

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs.-

Civil Action No. 06-11753
Hon. Nancy G. Edmunds

PETER ERIC HENDRICKSON and
DOREEN M. HENDRICKSON,

Defendants.

_____ /

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, the United States of America, moves for summary judgment in the above-captioned civil action pursuant to Rule 56(c) of the Federal Rules of Civil Procedure on the grounds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law with respect to (1) the refunds of federal income, social security (FICA) and Medicare taxes that were erroneously issued to defendants with respect to the 2002 and 2003 tax years; and (2) the Government's entitlement to an injunction under section 7402(a) of the Internal Revenue Code requiring defendants to file corrected federal income tax returns for the 2002 and 2003 tax years, and permanently enjoining defendants from filing false or fraudulent claims, forms, or returns with the Internal Revenue Service in the future, including the claims, forms and returns based on the false statements about the federal tax laws described in the complaint. The grounds for this motion are set forth with more specificity in the attached supporting brief. This motion for summary judgment is based on the pleadings, the records and files in this case, and the Declarations of Kim Halbrook, Shauna Henline, and Terry Grant.

On May 25, 2006, the undersigned attorney wrote to the defendants, Peter Eric Hendrickson and Doreen M. Hendrickson, to seek their concurrence in the relief sought by this motion. The undersigned attorney explained the nature of this motion and its legal basis, and requested, but did not obtain, concurrence in the relief sought by the motion. Therefore, the United States is bringing this motion for summary judgment in order to secure the requested relief.

WHEREFORE, the plaintiff, the United States of America, respectfully requests that its motion for summary judgment be granted, and that judgment be entered in favor of the plaintiff, the United States of America, for the erroneous tax refunds of federal income, social security and Medicare taxes in the total amounts of \$10,152.96 and \$10,228.00 for the 2002 and 2003 taxable years, respectively, plus interest according to law.

Dated this 13th day of July, 2006.

STEPHEN J. MURPHY, III
United States Attorney

WILLIAM L. WOODARD
Assistant United States Attorney

/s/ Robert D. Metcalfe

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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UNITED STATES OF AMERICA,

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-vs.-

Civil Action No. 06-11753
Hon. Nancy G. Edmunds

PETER ERIC HENDRICKSON and
DOREEN M. HENDRICKSON,

Defendants.

**BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This is an action under section 7405 of the Internal Revenue Code (26 U.S.C.) ("IRC") to recover the erroneous refunds of federal income, social security and Medicare taxes totaling \$20,380.96 that defendants Peter and Doreen Hendrickson obtained by filing false federal income tax returns and forms with the Internal Revenue Service. The United States also seeks injunctive relief under IRC § 7402(a) in order to prevent the defendants from continuing to file false income tax returns and forms in the future, and to compel them to amend their tax returns to correctly report the wages and other compensation they received as taxable income. Because the Government has established that: (1) the tax refunds in question were erroneous; (2) this action was timely commenced; and (3) the amounts of the refunds, judgment should be entered in favor of the United States. Furthermore, an injunction should issue barring defendants from filing tax returns that falsely assert that wages are not income or subject to withholding.

QUESTIONS PRESENTED

1. Section 7405(b) of the Internal Revenue Code provides that “[a]ny portion of a tax imposed by this title which has been erroneously refunded . . . may be recovered by civil action brought in the name of the United States.” In order for the United States to prevail in an action to recover an erroneous refund brought under IRC § 7405, the Government must establish (1) that a refund of a sum certain was made; (2) that the suit for the recovery of the erroneous refund is timely; and (3) that taxpayer is not entitled to the tax refund, *i.e.*, that the tax was erroneously refunded to the taxpayer. In the present case, the defendant taxpayer Peter Hendrickson, earned salaries of \$58,965 and \$60,608 in 2002 and 2003, respectively, but falsely reported that he received no wages on his income tax returns for those tax years. Defendants later obtained refunds of federal income, social security and Medicare taxes that totaled \$10,152.96 for 2002 and \$10,228.00 for 2003. Has the Government met its burden of establishing the first and third requirements, namely, that a refund of a sum certain was made to the defendants, and that the federal income, social security and Medicare taxes in question were erroneously refunded to the defendants?

