively in light of the District Court's decisions on those initial motions.

For instance, had discovery or trial not been improperly denied to us, we would have introduced into the record of this lawsuit testimony such as that found in Exhibit 1, the October 21, 2009 testimony of Warren Rose, the individual responsible for certification of the W-2s made so very much of by the Plaintiff in this case. In his testimony, Mr. Rose acknowledges that he is not familiar with the statutes concerning W-2 reporting, and the definitions involved in distinguishing the "wages" to be reported thereon from payments irrelevant to the forms and the tax.

Similarly, had discovery or trial not been improperly denied to us, we would have introduced into the record of this lawsuit testimony such as that found in Exhibit 2, October 21, 2009 testimony of Larry Bodoh, Comptroller of Personnel Management, Inc. and the individual with responsibility for preparing W-2s, admitting his fears of "IRS reprisals" if he didn't simply do what he believed the agency wanted him to do in regard to tax-related matters. The District Court having denied us the opportunities to conduct such discovery and otherwise

conduct our defense in a proper manner and its issuing judgment against us and for the Plaintiff on the strength of unsupported third-party hearsay documents alone was more than simply arbitrary and capricious (*Portillo, supra; Mason v. Barnhart, supra*); it was a fundamental violation of our right to due process of law, making the judgment issued in the case void. “Judgment is a void judgment if the Court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process.” *Klugh v. U.S., supra*, 620 F.Supp. 892; “A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer v. Neff*, 95 U.S. 714, 732 -733 (1878),” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). See also *Long v. Shorebank, supra* at 182 F.3d 548 (“A void judgment, ‘that is, one entered by a Court which lacks jurisdiction over the parties, the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any Court, either directly or collaterally, provided that the party is properly before the Court.’ [citation omitted]”). Also see Fed. R. Civ. P., Rule 60(b)(4). The District Court should have granted our Motion to Vacate accordingly.

16. As has just been shown, the Plaintiff’s representations in its Complaint in this case were flatly fraudulent, particularly in light of its having requested copies of the forms on which Mr. Hendrickson requested accurate W-2s,

and Warren Rose's refusal to comply, before making its fraudulent Complaint. A judgment induced by fraud is void, and the District Court should have granted Our Motion to Vacate accordingly. "Fraud vitiates the most solemn contracts, documents and even judgments." *U.S. v. Throckmorton*, 98 US 61 (1878).

E. The Plaintiff Was Estopped from Suits of This Kind, and the District Court Was Therefore Without Jurisdiction *ab initio*, and its Judgments, Rulings, and Orders are Void

17. The Plaintiff made another serious misrepresentation in its complaint which was meant to mislead the District Court in improper support of its suit, and which it is estopped from making in any litigation. In Paragraph 18 of its Complaint (RE #1), the Plaintiff refers to "[Peter] Hendrickson's tax-fraud promotion materials." The Plaintiff is well aware that not only does Mr. Hendrickson NOT "promote tax fraud," but the Plaintiff itself has conceded that what Mr. Hendrickson teaches about the law, and what informed the tax-related documents We filed relevant to this lawsuit, is NOT "false and fraudulent." The Plaintiff repeatedly initiated actions against Mr. Hendrickson based on the specious assertion that what he teaches about the law is false and fraudulent, only to eventually be forced to move for dismissal of its actions in every case – two of which dismissals were in Judge Edmunds' own court.⁴ As a consequence of those

⁴ See *U.S. v. Peter Hendrickson*, Case No. 04-73591 (E.D. Mich. 2004; *Peter Hendrickson v. U.S.*, 04-00177 (N.D. Calif. 2004) and *U.S. v. Peter Hendrickson*, Case No. 04-72323 (E.D. Mich. 2004).

repeated concessions that Mr. Hendrickson is perfectly correct about the law, the Plaintiff is estopped from any litigation based on the proposition that what he teaches about the law is false or fraudulent, or, by inescapable extension, any litigation based on the proposition that filings such as those made by Us for 2002 and 2003, which are directly informed by what Mr. Hendrickson knows and teaches about the law, are false or fraudulent (something which the Plaintiff has, in any event, utterly failed to substantiate with so much as a speck of evidence). Under the provisions of Fed. R. Civ. P., Rule 41(a)(1), multiple motions to dismiss by a litigant constitute an adjudication on the merits and an estoppel to future action involving the same grounds. Thus, the Plaintiff's complaint is brought in bad faith, and is a fraud upon the court. A judgment induced or supported by fraud is void,⁵ and Judge Edmunds should have vacated her judgments, rulings and orders in this matter accordingly upon our Motion, if not *sua sponte*.

