Dear

I never thought I would see the day in this country when I could be ordered to sign my name to words dictated by the United States government, not to mention words I believe to be false. I've seen this sort of thing on TV where American hostages are giving testimonials with ski-masked, armed captors ensuring that the Americans spoke the words that would spare their lives.

With considerable dismay, I now see our judiciary employing the same tactics that terrorists impose on their victims. Two Americans have been ordered to perjure themselves, that is to sign their names to documents that say things the government wants said, even though they believe these things to be false.

Federal Judge Nancy Edmunds (ED Michigan) has ordered Peter and Doreen Hendrickson held in contempt (14 days of $150 fines each, then incarceration) until they submit to her illegal order and testify to her specifications (as asked of her by the IRS and DOJ).

Let me be clear. The Hendricksons are not being punished for not testifying. They HAVE already testified. The government just doesn't like what they said, and is trying to coerce them into saying things more to its interests. (Can you say: suborning perjury? How about: raw, banana-republic-level corruption?)

Though the documents involved are tax returns, this fact is not relevant. The **only relevant issue** is that a federal judge has completely overstepped her authority.

No one in this country can legally compel custom testimony…Not on a tax form…Not on a contract…NOT ON ANYTHING!!!

Please help to uphold the principles on which this country was founded. Today, it's the Hendricksons and a tax form, tomorrow…

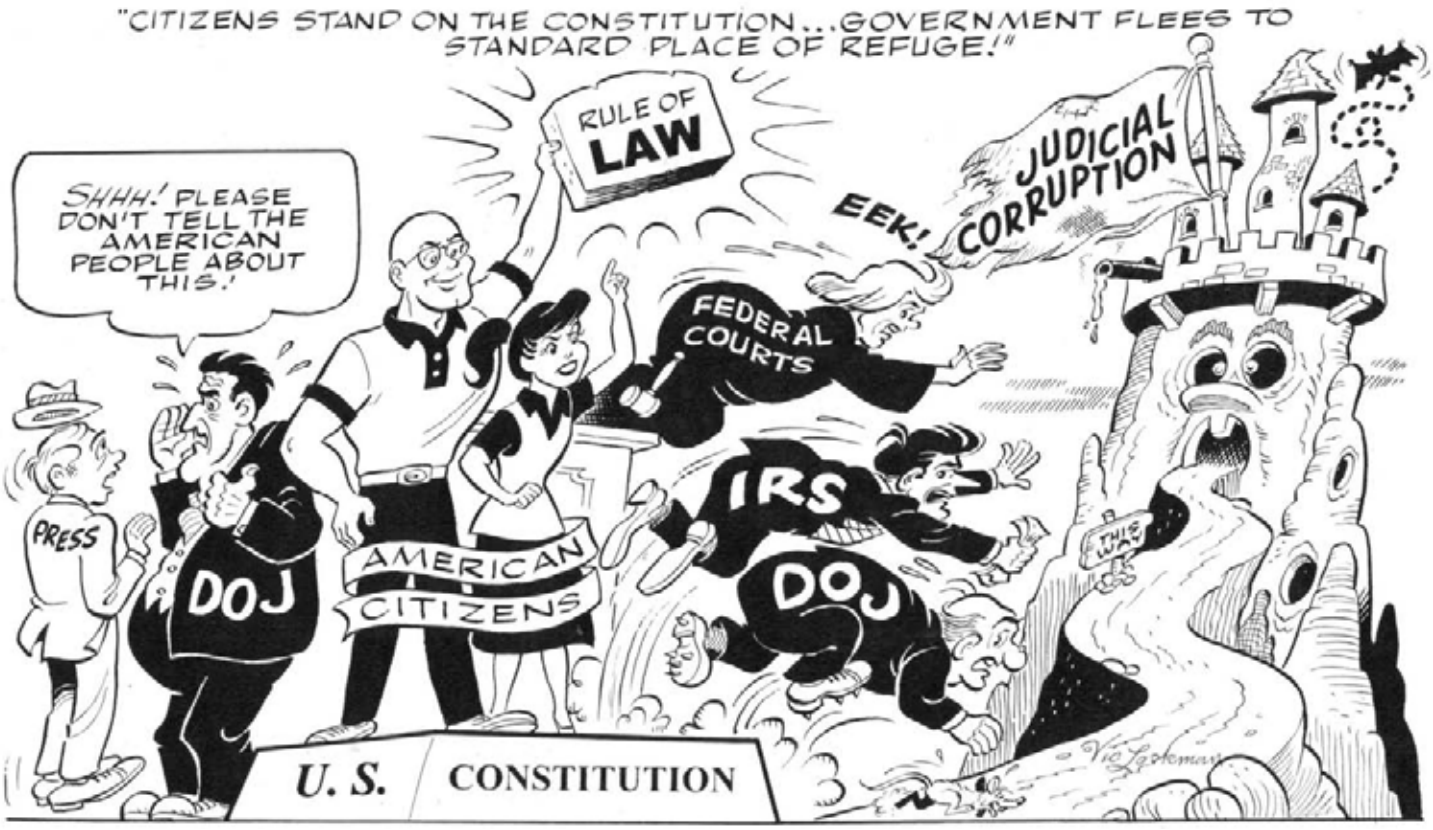
Please join me in taking serious notice of this precipitous descent into Stalinism in an America already dangerously far down the road to complete lawlessness and barbarism.

Read the documents enclosed. Some of the material will be easy, some will call for a little more effort, but all will be crystal clear, even though the two motions are legal briefs.

Remember, in this country, the law is YOUR law, and the only ones who can enforce it against government operatives who take liberties with the rules are the rest of us. They can't be relied upon to police themselves, as what you are about to read will make obvious.