2. With respect to the second requirement for an erroneous refund suit, under IRC § 6532(b), an erroneous refund suit is barred by the statute of limitations if not brought within two years after payment of the erroneous refund, “except that such suit may be brought any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.” This erroneous refund suit, which was commenced on April 12, 2006, was brought within two years of the refunds made to defendants with respect to the 2003 (but not the 2002) tax year. Are the Government’s claims subject to the

five-year limitations period of IRC § 6532(b) and therefore timely because the refunds of federal income, social security and Medicare taxes that were made to defendants for the 2002 tax year were induced by the fraudulent statements and material misrepresentations of fact contained in defendants' 2002 federal income return and the Form 4852 attached to that tax return?

3. Section 7402(a) of the Internal Revenue Code gives the district courts jurisdiction to issue writs and orders of injunction, and such other orders "as may be necessary or appropriate for the enforcement of the internal revenue laws." Defendants' repeated conduct in filing false tax returns and 4852 forms administratively burdens the IRS, and imposes an immediate and irreparable injury upon the United States of America by obstructing and impairing the assessment and collection of federal taxes. Should defendants be permanently enjoined from filing false or fraudulent returns and forms with the IRS, and required to file correct federal income tax returns for 2002 and 2003?

STATEMENT OF FACTS

Peter Hendrickson's 2002 and 2003 wages

1. During 2002 and 2003, the defendant taxpayer, Peter Eric Hendrickson ("taxpayer" or "Hendrickson") was employed by Personnel Management, Inc., in Farmington Hills, Michigan. Declaration of Kim Halbrook ("Halbrook Decl."), ¶¶1 and 4.

2. Personnel Management, Inc., paid Hendrickson a salary during 2002 and 2003. Halbrook Decl., ¶5.

3. In 2003 and 2004, Personnel Management, Inc., issued the taxpayer Forms W-2 (Wage and Tax Statements) for the 2002 and 2003 tax years, respectively. True and correct copies of those 2002 and 2003 W-2 Forms are attached to the Declaration of Kim Halbrook.

Halbrook Decl., ¶5.

4. The 2002 and 2003 Forms W-2 that were issued to Hendrickson reported (1) the wages paid to him, and (2) the federal income, social security and Medicare (FICA) taxes withheld from his wages in 2002 and 2003 and paid over to the IRS. Halbrook Decl., ¶6.

5. According to the 2002 Form W-2, Hendrickson received taxable wages of \$58,965.00 from Personnel Management, Inc., in 2002. Personnel Management, Inc., withheld federal income taxes of \$5,642.20, social security taxes of \$3,655.83, and Medicare taxes of \$854.93, and paid over the taxes to the IRS. Halbrook Decl., ¶¶5-7.

6. According to the 2003 Form W-2, Hendrickson received taxable wages of \$60,608.00 from Personnel Management, Inc., in 2003. Personnel Management, Inc., withheld federal income taxes of \$5,620.02, social security taxes of \$3,757.60, and Medicare taxes of \$878.72, and paid over the taxes to the IRS. Halbrook Decl., ¶¶5-7.

Peter and Doreen Hendrickson's 2002 federal income tax return

7. Peter Eric Hendrickson and his wife, Doreen M. Hendrickson, filed a joint U.S. Individual Income Tax Return (Form 1040) for the 2002 tax year in August of 2003. Declaration of Shauna Henline ("Henline Decl."), ¶4 and Exhibit 1 thereto.

8. Peter and Doreen Hendrickson reported "zero" wages on line 7 of their 2002 tax return. Henline Decl., ¶8.

9. The Hendricksons attached to their 2002 Form 1040 tax return a Form 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc.") signed by Peter Eric Hendrickson (under penalty of perjury) which reported that he received no wages for 2002. The Form 4852 also reported that federal income taxes (\$5,642.20), social security taxes (\$3,655.83) and

Medicare taxes (\$854.93), or a total of \$10,152.96 had been withheld from his wages or compensation during 2002. Henline Decl., ¶5 and Exhibit 1 thereto.

10. The Form 4852 submitted by the taxpayer contained the following explanation (in response to the request on line 9 of the form, which requested the taxpayer to “[e]xplain your efforts to obtain Form W-2, 1099-R, or W-2c, Statement of Corrected Income and Tax Amounts”):

Request, but the company refuses to issue forms correctly listing payments of “wages as defined in 3401(a) and 3121(a)” for fear of IRS retaliation. The amounts listed as withheld on the W-2 it submitted are correct, however.