F. The Plaintiff Never Satisfied its Jurisdictional Obligations under 26 USC 7401, and Therefore the District Court Has Never Had Jurisdiction, and its Judgments, Rulings, and Orders Are Void

18. In Our Motion to Dismiss for Lack of Jurisdiction and for other relief

⁵ “After observing that the Court of chancery is always open to hear complaints against fraud, whether committed in pais or in or by means of judicial proceedings, the Court said: ‘[The Court] will scrutinize the conduct of the parties, and, if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it.’ *Marshall v. Holmes*, 141 U.S. 589 at 599, quoting *Johnson v. Waters*, 111 U.S. 640, 667, 28 L. Ed. 547, 4 S. Ct. 619 (1884).

(RE #4, ¶16(b)), We challenged the Plaintiff's claim to have secured authorization for this suit pursuant to the requirements of 26 U.S.C. §7401. the Plaintiff never produced any evidence to substantiate its claim or in response to Our challenge. Its sole response was to suggest to the District Court that this fatal infirmity in its pleading should be overlooked, because WE could supposedly cure this defect for the Plaintiff by our availing ourselves of discovery opportunities. RE #6, ¶4.

Of course, as previously noted, the District Court denied us the discovery opportunities to which the Plaintiff blithely referred (and without ever commanding the Plaintiff to produce the evidence necessary to secure the District Court's jurisdiction in this regard, which the Plaintiff doubtless could have easily introduced into the record, if it actually existed). Further, and in any event, jurisdictional challenges of this sort must be answered with evidence before an action could proceed, not *during* proceedings which are allowed to go forward regardless. "[Jurisdiction] must be considered and decided, **before any Court can move one further step in the cause**; as any movement is necessarily the exercise of jurisdiction." *State of Rhode Island v. Commonwealth of Massachusetts*, 37 US 657, (1838). (Emphasis added.) The Plaintiff's failure to produce the required facts to provide the District Court with jurisdiction under §7401 deprived the District Court of the authority to issue any judgments in the case. Thus, those issued are void, and the District Court should have granted our Motion to Vacate.

“The Plaintiff’s allegation that the civil action ‘has been authorized, sanctioned and directed in accordance with the provisions of Section 7401 of the Internal Revenue Code of 1954’ may be construed liberally to be sufficient, Fed. R. Civ. P., Rule 8(a), but the mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective. Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter.

“This Court holds that 26 U.S.C. §7401 requirements constitute facts essential to jurisdiction. The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action.”

One 1972 Cadillac, supra at 355 F.Supp. 514-15. See also *U.S. v. Isaac, supra* at 968 F.2d 1216.

19. However, by issuing its judgment in the manner that it did, the District Court simply adopted the Plaintiff’s assertions as true without any evidentiary support, even though these matters were clearly issues of material fact in dispute as early as the date of the filing of our tax returns. Thus, the District Court’s judgment is void and our Motion to Vacate should have been granted by the District Court.

