(12)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
v.	§	
	§	**Case No. 2:06-CV-11753**
PETER ERIC HENDRICKSON and	§	**Judge Nancy G. Edmunds**
DOREEN M. HENDRICKSON,	§	No Brief
Defendants.	§	
	§	

DEFENDANTS' MOTION FOR RECONSIDERATION

Defendants respectfully move the Court for a reconsideration of its rulings in the above-captioned matter. Plaintiff has utterly failed to carry its burden of proof as to any issue of fact relevant to the matter, and has thus failed to meet its obligation to establish the jurisdiction of the Court, as well as its obligation to substantiate the existence of a lawful claim or interest for which it can seek relief.

Plaintiff has failed to prove, or even to attempt to prove, that Defendants owe or owed Plaintiff anything. The existence of an obligation is not established by the mere making of an allegation, whether by a complaining party directly, or, as Plaintiff attempts in the instant case, by proxy-- even when the allegation (whatever its character) is made by way of an affidavit; this is particularly so when such allegations have been explicitly (or even implicitly) rebutted. Thus, Plaintiff lacks (and has lacked from the beginning) standing and statutory authorization to bring suit for any reason, and particularly under the auspices of the law reflected at 26 USC 7405.

It is Plaintiff's burden to lay out with specificity what activities are taxed under the income tax laws; and to prove that Defendants engaged in those activities, and to such a degree as to cause a tax liability to result. Plaintiff has not even attempted to meet either burden. Instead, Plaintiff has merely submitted one hearsay affidavit into evidence, which is (and has repeatedly been) explicitly rebutted by sworn testimony. Otherwise, Plaintiff has done nothing more than carry on ad nauseum with completely irrelevant (and unsubstantiated, inflammatory and prejudicial) declarations of "fraud and falseness". Such declarations are irrelevant to Plaintiff's burden. Either Defendants are, and were, objectively liable for a tax, or they are, and were, not. Short of Defendants' sole ability to have made the question moot, nothing Defendants may or may not have done-- false, fraudulent, frivolous, whimsical or otherwise-- can affect, or can have affected, that objective reality in any way whatsoever. Nothing Defendants may or may not have done-- false, fraudulent, frivolous, whimsical or otherwise-- has relieved Plaintiff of its burden of proving its allegations that Defendants were, and are, objectively and actually liable for a tax relative to the years in question.

Furthermore, Plaintiff was actually obliged to meet this burden in its entirety within the body of its complaint, or lack standing to pursue the case to begin with. In the absence of pre-existing, definitive and conclusive determinations that Defendants had liabilities for the years in question, Plaintiff is barred from bringing suits such as the instant action. Congress has explicitly provided that an executed return such as the 1040s created by Defendants are dispositve instruments by which such determinations are made, precisely in order to prevent suits of this kind. It was obviously not the intention of Congress that this provision be thwarted by the simple mechanism of Plaintiff disputing

such determinations, nor that the Court allow Defendants to be subjected to the ordeal of a lawsuit so as to furnish Plaintiff with an opportunity to attempt to creatively justify having done so.

Finally, the injunction sought by Plaintiff is plainly violative of 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, as well as various federal criminal statutes and the fundamental principles of due process. For these reasons and others, Plaintiff's Motion For Summary Judgment should be denied, and Defendants' Motions To Dismiss And For Other Relief should be granted. Otherwise, the Court should permit Defendants to answer Plaintiff's complaint so that the matter can proceed to a proper jury trial.

DISCUSSION

1. Plaintiff has rested its entire case on the existence, and supposed veracity, of certain "information returns" (W-2s and 1099s) on which it is alleged that payments of certain particular amounts AND of certain particular legal character were received by Defendants. That is, such "information returns" report an amount paid, AND allege that the reported amount is a measurement, and consequence, of taxable activity engaged in by the recipient.

> *"The income tax is, therefore, not a tax on income* [earnings] *as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax."*
> F. Morse Hubbard, Treasury Department legislative draftsman. House Congressional Record, March 27, 1943, page 2580.

Plaintiff has produced NO EVIDENCE OF ANY KIND which is not entirely based, and utterly dependent, upon the presumed correctness of these "information returns" in both respects; and has produced NO EVIDENCE OF ANY KIND which independently substantiates that correctness.