Henline Decl., ¶¶6 and 12, and Exhibits 1 and 2 thereto.

11. On their joint 2002 Form 1040 tax return, the defendants reported (line 70) that they overpaid their 2002 federal income tax liabilities by \$10,152.96, or the total of the federal income, social security and Medicare taxes withheld from the wages Peter Hendrickson received in 2002. On line 71a of their 2002 federal tax return, the defendants requested a refund of the entire \$10,152.96. Henline Decl., ¶7 and Exhibit 1 thereto; Halbrook Decl., ¶¶4-6.

The 2002 tax refund made to defendants Peter and Doreen Hendrickson

12. Based on the 2002 Form 1040 tax return and the attached Form 4852 that the defendants filed, the IRS treated as a tax overpayment the \$10,152.96 in federal taxes that had been withheld from Peter Hendrickson’s wages during 2002. The IRS applied the \$10,152.96 to other outstanding tax liabilities of the Hendricksons: \$1,699.86 was applied to an unpaid tax liability owed by Doreen Hendrickson for the 2000 tax year on April 15, 2003. The remaining “overpayment” of \$1,931.99 was applied to Peter Hendrickson’s tax liability for 2000, and \$6,521.11 was applied to his tax liability for 2001 on April 15, 2003. Henline Decl., ¶9 and

Exhibits 3 and 5 thereto.

13. The IRS erroneously treated the \$10,152.96 as a tax overpayment. The defendants were not entitled to a refund of federal income, social security or Medicare taxes for the 2002 tax year because their income tax liabilities exceeded their income tax payments. Based on the Form W-2 and 1099 information provided to the IRS for the 2002 tax year by (1) Peter Hendrickson's employer, Personnel Management, Inc.; and (2) Una E. Dworkin (with respect to the non-employee compensation paid to Doreen M. Hendrickson), Peter Hendrickson received taxable wages of \$58,965.00 and Doreen Hendrickson received taxable compensation of \$3,773.00. The taxpayers' total corrected income tax liability of \$6,327.00, as shown on Exhibit 10 to the Declaration of Terri Grant, was greater than the \$5,642.20 in federal income tax that was withheld from Peter Hendrickson's wages during 2002 by his employer, and erroneously refunded by the IRS because of the false statements contained on the 2002 Form 1040 tax return filed by the taxpayers, and the Form 4852 attached to that tax return. Declaration of Terri Grant ("Grant Decl."), ¶¶6-8, and Exhibit 10.

14. The taxpayer defendants are also indebted to the United States for the social security (\$3,655.83) and Medicare (\$854.93) taxes that were withheld from Peter Hendrickson's wages during 2002 and erroneously treated as overpayments by the IRS as a result of the false statements contained on the 2002 Form 1040 tax return filed by the taxpayers, and the Form 4852 attached to that tax return. Grant Decl., ¶¶9 and 10.

Peter and Doreen Hendrickson's 2003 federal income tax return

15. Taxpayers' reported "zero" wages or salaries on line 7 of their 2003 federal income tax return. Henline Decl., ¶10, and Exhibit 2 thereto.

16. The Hendricksons' attached to their 2003 Form 1040 tax return a Form 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc.") signed by Peter Eric Hendrickson which reported that he received no wages for 2003. The Form 4852 also reported that federal income taxes (\$5,620.02), social security taxes (\$3,757.60) and Medicare taxes (\$878.72) had been withheld from his wages or compensation during 2003. The total of these amounts is \$10,256.34. Henline Decl., ¶11 and Exhibit 2 thereto.

17. On their 2003 return, the Hendricksons reported adjusted gross income of \$286.14 and a total tax of \$28.34. Henline Decl., ¶13 and Exhibit 2 thereto.

18. On their 2003 return, the defendants reported that they overpaid their 2003 federal income tax liabilities by \$10,228.00, which is equal to the total of the federal income, social security and Medicare taxes withheld from Peter Hendrickson's wages in 2003 minus the total tax they reported they owed for 2003 (\$28.34). On line 70a of their 2003 federal tax return, the defendants requested a refund of \$10,228.00 (\$10,256.34-\$28.34) in federal income, social security and Medicare taxes. Henline Decl., ¶14 and Exhibit 2 thereto; Halbrook Decl., ¶¶4-6.