G. Judge Edmonds Revealed Her Rulings Were Based On Her Own Misinterpretation Of The Tax Law

20. In the hearing of June 10, 2010 in which Judge Nancy Edmonds declared us in contempt of court, but for some reason did not address nor hear arguments concerning our Motion to Vacate (upon which she nonetheless issued a ruling later the same day), Judge Edmonds revealed the basis for her rulings in this case were a two-fold misstatement of the law, as shown in the following

exchanges:

Peter Hendrickson: *“I’m being told to say over my own signature that I do believe my earnings qualify as “wages”[as that term is defined in the law], and I don’t believe that, Your Honor.”*

Judge Edmunds: *“Simply by filing the tax return, you admit that, you acknowledge that.”*

Transcript, p. 6, lines 1-5; and, On page 7 of that transcript, Judge Edmunds makes the statement:

“[E]very American citizen is required to accurately report their wages and their earnings to the United States government because they owe federal taxes on it....”:

Transcript, p. 7, lines 13-16.

The fact that the judge utterly misstated the law and held us to a standard that wars with the Constitution and ruled in spite of her lack of jurisdiction to do so while denying us fair hearing, discovery and trial substantially interfered with the our ability fully and fairly to prepare for, and proceed at, a trial on the merits of this action. *Roger Edwards, LLC v. Fiddes & Son Ltd.*, 427 F.3d 129, 134 (1st Cir. 2005). We assert that this was not done in good faith, but rather demonstrated objective bad faith.

“[In determining good faith on the part of a federal official] [r]eliance is on the objective reasonableness of an official’s conduct, as measured by reference to clearly established law.”

Harlow v. Fitzgerald, *supra* at 457 U.S. 818. “The objective element [of good faith] involves presumptive knowledge of and respect for ‘basic, unquestioned

constitutional rights’” *Wood v. Strickland*, *supra* at 420 U.S. 322, , . . . and of “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, *supra*, 457 U.S. at 815. Objective bad faith, in contrast, is irrebuttably, incontrovertibly evinced by “ignorance or disregard of well-settled law.” *Wood v. Strickland*, *id.*; *accord*, *Harlow v. Fitzgerald*, *id.* See also *Bothke v. Fluor Engineers*, *supra* at 713 F.2d 1405.

The judge’s actions also constituted a fraud upon the court in the District Court action. *Demjanjuk v. Petrovsky*, *supra* at 10 F.3d 348; In *Marine Ins. Co. of Alexandria v. Hodgson*, 11 U.S. 332, 336 (1807), Chief Justice Marshall said:

“[A]ny fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a Court of law; or of which he might have availed himself at law, but was prevented by fraud or accident un-mixed with any fault or negligence in himself or his agents, will justify an application to a Court of Chancery.”

See also *Catz v. Chalker*, 142 F.3d 279, 294 (6th Cir.1998) [Wherein The Plaintiff attacks as unconstitutional “the manner in which the Arizona state Court proceeding was conducted” which “deprived the Plaintiffs of a full and fair opportunity to be heard on all claims.”] At the very minimum, such conduct constitutes abuse of discretion that acted to deprive Us of Our basic constitutional rights and our property. “A Court would necessarily abuse its discretion if it based its ruling [under Rule 60(b)] on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Lyons v. Jefferson Bank & Trust*, 994 F.2d

716, 727 (10th Cir.1993) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461, 110 L.Ed.2d 359 (1990)). [quoted in: *Orner v. Shalala*, 30 F.3d 1307 (10th Cir., 1994).]

CONCLUSION

This Honorable Court should not sacrifice Truth for the sake of finality, nor for any political reason nor as a result of any extrinsic pressure, prejudice or presumption. We are entitled to this honorable Court's protection of our rights as guaranteed by the United States Constitution, and are further entitled to sufficient respect such that this Court considers our briefs and testimony impartially and refrains from putting words in our mouths in rendering its ruling. "[F]raud perpetrated in the course of litigation interferes with the process of adjudication . . . Once such fraud is proved, the judgment may be set aside merely upon the movant showing that the fraud substantially interfered with the movant's ability fully and fairly to prepare for, and proceed at, trial. This is a far less demanding burden than showing that a different result would probably have ensued." *Roger Edwards, supra*, at 427 F.3d 134.