Sincerely Yours,

FOR IMMEDIATE RELEASE



Judge Orders Michigan Couple To Testify Against Themselves

On February 26, 2007 and again on May 2 of that year, a team of U.S. Department of Justice (sic) (DOJ) Attorneys and Federal District Court Judge Nancy G. Edmunds of the Eastern District of Michigan ordered Peter and Doreen Hendrickson to testify against themselves.

Judge Edmunds granted a DOJ- and IRS-requested “summary judgment” in a lawsuit asking for the Hendricksons to be coerced into changing their sworn testimony on already-filed tax returns in order to give the federal government a pretext for claiming the couple owed income taxes in 2002 and 2003.

The suit, and Edmunds’ “order”, are part of a sustained IRS effort to suppress revelations about the true legal nature of the income tax presented in Peter Hendrickson’s book, 'Cracking the Code- the Fascinating Truth about Taxation in America', which have had the tax agency in behind-the-scenes disarray for many years now. Since the book went to print in August 2003, readers have been steadily recovering every penny withheld from them in connection with the income tax from the federal and state governments -- including Social Security and Medicare ‘contributions’.

Odds are, Edmunds’ "order" started out as pure eyewash for the consumption of a gullible public and press. After all, forcing someone to change sworn testimony is outside the legitimate authority of any court. In fact, it’s called “witness tampering”, and it’s a felony. No effort was made to enforce the order.

However, after years of trying to frighten Americans away from Hendrickson’s book with triumphant press releases about a victory in court (without dwelling on any details), the IRS found that it wasn’t working. Simple word-of-mouth from enthusiastic readers saw tens of thousands of books flooding into the hands of other Americans wanting to know the truth about the tax during those same years.

So now things have escalated. The Hendricksons are to be thrown in prison until they “sign ze papers”. If the Hendricksons WERE to amend their forms with what the government dictates, then a new batch of press releases could go out, saying “See? The Hendrickson’s DID owe taxes for those years, after all! Now, all you tens of thousands that thought you got free just by reading what the law really says, GET BACK IN THE BARN!” *Is this a great country, or what?*

Judge Edmunds did all of this without so much as a single hearing over more than four years (until the imprisonment threat was issued two weeks ago), and despite the fact that not only have the official Treasury Department Certificates of Assessment shown for six and seven years now that the Hendricksons have never owed taxes for the years involved in the “lawsuit”, but nowhere in the complaint does the DOJ present evidence that the Hendricksons owe anything or that their returns as filed are inaccurate in any way.

The sordid fact is, the IRS has been trying to suppress Hendrickson’s book since it first appeared. This effort is the fourth to make it into a courtroom. In each of the previous three, the DOJ itself asked the various courts involved to dismiss the agency’s suits once they were contested. This revival of the effort indicates that the intensity of the IRS’s desire has overridden the increasingly politicized DOJ’s better instincts.

The reason the tax agency hates and fears Hendrickson’s book is simple: 'Cracking the Code-...' makes unmistakably clear to every reader that the application of the income tax is far more limited than most Americans have been carefully led to believe through decades of propaganda to the contrary. The book demonstrates how key terms in the code such as “wages,” “employer,” “employee,” “trade or business” and “self-employment” are explicitly defined in the law in order to limit the income tax to benefits of federal privilege, such as dividends from federally-controlled corporations, and compensation paid to federal workers and officeholders (including judges, DOJ attorneys and IRS agents, by the way…).

Earnings unconnected with such privilege are not subject to the tax. Unaware of these special definitions, most Americans give the words their common meaning, fill out and sign their tax returns accordingly, and mistakenly pay taxes they do not owe.

Hendrickson’s book makes clear that the limited nature of the tax is not a matter of his opinion. In addition to the plain words of the law, dozens of United States Supreme Court rulings agree with his research and analysis, while none support the broad misunderstanding of the law the IRS and certain courts like to encourage. ‘Cracking the Code-…’ is richly salted with every possible authority, from the words of the law, the courts, Treasury Department documents and testimony to Congress, you name it. Here are how a few attorneys who have studied the book describe it:

"[Y]ou really need to familiarize yourself with Pete Hendrickson's absolutely magnificent work at his website and in his book(s). He has, brilliantly and lucidly, "cracked the code" regarding the federal income EXCISE tax(es)."
Mark C. Phillips, JD

"...I find your work fascinatingly simple to understand."
Jerry Arnowitz, JD

"Your book is a masterpiece!"
Michael Carver, JD

"Received your book yesterday. Started reading at 11 PM, finished at 4 AM." "I have 16 feet (literally 16' 4.5") of documents supporting just about everything in your book." "Your book should be required reading for every lawyer before being admitted to any Bar." "I hope you sell a million of them."
John O'Neil Green, JD

“Thanks again for your efforts, Pete. They mean an awful lot to a lot of people.” “…as an attorney, I am humbled by your knowledge and ability in navigating the law. THANK YOU for your hard work and sacrifice.”
Eric Smithers, JD

"I am an attorney and want to give a testimonial to your book, which I find to be compelling. I am exercising these rights for myself and my adult children. I'm even considering making this my new avenue of law practice."
Nancy "Ana" Garner, JD

The IRS appears, at best, "conflicted". Even while presenting a disparaging (but carefully inaccurate) summary of 'Cracking the Code-...' on its web site and carrying on with its “lawsuit”, the agency continues to send full refunds-- Social Security and Medicare ‘contributions’ included-- to nearly everyone who files accurate returns based on what they learn by reading the book (that is, folks who file returns the same way that the Hendricksons’ actually filed theirs).

