CASE NO. 08-1399

IN THE SUPREME COURT OF THE UNITED STATES

Peter E. Hendrickson and Doreen M. Hendrickson, Petitioners

v.

United States, Respondent

On Petition for Writ of Certiorari to the United States Court Of Appeals for the Sixth Circuit

Petition for Writ of Certiorari

Petitioners Peter E. Hendrickson and Doreen M. Hendrickson
Proceeding Pro Se

QUESTIONS FOR REVIEW

1. Does a court, or any agency of the government, possess the lawful authority to compel an American man or woman to declare to be true and correct to the best of his or her own knowledge and belief, over his or her own signature, particular words and other explicit testimony dictated and/or specified by the court or government agency, and which he or she does not, in fact believe to be true and correct;
2. Does a court, or any agency of the government, possess the lawful authority to compel an American man or woman to stand silent in the face of testimony made by others which is about, or which affects, him or her, or to compel an American man or woman to adopt such testimony made by others as his or her own, when that American man or woman believes that testimony made by others to be erroneous or false;
3. Can the federal courts grant summary judgment to the United States on its own motion in a suit which it has brought seeking to assert a claim to the property of an American man or woman by unilaterally construing all material-fact-related assertions of the movant United States to be true, and by disregarding or construing to be false all of the contradictory assertions of the non-movant American man or woman;
4. Can the federal courts issue federal tax-related injunctions despite the provisions of the Declaratory Act, permit litigation barred by the doctrine of *res judicata* and collateral estoppel as enunciated in Rule 41 of the Federal Rules of Civil Procedure, and sanction an American man or woman for appealing judicial decisions purporting to do all of the above.

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The opinion of the Circuit Court is "not recommended for publication" (Case No. 07-1510). (The government subsequently moved the court to publish the opinion and the court refused to do so.) The District Court case is designated as Case No. 2:06-CV-11753, ED Mich. (2007). Both opinions and the Circuit Court denial of *en banc* rehearing are reproduced in full in the appendix to this petition.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Article III of the Constitution of the United States of America as the Court of appellate jurisdiction of all controversies to which the United States is a party. Judgments for review were entered by District Court on May 2, 2007 and by a panel of the Sixth Circuit Court of Appeals on June 11, 2008. Petition for *En Banc* Rehearing by the Circuit Court was denied on December 16, 2008

PROVISIONS OF LAW INVOLVED IN THIS CASE

Article 1, Section 9 and the First, Fifth and Seventh Articles of Amendment to the Unites States Constitution; Rules 12 and 41 of the Federal Rules of Civil Procedure; the statutes codified at 26 USC §6201, 26 USC §6402, 26 USC §7405 and 28 USC §2201; and the regulations found at 26 CFR §301.6203-1 and 26 CFR §301.6402-3 are either set forth in the body of the petition, or will be found in the appendix.

STATEMENT OF THE CASE

On April 12, 2006, the Plaintiff "United States" ("U.S.") brought suit against Petitioners (we, us)

alleging that refunds it had made to us of moneys withheld from us and deposited in escrow against the possibility that we would prove liable for "income taxes" during 2002 and 2003 were "erroneous refunds of tax" under the provisions of 26 USC §7405(b), despite there being no evidence of any liability for any tax ever having been determined for these years. Indeed, the United States Treasury Department Certificates of Assessment current at the time of suit indicate that assessment is complete, and that no tax is or ever was, owing for those years.

The relief sought by the "U.S." in its suit is that we be compelled by the federal courts to testify on tax return forms to the receipt of "wages" and "non-employee compensation" in amounts specified by the "U.S." such as to establish a tax liability for these years (and that the courts declare us to then be liable accordingly); the "U.S." further seeks injunctions compelling us to submit to its dictates as to the content of future returns that we might file. We promptly filed motions to dismiss on jurisdictional and other grounds, including the inability of the court to lawfully grant the relief sought and the inability of the court to entertain a suit under 7405(b) when the amounts refunded were not, in fact, amounts of "tax" and had not, in fact, been refunded erroneously.

The District Court sat on the case for nearly a year, during which time a magistrate assigned pre-trial responsibilities accepted a "U.S." motion for summary judgment. We responded to that motion-- under protest of its untimeliness due to our still-pending motions-- with definitive competent evidence of issues of material fact categorically rebutting every contention upon which the "U.S." has based its complaint. The "U.S.", on the other hand, produced

nothing more than the testimony of a single affiant--whose testimony serves merely to verify that copies of two documents which the "U.S." purports to be relevant to the suit, and which were created by yet another, thus-far never heard-from party, are true copies-- as its sole evidence in support of its own complaint. This single piece of irrelevant hear-say testimony remains the sole "evidence" produced by the "U.S." to date.

Nonetheless, the magistrate recommended the granting of the motion for summary judgment, the granting of the injunctive relief sought by the "U.S." and the denial of our still-pending motions. On February 26, 2007, within less than one business day of receiving our in-depth objections to the magistrate's recommendations, the District Court adopted them all.

We filed timely motions for reconsideration (including for an opportunity to actually answer the complaint, now that our motions to dismiss had at last been ruled upon), for a jury trial, and for relief from judgment, to which the District Court responded with final rulings on May 2, 2007, again granting the "U.S." the relief it sought (including a motion to amend its previous judgment) and denying all our motions, based upon a lengthy "finding of facts" which amounts to the simple adoption-as-true of everything asserted by the "U.S." in its complaint, motions and briefs. We timely appealed to the Sixth Circuit Court.

A year later, after being briefed, but also after excluding two memoranda of law we filed (on motion by the "U.S." that they exceeded filing page limits), and having refused to allow oral arguments, the three-judge panel of the Appellate Court affirmed the

District Court in a short, "not for publication" opinion laden with *ad hominem* attacks against us, and imposing a $4,000.00 sanction upon us for having made our appeal. The "U.S." moved the court to publish its opinion; the court refused. We timely petitioned the Circuit Court for *en banc* re-hearing, which was denied without comment on December 16, 2008.

Plainly, this case concerns matters of exceptional importance. Just to name one: the orders of the courts below in this case serve to coerce Petitioners (hereafter "we" or "us") into testifying to the Plaintiff's specifications as to content on sworn affidavits (and to the Plaintiff's financial benefit, as well). That is, the orders of the courts below are not simply that we testify, or that we testify concerning some specified matter. INSTEAD, THE ORDERS DICTATE THE VERY WORDS OF OUR TESTIMONY, AND COMMAND US TO DECLARE THAT WE BELIEVE THOSE DICTATED WORDS TO BE TRUE, OVER OUR OWN SIGNATURES!

These orders are not only unprecedented in the judicial history of the USA and repugnant to every principle of proper law, but are manifestly defiant of the First and Fifth Amendments to the U.S. Constitution. Indeed, the orders of the courts below in this respect alone are subversive of the entire concept of rule of law.

Further, the rulings issued in this case conflict directly with the provisions of the Declaratory Act, as ruled upon by this Honorable Court in *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974); the principles on which summary judgment rulings operate, as ruled

upon by this Honorable Court in *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986); and the doctrine of *res judicata* laid out in FRCP 41. These rulings also directly conflict with the proper application of 26 USC §7405(b) in light of the rulings by this Honorable Court in *Rosenman v. United States,* 323 US 658 (1945), and those of virtually all of the Circuit Courts, including (but not limited to) *Moran v. United States,* 63 F.3d 663, 666-667, 7th Circuit (1995), *Plankinton v. United States,* 267 F.2d 278 (7th Cir. 1959), *United States v. Dubuque Packing Co.,* 233 F.2d 453 (8th Cir. 1956) *Thomas v. Mercantile Nat'l Bank at Dallas,* 204 F.2d 943 (5th Cir. 1953) and *Ameel v. United States,* 426 F.2d 1270 (6th Cir. 1970). Indeed, these rulings do violence to so vast a swath of well-settled law that our briefs in this case provided occasion to include more than 140 citations to rulings directly supporting our positions from virtually every federal court in the country, and more than 70 citations of relevant statutes, regulations and other authorities.

What's more, the rulings by the courts below issued despite the fact that the precise "controversy" alleged by the "U.S." has already long since been concluded *in its proper venue.* Years ago, after very exacting scrutiny by executive agencies of the "U.S." over many month's time of all the relevant evidence--including all the evidence alluded to by the "U.S." throughout the proceedings in this case, the "U.S." recognized and formally acknowledged that it had--and has-- no basis in law or in fact by which to assert that we are beholden to it in any way. The "U.S." then acted accordingly, returning property belonging to us which it had been holding in escrow against the possibility that we might have proven to have become

beholden to it.