This Court is authorized under Fed. R. Civ. P., Rules 60(b)(3), 60(b)(4), 60(b)(6) (the ruling violates Constitutional rights) and 60(d)(3) to set aside this judgment and contempt ruling and is required to dismiss the Plaintiff's Complaint per Fed. R. Civ. P., Rule 12(h)(3): "Whenever it appears by suggestion of the

parties or otherwise that the Court lacks jurisdiction of the subject matter, **the Court shall dismiss the action.**” (Emphasis added.) This constitutes an “extreme situation where principles of equity *mandate* relief. *Stokes v. Williams*, 475 F.3d 732, 735 (6th Cir. 2007). It should do so, or order the District Court to do so.

PRAYER

We respectfully pray this Honorable Court to hold the District Court’s rulings, judgments and orders in and pursuant to the underlying lawsuit invalid and void, and to vacate them accordingly, or order the District Court to do so. We also pray this Honorable Court to reverse and deny the District Court’s rulings and order of June 10, 2010, holding Us in contempt, and order the documents we created to forestall the harm threatened Us pursuant to those improper ruling and orders returned to Us for Our disposal; and We pray this Honorable Court to rule that all debts allegedly owed by Us to any Court and to the Plaintiff United States in connection with this lawsuit and any and all related proceedings null and void; and We pray for what other relief this Honorable Court finds appropriate.

Respectfully submitted this the 1st day of September, 2010.

Peter Eric Hendrickson

Doreen M. Hendrickson

ADDENDUM – DESIGNATION OF APPENDIX CONTENTS

Defendant-Appellants, pursuant to Rules of Appellate Procedure, Rule 28(d) and 30(b), hereby designate the following portions of the record below for inclusion in the Joint Appendix:

Description of Entry	Date	Docket #
COMPLAINT	4/12/06	1
MOTION to Dismiss for lack of jurisdiction, to state a claim upon which relief may be granted, motion for more definite statement, motion to strike and notice of violation of FRCP Rule 11	5/2/06	4
RESPONSE to Motion to Dismiss	5/23/06	6
REPLY to response to Motion to Dismiss	6/5/06	8
RESPONSE to Motion for Summary Judgment	9/7/06	13
ORDER Adopting Report and Recommendation Denying Motion to Dismiss	2/26/07	20
ORDER Accepting In Part and Rejecting in Part Report and Recommendation and Granting Motion for Summary Judgment	2/26/07	21
JUDGMENT Signed by Honorable Nancy G Edmunds	2/26/07	22
MOTION to Compel Responses to United States' Discovery Requests and Memorandum of Law in Support	1/15/10	44
MOTION to Vacate Report and Recommendation Re Motion for Contempt	5/17/10	58
ORDER denying Motion to Vacate Judgment	6/10/10	67

Description of Entry	Date	Docket #
ORDER granting Motion to Hold Defendants in Contempt	6/10/10	68
TRANSCRIPT of Excerpt of Motion Hearing held on 6/10/2010	7/6/10	73

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

Case No. 10-1824

PETER E. HENDRICKSON; DOREEN M. HENDRICKSON

Defendant-Appellants,

v.

UNITED STATES OF AMERICA

The Plaintiff-Appellee

**MEMORANDUM OF LAW
IN SUPPORT OF APPELLANTS' BRIEF**

Peter E. Hendrickson
Doreen M. Hendrickson
Proceeding Pro Se

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MEMORANDUM OF LAW IN SUPPORT OF APPELLANT'S BRIEF

1. The U.S. Constitution is the supreme law of the land.⁶
2. Article 1, Section 9 of the U.S. Constitution prohibits “capitations and other direct taxes” other than by the mechanism of apportionment.⁷
3. Direct taxes on persons, including taxes measured by, or related to, earnings, revenue, wealth and/or economic events or activities, are capitations.⁸

⁶ U.S. Constitution, Article VI. “In declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.” *Marbury v. Madison*, 5 U.S. (2 Cranch) 137, 180 (1803)

⁷ *Id.*, Article 1, Section 9: “No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.”