Hendrickson’s web site, www.losthorizons.com, shows copies of refund checks, credits, corrected account statements and closing notices (surrender papers the IRS sends out when it gives up on its occasional effort to balk at an educated filing), and, in many cases, the complete filing that produced them. These admissions currently (as of 6/18/10) add up to over $10.8 million received by his readers in complete refunds and retentions of EVERYTHING-- Social Security and Medicare taxes included-- from the federal and state governments since the book was first published. This amount, which the IRS says is a mere fraction of what it has returned to readers of Hendrickson’s book so far, continues to grow every week.

The most recent complete federal refund check posted as of this writing was issued on June 11, 2010 and was the return of everything withheld from a happy, law-upholding reader during 2002, plus interest.

Indeed, each and every month since the filing of this "lawsuit" more than two years ago, an average of more than $83,000.00 worth of subsequent victories in obliging the federal and state governments to stick within the limits of the law have been shared with the world by upstanding CtC-educated Americans, an even higher average than had been the case for the several years before this latest effort to suppress the book began. The only differences between pre- and post-"lawsuit ploy" is that now many more state governments (33, so far) have joined the feds in acknowledging the truth about the law revealed in CtC than had done so before, and are themselves routinely issuing complete refunds of every penny withheld and turned over to them by payers in connection with the “income” tax.

The simple fact is, while the DOJ and Judge Edmunds work to suppress Hendrickson’s book, and the IRS floods the media with disinformation and fear, the hard evidence-- the words of the law, dozens of Supreme Court rulings, the ongoing stream of complete refunds and everything else-- remains squarely on the side of the liberating revelations in 'Cracking the Code- the Fascinating Truth about Taxation in America'.

CONTACT: Pete Hendrickson
E-mail: phendrickson ‘at’ losthorizons.com

###

"Don't pay any attention to Joe back there...
He's just... uh... cleaning up the office...
You pay attention to me!
This 'Cracking the Code' book is nothing but
FALSE and FRIVOLOUS nonsense!"

For a quick introduction to the truth about the tax,
see
http://losthorizons.com/Intro.pdf

For a documented history of government efforts to suppress
'Cracking the Code- The Fascinating Truth About Taxation In America',
see
http://losthorizons.com/ADocumentedCtCSuppressionHistory.pdf

To enjoy a few video testimonials from readers of the book,
see
http://losthorizons.com/AreYouReady.htm
and
http://losthorizons.com/WtW.htm

LOSTHORIZONS.COM

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,	§	
Defendants.	§	
	§	

MOTION TO VACATE JUDGMENT

Defendants Peter and Doreen Hendrickson move the Court to vacate its judgment and orders in the above-captioned case, and dismiss Plaintiff's Complaint with prejudice, for reasons set forth in the attached memorandum of law and fact.

MEMORDUM IN SUPPORT OF DEFENDANTS' MOTION FOR THE VACATING OF JUDGMENT

INTRODUCTION

On February 26, 2007, and again on May 2, 2007, this Court declared us to be indebted to Plaintiff upon Plaintiff's motion to that effect. No evidence of such indebtedness was ever introduced into the record by Plaintiff in support of its complaint or motion.

Nor was any evidence of an agreement or event under which such an indebtedness could arise introduced or identified by Plaintiff. In fact, Plaintiff's own Department of Treasury has persistently indicated to all inquirers, Plaintiff and this Court included, that we DO NOT owe Plaintiff the debt Plaintiff claims to be seeking to "recover" (see Dept. of Treasury Certificates of Assessment attached as exhibits to our Reply to Plaintiff's Motion for Summary Judgment Doc. #13 and more recent certificates attached as exhibits to our Response to Plaintiff's Motion to Compel Discovery, Doc. #47).

Plaintiff instead merely introduced four unsigned pieces of paper purportedly produced by two "third parties", the form and content of which suggest that we had engaged in activities which could theoretically cause an indebtedness to Plaintiff to arise. Two out of four of these hearsay documents were meaninglessly declared "true copies" of "original" hearsay documents by a record-keeper of one of the third parties (Personnel Management, Inc.) in an affidavit introduced into the record by Plaintiff (although their accuracy as "true copies" had neither been disputed, nor was relevant).

The other two hearsay documents, purportedly created by one Una Dworkin, hadn't even the benefit of this pretense of "support". Not one of these four hearsay documents were supported by testimony or any other evidence.

We categorically and repeatedly disputed every allegation of fact relevant to the existence of the alleged debt both implied and specified in Plaintiff's Complaint and the hearsay documents it relies upon as "evidence" by eight sworn affidavits properly introduced into the record. Further, we introduced undisputed evidence, certified by Plaintiff itself, that no such debt exists. To date, Plaintiff has never substantiated its allegations in any manner, despite being required to do so by the basic principles of due process and by explicit statutory specifications.

ARGUMENT

1. There has never been a case or controversy to adjudicate, as Plaintiff agrees that we owe it no tax.

Plaintiff itself apparently believes in the accuracy and correctness of our positions on all matters involved in this suit. This is evident by its failure to controvert our positions in a legally-meaningful manner, as it is required to do by statute if it believes our positions on these matters to be incorrect, pursuant to 26 USC 6020(b), which says, in pertinent part:

> *Sec. 6020. - Returns prepared for or executed by Secretary*
> *(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.* (Emphasis added.)

Plaintiff has persistently and consistently declined to subscribe to any claim that our returns were false, fraudulent, or invalid (and thus effectively never made), as required to do by 26 USC 6020(b) if it believes any of these things to be true (even while gratuitously suggesting to the Court that our returns were false or fraudulent in its filings in this suit). Its silence is its admission of the accuracy of our returns.

Plaintiff's effort to seduce the Court into compelling us to change the testimony on our returns to its specifications, while failing to produce any returns of its own expressing disagreement with those we have already made, dramatically highlights this aspect of the sordid bad-faith of Plaintiff's "Complaint". Plaintiff declines to dispute our returns itself, but hopes to coerce us into changing them. This is a transparent effort to create a pretext for claims in its favor which Plaintiff knows do not actually exist.