The only aspect of these "information returns" which has been credibly substantiated is the amount (not the legal character) of Defendant Peter Hendrickson's property diverted from him and put into the temporary keeping of Plaintiff during 2002 and 2003 which was also reported on the W-2s. The substantiation of that single aspect of the "information returns" upon which Plaintiff bases the entirety of its case, consists of the testimony of Defendant Peter Hendrickson on the Forms 4852 submitted with Defendants' tax returns-- which testimony simultaneously rebuts the assertions on those same W-2s as to the amount of taxable activity engaged in by Hendrickson during the periods involved (which activity, within the context of Forms W-2, is reported as the payment of "wages as defined in the law reflected at sections 3401(a) and 3121(a) of Title 26"). THUS, PLAINTIFF HAS NOT MET EVEN A HINT OF ITS BURDEN OF PROOF.

2. Because Plaintiff has not supported its case with any evidence, we are forced to suspect that the Court is basing its decisions in this matter on unstated presumptions. We respectfully submit that to do so is judicial error, for the following reasons, at least:

It is self-evident (and a simple matter of law) that not every payment made is a payment of "wages as defined at 3401(a) or 3121(a) of title 26", a payment of "gains profit and income" made in the course of a "trade or business", or, speaking more generally, a payment made in connection with a taxable activity. It is not necessary at

this time to go into what DO constitute such payments-- it is enough that some payments do not. Because this is so, the issue in the instant matter is one involving questions of fact as well as questions of law. Those pertaining to the law are exclusively of the character of, *"IF it were to be established as true that payments of a particular amount AND resulting from the conduct of particular activities were received by the Defendants, then the law says that such-and-such is the consequence"*. With all due respect, the Court CANNOT presume for ANY reason that such payments were received by the Defendants-- because there is explicit testimony in the record that they were not. Once challenged or rebutted, presumptions have no legal standing whatsoever as a matter of fundamental principle, and also as specified in the Federal Rules of Evidence:

> *Federal Rules of Evidence Rule 301. Presumptions in General Civil Actions and Proceedings*
> *In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.*

The mere existence of "information returns" asserting such payments is immaterial, because it is also self-evident that what is reported on "information returns" can be simply wrong. Even if Kim Halbrook, for instance, whose testimony as to having seen records alleging (or assumed by her to allege, or constitute) payments of "wages as defined in the law" to Defendant Peter Hendrickson is so integral to Plaintiff's presentation, really BELIEVES what she alleges to be true, she could be wrong, for many different reasons and in many different ways. Or she could be simply lying. In any event, she cannot be simply presumed to be knowledgeable, accurate or honest,

particularly in the face of testimony explicitly disputing her assertions. Neither can any document be held to be self-validating in the face of testimony to the contrary, with one significant exception:

> *"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)*

That the process specified in this statute remains intact and in force is illustrated by the following IRC and CFR sections:

> *26 USC § 6201*
> *(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.*
>
> *6 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...*

3. Aside from the United States Department of Treasury Certificates of Assessment establishing that the official position of Plaintiffs client agency is that no tax is or ever was paid in by Defendants, or is now, or ever was, owing to Plaintiff or its client in connection with the years 2002 and 2003 (due to which the legitimacy of any alleged authorization for the bringing of this action pursuant to the requirements expressed at 26 USC 7401 is gravely compromised, and the legitimacy of Plaintiff's

standing to bring this action under 26 USC 7405 is demonstrably non-existent), no relevant evidence is in the record but the "information returns" discussed above (upon which all of Plaintiff's averments and testimonials rest like a pyramid standing on its point) and Defendants' own filed documents. Therefore, we will also address the possibility that our own documents are being somehow construed as a basis for presumptions of fact in support of Plaintiff's claims, a construction which would be illegitimate for similar reasons to those given in the previous discussion of presumptions related to the existence and content of "information returns".

While the legal consequences of the making of any particular testimony, or the implications of the use of any particular forms or references thereto, may be "matters of law", the intent-- and therefore, the actual meaning, the actual legal character and the actual legal significance-- of such testimony, usage and/or references are purely matters of fact. As such they are matters of which we respectfully submit that the Court has no knowledge of its own; they are matters of which Plaintiff has no knowledge of its own; and they are matters regarding which Plaintiff has introduced no first-hand (and thus relevant) testimony. They are also matters regarding which WE HAVE first hand knowledge. We have made clear through the affidavits accompanying our various filings in the case so far, as well as by our return instruments themselves, honestly read, that our intentions in the making of our return testimony, and the use of, or reference to, any forms in the course of or in connection with that testimony is to explicitly rebut Plaintiff's claims, and the basis upon which Plaintiff purports to make such claims. Thus, no adverse presumptions can be legitimately sustained based on that testimony or usage.