⁸ ...”Albert Gallatin, in his *Sketch of the Finances of the United States*, published in November, 1796, said: ‘The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...’ He then quotes from Smith’s *Wealth of Nations*, and continues: ‘The remarkable coincidence of the clause of the constitution with this passage in using the word ‘capitation’ as a generic expression, including the different species of direct taxes – an acceptance of the word peculiar, it is believed, to Dr. Smith – leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue;...’” *Pollock v. Farmer’s Loan & Trust*, 157 U.S. 429 (1895);

“The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,”... “Capitation taxes, . . . are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes.”...” In the capitation which has been levied in France without any interruption since the beginning of the present century, . . . people [are rated] according to what is supposed to be their fortune, by an assessment which varies from year to year. . . . Serjeants, attorneys, and proctors at law . . . were assessed at three shillings in the pound of their supposed income . . .” Adam Smith, *The Wealth of Nations*, Book V, CH. II, Art. IV. (Bear in mind that Smith is using the

4. The name of the tax, or the mechanics of its application, do not determine the character of the tax. What matters is its actual incidence. Calling a tax an “activity”- or “event”-dependent tax does not change the fact that it is paid by, and therefore ACTUALLY falls on, the person from whom payment is demanded. Substance rules over form.⁹

5. A tax effectively on the exercise of a Right is inherently direct, and a

common words ‘income’ and ‘wages’, not the custom-defined legal terms found in or relevant to the modern federal revenue laws.)

CAPITATION: a tax or imposition raised on each person in consideration of his labour, industry, office, rank, etc. It is a very ancient kind of tribute, and answers to what the Latins called *tributum*, by which taxes on persons are distinguished from taxes on merchandize [sic], called *vectigalia*. J.J.S. Wharton, Esq., *Law Lexicon or Dictionary of Jurisprudence* (1848);

“CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability. 2. The Constitution of the United States provides that “no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, therein before directed to be taken.” Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat 317.” Bouvier’s *Law Dictionary*, 6th Ed. (1856).

⁹ “[T]axation on income [is] in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form [*that is, any pretense by which it is made to appear that the tax is being confined to its proper limits when it is not, such as by creatively construing the meaning of “income,” or the use of any pretense, scheme or construction by which non-specialized revenue or activities are made to appear otherwise so as to be subjected to the tax*] and consider substance alone [*that is, what the tax is actually falling upon as a practical reality*], and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it.” *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916);

“The name by which the tax is described in the statute is, of course, immaterial. Its character must be determined by its incidents...” *Dawson v. Kentucky Distillers & Warehouse Co.*, 255 U.S. 288 (1921).

capitation.¹⁰ Therefore, if a tax is connected with an activity, the activity must be the exercise of a privilege, rather than the exercise of a Right. Otherwise, the tax is a capitation, and requires apportionment.

6. In order for a tax to fall on any person, and yet not be a capitation and subject to apportionment, it must be limited in application, by taxing only activities connected with the voluntary exercise of privilege, and not the exercise of Rights.¹¹

¹⁰ “Direct taxes bear immediately upon persons, upon the possession and enjoyments of rights;” *Knowlton v. Moore*, 178 U.S. 41 (1900).

¹¹ *Brushaber supra*;

“It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach.” *McCullough v. Com. of Virginia*, 172 U.S. 102 (1898);

“The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax.” U.S. Treas. Dept. legislative draftsman F. Morse Hubbard, House Congressional Record, March 27, 1943, p. 2580;

“[T]he requirement to pay [excise] taxes involves the exercise of privilege.” *Flint v. Stone Tracy Co.* 220 U.S. 107 (1911);

“The terms ‘excise tax’ and ‘privilege tax’ are synonymous. The two are often used interchangeably.” *American Airways v. Wallace*, 57 F.2d 877, 880 (Dist. Ct., M.D. Tenn., 1937);

.” . . in *Springer v. U. S.*, 102 U.S. 586, it was held that a tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional.” *Pollock v. Farmer’s Loan & Trust*, 158 U.S. 601, 1895;

“The term “excise tax” is synonymous with “privilege tax” and the two are used interchangeably. Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax.” 71 Am. Jur.2d §24, pp. 319-20;

7. All of the above remains true today, the Sixteenth Amendment notwithstanding.¹²

“The ‘Government’ is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed...” *U.S. v. County of Allegheny*, 322 US 174 (1944).