Nothing new as to the relevant facts or law has arisen, been cited or even been alleged by the "U.S." since then. The "U.S." simply wishes now to evade the constraints of law to which it had previously been obedient. It has asked the judiciary to be its co-conspirator in this endeavor, and to create "facts" unsupported by evidence in order to give the "U.S." its way.

The reason for this pernicious assault on the rule of law is that while nothing new has arisen creating a legitimate complaint of the "U.S." as to our actually owing it any duty or any money, Petitioner Peter Hendrickson has written a book on the subject of the "income tax" which the "U.S." has been trying repeatedly to suppress for more than five years now. The "U.S." has failed in three previous legal assaults on Hendrickson and his book for allegedly "promoting an abusive tax shelter", and now seeks to attack the book by having the courts compel Hendrickson to repudiate its contents by filing tax returns contrary to his own beliefs as to what is true and correct in regard to those returns.

REASONS THIS PETITION SHOULD BE GRANTED

A. The courts below have abused their discretion in the award of summary judgment to the government, and have thereby also committed an assault on the Seventh Article of Amendment to the United States Constitution.

The District Court granted the "U.S.'s" motion

for a summary judgment in this case by making "findings of fact" which elevate all of the (hear-say) allegations presented by the "U.S." to gospel and disregard entirely our sworn testimony to the contrary-- despite having no independent knowledge of these matters whatsoever, and alluding to none. The court then declares that, lo and behold! no genuine issue of fact exists and (based on the same "found facts") summary judgment for the "U.S." is appropriate! This is highly convenient to the "U.S.", of course, but flatly violates the well-established doctrine regarding such motions:

> *"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Adickes, 398 U.S., at 158 - 159"*

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

> *"[I]n ruling on a motion for summary judgment, the nonmoving party's evidence "is to be believed, and all justifiable inferences are to be drawn in [that party's] favor." Anderson , supra, at 255"*

Hunt v. Cromartie, 526 U.S. 541 (1999)

It also flatly violates the admirable and accurate position well-expressed in *Beaty v. United States*, 937 F.2d 288 (6th Cir. 1991):

> *"A central tenet of our republic--a characteristic that separates us from totalitarian regimes*

> *throughout the world--is that the government and private citizens resolve disputes on an equal playing field in the courts. When citizens face the government in the federal courts, the job of the judge is to apply the law, not to bolster the government's case."*

Frankly, it is just this sort of contrivance that the rules concerning summary judgment are designed to prevent, and that the 7th Amendment to the U.S. Constitution makes illegal by providing that the right of trial by jury shall be preserved. If permitted to favor one side in this fashion, any court could keep any case-- the outcome of which it wished to control-- from reaching a jury by making convenient "findings of fact" favoring one side, just as has been done by the District Court in this case. Nonetheless, when allegedly considering the matter *de novo* on appeal, the panel of the Circuit Court simply repeats the District Court's bad behavior.

Perhaps the Appellate Court's error results from confusion as to both who was the moving party in this case and as to the rules regarding summary judgment. Discussing those rules in its opinion, it says, *"Thereafter, the nonmoving party must present significant probative evidence in support of the complaint to defeat the motion. The nonmoving party is required to show more than a metaphysical doubt as to the existence of a genuine issue of material fact."* (Citations omitted.) However, the "non-moving party" in this case were the defendants, who obviously do NOT need to *"present significant probative evidence in support of the complaint to defeat the motion"*; more significantly, the "non-moving party" is NEVER *"required to show more*

than a metaphysical doubt as to the existence of a genuine issue of material fact" On the precise contrary, it is the MOVANT that must attempt to raise doubts as to the existence of an issue of material fact; the non-movant need merely show that there IS an issue of material fact in controversy.

In this case, a third party has alleged that "Event A" occurred, on the basis of which alleged event the "U.S." argues that we are indebted to it. We have testified-- both long before this case began and directly in response to the motion for summary judgment-- that "Event A" did not occur. There can be no plainer "issue of material fact."

Neither the District Court nor the Circuit Court have any first-hand knowledge whatever as to the occurrence of "Event A", and thus have no basis upon which to make "findings of fact", even if such findings were not the proper province of a jury in any case. Yet both courts presume to make such findings.

The courts below thus abuse their discretion and, without regard to the fact that the only proper disposition of this case is dismissal, do violence to the spirit of the 7th Amendment as well. The appellate Court compounds the abuse and that violence by punishing us with sanctions for invoking its supervisory authority over the District Court! This Honorable Court has plainly declared, "*The evidence of the nonmovant is to be believed.*" *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986). We appealed a District Court ruling based on the straightforward meaning of this declaration, among other things, and the Appellate Court declares our appeal to be "frivolous" and punishes us with sanctions! We appeal

to this Honorable Court for its protection from this abuse.

We feel obliged to observe that in addition to sharing the Circuit Court's "confusion" about the rules concerning summary judgment, the District Court exhibited considerable "confusion" about matters of concrete fact throughout its Final Rulings. For example, in those rulings the court deliberately quotes one line of Peter Hendrickson's book, 'Cracking the Code- The Fascinating Truth About Taxation In America' out of context so as to suggest that the book argues that income tax-related withholding only applies to federal workers. The book does contain that one line, but makes no such argument. Income tax-related withholding in other cases is discussed in depth in the book.

Similarly, the District Court refers to *"the false and frivolous claims set forth in Cracking the Code that only federal, state or local government workers are liable for the payment of federal income tax"*; and *"the assertion that wages do not constitute income for federal tax purposes"*. No such claims are made in the book; in fact, the book specifically says otherwise in great detail.

Most egregiously, perhaps, the District Court makes the following declaration in its final ruling:

> *"The only new argument is that "the statutes invoked or relied upon by Plaintiff and the Court . . . are unconstitutional, being plainly violative of at least the 'necessary and proper' clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution." (Defs.' Mot. for Reconsideration*

at 9.)"

What we actually said in the referenced motion is:

> *4. Regarding Plaintiff's requests for an injunction and coerced testimony and the Court's related decisions, it is self-evident that to dictate what cannot be said is to dictate what must be said, or to impose silence. It is not necessary to discuss Plaintiff's calculated mischaracterizations of what is said in Defendant Peter Hendrickson's book or Plaintiff's pretensions in suggesting that it possesses some mystic knowledge about the underlying meaning of our tax return testimony in order to observe that neither Plaintiff, nor anyone else on Earth, has the lawful authority to dictate the content of our testimony, or to impose silence, in the face of allegations concerning us, such as those on the "information returns" made so much of by Plaintiff in this case.*
>
> *To whatever degree the statutes invoked or relied upon by Plaintiff and the Court can be construed to provide for such an injunction and coercion of testimony, those statutes are unconstitutional, being plainly violative of at least the "necessary and proper" clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution. Such efforts to dictate or control testimony also violate various federal criminal statutes regarding witness tampering and intimidation, as well as the fundamental principles of due process.*

> *The very fact that Plaintiff has sought such an injunction, and a coerced change in testimony we have already made, is a plain acknowledgment that Plaintiff has no legal basis for disputing the freely-made testimony on our returns. The same plain truth is revealed by Plaintiff's inability to carry its burden of proof throughout this contest, and its failure to even try to do so. Plaintiff CANNOT substantiate the allegations made on the "information returns" upon which it relies, and therefore seeks to prevent those allegations from being rebutted.*

It is not for us to say whether these mis-statements and contrivances are calculated to plant false notions about our arguments and positions in the minds of those who read only the rulings by the court and not the actual materials we filed in the proceedings below, and to suggest that we are "tax protestors". However, if left unaddressed, these mis-statements will leave such false notions. Therefore, we bring them to this Honorable Court's attention here.

B. In ordering us to testify under oath using government-dictated words, the courts below directly violate the First and Fifth Amendments to the United States Constitution and the fundamental principles of due process, and do so in an effort to evade the provisions of Article 1, Section 9, as well as the Seventh Amendment.

The injunctive "relief" sought by the "U.S.", granted by the District Court and affirmed by the

Appellate Court seeks to deny us our absolute right to challenge and rebut testimony by others which is about us and directly affects us; and to deny us our right to testify on our own behalf. It is grossly unconstitutional-- indeed, it is so offensive to civilized sensibilities generally as to defy description.

