

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.

**MEMORANDUM OF LAW IN SUPPORT OF THE
PLAINTIFF'S MOTION TO AMEND JUDGMENT**

This is an action under section 7405 of the Internal Revenue Code (26 U.S.C.) ("IRC") to recover the erroneous federal tax refunds made to the defendants for the 2002 and 2003, and to obtain an injunction barring defendants from filing tax returns that falsely claim that wages paid to private sector employees are not subject to federal taxes. The Magistrate Judge's Report and Recommendation (doc. #17) recommended that plaintiff's motion for summary judgment be granted. On February 26, 2007, this Court entered an Order (doc. #21) accepting in part and rejecting in part the Magistrate Judge's Report and Recommendation.

The United States has moved, pursuant Fed. R. Civ. P. 52(b), to amend the Judgment (doc. #22) entered on February 26, 2007, to make additional findings regarding (1) the amounts of the erroneous tax refunds due from defendants for the 2002 and 2003 tax years; and (2) the reasons for the issuance of the permanent injunction against defendants (as required by Fed. R. Civ. P. 65(d)). A proposed Judgment and Order of Permanent Injunction is submitted herewith. For the following reasons, the plaintiff's motion to amend the Judgment should be granted.

ARGUMENT

A. The Court Should Enter Judgment For The Amounts Of The Erroneous Refunds Due From The Defendants For 2002 And 2003

In this civil action, the District Court has entered a judgment for the United States that granted the plaintiff's motion for summary judgment and dismissed the case. The judgment (doc. #22) entered in this erroneous refund suit on February 26, 2007, did not set forth the amounts of the erroneous income tax refunds, plus interest, against the defendants, Peter Eric Hendrickson and Doreen M. Hendrickson for the 2002 and 2003 tax years. Plaintiff respectfully submits that a money judgment for a sum certain should be entered in accordance with Fed. R. Civ. P. 58. See *United States v. Schaefer Brewing Co.*, 356 U.S. 227, 233 (1958); *Philhall Corp. v. United States*, 546 F.2d 210, 213 (6th Cir. 1976). In *Philhall*, the Sixth Circuit quoted *Schaefer Brewing Co.* for the proposition that "a tax refund suit is an action for money only, and it is necessary to determine whether the language [of any purported judgment] embodies the essential elements of a judgment for money and clearly evidences the judge's intention that it shall be his final act in the case. If it does so, it constitutes his final judgment." 546 F.2d at 213. Thus, a judgment for money, as here, should evidence the judge's intent that it be her final act, and set forth a sum certain.

In recommending that the plaintiff's motion for summary judgment in this erroneous tax refund suit be granted, the Magistrate Judge determined that no genuine issue of material fact remained with respect to defendants' receipt of erroneous tax refunds of \$10,152.96 and \$10,228, respectively, for the 2002 and 2003 tax years. The proposed judgment submitted herewith provides that the United States shall recover the credits that were erroneously applied to defendants' other federal tax liabilities in the amounts of \$1,699.86, \$6,521.11 and \$1,931.99 (\$10,152.96 total) for the 2002 tax year, with interest at the underpayment of tax rate specified

by IRC § 6621 from April 15, 2003, the date the erroneous credits were applied.¹ With respect to the 2003 tax year, the proposed judgment provides for the recovery of four credits that were erroneously applied to defendants' other federal tax liabilities on April 15, 2004 (\$5,551.44, \$515.66, \$553.17 and \$529.18), along with the erroneous tax refund of \$3,172.30 made to defendants on October 4, 2004, for a total of \$10,228.00.²

As the Magistrate Judge noted in his Report and Recommendation (doc. #17 at 7), “[d]efendants do not deny that they filed 2002 and 2003 returns claiming \$10,152.96 and \$10,228 respectively, further acknowledging that these amounts were either applied to earlier tax liabilities or submitted to them by check.” Because the tax credits and the tax refund issued to the defendants was erroneous within the meaning of IRC § 7405, they are indebted to the United States in the amounts of \$10,152.96 and \$10,228 for the 2002 and 2004 tax years, and judgment should be accordingly be entered against them.

B. A Permanent Injunction Under Section 7402(a) Is Appropriate

Section 7402(a) 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. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir.

¹ Section 7405(c) of the Internal Revenue Code (26 U.S.C.) (“IRC”) provides that interest on the amount of the erroneous refund or credit will accrue in accordance with IRC §§ 6602 and 6621. Section 1961(c) of Title 28, United States Code, provides that interest on any money judgment will accrue under IRC § 6621 in cases involving “. . . any judgment . . . with respect to any internal revenue tax case.”

² The dates of tax credits or refunds are set forth separately in the proposed judgment because interest, at the underpayment rate specified by IRC § 6621, begins to run on the dates that the credits or refund were erroneously applied or made.

1984). 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). An injunction issued pursuant to IRC § 7402(a) is appropriate here because of defendants’ actions in (1) repeatedly filing income tax returns that falsely and fraudulently reported that they had no taxable income at all; (2) illegally claiming and obtaining refunds of the federal income, social security and Medicare taxes withheld from Peter Hendrickson’s wages in 2002 and 2003; and (3) promoting Peter Hendrickson’s “zero tax” theories on the www.losthorizons.com website. See *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) (injunction under IRC § 7402(a) was appropriate to preclude individuals “from disseminating their rather perverse notions about compliance with the Internal Revenue laws.”), *affirmed*, 827 F.2d 1144 (7th Cir. 1987).

Injunctive relief under IRC § 7402(a) is necessary to further the enforcement of the internal revenue laws and to prevent defendants’ blatant interference with the administration of these laws. Defendants have no right to file tax returns with the IRS that falsely claim that the wages received by private sector workers are non-taxable. As the Magistrate Judge found in his Report and Recommendation (doc. #17), the Government has met the traditional equity standards for a permanent injunction. The proposed permanent injunction complies with the requirements of Fed. R. Civ. P. 65(d) in setting forth the reasons for its issuance and describing, in reasonable detail, the acts sought to be restrained.

CONCLUSION

For the foregoing reasons, the Court should grant the plaintiff's motion to amend the judgment and enter a final judgment in favor of the United States with respect to the erroneous tax credits and refund that defendants received for the 2002 and 2003 tax years. The Court should also enter a permanent injunction prohibiting defendants from filing "zero income" tax returns that falsely claim that the wages of private sector employees are not subject to tax.

Respectfully submitted this 2nd day of March, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2007, I electronically filed the foregoing

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JUDGMENT with the Clerk of the Court using the CM/ECF system. I hereby certify that I

have mailed by United States Postal Service the documents to the following non-CM/ECF

participants:

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