¹² “We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it...” and, “[If the 16th Amendment were construed to allow for a direct, unapportioned tax, it] would cause one provision of the Constitution to destroy another; that is, [it] would result in bringing the provisions of the Amendment [supposedly] exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned.” *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916);

“The provisions of the Sixteenth Amendment conferred no new power of taxation...” *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916);

“The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects...” *Peck v. Lowe*, 247 U.S. 165 (1918);

“[T]he settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income.” *Taft v. Bowers*, 278 US 470, 481 (1929);

“The legislative history merely shows... ..that the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable.” *South Carolina v. Baker*, 485 U.S. 505 (1988);

“The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes

8. The federal income tax (the tax) effectively falls on persons and is not apportioned.¹³

9. In order for the tax to fall on persons without being a capitation, it must be measured only by the exercise of privilege (taxable activity) and must not be applied to general activities connected with the exercise of Rights.¹⁴ To view the tax law otherwise is to consider it at odds with the United States Constitution.¹⁵

10. The taxing statutes are Constitutional as written, and it reasonably may be presumed that Congress wrote them with that intention.¹⁶

were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment. . .” Howard M. Zaritsky, Legislative Attorney of the American Law Division of the Library of Congress, helpfully summarizes all of this in his 1979 Congressional Research Service Report No. 80-19A entitled “*Some Constitutional Questions Regarding The Federal Income Tax Laws*”; “[T]he amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income,” (that is, “income otherwise taxable,” as the Supreme Court reminds us some four-and-a-half decades later in the *South Carolina v. Baker* decision). House Congressional Record, *supra*, p. 2580 (see Note 6).

¹³ 26 USC §1.

¹⁴ Points 1 - 7 with associated footnotes and citations.

¹⁵ U.S. Constitution, Article I, Section 9. Also, “It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach.” *McCullough v. Com. of Virginia*, *supra*. See also Note 6 above.

¹⁶ “[W]here Congress includes particular language in one section of a statute but omits it in another . . ., it is generally presumed that Congress acts intentionally and

11. The canon of constitutional avoidance requires that where a statute can fairly be interpreted so as to avoid a constitutional issue, it should be so interpreted.¹⁷

12. Because the tax must be confined to distinguished activities (or be unconstitutional for being an unapportioned capitation), those who would impose the tax bear the burden of proving that the activities for which liability is said to have arisen are so distinguished, if this presumption or assertion is disputed.¹⁸

13. All Americans, Peter and Doreen Hendrickson included, are shielded from non-apportioned capitations and other direct taxes by Article 1, Section 9 of the U.S. Constitution.¹⁹

14. Working and being paid for doing so, or acquiring wealth in any other fashion, absent specialized circumstances, are the exercise of Rights, not

purposely in the disparate inclusion and exclusion.” *Rusello v. U.S.*, 464 U.S. 16, 23 (1983) [quoting *U.S. v. Wong Kim Bo*, 472 F.2d 720, 722 (CA, 1972)].

¹⁷ “[W]e must remember, in considering an act of Congress, that a construction which might render it unconstitutional is to be avoided. . . . ‘A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.’” *U.S. v. Standard Brewery, Inc.*, 251 U.S. 210, 217, 220 (1920) (internal citations omitted).

¹⁸ “Presumptions governed by this rule are given the effect of placing upon the opposing party the burden of establishing the nonexistence of the presumed fact, **once the party invoking the presumption establishes the basic facts giving rise to it.**” Notes of Advisory Committee to Federal Rules of Evidence, Rule 301 (emphasis added.)