Thus, there never was any case or controversy of which this Court could take cognizance, since all parties are in agreement that no tax is due and owing, as indicated by Plaintiff's failure to assert any contrary claim (and as Plaintiff plainly reports on its Treasury Dept. Certificates of Assessment), and the Court has lacked jurisdiction; further, Plaintiff's complaint was manifestly brought in bad faith, and its "claim" is a fraud upon the court, *Demjanjuk v. Petrovsky*, 10 F.3d, 338, 348 (6th Circuit, 1993). Judgments where jurisdiction is lacking or which are induced by fraud are void:

> "A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally..." *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999)

This rule was set forth by the Supreme Court of the United States as long ago as 1828:

> "But if [a court] act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers." *Elliott v. Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L. Ed. 164 (1828)

This Court is authorized under FRCP 60(B)(3), 60(B)(4) and 60(d)(3) to set aside this judgment accordingly.

2. Plaintiff invoked the Court's jurisdiction under false pretenses.

Plaintiff's Complaint is predicated on the existence of a tax debt it alleges to be owed by us to Plaintiff. As is demonstrated by Plaintiff's own current Department of the Treasury Certificates of Assessment, no such debt exists. When Plaintiff brought suit in this Court implicitly asserting a good-faith belief in the existence of such a debt, and alleging the Court's jurisdiction under a statute only operable when such debts exist (26 USC 7405), it was committing a fraud upon the Court. Judgments induced by fraud are void (see *Long v. Shorebank Development Corp*., 182 F.3d 548 (C.A. 7 Ill. 1999)), and this Court is authorized under FRCP 60(B)(3), 60(B)(4) and 60(d)(3) to set aside this judgment accordingly.

Similarly, when Plaintiff alleged/implied that Defendants were parties to some relationship or agreement with itself or its principal such as to cause such a debt to arise, it was committing a fraud upon the Court. Plaintiff identified no evidence whatever of such a relationship or agreement, and is entitled to no presumption of such a relationship or agreement, particularly in light of our having introduced into the record sworn statements that we are party to no such relationship or agreement. Nonetheless, Plaintiff proceeded as though such a relationship or agreement was actually proven relevant to its complaint. Plaintiff appears to have been taken "at its word" by the Court, but "its word" was intended to mislead the Court. Judgments induced by fraud are void, and this Court is authorized under FRCP 60(B)(3), 60(B)(4) and 60(d)(3) to set aside this judgment accordingly.

3. Plaintiff has never had standing to bring this suit, and thus, this Court has lacked jurisdiction.

Having failed to produce any evidence of a relationship or agreement between

Defendants and itself such as could cause a debt from them to it to arise (or an obligation or duty of any other kind), having declined to assert the existence of any tax obligation owed by us to it in the manner required by law through the making and subscribing of its own returns, and having instead certified that no such debt exists, Plaintiff lacked standing to bring suit ab initio, and therefore the Court lacked jurisdiction in this matter.

In order to have standing, a party must have a legally protected interest-- not a mere wish, preference, or desire-- which is in jeopardy of being adversely affected. *Solomon v. Lewis,* 184 Mich App 819, 822; 459 NW2d 505 (1989), *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As the Supreme Court of Michigan has noted:

> "[O]ne cannot rightfully invoke the jurisdiction of the court to enforce private rights, or maintain a civil action for the enforcement of such rights, unless one has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. This interest is generally spoken of as 'standing' . . ." *Bowie v. Arder,* 441 Mich 23, 42-43; 490 NW2d 568 (1992)

Plaintiff's mere assertion of a legally-protected interest in its Complaint is explicitly belied by its own Department of Treasury Certificates of Assessment, as well as its failure to produce legally-meaningful claims as required by 26 USC 6020(b). Plaintiff's persistent and consistent declarations that we DO NOT owe it anything, and its consistent failure to assert any claim to the contrary in the manner required by law, make clear that Plaintiff had no legally-protected interest underlying its suit, and thus this Court has never had jurisdiction in this matter. A lack of jurisdiction renders a judgment void and this judgment should be vacated accordingly.

> "A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack." *Fritts v. Krugh*, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (1958).

4. Plaintiff has never introduced any evidence in support of its claims; and the "information return" hearsay upon which it relied is specifically declared by statute to be insufficient to support findings and judgment in its favor.

Fundamental "due process" requires that any Plaintiff must actually prove its allegations, rather than merely make them (or submit allegations of others) and have them taken as true. As noted above, Plaintiff never introduced any evidence at all, but has relied on mere hearsay from "third-parties" unsupported by any testimony or other authority.

In this lawsuit, having self-servingly deemed us "taxpayers", Plaintiff has additionally called down upon itself specific statutory obligations to produce evidence above and beyond what was reported on the W-2s and 1099s it has introduced (and upon which it has exclusively relied). Congress has imposed these obligations on Plaintiff in clear language:

> *26 USC § 6201 -Assessment authority*
> *(d) Required reasonable verification of information returns*
> *In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.*
> ("Subpart B or C of part III of subchapter A of chapter 61" refers to the statutory authorities for W-2s, 1099s, and other "information returns".)