Furthermore, the purely legal implications of completing and submitting tax return documents do not support presumptions adverse to Defendants and favorable to Plaintiff. In addition to the provisions of law cited earlier in our discussion of the self-validating and legally dispositive character of an executed return, we are instructed by the following:

> *26 CFR Sec. 301.6402-3 Special rules applicable to income tax.*
> *(a) In the case of a claim for credit or refund filed after June 30, 1976--*
> *(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.*
>
> *"Even if you do not otherwise have to file a return, you should file one to get a refund of any Federal income tax withheld."*
> From the instructions for the 2002 Form 1040
>
> Senator Danaher: *"Of course, you withhold not only from taxpayers but nontaxpayers."*
> Mr. Hardy: *"Yes."*
> ...
> Senator Danaher: *"I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?"*
> Mr. Friedman: *"You're thinking of a corporation or an individual?"*
> Senator Danaher: *"I am talking about an individual."*
> Mr. Friedman: *"An individual will file an income tax return, and that income tax return will constitute an automatic claim for refund."*
> From a hearing before a subcommittee of the committee on finance, United States Senate, during the 77th Congress, Second Session on withholding provisions of the 1942 Revenue Act on August 21 and 22, 1942. Connecticut Republican Senator John A. Danaher and testifying witnesses Charles O. Hardy of the Brookings Institution and Milton Friedman of the Treasury Department Division of Tax Research.

In any event, the tax arises from engaging in taxable activities, and nothing else. It does not arise from the use or completion of certain forms, whether returns, or any other variety of form, document or instrument, and whether used or completed by

Defendants, or anyone else; nor can the conduct of such activities be presumed from the use or completion of any form, in the face of explicit testimony to the contrary.

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.

CONCLUSION

At no point in these proceedings, from the complaint itself to the present, has Plaintiff carried its burden of proof. Plaintiff had no statutory authority to bring this suit, and, in fact, violated several statutes in doing so.

Plaintiff has, and has had, no legitimate, substantiated complaint to prosecute. It has demonstrated none in any of its voluminous filings, and has not even made a meaningful effort to substantiate the legitimacy of what it purports to be its complaint.

Plaintiff has sought "relief" which is abhorrent to the Constitution under the sole authority of which it exists at all, and has done so for the deliberate purpose of evading both provisions of that fundamental law, and numerous plain and proper enactments of Congress. Indeed, in every regard, Plaintiff's action has been brought for grossly improper purposes.

Every aspect of Plaintiff's presentments in this action-- its deliberate, repeated effort to dissemble as to the content of Defendant Peter Hendrickson's book, its side-stepping of every substantive element of it's assertions that Defendants owe or owed any tax, its calculated efforts to obscure the real issues in this matter with an endless clutter of irrelevancies, and the lawless relief it has sought-- serves to demonstrate that the real nature of this action is an attempt by Plaintiff to protect a lie, and to suppress or neutralize a truth to which it has no other answer. It is therefore no surprise that Plaintiff has failed to prove its case.

WHEREFORE

We pray this Court reconsider its prior decisions in this matter and:

1. FIND that Plaintiff has failed to meet its burden of proof, DENY Plaintiff's motions, and GRANT Defendants' previously filed Motion To Dismiss and such other relief as the Court finds appropriate;

or,

2. DENY Plaintiff's Motions, GRANT Defendants' previous Motions For More Definite Statement, To Strike, and giving Notice of Violation Of FRCP Rule 11 insofar as the Court sees fit, permit Defendants to answer the complaint, and allow this matter to proceed to a proper jury trial.

Dated this the 12th day of March, 2007

Respectfully submitted

Peter Eric Hendrickson

Doreen M. Hendrickson
232 Oriole Rd.
Commerce Twp, Michigan 48382
(248) 366-6858

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2007 a true and correct copy of the above and foregoing document was served on the Plaintiff as listed below by First Class Mail to:

Robert D. Metcalfe
Trial Attorney Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, DC 20044

Peter Eric Hendrickson