In particular, the injunctions issued by the District Court and affirmed by the Circuit Court assault our right to freedom of speech (which includes a freedom FROM speaking generally), and our right to not be compelled to be witnesses against ourselves, recognized by the First and Fifth Articles of Amendment to the U.S. Constitution. In regard to the Fifth Amendment, it is obvious that if we are made to testify contrary to our testimony already made, such a contrivance would have the effect of forcing us into a declaration of having perjured ourselves in our original testimony.

The injunctions also offend against the Seventh Amendment, because if obeyed, the "U.S." would be improperly spared the necessity of actually proving its alleged claims against us in a proper proceeding before a jury, as is provided for by that amendment. (This notwithstanding the fact that the "U.S.'s" complaint has never been supported by any competent witness throughout the proceedings in this case, and therefore it has failed to make even a *prima facie* claim-- meaning that the only proper disposition of this case is dismissal).

This injunctive "relief" would be pernicious and lawless no matter the circumstances in which it was sought, but it is particularly so when deployed in the instant case, because its ultimate effect would be to facilitate the government's evasion of the

provisions of Article 1, Section 9 of the U.S. Constitution. However much the "U.S.", the District Court and the Circuit Court have endeavored to obscure, evade or ignore it, it is a fact that there is no Constitutionally-valid unapportioned federal tax on the general, undistinguished revenue or economic activity of American citizens (or anyone else). This is evident upon careful study of the revenue statutes, a multitude of rulings by this Honorable Court, and other authorities. A tax on general, undistinguished revenue or economic activity is a capitation:

> *"...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 acceptation 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)

(Smith actually puts the matter more pointedly: "*The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,*" ('The Wealth of Nations', Ch. 4).) Such a tax

must be apportioned per Article 1, Section 9 of the U.S. Constitution: *"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."*

Thus, an unapportioned tax on revenue or economic activity such as the income tax can only be a tax on specialized, distinguishable revenue or economic activity. This has always been true, and remains true to this day. As this Honorable Court observes in ruling on the effect of the 16th Amendment in *Brushaber v. Union Pacific R. Co.*, (240 U.S. 1 (1916)), the amendment has no effect on the provisions of Article 1, Section 9, but merely undoes the loophole perceived by the *Pollock* court in 1895 by means of which certain specialized revenue or economic activity was relieved of the tax because of additional specialized characteristics which the *Pollock* court concluded would make the tax functionally direct in those particular applications. The 16th Amendment overruled the *Pollock* court, and provides that what the *Pollock* court had excluded from the tax, but which otherwise qualified as "income" under the (by then) 50-year-old income tax is taxable without apportionment. (See *South Carolina v. Baker,* 485 U.S. 505, (1988).)

The *Brushaber* court goes on to observe that this is the only effect of the amendment-- it does not extend the tax to anything which had been untaxable without apportionment prior to the amendment's adoption, but merely undoes the *Pollock* court's extension of the apportionment requirement to the tax when applied to gains derived from personal property sources such as stock or real estate. (See *South Carolina v. Baker,* 485 U.S. 505, (1988);

Stanton v. Baltic Mining Co., 240 U.S. 103 (1916); *Peck v. Lowe*, 247 U.S. 165 (1918).) Indeed, the *Brushaber* court specifically cautions against misunderstanding arising on this point, declaring that should the tax ever come to be applied more promiscuously by any means:

> "*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.*"

Whether revenue or economic activity of any kind has been received or engaged in; and, if so, whether such revenue or activity was of a taxable character; is established in whole or in part by testimony. See *Bothke v. Terry*, 713 F. 2d 1405, at 1414 (1983). Parties who have received revenue of a specialized taxable character or engaged in activities of a taxable character are compelled by law to testify about them. Those about whose receipts "information returns" (such as Forms W-2 or 1099) have been prepared are compelled as a practical matter to testify in response, or suffer financial harm, or worse--regardless of the accuracy of those "information returns." That such parties have an absolute right to so testify is beyond rational question or dispute. (See

Garner v. United States, 424 U.S. 648 (1976); *Heiner v. Donnan,* 285 U.S. 312 (1932); *Vlandis v. Kline,* 412 U.S. 441 (1973); *Armstrong v. Manzo,* 380 U.S. 545 (1965); *Escobedo v. Illinois,* 378 U.S. 478 (1964); *Joint Anti-Fascist Comm. v. McGrath,* 341 U.S. 123 (1951).)

The instant case is an exact expression of this legal principle. We received no specialized revenue, nor engaged in any specialized activity of a sort taxable without apportionment during the years involved in this case. We are, nonetheless, compelled to testify to this effect by way of a return and associated documents, because if we do not, the contrary and erroneous assertions made on "information returns" will be taken as true by default, causing us to face possible criminal sanctions for "failure to file," and causing erroneous presumptions of governmental claims to ownership of some of our property to arise.

Indeed, the ONLY legal remedy available to us to overcome the legal "presumption of correctness" of such "information returns" filed about us is the rebuttal of those allegations by way of our own testimony as to our own knowledge, information and belief. For this reason, and in light of the Constitutional limitations on federal taxing authority and our Constitutionally-protected rights involving speech and due process, **we cannot lawfully be enjoined from saying we received no specialized revenue and engaged in no specialized economic activity, sanctioned for having said so, ordered to say anything to the contrary, or prevented from saying the same in the future.**

This is a simple core matter of due process.

Regardless of context or any other consideration, no American can lawfully be prevented from testifying in his or her own behalf, be sanctioned for having done so, or be ordered to testify contrary to his or her own beliefs as to what is true about the matter at issue.

C. In seeking to compel our adoption of the government's words on our tax returns, the "U.S." and the courts below are in violation of the statutes codified at 26 USC §6201, 26 USC §6402, and the regulations found at 26 CFR §301.6203-1 and 26 CFR §301.6402-3.

However much the "U.S.", the District Court and the Circuit Court have endeavored to obscure, evade or ignore them, federal statutes explicitly provide for our un-coerced testimony as to these matters, and require the federal government to accept that testimony as true and dispositive as to whether, and to what degree, we are or are not beholden to it (see §93 of the R.A. of 1862; R.S. §3173 as amended; §3615 of the 1939 IRC; 26 USC §6201; 26 USC §6402; 26 USC §6020(b); 26 CFR §301.6402-3; 26 CFR §301.6203-1; IRM §5.1.11.6.8). The only lawful government involvement in the preparation or content of returns such as ours is at the voluntary election of the filer (see the authorities cited above, as well as 26 USC §6020(a) and 26 USC §6014(a)).

We have invoked the plain and clear language of these statutes, current IRC sections and current CFR sections repeatedly throughout our filings in this case. The "U.S." has neither disputed nor denied the requirements thus imposed upon it; nor have the courts. Indeed, the "U.S." properly obeyed these requirements in its initial response to our filings years

ago. (See Treasury Dept. Certificates of Assessment in the Appendix.) Nonetheless, the "U.S." now seeks to evade these requirements, with the help of the courts. We believe that ignoring these laws is not within the discretion of either.

When all the creative clutter and distracting rhetoric and references deployed in this case by both the "U.S." and the courts are pushed aside, a stark and disgraceful reality meets the eye. Unheard-from "information return" preparers are being judicially elevated into incontrovertible witnesses-- in defiance of the law and to our great harm (but to the distinct benefit of the federal government). Simultaneously, we are gagged as to our own testimony and have the words of others forced into our mouths-- words which we are commanded to swear to be true to the best of our knowledge and belief! Piling on the injury and injustice, the Circuit Court has sanctioned us for objecting to these pernicious, lawless outrages!

Frankly, the fact that our legal arguments are explicitly supported by scores of Supreme and lower court rulings, as well as the entire body of relevant statutes and regulations, the Congressional and historical records, and every other possible authority-- all exhaustively presented in our briefs in the proceedings below-- needn't even be mentioned to decisively rebut the grotesque characterization of our appeal by the Circuit Court panel as "frivolous" and appropriate for punishment. The manifest lawlessness-- indeed, the anti-lawfulness-- of the ruling upheld by that panel more than suffices by itself, simply upon being plainly stated.

The sole purpose of these outrages is to evade the testimony already made on our returns and the obligation imposed by law upon the "U.S." to accept

those returns as filed and to return any of our property held in escrow against the possibility that those returns should establish that we are beholden to the "U.S."

> *"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)

26 CFR §301.6203-1 Method of assessment.
"The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown..."

> Senator Clark: *"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 a hearing on withholding provisions of the 1942 Revenue Act before a subcommittee of Committee on Finance, US Senate, during the 77th Congress, Second Session, August 21, 22, 1942, pp. 104 and 141. Missouri Senator Bennett Clark, Connecticut Senator John A. Danaher and testifying witnesses Charles O. Hardy, Brookings Institution, and Milton Friedman, Treasury Department Division of Tax Research.