An allegation on an "information return" is "reasonably disputed" merely by a sworn rebuttal, each being of the same legal stature-- Joe's affidavit v. Sam's affidavit. A court is not authorized to unilaterally honor one and dishonor the other. As held by the Fifth Circuit Court of Appeals in ruling a notice of deficiency invalid:

> "[T]he Commissioner's determination that Portillo had received unreported income of $24,505 from Navarro was arbitrary. The Commissioner's determination was based solely on a Form 1099 Navarro sent to the I.R.S. indicating that he paid Portillo $24,505 more

> than Portillo had reported on his return. The Commissioner merely matched Navarro's Form 1099 with Portillo's Form 1040 and arbitrarily decided to attribute veracity to Navarro and assume that Portillo's Form 1040 was false." *Portillo v. Commissioner of Internal Revenue*, Fifth Circuit, 932 F.2d 1128 (1991

The Eighth Circuit Court of Appeals explains 6201(d) concisely in *Mason v. Barnhart*, 406 F.3d 962 (8th Cir. 2005):

> "Receipt of a Form 1099 does not conclusively establish that the recipient has reportable income. If a recipient of a Form 1099 has a reasonable dispute with the amount reported on a Form 1099, the Code places the burden on the Secretary of the Treasury to produce reasonable and probative information, in addition to the Form 1099, before payments reported on a Form 1099 are attributed to the recipient. See I.R.C. § 6201(d)."
>
> This legislative recognition and specification that allegations on an "information return" such as a W-2 or 1099 are insufficient to carry the Plaintiff's burden of proof is also expressed at 26 USC § 7491 -Burden of proof:
>
> *(a) Burden shifts where taxpayer produces credible evidence*
> *(1) General rule*
> *If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.*
> *(2) Limitations*
> *Paragraph (1) shall apply with respect to an issue only if—*
> *(A) the taxpayer has complied with the requirements under this title to substantiate any item;*
> *(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews;*

No requests have ever been made of us by the Secretary (or his delegate) in regard to any of the W-2s or 1099s relied upon by Plaintiff, and our 4852 forms and 1099 rebuttals certainly constitute credible evidence and the expression of a reasonable dispute with respect to "items of income" reported on the "information returns" relied upon by the Plaintiff. As is explained by the Tenth Circuit Court of Appeals in *Rendall v. CIR*, 535 F.3d 1221 (10th Circuit, 2008):

> "Credible evidence," as used in § 7491(a)(1), means "the quality of evidence, which after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted." *Blodgett v. Comm'r,* 394 F.3d 1030, 1035 (8th Cir. 2005) (emphasis and quotation omitted)."

The rebutting instruments we introduced-- sworn statements as to the matters at issue, by parties with direct personal knowledge of the facts-- already proved *"sufficient upon which to base a decision on the issue,"* and did so even when "contrary evidence" WAS submitted and considered. Plaintiff's agent (the IRS) had in its possession "contrary evidence" (W-2s and 1099s) when considering our rebutting instruments for the years 2002 and 2003 (and those rebutting instruments directly refer anyone examining them to that "contrary evidence", as well), and yet found our rebuttals sufficient to base a decision in our favor and return our property accordingly (something that has happened in thousands of other cases over the years, as well). Thus, Plaintiff was clearly required by statute to produce additional evidence under the provisions of 6201(d) and 7491(a), and this Court plainly lacked a basis, as a matter of statutory specification as well as by the routine rules of evidence, to make findings, and render judgment, in Plaintiff's favor, and its previously rendered judgment should be vacated accordingly.

5. By entertaining Plaintiff's Motion for Summary Judgment before ruling on the various Motions we filed in response to Plaintiff's Complaint, and then granting Plaintiff's Motion and denying ours the same day, and without any hearing at any time, the Court violated our right to due process of law.

Before ruling on the Motions to Dismiss for Lack of Jurisdiction and for Failure to State a Claim upon which Relief May be Granted, Motions for a More Definite Statement and to Strike, and the Notice of Violation of FRCP Rule 11 we had immediately filed in response to Plaintiff's complaint, the Court allowed Plaintiff to Move for Summary Judgment. The Court then granted Plaintiff's Motion <u>on the same day that it finally denied our Motions</u>, some 9½ months after they

were filed, and without so much as a single hearing.

By so doing, the Court denied us our rights to formulate and make a Reply to the Complaint, to conduct Discovery, to file additional Motions, and to otherwise conduct ourselves in light of the Court's decision on our initial Motions. For instance, in paragraph 18 of Plaintiff's Complaint, it declares:

"Pre-printed language on block 9 of the Form 4852 that Hendrickson signed and filed with defendants' 2002 and 2003 Form 1040 tax returns asks "Explain your efforts to obtain Form W-2, 1099-R, or W-2c, Statements of Corrected Income and Tax Amounts." In response to this request on the form, Hendrickson falsely and fraudulently states:

> *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.*

The quoted language is taken directly from Hendrickson's tax-fraud promotion materials. The quoted language is false because Hendrickson's employer correctly reported Hendrickson's wages on the W-2 Wage and Tax Statements that it issued to Hendrickson for the 2002 and 2003 tax years. On information and belief the quoted language is also false in stating that (a) Hendrickson had requested his employer to issue a W-2 or corrected W-2 for 2002 or 2003, (b) that Hendrickson's employer had refused to do so, and (c) that Hendrickson's employer had refused to issue him a W-2 or corrected W-2 for 2002 or 2003 "for fear of IRS retaliation.""

Had discovery or trial not been improperly denied to us, we would have introduced into the record of this lawsuit testimony such as that found in Exhibit 1, October 21, 2009 testimony of Warren Rose, vice-president of Personnel Management, Inc., the company that created the W-2s referred to by Plaintiff, and the individual responsible for certification of those W-2s. In his testimony, Mr. Rose acknowledges that he is not familiar with the statutes relevant to Form W-2 reporting and the definitions of "wages" to be reported thereon. Mr. Rose also testifies that Mr. Hendrickson DID, in fact, request accurate W-2s, and admits that he (Rose) refused to issue them.