The 2003 tax refund made to defendants Peter and Doreen Hendrickson

19. After the defendants filed their 2003 Form 1040 tax return, an income tax assessment of \$28.34 was made against them on April 15, 2004, along with withholding and excess FICA credit of \$10,256.34, leaving a credit of \$10,228.00. Henline Decl., ¶15 and Exhibit 4 thereto.

20. The IRS applied a credit of \$5,551.44 to Peter Hendrickson's unpaid 2000 federal income tax liabilities. Additionally, credits of \$515.66, \$553.17 and \$529.18 were transferred and applied to IRC § 6702 frivolous return penalties assessed against the defendants on April 15, 2004. Henline Decl., ¶16 and Exhibits 4, 6, 7 and 8 thereto.

21. On October 4, 2004, an erroneous tax refund was made to defendants by Treasury check in the amount of \$3,172.30. Henline Decl., ¶17 and Exhibits 4 and 9 thereto.

22. The \$10,228.00 tax refund that the IRS made to the defendants for the 2003 tax year in the form of credits and a \$3,172.30 tax refund check was erroneous. The defendants were not entitled to a refund of federal income, social security or Medicare taxes for the 2003 tax year because their income tax liabilities exceeded their income tax payments. Based on the Form W-2 and 1099 information provided to the IRS for the 2003 tax year by defendants' employers, Peter Hendrickson received taxable wages of \$60,608.00 and Doreen Hendrickson received taxable compensation of \$3,188.00 during 2003. The taxpayers' total corrected tax liability of \$6,061.00, as shown on Exhibit 10 to the Declaration of Terri Grant, was greater than the \$5,620.02 in federal income tax that was withheld from Peter Hendrickson's wages during 2003 by his employer, and erroneously refunded by the IRS because of the false statements contained on the 2003 Form 1040 tax return filed by the taxpayers, and the Form 4852 attached to that tax return. Declaration of Terri Grant ("Grant Decl."), ¶¶11-12, and Exhibit 10 thereto.

23. The taxpayer defendants are also indebted to the United States for the social security (\$3,757.60) and Medicare (\$878.72) taxes that were withheld from Peter Hendrickson's wages during 2003 by his employer, Personnel Management, Inc., and erroneously refunded by the IRS as a result of the false statements contained on the 2003 Form 1040 tax return filed by the

taxpayers, and the Form 4852 attached to that tax return. Grant Decl., ¶¶13 and 14.

The IRS Frivolous Return Program

24. The IRS operates a Frivolous Return Program which identifies Form 1040 tax returns that are filed with the IRS that qualify as frivolous tax returns. IRS offices and service centers throughout the United States forward purported tax returns identified as frivolous to the Frivolous Return Program located in the Utah Service Center in Ogden. Henline Decl., ¶19.

25. Near the end of 2004, Frivolous Return Program employees began to observe a new pattern or trend in the filing of Form 1040 income tax returns (as well as Form 1040A and Form 1040EZ returns) and Form 1040X amended returns that asserted that the taxpayers had no taxable income. Henline Decl., ¶21.

26. In nearly every case, filed a purported federal income tax return that reported “zero” or no wages, salaries, or other income. The taxpayers also attached to the return a signed Form 4852 (Substitute for W-2, Wage and Tax Statement, etc.), filed under penalty of perjury, that reported that the taxpayers received no wages or salary from their employers. Henline Decl., ¶22.

27. In some instances, the Form 4852 also stated that the taxpayer requested his or her employer to provide him or her with a Form W-2, but that the “company refuses to issue forms correctly listing payments of ‘wages as defined in [sections] 3401(a) and 3121(a)’ [of the Internal Revenue Code] for fear of IRS retaliation.” Henline Decl., ¶23.

28. Cracking the Code was written by the defendant, Peter Eric Hendrickson and published in July of 2003. Henline Decl., ¶24. On page 76 of Cracking the Code (“CtC”), the 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).” A copy of a Form 4852 (“Substitute for Form W-2, Wage and Tax Statement, etc.”) appears on page 230 of CtC in its Appendix. Henline Decl., ¶¶24 and 25.

ARGUMENT

I. THE TAX REFUNDS WERE ERRONEOUS

Section 7405 of the Internal Revenue Code provides that the United States may bring a civil action to recover a refund of any tax imposed by the Code that the IRS erroneously makes.¹ In the present case, the United States seeks to recover tax refunds of \$10,152.96 and \$10,228.00 from the defendants under IRC § 7405(b). The Government also seeks interest on the amounts erroneously refunded, as provided by IRC § 7405(c).