> "[Withheld or paid-in amounts] *are, as it were, payments in escrow. They are set aside, as we have noted, in special suspense accounts established for depositing money received when no assessment is then outstanding against the taxpayer. The receipt by the Government of moneys under such an arrangement carries no more significance than would the giving of a surety bond. Money in these accounts is held not as taxes duly collected are held but as a deposit..."*

Rosenman v. United States, 323 US 658 (1945)

D. The courts below have issued and affirmed rulings in this case despite the United States being barred from litigating this case under the provisions of Rule 41 of the Federal Rules Of Civil Procedure.

Although we clearly invoked the doctrine of *res judicata* as prescribed in FRCP 41 to the Appellate Court, it has waved away this jurisdictional infirmity with the inapposite declaration that the government

can't be prohibited from "suggesting that Peter. E. Hendrickson's book promotes false or fraudulent tax schemes..." The Appellate Court appears to have misunderstood our point.

We never proposed to the court that anyone could be prevented from "suggesting" anything in bringing this jurisdictional issue to the court's attention. Rather, we observed that in moving three different courts to dismiss its own previous complaints involving Petitioner Peter Hendrickson and his book, 'Cracking the Code- The Fascinating Truth About Taxation In America', in which the "U.S." had attempted to broadly challenge the content of the book, and to characterize it (and Hendrickson) as "promoting false or fraudulent tax schemes", the "U.S." has conceded that the book does ***not***, in fact, contain, argue or promote false or fraudulent tax schemes (see *United States v. Peter Hendrickson,* Case No. 04-73591 (E.D. Mich. 2004), *Peter Hendrickson v. United States,* 04-00177 (N.D. Cal 2004), and *United States v. Peter Hendrickson,* 04-72323 (E.D. Mich. 2004)).

Nonetheless, the book was deliberately and specifically characterized as doing so as an integral element of the complaint in this case, and cited to the same effect by the District Court as a basis for its ruling, despite the "U.S." having already conceded in the above-mentioned cases that the book DOES NOT, in fact, promote any "false or fraudulent tax scheme". Thus, the "U.S."' complaint is brought in bad faith and is conclusively barred by *res judicata*, or collateral estoppel, or both, pursuant to Fed. R. Civ. Proc. 41:

> Federal Rules Of Civil Procedure, Rule 41. Dismissal of Actions:
> *(a) Voluntary Dismissal: Effect Thereof.*

> *(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court*
>
> > *(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.*

E. The Appellate Court abused its discretion by penalizing us with sanctions for allegedly making a "frivolous" appeal despite our arguments having already been established to be well-founded (and being exhaustively supported by rulings of this Honorable Court and scores of other authorities).

As noted in 'D.' above, the issue of the soundness of Petitioners' arguments in general has already been repeatedly conceded by the "U.S." Those conceded positions informed much of the argument made in our filings in the District Court and in our appeal. Thus, it is clear that even the Plaintiff in this case has agreed that what the Appellate Court purports to complain of, and punish us for, is perfectly legitimate, solidly based in the law, and explicitly NOT "frivolous."

Furthermore, our arguments in this case rest

on the plain words of more than 70 Constitutional provisions, relevant statutes, regulations and other authorities clearly cited and extensively quoted in our briefs. They are directly supported by more than 140 rulings from virtually every federal circuit and this Honorable Court, also cited and quoted in our filings.

Since even if our appeal-of-right of the District Court's summary judgment COULD be sanctioned under any circumstances (and we do not accept that this is so), it certainly cannot be if even one single thing we argue is sound, or is supported by an existing authority. In light of those arguments having already prevailed on their merits in the three cases cited in point 'D.' above, and the exhaustive authority with which they are supported in the instant case, (not to mention other points made in this petition) the imposition upon us of punitive monetary sanctions for bringing our appeal is rankly abusive.

F. The courts below have unlawfully assumed the power to declare petitioners to be under a tax-related duty to our adversary, in violation of the Declaratory Act and in a usurpation of the authority reserved to juries as finder of fact.

The Declaratory Act, codified at 28 USC §2201 bars the courts from determining rights and other legal relations with respect to federal taxes, in particular. The courts below have nonetheless made such determinations by way of "findings of facts," (and based on nothing more than unsupported, untested assertions made on certain documents by persons not even party to this action, and which are explicitly and comprehensively rebutted under oath

by the petitioners).

The authority to make such "findings of facts" not only is withheld from the courts by the Declaratory Act, but is properly the province of a jury (notwithstanding the fact that in the absence of these convenient "findings" there is no real case here to put to a jury). Thus, the rulings of the courts below are also violative of the Seventh Amendment to the Constitution, which provides that, *"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."* The courts below appear to be suggesting that their "findings of fact" establish that the instant case is somehow not a "suit at common law," but this obviously puts the cart before the horse in an effort to evade putting the case before a jury.

Furthermore, the relief sought by the "U.S." and granted by the courts below includes the issuance of injunctions serving to dictate the content of our speech in service to the interests of the "U.S." As this Court has observed, and as the "U.S." itself has acknowledged, injunctions in respect to federal taxes are particularly barred by the Declaratory Act:

> *"In 1935, one year after the enactment of the Declaratory Judgment Act... ...Congress amended that Act to exclude suits "with respect to Federal taxes . . .,"... Some have noted that the federal tax exception to the Declaratory Judgment Act may be more sweeping than the Anti-Injunction Act. ...The [IRS] takes that position in this case, arguing that any suit for an injunction is also an action for a declaratory judgment and thus is barred by the literal terms of the Declaratory Judgment Act,..."*

Bob Jones Univ. v. Simon, 416 U.S. 725 (1974)).

G. The courts below sustained the complaint in this case without jurisdiction, and in direct conflict with well-settled relevant precedent from across the entire spectrum of the federal judiciary.

The "U.S." brought suit citing the authority of 26 USC §7405(b), purportedly seeking to reclaim an "erroneous refund of tax". Plainly, in order for a suit to properly seek to reclaim an "erroneous refund of tax", a "refund of tax" must first have been made. In this case, the "refunds" involved were nothing more than the return of property to its owners upon proper application. See *Rosenman v. United States,* 323 US 658 (1945), *Moran v. United States,* 63 F.3d 663, 666-667, 7th Circuit (1995), *Plankinton v. United States,* 267 F.2d 278 (7th Cir. 1959), *United States v. Dubuque Packing Co.,* 233 F.2d 453 (8th Cir. 1956) *Thomas v. Mercantile Nat'l Bank at Dallas,* 204 F.2d 943 (5th Cir. 1953) and *Ameel v. United States,* 426 F.2d 1270 (6th Cir. 1970), among many, many others.

No liability for any tax had ever been found to be owing in connection with these amounts (or the relevant periods) prior to this suit being brought, and none exists to this day. See the Department of Treasury Certificates of Assessment acknowledging zero liability for us for these years in the appendix. Those certificates (produced in February of 2006) reflect the determination by the "U.S." itself-- made while in possession of every bit of information and evidence produced in support of its "complaint"-- that what was returned was NOT a "refund of tax" (and was not "erroneous", either).

Indeed, somehow the "U.S." neglected to

mention in its complaint and its hundreds of pages of filings in the proceedings in the courts below that not only had its own consideration of the entire evidentiary record led to its agreement that we owed it nothing and never had for the years involved here, but before it returned our property-in-escrow, it made numerous deductions and diversions from those amounts to satisfy what it perceived as balances owed for other years. Clearly its determinations, and its behavior in returning our property, were fully informed, aware and deliberate, rather than being some kind of "computer glitch" or act of naiveté.

Thus, it is clear that even the "U.S." itself understood that it was not seeking a return of an "erroneous refund of tax", and had no lawful authority to bring this suit. Making up with craft what it lacked in integrity and respect for the law, the "U.S." sought to contrive its way around this jurisdictional problem by asking the court to lift itself up by its own bootstraps and confer jurisdiction upon itself to hear this case-- long after already having allowed it to proceed-- by means of its eventual order to us to testify to words specified by the government. Those words would have the effect of establishing a liability and retroactively converting the amounts returned to us into amounts paid as tax, rather than merely amounts held in escrow.

Even leaving aside the idiosyncrasies of 26 USC §7405(b), the suit should not have been sustained simply because there never having been a defined tax liability, there was no claim for the "U.S." to be pursuing by way of ANY protocol. This was made clear in the motions to dismiss we filed immediately in response to the initial "complaint," which should have been promptly granted pursuant to FRCP 12(h)(3).