¹⁹ U.S. Constitution Article 1, Section 9; Article VI.

privilege.²⁰

15. In order for a court to acquire or maintain jurisdiction when the United States alleges that a report of tax-related amounts received is false, the government must first prove that the accused was engaged in a taxable activity. Absent that proof, the court is without both *in personam* and subject matter jurisdiction.²¹

²⁰ “The right to follow any of the common occupations of life is an inalienable right... It has been well said that ‘the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property’.” *Butcher’s Union Co. v. Crescent City Co.*, 111 U.S. 746 (1883);

“Included in the right of personal liberty and the right of private property-partaking of the nature of each- is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property” *Coppage v. Kansas*, 236 U.S. 1 (1915);

“An income tax is neither a property tax nor a tax on occupations of common right, but is an excise tax...The legislature may declare as ‘privileged’ and tax as such for state revenue, those pursuits not matters of common right, but it has no power to declare as a ‘privilege’ and tax for revenue purposes, occupations that are of common right.” *Simms v. Ahrens*, 271 SW 720 (1925);

“Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege.” *Jack Cole Company v. Alfred T. MacFarland, Commissioner*, 206 Tenn. 694, 337 S.W.2d 453 (Sup. Crt. Tenn., 1960).

²¹ All of the foregoing, and: “[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective. Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter,” and, “The failure to prove jurisdictional facts when

16. The conduct of taxable activities is measured by the dollar amount received as a consequence of the conduct.²²

17. Reports of amounts paid to others on “information returns” such as W-2s and 1099s are allegations that the listed recipient has engaged in taxable activities to the extent indicated by the money amount asserted, not simply allegations that a certain amount of money has been paid to someone. The payment or receipt of money, *per se*, has no inherent relevance to the tax, since neither, by itself, is a taxable activity.²³ It is only money received for engaging in a taxable activity that matters,²⁴ with the amount received being the measure of the amount of the activity conducted.²⁵

specifically denied is fatal to the maintenance of this action.” *U.S. v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky. 1973). See also *U.S. v. Isaac*, 968 F.2d 1216 (6th Cir. 1992);

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree . It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

“It is a “well-established principle that federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress.” *Chertkov v. Office of Pers. Mgmt.*, 52 F.3d 961, 966 (Fed. Cir. 1995). The jurisdiction of this court is “limited to those subjects encompassed within a statutory grant of jurisdiction.” *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982).

²² House Congressional Record, *supra*, p. 2580 (see Note 6).

²³ See Note 6.

²⁴ See, for example, 26 USC §§6041, 6051.

²⁵ House Congressional Record, *supra* at Note 6.

18. When taxable activity has been alleged by reporting a payment using forms W-2 and/or 1099, a counter-report of the receipt of a different amount, made in the same context, is not a denial of the receipt of money. It is a denial of the amount of taxable activity alleged by the initial payment report.²⁶

19. Allegations of the conduct of taxable activity, whatever the amount of money said to be the measure of such activity (other than zero), cannot be

²⁶ “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*;

Also, from Withholding Tax Hearing Before A Subcommittee of The Committee on Finance, United States Senate, 77th Congress, Second Session on: Data Relative to Withholding Provisions of the 1942 Revenue Act, August 21 and 22, 1942 (Printed for the use of the Committee on Finance) United States Government Printing Office, Washington 1942, Connecticut Republican Senator John A. Danaher and testifying witnesses Charles O. Hardy of the Brookings Institution and Milton Friedman of the Treasury Department Division of Tax Research:

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.”*

presumed true, once denied.²⁷ Such allegations can only be proven true by first proving that a taxable activity was conducted, and then by proving that the amounts of money allegedly paid in connection with that activity are accurate – that is, that the amounts reported weren’t paid exclusively as a consequence of a NON-taxable activity, and that the taxable activity was actually conducted to the extent indicated.²⁸

20. A counter-report declaring \$0.00 received is a declaration that no taxable activity was engaged in at all.

21. The means or manner by which an allegation is denied cannot be construed to be a confirmation of the allegation, nor can the denial itself.²⁹

22. The plaintiff in any action is required to furnish evidence to support the allegations on which its complaint is based in order to maintain a court’s jurisdiction and the viability of its action, and a failure to do so when those allegations have been denied deprives the court of jurisdiction and is fatal to the

²⁷ Fed. R. Ev., Rule 301.