Similarly, had discovery or trial not been improperly denied to us, we would have

introduced into the record of this lawsuit testimony such as that found in Exhibit 2, October 21, 2009 testimony of Larry Bodoh, Comptroller of Personnel Management, Inc. and the individual with responsibility for preparing W-2s, admitting his fears of "IRS reprisals" if he didn't simply do what he believed the agency wanted him to do in regard to a tax-related matter.

As has just been shown, Plaintiff's representations in its Complaint are flatly fraudulent, particularly in light of its having requested copies of the forms on which Mr. Hendrickson requested accurate W-2s, and Warren Rose indicated his refusal to comply, before making its fraudulent Complaint. This is of a piece with Plaintiff's reference in the Complaint language quoted above to what it calls, "Hendrickson's tax-fraud promotion materials." Plaintiff is, and was, well aware that Mr. Hendrickson's "materials" are NOT those of a "tax-fraud promotion", having itself conceded that fact repeatedly in prior legal actions, including several in this very Court (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)). As a consequence of those repeated concessions, which took the form of its having moved for dismissals of its own causes, Plaintiff is estopped from making this assertion in any court proceeding, per FRCP Rule 41(a)(1)-- but did so anyway, in another of its endless acts of bad faith in the course of this affair.

However, by issuing its judgment in the manner that it did, the Court simply adopted Plaintiff's assertions as true without any evidentiary support, even though these matters were clearly issues of material fact in dispute as early as the date of the filing of our tax returns. Thus, the Court denied us the opportunity to demonstrate the above concessions and other exculpatory facts relevant to the Complaint, and thus to develop and present our defense, <u>as is our right</u>.

A violation of due process renders a judgment void:

> "Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process." *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). Also see FRCP Rule 60(b)(4).

The Court should vacate its previous judgment in this matter accordingly.

6. Plaintiff failed to substantiate its assertion of jurisdiction pursuant to 26 USC 7401, and the Court was therefore without jurisdiction.

In our Motion for More Definite Statement ¶16(b), we challenged Plaintiff's claim to have secured authorization for this suit pursuant to the requirements of 26 USC 7401. Plaintiff never produced any evidence to substantiate its claim or in response to our challenge. Its sole response was to suggest to the Court that this infirmity in its pleading could be ameliorated by our availing ourselves of discovery opportunities (see Plaintiff's Brief in Opposition, Doc. 6-1, ¶4).

As previously noted, we were denied the discovery opportunities to which Plaintiff blithely refers. Further, jurisdictional challenges of this sort must be answered with evidence before an action can proceed, not *during* proceedings which are allowed to go forward regardless.

> "Plaintiff's allegation that the civil action "has been authorized, sanctioned and directed in accordance with the provisions of Section 7401 of the Internal Revenue Code of 1954" may be construed liberally to be sufficient, Rule 8(a) F.R.C.P., but the mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective. Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter.
>
> "This Court holds that 26 U.S.C. § 7401 requirements constitute facts essential to jurisdiction. The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action." *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

Because the Court proceeded to judgment in the matter while this jurisdictional challenge remained unresolved, the judgment rendered is void.

> "[Jurisdiction] must be considered and decided, **before any court can move one further step in the cause**; as any movement is necessarily the exercise of jurisdiction." *State of Rhode Island v. Commonwealth of Massachusetts*, 37 US 657, (1838). (Emphasis added.)
>
> *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***. (Emphasis added.)

This Court is authorized under FRCP 60(B)(3), 60(B)(4) and 60(d)(3) to set aside this judgment accordingly, and required to dismiss Plaintiff's Complaint per FRCP Rule 12(h)(3), and should do so.

CONCLUSION

In light of the foregoing new evidence, arguments and points of law, the Court should vacate its previous judgment and orders and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted this 17th day of May, 2010.

_____
Peter Eric Hendrickson

_____
Doreen M. Hendrickson

Attachments:
Exhibit 1- Testimony of Warren Rose
Exhibit 2- Testimony of Larry Bodoh

recipients, possibly arising to necessities of legal action against both the government and issuer of the form.

Q Now I believe you testified about Government Exhibit 48, did you not, sir?

Do you have that in front of you?

A Yes, I do.

Q And that was a form that you identified as an Employee Verification Form. Is that correct?

A Yes. That's correct.

Q I believe you testified that when asked if you knew Mr. Hendrickson, you said he was an employee of Personnel Management.

Is that correct?

A Yes.

Q You've not ever undertaken a study of the definitions under the Internal Revenue Code of what constitutes an employee.

Is that correct?

A That's correct.

Q So you use the term "employee" in the sense of it's common meaning.

Is that correct, sir?

A That would be correct.

Q That could -- you don't know what the statutory

definition is that is the definition of the Internal Revenue Code, do you?

A I haven't done a thorough review of it, no.

Q There could be some difference between how the IRS defines an employee and the common meaning of the word.

Is that correct?

A It's possible.

Q Now on Government Exhibit 48, sir, I believe that Mr. Hendrickson is -- this is one of these forms your company refers to as an Employee Verification Form.

Is that correct?

A Yes. That's correct.

Q This is information that is -- you asked people who the company considers to be an employee, you asked them to fill out and verify information so that you can report there earnings to the -- properly report their earnings to the Internal Revenue Service.

Is that correct?

A Yes. That's correct.

Q On this particular one, Mr. Hendrickson didn't ask you to not report his earnings.

Isn't that correct?

A May I read this over again?
Q Sure.
(After a short delay, the proceedings continued)
A Yes. Okay.
Q To make sure in reporting his earnings that nothing is listed as, quote wages, which does not conform to the strict legal definition of wages within Title 26 U.S.C.
Is that correct?
A That's correct.
Q He never said to you something to the effect don't report what you paid me to the IRS.
Right?
A Yes.
Q Just make sure you report what you comply with legal definitions?
A Yes.
Q In response to that, you wrote a little note to Mr. Hendrickson which is at the bottom that says:
I'm sorry, but I can't comply with your request.
Please give me a call regarding the issues when you get a chance.
Is that correct?

exemptions to which they believe they're entitled.