CONCLUSION

The suit brought by the "U.S.", and the findings, orders and judgments of the courts below are all part of a deliberate, corrosive assault on the core principles of due process and the rule of law, or, if not deliberate, have the effect of such an assault, nonetheless. Every aspect of the progress of this suit from the initial complaint to each step through the courts has involved a distortion or outright violation of one or more well-settled Constitutional, statutory and doctrinal prescriptions and proscriptions.

Any one of these many distortions and violations merits the review of this Honorable Court, and none more so than the central contrivance about which all revolve: the dictation to us of the very words that must appear over our own signatures, and which the "U.S." and the courts below would have us declare to be our own testimony. It is impossible to imagine a more pernicious request to the courts by the government, or a more corrupt command by a court (although the imposition of sanctions upon us for appealing that corrupt command and the many other errors and improprieties of the District Court may be in the running...).

We ask that for these reasons, and the others set forth above, this Honorable Court grant our Petition and afford us appropriate relief.

Respectfully submitted,

_____

Peter Eric Hendrickson

_____

Doreen M. Hendrickson

APPENDIX

Decisions of the Courts below:

Opinions of the District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v.

PETER HENDRICKSON and DOREEN HENDRICKSON, Defendants.
/
Case No. 06-11753
Honorable Nancy G. Edmunds

ORDER DENYING (1) DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT, [26] AND (2) DEFENDANTS' MOTION FOR RECONSIDERATION [27]

This matter comes before the Court on Defendant Peter Hendrickson's and Defendant Doreen Hendrickson's (collectively, "Defendants") motions for relief from judgment and for reconsideration, both filed on March 13, 2007.[1] On February 26, 2007, this Court accepted in part and rejected in part the magistrate judge's report and recommendation, granted the government's motion for summary judgment, and granted the government's request for a

preliminary injunction. Defendants' motion for relief from judgment is based upon Fed. R. Civ. P. 60(b)(4) and (6), as they argue that this Court lacked subject matter jurisdiction to hear the case. The motion for reconsideration is presumably brought under Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan, and Defendants argue that the government has not met its burden of proof regarding the fact that they received erroneous tax refunds for 2002 and 2003.

---

[1]If Defendants desire to appeal, they must do so in accordance with the Rules of Appellate Procedure. An appeal from an order of this Court must be taken to the Sixth Circuit Court of Appeals.

Rule 60(b) provides a number of grounds under which a court has the discretion to set aside a judgment, including the two that Defendants cite here: "(4) the judgment is void; . . . or (6) any other reason justifying relief from the operation of the judgment." "A judgment is void under 60(b)(4) 'if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, ...'" Antoine v. Atlas Turner, Inc., 66 F.3d 105, 108 (6th Cir. 1995) (quoting In re Edwards, 962 F.2d 641, 644 (7th Cir. 1992)). Defendants do not argue that this Court lacks personal jurisdiction over them, and nothing in their motion convinces the Court that the magistrate's finding that subject matter jurisdiction exists here was incorrect. Furthermore, a party merely seeking to re-litigate prior issues is not entitled to relief under Rule 60(b). Johnson v. Unknown Dellatifa, 357 F.3d 539, 543 (6th Cir. 2004).

With regards to Rule 60(b)(6), the Sixth Circuit has held that "[r]elief from a judgment pursuant to Rule 60(b)(6) 'is appropriate to accomplish justice in an extraordinary situation . . . .'" Id. (quoting Overbee v. Van Waters & Rogers, 765 F.2d 578, 580 (6th Cir.1985)). Defendants fail to state a sufficient reason to meet this demanding standard, so they are not entitled to relief on this alternative ground under Rule 60(b).

Turning to Defendants' motion for reconsideration, the Court will not grant a motion for reconsideration under Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan "that merely present[s] the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case." The majority of Defendants' motion attempts to re-argue the previously rejected assertion that wages do not constitute income for federal tax purposes, and thus, does not meet the requirements of L.R. 7.1(g)(3). The only new argument is that "the statutes invoked or relied upon by Plaintiff and the Court . . . are unconstitutional, being plainly violative of at least the 'necessary and proper' clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution." (Defs.' Mot. for Reconsideration at 9.) This assertion is not supported by any legal authority, however, and the Court declines to address Defendants' position without any indication that there is a legal basis for this newly alleged defense to the government's claims.

Because Defendants' motions for relief from judgment and for reconsideration fail to satisfy the requirements of Fed. R. Civ. P. 60(b) and L.R. 7.1(g)(3), the Court hereby DENIES both motions in their entirety.

SO ORDERED.
s/Nancy G. Edmunds
Nancy G. Edmunds
U. S. District Judge
Dated: May 2, 2007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,
-vs.-

PETER ERIC HENDRICKSON and
DOREEN M. HENDRICKSON,
Defendants.
/
Civil Action No. 06-11753
Hon. Nancy G. Edmunds

AMENDED JUDGMENT AND ORDER OF PERMANENT INJUNCTION [23, 24]

Upon consideration of Plaintiff's Motion to Amend Judgment, and any response thereto, good cause appearing, it is hereby

ORDERED, that Plaintiff's Motion to Amend Judgment is GRANTED; and it is ADJUDGED and ORDERED that Defendant Peter Hendrickson and Defendant Doreen Hendrickson, (collectively,

"Defendants") are jointly indebted to Plaintiff for erroneous refunds for the 2002 and 2003 tax years as shown below:

2002 Tax Year

$10,152.96, plus interest accruing on the amounts of the erroneous refunds or credits from April 15, 2003, pursuant to 26 U.S.C. §§ 6602 and 6621(a)(2) until paid.

2003 Tax Year

$7,055.70, plus interest accruing on the amounts of the erroneous refunds or credits from April 15, 2004, pursuant to 26 U.S.C. §§ 6602 and 6621(a)(2) until paid.

$3,172.30, plus interest accruing on the amounts of the erroneous refunds or credits from October 4, 2004, pursuant to 26 U.S.C. §§ 6602 and 6621(a)(2) until paid.

PERMANENT INJUNCTION

In accordance with Rule 65 of the Federal Rules of Civil Procedure, the Court makes the following findings of fact and sets forth the following conclusions of law.

1. Plaintiff commenced this action on April 12, 2006, to recover the federal income tax refunds made to Defendants for the 2002 and 2003 tax years, and to obtain a permanent injunction (1) requiring Defendants to amend their 2002 and 2003 federal income tax returns; and (2) prohibiting Defendants from filing or continuing to file federal income tax returns that falsely claim that they received "zero" or no taxable income.

2. Defendants are residents of Commerce Township, Michigan, within this judicial district, and were properly served with process on April 12, 2006.

3. During 2002 and 2003, Defendant Peter Hendrickson was employed by Personnel Management, Inc., and earned wages of $58,965 and $60,608, respectively, during those years.

2002 tax year

4. As required by law, Defendant Peter Hendrickson's employer withheld federal income taxes ($5,642.20), social security taxes ($3,655.83) and Medicare taxes ($854.93) from his wages in 2002 and paid over those amounts to the IRS. Also, as required by law, Mr. Hendrickson's employer issued him a Form W-2 Wage and Tax Statement that correctly reported his wages and those withholdings.

5. Defendant Doreen Hendrickson received $3,773.00 in non-employee compensation from Una E. Dworkin in 2002. As required by law, Dworkin provided her with a Form 1099 that correctly reported this non-employee compensation.

6. Defendants' 2002 Form 1040 tax return, which was filed with the IRS in August of 2003, falsely reported "zero" wages on line 7. An IRS Form 4852 attached to the return falsely reported that Defendant Peter Hendrickson received no wages during 2002. The Form 4852 did report that federal income taxes ($5,642.20), social security ($3,655.83) and Medicare taxes ($854.93) totaling $10,152.96 had been withheld from his wages during 2002.

7. Defendant Peter Hendrickson also claimed on his Form 4852 that he had asked his employer to "issue forms correctly listing payments of 'wages as

defined in [sections] 3401(a) and 3121(a),' but that his company had refused for 'fear of IRS retaliation.'"

8. Defendants requested, on line 70 of their joint 2002 tax return, a refund of the $10,152.96 in federal income, social security, and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2002.

9. Because Defendants reported that they had no income, the IRS, unaware that Defendants' report was false, treated the withheld federal taxes as a tax overpayments and applied them on April 15, 2003 to (1) Defendant Doreen Hendrickson's unpaid 2000 tax liability ($1,699.86); and (2) the outstanding tax balances owed by Defendant Peter Hendrickson for 2001 ($6,521.11) and 2000 ($1,931.99).