In an erroneous refund suit under IRC § 7405(b), the United States has the burden of showing that it made a refund of a sum certain to a taxpayer, that its recovery action was timely commenced, and that the refund in issue was erroneous (*i.e.*, the taxpayer was not entitled to it). *See United States v. Commercial Nat’l Bank*, 874 F.2d 1165, 1169 (7th Cir. 1989); *United States v. MacPhail*, 313 F.Supp.2d 729, 733 (S.D. Ohio 2004), *aff’d in part, vacated with directions in part on other issues*, 149 Fed. Appx. 449 (6th Cir. 2005). The underlying premise in an erroneous refund suit “is that the taxpayer is unjustly enriched at the expense of the government

¹ Section 7405 embraces two kinds of erroneous refunds. First, IRC § 7405(a) provides that the United States may sue to recover a refund described as erroneous in IRC § 6514, *i.e.*, a refund that should not have been issued because it was barred by the applicable statute of limitations. Second, IRC § 7405(b) provides that the United States may sue to recover any other refund of tax it has erroneously made. *See United States v. Wurts*, 303 U.S. 414, 415 (1938); *United States v. Carter*, 906 F.2d 1375, 1377 (9th Cir. 1990).

and other taxpayers.” *MacPhail*, 313 F.Supp.2d at 735 (citation omitted). “As such, the government must show that the taxpayer has money ‘it ought not to retain.’” *Id.* (quoting *United States v. Russell Mfg. Co.*, 349 F.2d 13, 16 (2^d Cir. 1965)).

The United States has established, through the Declaration of Kim Halbbrook, that defendant Peter Eric Hendrickson was employed by Personnel Management, Inc., which paid him wages of \$58,965 in 2002 and \$60,608 in 2003. Personnel Management withheld federal income, social security and Medicare taxes from his wages and issued him Forms W-2 that reflected those withholdings.² The defendants subsequently filed tax returns which falsely reported that Peter Hendrickson earned no wages in 2002 and 2003. As they acknowledge in the affidavits submitted in support of their motion to dismiss the complaint in this action, defendants did not attach the W-2 forms issued by Personnel Management, Inc., to the 2002 and 2003 federal income tax returns that they filed with the IRS.

Instead, defendants attached Forms 4852 (“Substitute for Form W-2 Wage and Tax Statement, etc.”) to their returns. The Forms 4852 falsely stated that Peter Hendrickson had received no wages in 2002 and 2003. The Forms 4852 set forth the exact amounts of the federal income, social security and Medicare taxes that had been withheld from Peter Hendrickson’s wages by Personnel Management, Inc., in 2002 and 2003. Based on the false statements contained in defendants’ Forms 1040 and the attached Forms 4852, the IRS subsequently issued credits and refunds to defendants in the precise amounts they claimed on their 2002 and 2003

² Peter Hendrickson’s employer, Personnel Management, Inc., was required to withhold federal income, social security and Medicare taxes from Hendrickson’s salary in 2002 and 2003 and to pay the withheld taxes to the Internal Revenue Service under IRC §§ 3101, 3102(a), 3102(b), and 3402. *See Brewery, Inc. v. United States*, 33 F.3d 589, 591 (6th Cir. 1994).

federal income tax returns (\$10,152.96 and \$10,228.00, respectively).³ These refunds, which were comprised of all the federal taxes withheld from Peter Hendrickson's wages in 2003 and 2003, were erroneously made because they were based on defendant's misrepresentations (made on their tax returns and the Forms 4852 attached to those tax returns) that Peter Hendrickson earned "zero" wages during 2002 and 2003.