²⁸ Fed. R. Ev., Rule 301; “[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective,” and “The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action.” *One 1972 Cadillac, supra*. See also *U.S. v. Isaac, supra*; *Kokkonen, supra*.

²⁹ The Court may take judicial notice of the fact that IRS Forms 4852 and 1040, and those created by Doreen Hendrickson to specifically rebut erroneous allegations on Forms 1099-MISC, are all sworn statements.

prosecution's action.³⁰

23. In addition to the general and routine obligations of the prosecution to furnish evidence to support the allegations on which its complaint is based in order to maintain a court's jurisdiction and the viability of its action, the United States is explicitly required by statute to support disputed reports of the alleged conduct of taxable activity made on "information returns" with additional fact evidence.³¹

³⁰ *One 1972 Cadillac, supra*. See also *Isaac, supra*; *Kokkonen, supra*, and cases cited.

³¹ See 26 USC §§6201(d), 7491, and, "[T]he Commissioner's determination that Portillo had received unreported income of \$24,505 from Navarro was arbitrary. The Commissioner's determination was based solely on a Form 1099 Navarro sent to the I.R.S. indicating that he paid Portillo \$24,505 more than Portillo had reported on his return. The Commissioner merely matched Navarro's Form 1099 with Portillo's Form 1040 and arbitrarily decided to attribute veracity to Navarro and assume that Portillo's Form 1040 was false." *Portillo v. CIR*, 932 F.2d 1128 (5th Cir., 1991);

"Receipt of a Form 1099 does not conclusively establish that the recipient has reportable income. If a recipient of a Form 1099 has a reasonable dispute with the amount reported on a Form 1099, the Code places the burden on the Secretary of the Treasury to produce reasonable and probative information, in addition to the Form 1099, before payments reported on a Form 1099 are attributed to the recipient. See I.R.C. §6201(d)." *Mason v. Barnhart*, 406 F.3d 962 (8th Cir., 2005);

"If, however, the 'taxpayer introduces credible evidence with respect to any factual issue,' see 26 U.S.C. §7491(a)(1), and also meets substantiation and record maintenance requirements, see *id.* [*11] §7491(a)(2)(A)-(B), the burden shifts to the Commissioner with respect to that issue. 'Credible evidence,' as used in §7491(a)(1), means 'the quality of evidence, which after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted.' *Blodgett v. Comm'r*, 394 F.3d 1030, 1035 (8th Cir. 2005)." *Rendall v. CIR*, 535 F.3d 1221 (10th Circ. 2008);

"In summary, businesses can make mistakes in reporting data on information returns, and, decisive here, respondent offered no evidence showing that the

24. A failure to support disputed “information return” allegations with additional fact evidence is, BY STATUTE, a “failure to prove jurisdictional facts,” and therefore is, and was, *ab initio*, “fatal to the maintenance of this action,” as this Honorable Court has correctly and unambiguously declared.³²

25. When a statute includes an explicit definition, [courts] must follow that definition, even if it varies from that term’s ordinary meaning.³³

26. It is axiomatic that the statutory definition of a term excludes unstated meaning of that term.³⁴

27. [S]tatutory definitions of terms used therein prevail over colloquial meanings.³⁵

Dated: September 1 2010

Respectfully submitted,

Peter Eric Hendrickson

amounts on the 2004 Form 1099-R are correct. We conclude respondent has not met his burden of producing reasonable and probative information...” *Perez v. CIR*, T.C. Summary Opinion 2009-94.

³² *One 1972 Cadillac*, *supra*. See also *Isaac and Kokkonen*, *supra*, and cases cited.

³³ *Stenberg v. Carhart*, 530 US 914 (2000); see also *Mobley v C.I.R.*, 532 F. 3d 491, 496 (6th Cir. 2008).

³⁴ *Meese v. Keene*, 481 US 465 (1987); see also *Mobley*, *supra*.

³⁵ *Western Union Telegraph Co. v. Lenroot*, 323 US 490 (1945); see also *Mobley*, *supra*.