10. The refunds or credits described above were erroneous within the meaning of IRC § 7405(b). Defendants were not entitled to refunds of federal income taxes for 2002 because their federal income tax liability for that year – $6,327.00 – exceeded the amount of the federal income taxes withheld from Defendant Peter Hendrickson's wages by his employer ($5,642.20), which constituted the only tax payments made by Defendants in 2002. Furthermore, Defendants were not entitled to a refund, under any circumstances, of the social security and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2002.

2003 tax year

11. As required by law, Defendant Peter Hendrickson's employer withheld federal income taxes ($5,620.02), social security taxes ($3,757.60) and Medicare taxes ($878.72) from his wages in 2003 and paid over those amounts to the IRS. Also, as required

by law, Mr. Hendrickson's employer issued him a Form W-2 Wage and Tax Statement that correctly reported his wages and those withholdings.

12. Defendant Doreen Hendrickson received $3,188.00 in non-employee compensation from Una E. Dworkin in 2003. As required by law, Dworkin provided her with a Form 1099 that correctly reported this non-employee compensation.

13. Defendants' 2003 Form 1040 tax return falsely reported "zero" wages on line 7. An IRS Form 4852 attached to the return reported that Defendant Peter Hendrickson received no wages during 2003. The Form 4852 did report that federal income taxes ($5,620.02), social security ($3,757.60) and Medicare taxes ($878.72) totaling $10,256.34 had been withheld from his wages during 2003.

14. Defendant Peter Hendrickson also claimed on his Form 4852 that he had asked his employer to "issue forms correctly listing payments of 'wages as defined in [sections] 3401(a) and 3121(a),' but that his company had refused for 'fear of IRS retaliation.'"

15. Defendants requested, on their joint 2003 tax return, a refund of the $10,228.00 in federal income, social security, and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2003.

16. Because Defendants reported that they had no income, the IRS, unaware that Defendant's report was false, treated the withheld federal taxes as tax overpayments and applied them on April 15, 2004 to (1) Defendant Peter Hendrickson's unpaid 2000 tax liability ($5,551.44); and (2) three frivolous return penalties that had been assessed against Defendants under IRC § 6702 ($515.66, $553.17 and $529.18). The

IRS also sent a refund check sent to Defendants on October 10, 2004 in the amount of $3,172.30.

17. The refunds or credits described above were erroneous within the meaning of IRC § 7405(b). Defendants were not entitled to refunds of federal income taxes for 2003 because their federal income tax liability for that year – $6,061.00 – exceeded the amount of the federal income taxes withheld from Defendant Peter Hendrickson's wages by his employer ($5,620.02), which constituted the only tax payments made by Defendants in 2003. Furthermore, Defendants were not entitled to a refund, under any circumstances, of the social security and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2003.

18. Defendants contend that their Forms 4852, as described above, accurately reported that they received no wages or other compensation in 2002 and 2003. Defendants base their contention on theories contained in a book entitled Cracking the Code, which was written by Defendant Peter Hendrickson. On page 76 of Cracking the Code ("CtC"), Defendant Peter Hendrickson, states "So, actually, withholding only applies to the pay of federal government workers, exactly as it always has (plus 'State' government workers, since 1939, and those of the District of Columbia since 1921)."

19. Defendants' contention that withholding applies only to government workers is frivolous and false. See, e.g., Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986); United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985); (contention that "under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute."); O'Connor v.

United States, 669 F. Supp. 317, 322 (D. Nev. 1987). Defendant Peter Hendrickson was an employee of Personnel Management, Inc. in 2002 and 2003 within the meaning of IRC § 3401(c). Defendant Peter Hendrickson's employer properly withheld federal income and employment taxes from his wages.

20. In addition to the monetary loss occasioned by the erroneous tax refunds that the IRS made to or on behalf of Defendants, their conduct in filing false tax returns caused substantial interference with the internal revenue laws by administratively burdening the IRS, requiring the agency to expend considerable resources to detect the erroneous refunds, examine Defendants' 2002 and 2003 Form 1040 tax returns, and obtain the documents necessary to prove that the refunds were erroneous.

21. In order to qualify for injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, Plaintiff must establish (1) the likelihood of the government's success on merits; (2) whether the injunction will save Plaintiff from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction. See Southern Milk Sales, Inc. v. Martin, 924 F.2d 98, 103 n.3 (6th Cir. 1991); In re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985).

22. Plaintiff has prevailed on the merits of its erroneous refund claims against Defendants as reflected in the prior order adopting in part and rejecting in part the Magistrate Judge's Report and Recommendation with respect to Plaintiff's motion for summary judgment.

23. Defendants' actions impose an immediate and irreparable injury on Plaintiff by impeding, impairing and obstructing the assessment and

collection of federal taxes in accordance with the internal revenue laws.

24. In the absence of an injunction, Plaintiff will continue to suffer irreparable injury as Defendants and those who imitate them continue to file false tax returns. Since Plaintiff has met all of the proper standards and the traditional equity criteria for the entry of a permanent injunction under IRC § 7402(a), a permanent injunction should issue.

25. Defendants will not be harmed by the entry of an injunction against them because they will only be required to obey the law, including the provisions of the Internal Revenue Code and the applicable Treasury Regulations.

26. Finally, the United States' system of taxation relies on self-assessment and the good faith and integrity of taxpayers to disclose completely and honestly all information relevant to their tax liability. The public interest will be accordingly be served by requiring Defendants to correctly report the income that they receive on their federal tax returns.

27. Accordingly, it is hereby

ORDERED, that Defendants are prohibited from filing any tax return, amended return, form (including, but not limited to Form 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc.")) or other writing or paper with the IRS that is based on the false and frivolous claims set forth in Cracking the Code that only federal, state or local government workers are liable for the payment of federal income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws (26 U.S.C.); and it is further

ORDERED, that within 30 days of the entry of this Amended Judgment and Order of Permanent Injunction, Defendants will file amended U.S. Individual Income Tax Returns for the taxable years ending on December 31, 2002 and December 31, 2003 with the Internal Revenue Service. The amended tax returns to be filed by Defendants shall include, in Defendants' gross income for the 2002 and 2003 taxable years, the amounts that Defendant Peter Hendrickson received from his former employer, Personnel Management, Inc., during 2002 and 2003, as well the amounts that Defendant Doreen Hendrickson received from Una E. Dworkin during 2002 and 2003.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge
Dated: May 2, 2007

Opinion of the Appellate Panel

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-1510

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.
PETER E. HENDRICKSON; DOREEN M. HENDRICKSON,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

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

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

Peter E. Hendrickson is a tax protester who pled guilty to reduced charges for his role in a conspiracy to place a firebomb in a post office bin as a tax protest, which resulted in injuries to a postal worker and a bystander. *See United States v. Scarborough, 43* F.3d 1021, 1023 (6th Cir. 1994). Hendrickson subsequently wrote a book entitled "Cracking the Code: The Fascinating Truth About Taxation in America" in which he apparently advocates improper schemes others have followed to avoid paying federal income tax. *See United States v. Kunn,* No. CV06-1458-PCT-FJM, 2006 WL

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

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

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

opposition to the motion for relief from judgment, and the Hendricksons filed a reply and a notice of appeal. The district court denied the Hendricksons' motions, but granted the government's motion and entered an amended judgment and order of permanent injunction. The Hendricksons filed a timely amended notice of appeal.

On appeal, the Hendricksons make numerous challenges to the district court's jurisdiction and judgment which fairly can be characterized as plainly baseless tax protester arguments. The government responds that the district court's judgment was proper, and has filed a separate motion for sanctions in the amount of $8,000.00 pursuant to Fed. R. App. P. 38. The Hendricksons have not responded to the government's motion. Upon consideration, we grant the motion for sanctions in part, and affirm the district court's judgment.

This court reviews de novo a district court grant of summary judgment, making any reasonable inference in favor of the non-moving party. *United States v. Guy*, 978 F.2d 934, 936 (6th Cir. 1992); *EEOC v. Univ. of Detroit*, 904 F.2d 331, 332 (6th Cir. 1990). Generally, summary judgment is proper where no genuine issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Guy*, 978 F.2d at 936. The burden is upon the moving party to show "that there is an absence of evidence to support the non-moving party's case." *Celotex Corp.*, 477 U.S. at 325. Thereafter, the nonmoving party must present significant probative evidence in support of the

complaint to defeat the motion. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249-50 (1986). The nonmoving party is required to show more than a metaphysical doubt as to the existence of a genuine issue of material fact. M*atsushita Elec. Indus. Co. v. Zenith Radio Corp., 475* U.S. 574, 586 (1986). Here, summary judgment for the government was proper.