Is that correct?

A That's correct.

Q And then you also told Mr. Hendrickson in response to this memo, that for the good of the company, you must follow the lawyer's recommendations.

Isn't that correct?

A Yes, sir.

Q And what you meant by that is you were concerned about reprisals from the Internal Revenue Service if you didn't follow the lawyer's recommendation.

Is that correct?

A That's correct.

MR. CEDRONE: I've no further questions, Your Honor.

THE COURT: Anything on redirect, Mr. Leibson?

MR. LEIBSON: Nothing further.

THE COURT: Any questions from any of our jurors?

All right. Can Mr. Bodoh be excused from his subpoena responsibilities?

MR. LEIBSON: Yes.

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,	**§**	
Defendants.	**§**	

MOTION FOR RECONSIDERATION OF THE COURT'S DENIAL OF DEFENDANT'S MOTION TO VACATE AND ITS CONTEMPT RULINGS AND, SHOULD THESE NOT BE GRANTED, MOTION FOR STAY OF EXECUTION OF THE COURT'S CONTEMPT RULINGS PENDING THE OUTCOME OF OUR APPEAL OF THESE ISSUES TO THE CIRCUIT COURT

Peter E. Hendrickson and Doreen M. Hendrickson move this Honorable Court to reconsider its June 10 denial of our Motion to Vacate its judgment and related orders in this case and grant that Motion, or, should this relief be denied, to stay execution of its rulings on Plaintiff's Motions for Contempt pending the outcome of our appeal of these issues to the Circuit Court. New evidence made available to us only on June 10, 2010 has revealed two fundamental errors of law and fact upon which all decisions made in this case have been based. These revelations, and the simple analysis of the Complaint in this case and the relevant law presented in the Memorandum accompanying this Motion make clear beyond honest misunderstanding that the Court's assumption of jurisdiction in this matter has always been in error. Without jurisdiction, the Court's judgment, rulings and orders are void,[1] and the Court is obliged to

[1] *Long v. Shorebank Development Corp*., 182 F.3d 548 (C.A. 7 Ill. 1999); *Elliott v. Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L. Ed. 164 (1828); *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). Also see FRCP Rule 60(b)(4)

dismiss Plaintiff's Complaint and vacate all related judgments, rulings and orders.[2]

Plaintiff's Complaint in this case alleges that we became indebted to it in 2002 and 2003, upon the basis of which allegation Plaintiff further alleges an equity relationship between it and us, and alleges itself to have suffered harm requiring injunctive relief and to anticipate further harm requiring further injunctive relief. The debts Plaintiff alleges to have arisen are predicated entirely on unsupported third-party allegations that we had received payments of what Plaintiff calls "wages" and/or "non-employee compensation", special terms within its own laws which Plaintiff uses to describe compensation for activities of certain kinds, the conduct of which can result in tax liabilities to Plaintiff.

As a matter of law, not all payments qualify as payments of "wages" and/or "non-employee compensation" or are "taxable".[3] Whether any payment does or does not qualify as any of these things is a matter of the characteristics of the activity connected with the payment, not what it happens to have been called, or been treated as, by either the payer or by Plaintiff.

Once an allegation of the payment of taxable "wages" or "non-employee compensation" has been disputed, claims such as Plaintiff's can only be sustained through the introduction of additional factual evidence concerning the nature of the activities connected with the payments, which distinguish them from payments which do not qualify.[4] The requirement for such

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[2] "Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter." *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

[3] United States Constitution, Article 1, Section 9; *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429 (1895); *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916); *Peck v. Lowe*, 247 U.S. 165 (1918); *South Carolina v. Baker*, 485 U.S. 505 (1988); 26 USC §§3401(a) and 3121(b); 26 CFR §§ 31.3121(b)-4, 31.3401(a)-2, 31.3401(c)-1, 1.1401-1, 1.1402(a)-1 and 1.1402(c)-1

[4] "[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective," and "The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action." *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

additional fact evidence is explicitly specified by law as well as being self-evident as a matter of principle;[5] and further, in the absence of such additional fact evidence, the Court is incapable of determining whether any alleged payments do or do not qualify as payments of "wages" and/or "non-employee compensation" or are "taxable", and therefore is incapable of determining whether Plaintiff is owed anything, has any equity relationship to us, has suffered any harm by our actions, is entitled to injunctive relief, or whether such relief would be appropriate.

In the absence of any additional fact evidence, Plaintiff can have demonstrated no standing and the Court is without jurisdiction of person or subject-matter. Further, in the absence of additional fact evidence, the Court is incapable of providing any relief sought by Plaintiff in anything but a completely arbitrary and capricious manner.[6]

Plaintiff failed to introduce any fact evidence whatsoever in support of its allegations. Under the provisions of 26 USC §6201(d) and §7491 (as well as Plaintiff's fundamental obligation to bear the burden of proof in any suit), our dispute of Plaintiff's allegations and those of third-parties on which Plaintiff relies prevail in the absence of additional fact evidence in support of those allegations. Nonetheless, the Court denied our Motions to Dismiss in response to Plaintiff's unsupported Complaint, and issued summary judgment in favor of Plaintiff without the accompaniment of any judicial reasoning or other explanation.