We anticipate that defendants will argue that they had no income tax liability for 2002 or 2003, and that the IRS accordingly did not erroneously refund the taxes that had been withheld from Peter Hendrickson's wages during the taxable years at issue. Defendants' argument is based on a fallacious interpretation of IRC § 3401(c) in Cracking the Code ("CtC") which the defendant, Peter Hendrickson.⁴ On page 76 of CtC, Peter Hendrickson erroneously states that "[s]o, 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)." *See* Henline Decl., ¶25. This is a stale, tax-protestor type argument that has been rejected numerous times over many years. *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

³ Instead of sending refunds checks for all of the withheld taxes to the defendants, the IRS applied most of the refunds as credits to the unpaid federal income liabilities owed by Peter and Doreen Hendrickson for other taxes under IRC § 6402. It is well settled that a tax credit, improperly allowed, is in the nature of an erroneous refund and may be recovered under IRC § 7405. *United States v. Guy*, 978 F.2d 934, 939 (6th Cir. 1992)

⁴ Section 3401(c) of the Internal Revenue Code provides as follows:

(c) Employee.— For purposes of this chapter, the term "employee" includes an officer, employee or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

“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). Peter Hendrickson was obviously an employee of Personnel Management, Inc. in 2002 and 2003 within the meaning of IRC § 3401(c). Hendrickson’s employer properly withheld federal income and employment taxes from his wages, and defendants fraudulently obtained refunds of those withheld taxes which the United States is now attempting to recover through the present erroneous refund suit.

The refunds of the withheld federal income, social security and Medicare taxes – which totaled \$10,152.96 and \$10,228.00 for the 2002 and 2003 tax years – were “erroneous” within the meaning of IRC § 7405(b) because the defendants were not entitled to receive them. As shown through the Declaration of Terri Grant and Exhibit 10, the Hendricksons’ federal income tax liability (based on their joint incomes) was \$6,327.00 for 2002 and \$6,061.00 for 2003. Since the income taxes that were withheld from Peter Hendrickson’s wages in 2002 (\$5,642.20) and 2003 (\$5,620.02) were the only income tax payments made by defendants, and less than the defendants’ federal income tax liabilities for the tax years at issue, the tax refunds (insofar as they were comprised of withheld federal income taxes) were clearly erroneous.

Nor were defendants entitled to the refunds of the social security and Medicare taxes that they received for the 2002 and 2003 tax years. These taxes, commonly referred to as “FICA” taxes, are used to fund Social Security and Medicare benefits.⁵ The FICA tax is comprised of two elements: old-age, survivor and disability insurance (OASDI), and hospital insurance (HI).

⁵ The Federal Insurance Contributions Act (“FICA”) is codified in Chapter 21 of the Internal Revenue Code, sections 3101 through 3128.

IRC §§ 3101(a) and (b); 3111(a) and (b). FICA taxes are imposed on both employees and employers. *Id.* Both elements of the tax are imposed on all “wages” received by an employee “with respect to employment.” IRC § 3101(a) and (b). The employees’ portion of the FICA tax is collected by the employer by deducting the tax from wages at the time of payment. IRC § 3102(a).

Section 3121(a) broadly defines “wages” for purposes of the FICA tax as “all remuneration for employment . . .” Although IRC § 3121(a) lists certain exceptions to this definition of wages, none are applicable here. The term “employment” is defined, in turn, in IRC § 3121(b), as “any service, of whatever nature, performed (A) by an employee for the person employing him,” again with certain exceptions not relevant here. Because Peter Hendrickson was employed by Personnel Management, Inc., during 2002 and 2003, his employer was required to withhold FICA taxes from his wages and pay them over to the IRS. *See Social Security Board v. Nierotko*, 327 U.S. 358, 365-66 (1946). Since defendants were not entitled to a refund of the withheld FICA taxes, it necessarily follows that the refunds made by the IRS were also “erroneous” within the meaning of IRC § 7405(b).

II. THE 2002 REFUND WAS INDUCED BY MATERIAL MISREPRESENTATIONS OF FACT

Under IRC § 6532(b), an erroneous refund action is barred by the statute of limitations if not brought within two years after payment of the erroneous refund, “except that such suit may be brought any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.” IRC § 6532(b). The instant suit to recover the erroneous refunds of federal income, social security and Medicare taxes made to defendants with respect to the 2002 and 2003 tax years which was commenced on

April 12, 2006, is within two years of the refunds of 2003 taxes, which were made on April 15, 2004, and October 4, 2004.