First, the Hendricksons' jurisdictional challenges lack merit. The United States plainly may sue for return of taxes erroneously refunded pursuant to 26 U.S.C. § 7405(b). *Guy,* 978 F.2d at 938. Moreover, 26 U.S.C. § 7402(a) gives district courts the authority to grant injunctions "necessary or appropriate for the enforcement of the internal revenue laws." *United States v. First Nat '1 City Bank,* 379 U.S. 378, 380 (1965). The Hendricksons' initial assertion on appeal, that the district court lacked jurisdiction in this case because another statutory provision, 26 U.S.C. § 6201, authorizes and requires the Secretary of the Treasury to determine and assess taxes, was properly rejected by the district court as irrelevant and patently meritless. The Hendricksons' remaining jurisdictional challenges at least arguably were not asserted in the district court, and should not be considered in the first instance on appeal. *See Weinberger v. United States,* 268 F.3d 346, 352 (6th Cir. 2001) (citing *Foster v. Barilow, 6* F.3d 405, 407 (6th Cir. 1993)). Nonetheless, it is noted that the challenges are patently meritless. For example, the Hendricksons' assertion that the government lacks standing under 26 U,S.C. § 7405(b) to seek return of taxes not already determined is wholly unsubstantiated as is their equally meritless

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

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

Given the patent baselessness of the Hendricksons' assertions on appeal, the government's motion for sanctions will be granted, but only in the amount of $4,000.00. As noted, the government seeks $8,000.00, an amount it contends is justified by records that show that average costs incurred in frivolous taxpayer appeals in 2004 and

2005 exceeded $11,000.00. However, this court consistently has awarded $4,000.00 sanctions in frivolous tax protester appeals. *See Raft v. Comm'r*, 147 F. App'x 458, 462-63 (6th Cir. 2005). Under these circumstances, the government's motion for sanctions will be granted in the amount of $4,000.00.

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

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

ENTERED BY ORDER OF THE COURT
Leonard Green
Clerk

Denial of En Banc Rehearing

No. 07-1510

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee
v.

PETER E. HENDRICKSON, ET AL., Defendants-Appellants.

BEFORE: GIBBONS and SUTTON, Circuit Judges; and ACKERMAN, District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Filed December 16, 2008
LEONARD GREEN, Clerk

Fundamental Law, Statutes, Rules and Regulations Not Reproduced In The Petition

First Amendment, United States Constitution:
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.

Fifth Amendment, United States Constitution:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment, United States Constitution:
"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."

Sixteenth Amendment, United States Constitution:
"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

§3173 of the Revised Statutes, as amended in 1919:
"And if any person, on being notified or required as aforesaid, [this is a reference to the 10-day notice to be given to anyone who has not filed timely] *shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person*

who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person..."

(The statute goes on to authorize the examination of books and records, taking of testimony, etc.; and-- solely in the case of refusal to file or the filing of a false or fraudulent return by someone required to deliver a monthly or other return of objects subject to tax, as listed above-- the production of a return by the Secretary. It is worth emphasizing that this latter authority does not extend to individual annual returns of "income", even when such returns have not been filed. We see this distinction accurately reflected in the current IRC at 6020.)

The first codified representation of the statutory language from R. S. 3173 offers a very clear reflection of the statute. That representation, in the 1939 IRC, is as follows:

§3615 of the Internal Revenue Code of 1939:

§3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.

(a) GENERAL AUTHORITY.—It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or

the returns thereof.

...

(b) ACTS CREATING LIABILITY.—Such summons may be issued—

(1) REFUSAL OR NEGLECT TO COMPLY WITH NOTICE REQUIRING RETURN.—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or

(2) FAILURE TO RENDER RETURN ON TIME.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

(3) ERRONEOUS, FALSE, OR FRAUDULENT RETURN.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

(4) REFUSAL TO PERMIT EXAMINATION OF BOOKS.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

26 USC § 6014. Income tax return—tax not computed by taxpayer:

(a) Election by taxpayer

An individual who does not itemize his deductions and who is not described in section 6012 (a)(1)(C)(i), whose gross income is less than $10,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as

defined in section 3401 (a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section. In such case the tax shall be computed by the Secretary who shall mail to the taxpayer a notice stating the amount determined as payable.

26 USC §6020. - Returns prepared for or executed by Secretary:

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

26 USC §6201 Assessment authority:

(a) Authority of Secretary

The Secretary is authorized and required to make the

inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

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

26 USC §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), refund any balance to such person.

26 USC §7405 Action for recovery of erroneous refunds:

(a) Refunds after limitation period

Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) Refunds otherwise erroneous

Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

28 USC § 2201. Creation of remedy:
(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986,... ...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Federal Rules of Civil Procedure 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.

Federal Rules Of Civil Procedure, Rule 41. Dismissal of Actions:
(a) Voluntary Dismissal: Effect Thereof.
(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court

> *(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.*

26 CFR §301.6402-3 Special rules applicable to income tax:

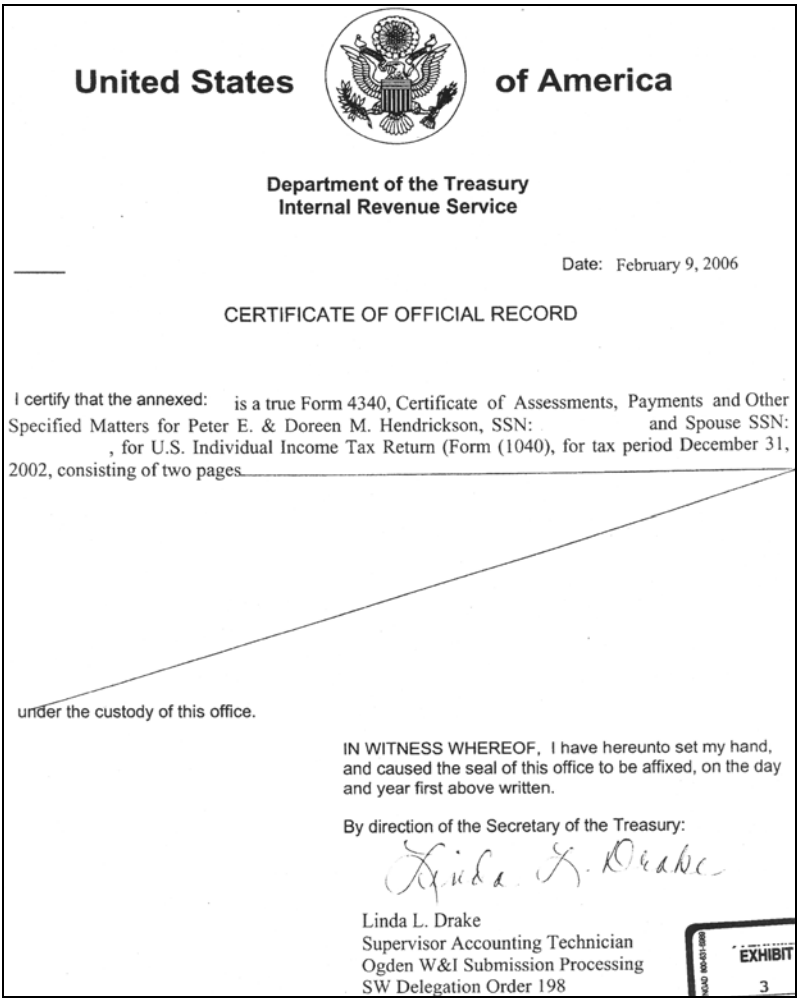
(a) In the case of a claim for credit or refund filed after June 30, 1976--

> *(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).*

Internal Revenue Manual §5.1.11.6.8 (03-01-2007): *IRC 6020(b) Authority*

> *1. The following returns may be prepared, signed and assessed under the authority of IRC 6020(b):*
>
> *A. Form 940, Employer's Annual Federal Unemployment Tax Return*
>
> *B. Form 941, Employer's Quarterly Federal Tax Return*
>
> *C. Form 942, Employer's Quarterly Tax Return for Household Employees*
>
> *D. Form 943, Employer's Annual Tax Return for Agricultural Employees*
>
> *E. Form 720, Quarterly Federal Excise Tax Return*
>
> *F. Form 2290, Heavy Vehicle Use Tax Return*
>
> *G. Form CT-1, Employer's Annual Railroad Retirement Tax Return*
>
> *H. Form 1065, U.S. Partnership Return of Income*