The refund of the 2002 taxes that was made on April 15, 2003 is timely within the five-year limitations period of section 6532(b) because the defendants made misrepresentations and fraudulent statements on their 2002 federal income tax return to induce the IRS to make the refund. At the very least, defendants' intentional misrepresentations (on their 2002 Form 1040 tax return and the Form 4852 attached to that return) that Peter Hendrickson had "zero" wages or salary in 2002 constituted material misrepresentations of fact that are sufficient to bring the Government's claims within the five-year limitations period of IRC § 6532(b). *Lane v. United States*, 286 F.3d 723, 732 (4th Cir. 2002) (holding that "the United States need not demonstrate more than gross negligence in order to avail itself of § 6432(b)'s five-year limitations period."); *United States v. McLean*, 420 F. Supp.2d 613 (E.D. Tex. 2006); *United States v. McLean*, 390 F. Supp.2d 475, 479 (D. Md. 2005) (misrepresentations concerning existence of trust on fiduciary tax return sufficient to trigger five-year statute of limitations under IRC § 6532(b)). Because all of the refunds were paid (either in the form of credits to other taxes owed by defendants or a Treasury check) within five years of April 12, 2006, the date on which this suit was filed, this erroneous refund suit is timely.

III. AN INJUNCTION SHOULD ISSUE UNDER SECTION 7402(a)

Section 7402(a) of the Internal Revenue Code gives the district courts jurisdiction to issue writs and orders of injunction, and such other orders "as may be necessary or appropriate for the enforcement of the internal revenue laws." *See United States v. Raymond*, 228 F.3d 804, 809 (7th Cir. 2000). This broad language manifests "a congressional intention to provide the

district courts with a full arsenal of powers to compel compliance with the internal revenue laws.” *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). *See also United States v. First Nat’l City Bank*, 586 F.2d 853 (2^d Cir. 1977). An injunction may issue under IRC § 7402(a) “to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute.” *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984). *See United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) (“federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax schemes”), *aff’d*, 827 F.2d 1144 (7th Cir. 1987). *See generally United States v. Lee*, 455 U.S. 252, 253 (1982) (noting that “the broad public interest in maintaining a sound tax system is of . . . a high order.”); *United States v. Ekblad*, 732 F.2d 562, 563 (7th Cir. 1984) (finding in a case brought under IRC § 7402 that “[t]he United States has standing to seek relief from actual or threatened interference with the performance of its proper governmental functions.”).

It cannot be disputed that the defendants filed sworn income tax returns and Forms 4852 (Exhibits 1 and 2 to the Declaration of Shauna Henline) that fraudulently reported that they received no income or wages when they knew they had gross incomes of more than \$60,000 during each of the taxable years in question. Defendants filed these false tax returns in order to obtain refunds of the federal income, social security and Medicare taxes that had been withheld from Peter Hendrickson’s wages in 2002 and 2003. The IRS applied the erroneous refunds, which totaled \$20,380.96, to the defendants’ outstanding federal income tax liabilities and sent

them a check for the balance.⁶

In addition to the monetary loss occasioned by the erroneous tax refunds that the IRS made to or on behalf of the defendants, the defendants' conduct in filing their 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. Defendants' actions impose an immediate and irreparable injury on the United States by impeding, impairing and obstructing the assessment and collection of federal taxes in accordance with the internal revenue laws. In the absence of an injunction, the United States will continue to suffer irreparable injury as the defendants and those who imitate them continue to file false tax returns. Since the United States 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.

The injunction should prohibit the defendants from filing any tax return or amended return with the IRS that is based on the claim that only federal, state or local government workers are liable for the payment of income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws. Defendants should also be required, within a reasonable period of time, to file corrected amended Form 1040 tax returns for the 2002 and 2003 tax years with the IRS that report (1) the wages of \$58,965 and \$60,608 that Peter Hendrickson received from his employer, Personnel Management, Inc., in

⁶ The need for an injunction under IRC § 7402(a) is further underscored by Peter Hendrickson's prior conviction in this Court in 1992 for willfully failing to file an income tax return. *See United States v. Scarborough*, 43 F.3d 1021 (6th Cir. 1994).

2002 and 2003, respectively; and (2) the non-employee compensation of \$3,773 and \$3,188 that Doreen Hendrickson received from her employer in 2002 and 2003, respectively.

CONCLUSION

For the foregoing reasons, the Court should grant the plaintiff's motion for summary judgment and enter judgment in favor of the United States and against the defendants, Peter Eric Hendrickson and Doreen M. Hendrickson. A proposed order granting the United States' motion for summary judgment and a proposed form of permanent injunction are submitted herewith.

Respectfully submitted this 13th day of July, 2006.

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