Treasury Department Certificates of Assessment for Peter and Doreen Hendrickson for 2002 and 2003



United States of America

Department of the Treasury
Internal Revenue Service

Date: February 9, 2006

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is a true Form 4340, Certificate of Assessments, Payments and Other Specified Matters for Peter E. & Doreen M. Hendrickson, SSN: and Spouse SSN: , for U.S. Individual Income Tax Return (Form (1040), for tax period December 31, 2002, consisting of two pages

under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

Linda L. Drake
Supervisor Accounting Technician
Ogden W&I Submission Processing
SW Delegation Order 198

EXHIBIT 3

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2002

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT, OTHER DEBITS (REVERSAL)	PAYMENT, CREDIT (REVERSAL)	ASSESSMENT DATE (23C, RAC 006)
	ADJUSTED GROSS INCOME 20.00			
08-25-2003	RETURN FILED & TAX ASSESSED 08221-236-16503-3		0.00	09-29-2003
04-15-2003	WITHHOLDING & EXCESS FICA		10,152.96	
03-21-2003	EXTENSION OF TIME TO FILE EXT. DATE 08-15-2003			
04-15-2003	OVERPAYMENT CREDIT TRANSFERRED 1040 200012		(1,699.86)	
04-15-2003	OVERPAYMENT CREDIT TRANSFERRED 1040 200112		(6,521.11)	
04-15-2003	OVERPAYMENT CREDIT TRANSFERRED 1040 200012		(1,931.99)	

FORM 4340 (REV. 01-2002) PAGE 1

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2002

BALANCE 0.00

I CERTIFY THAT THE FOREGOING TRANSCRIPT OF THE TAXPAYER NAMED ABOVE IN RESPECT TO THE TAXES SPECIFIED IS A TRUE AND COMPLETE TRANSCRIPT FOR THE PERIOD STATED, AND ALL ASSESSMENTS, ABATEMENTS, CREDITS, REFUNDS, AND ADVANCE OR UNIDENTIFIED PAYMENTS, AND THE ASSESSED BALANCE RELATING THERETO, AS DISCLOSED BY THE RECORDS OF THIS OFFICE AS OF THE ACCOUNT STATUS DATE ARE SHOWN THEREIN. I FURTHER CERTIFY THAT THE OTHER SPECIFIED MATTERS SET FORTH IN THIS TRANSCRIPT APPEAR IN THE OFFICIAL RECORDS OF THE INTERNAL REVENUE SERVICE.

SIGNATURE OF CERTIFYING OFFICER: Linda L. Drake

PRINT NAME: Linda L. Drake

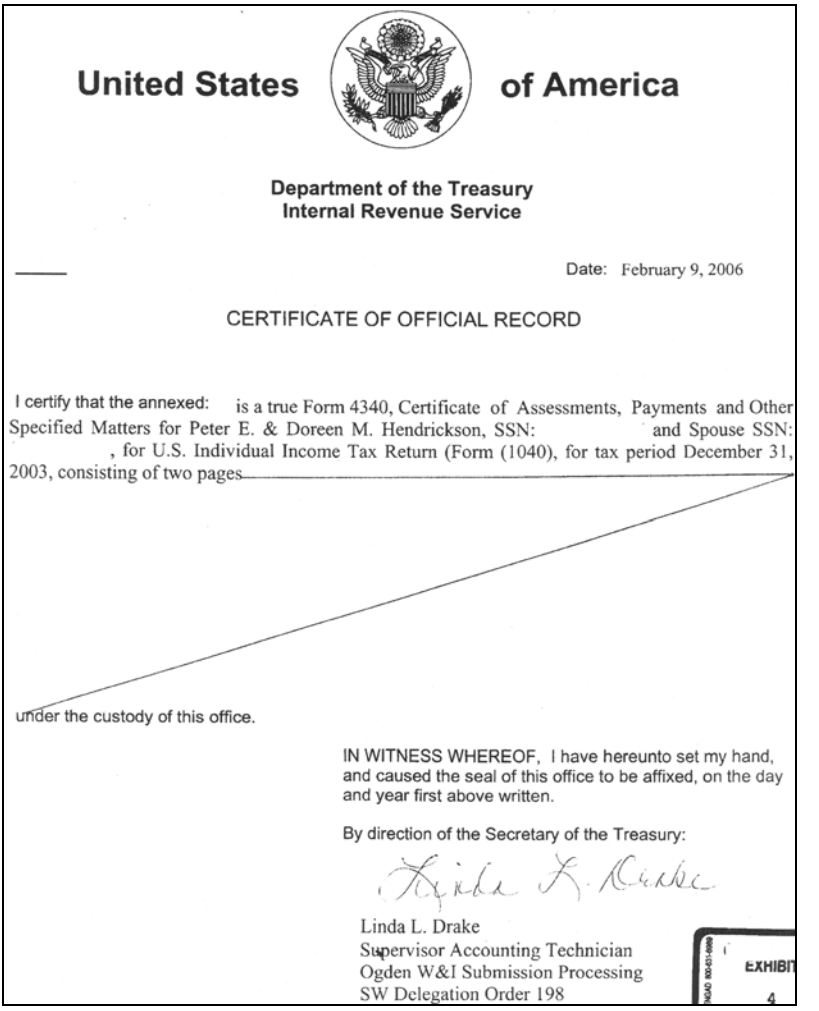
TITLE: Supervisor Accounting Technician, Ogden W&I Submission Processing

DELEGATION ORDER: SW Delegation Order 198

LOCATION: INTERNAL REVENUE SERVICE

ACCOUNT STATUS DATE 02/09/2006

FORM 4340 (REV. 01-2002) PAGE 2



United States of America

Department of the Treasury
Internal Revenue Service

Date: February 9, 2006

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is a true Form 4340, Certificate of Assessments, Payments and Other Specified Matters for Peter E. & Doreen M. Hendrickson, SSN: and Spouse SSN: , for U.S. Individual Income Tax Return (Form (1040), for tax period December 31, 2003, consisting of two pages

under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

Linda L. Drake
Supervisor Accounting Technician
Ogden W&I Submission Processing
SW Delegation Order 198

EXHIBIT 4

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2003

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT, OTHER DEBITS (REVERSAL)	PAYMENT, CREDIT (REVERSAL)	ASSESSMENT DATE (23C, RAC 006)
	ADJUSTED GROSS INCOME 286.00			
04-15-2004	RETURN FILED & TAX ASSESSED 09221-105-38349-4 200419		28.34	05-24-2004
04-15-2004	WITHHOLDING & EXCESS FICA		10,256.34	
04-15-2004	OVERPAYMENT CREDIT TRANSFERRED 1040 200012		(5,551.44)	
04-15-2004	CREDIT TRANSFERRED		(515.66)	
04-15-2004	CREDIT TRANSFERRED		(553.17)	
04-15-2004	CREDIT TRANSFERRED		(529.18)	
06-14-2004	OVERPAID CREDIT APPLIED		32.91	
10-04-2004	REFUND		(3,172.30)	
10-04-2004	INTEREST DUE TAXPAYER		60.84	

FORM 4340 (REV. 01-2002) PAGE 1

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2003

BALANCE 0.00

I CERTIFY THAT THE FOREGOING TRANSCRIPT OF THE TAXPAYER NAMED ABOVE IN RESPECT TO THE TAXES SPECIFIED IS A TRUE AND COMPLETE TRANSCRIPT FOR THE PERIOD STATED, AND ALL ASSESSMENTS, ABATEMENTS, CREDITS, REFUNDS, AND ADVANCE OR UNIDENTIFIED PAYMENTS, AND THE ASSESSED BALANCE RELATING THERETO, AS DISCLOSED BY THE RECORDS OF THIS OFFICE AS OF THE ACCOUNT STATUS DATE ARE SHOWN THEREIN. I FURTHER CERTIFY THAT THE OTHER SPECIFIED MATTERS SET FORTH IN THIS TRANSCRIPT APPEAR IN THE OFFICIAL RECORDS OF THE INTERNAL REVENUE SERVICE.

SIGNATURE OF CERTIFYING OFFICER: Linda L. Drake

PRINT NAME: Linda L. Drake

TITLE: Supervisor Accounting Technician, Ogden W&I Submission Processing

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ACCOUNT STATUS DATE 02/09/2006

FORM 4340 (REV. 01-2002) PAGE 2