On June 10, 2010, more than four years after commencement of the instant action, we had actual eye contact with the judge in the case ***for the very first time***. During that brief 15 minutes of contact, it was revealed that the judgment in this case was predicated on at least two

[5] See 26 USC §§6201(d) and 7491; and see *Portillo v. CIR*, 932 F.2d 1128 (5th Cir., 1991); *Mason v. Barnhart*, 406 F.3d 962 (8th Cir., 2005); *Rendall v. CIR*, 535 F.3d 1221 (10th Circ., 2008) and cases cited.
[6] *Portillo v. CIR*, 932 F.2d 1128 (5th Cir., 1991); *Mason v. Barnhart*, 406 F.3d 962 (8th Cir., 2005); *Rendall v. CIR*, 535 F.3d 1221 (10th Circ., 2008) and cases cited.

fundamental misunderstandings of fact and law, each of which appear to have led the judge to imagine her Court to have jurisdiction in this case, when in fact, it never has. Because the final judgment issued in this case on May 2, 2007 was actually written by the Plaintiff word-for-word and merely signed by the judge, with no judicial reasoning or explanation of any kind, it was impossible for us to be aware of these errors, or to respond to them directly until now.

However, in the hearing conducted Thursday, June 10, Judge Edmunds finally revealed at least two fundamental errors on which her judgment in this action was based. On page 6 of the excerpt of the proceedings transcript we ordered (Exhibit 1), we see the following exchange:

> Peter Hendrickson: *"I'm being told to say over my own signature that I do believe my earnings qualify as "wages"[as that term is defined in the law], and I don't believe that, Your Honor."*
> Judge Edmunds: *"Simply by filing the tax return, you admit that, you acknowledge that."*

On page 7 of that transcript (Exhibit 2), Judge Edmunds makes the statement:

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

Judge Edmunds' statements reveal that she has been harboring errant notions that our completion of 1040s saying we DIDN'T receive taxable "wages" and/or "non-employee compensation" somehow constitutes evidence that we DID (and in particular amounts, as well), or constitutes validation of the very "information returns" we used the forms to rebut; and that the mere earning of money by any American automatically and invariably causes a tax debt to arise. Since the Plaintiff itself failed to produce <u>any evidence</u> in the case in support of its naked allegations, these frivolous notions must be the sole basis for the judgment rendered. Because these notions ARE frivolous (that is, not supported by law), and, now that they are known, are easily and directly contradicted by incontrovertible authority, the judgment rendered in this case,

and all subsequent and related orders, judgments and rulings by Judge Edmunds and others are revealed as invalid and a manifest injustice, and should be ordered vacated and void, and Plaintiff's suit should be dismissed with prejudice.

The Court may be tempted to take the view that it's too late to revisit the matter-- that what's done is done. We dispute this conclusion. It is well-settled law that failure to prove facts underlying an allegation in a complaint is fatally defective to jurisdiction;[7] decisions made in which jurisdiction is lacking are inherently void, and void judgments can be attacked at any time;[8] and in fact, the Courts are specifically required under FRCP 12(h)(3) to dismiss the action when a defect of jurisdiction becomes known to the Court.[9] There is no time limit associated with that requirement, which is mandatory, not discretionary.

Further, we urge this Honorable Court to consider that the defective ruling in this case has been recently used by the United States as evidence to accomplish a conviction in a criminal prosecution. Therefore the flaws in this case are of great and immediate significance. Further still, this flawed ruling is being used right now as a basis for contempt proceedings to seize property and liberty from two Americans.

Finally, the implication for all Americans of such a baseless ruling standing without correction cannot be overstated – 1) that any American filing a tax return is now considered, simply by that act alone, and without regard to his or her intentions or the content entered on the form, to be creating testimonial evidence about himself or herself of some kind, the nature of

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[7] *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

[8] *Long v. Shorebank Development Corp*., 182 F.3d 548 (C.A. 7 Ill. 1999); *Elliott v. Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L. Ed. 164 (1828); *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985)

[9] "Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter." *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973).

which is unknown to that person but which can be simply declared-- or silently assumed-- by a judge to that individual's disfavor in a legal contest; and 2) that any American who acquires *money* by any means could or should be presumed to have engaged in taxable activity giving rise to an enforceable debt to the government despite the Constitutional prohibition of such a notion and the host of revenue statutes, regulations and Supreme and lower court rulings to the contrary.[10] This ruling is an egregious insult to the rights of all citizens guaranteed by our Constitution.[11]

CONCLUSION

For the foregoing reasons and those set forth in the accompanying memorandum of law, this Honorable Court should reconsider its June 10 denial of our Motion to Vacate its judgment and related orders in this case and grant that Motion, or, should this relief be denied, stay execution of its rulings on Plaintiff's Motions for Contempt pending the outcome of our appeal of these issues to the Circuit Court.

Respectfully submitted this 21st day of June, 2010.

_____
Peter Eric Hendrickson

_____
Doreen M. Hendrickson

[10] These rulings have been exhaustively provided to this Court in our prior briefs in this case, and are incorporated herein by this reference.
[11] United States Constitution, Amendments I, V, VII, and XIV

MEMORANDUM OF LAW IN SUPPORT OF PETER AND DOREEN HENDRICKSONS' MOTION FOR RECONSIDERATION AND OTHER RELIEF

1. Plaintiff's case is founded on unsupported, long-since rebutted allegations that during 2002 and 2003, we received "wages" and "non-employee compensation". Absent proof these allegations are true, Plaintiff's claims that we owe it a tax for those years, or that the documents we filed are in any way inaccurate, or that it has suffered harm or is likely to suffer harm entitling it to injunctive relief, or that it has any "equity" relationship or claim on us of any kind, are all entirely without foundation and always have been, and the Court has always lacked jurisdiction.[1]

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

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

4. The statutes to which Plaintiff and this Court are subject require Plaintiff's production of additional fact evidence beyond the allegations on Plaintiff's third-party pieces of paper once

[1] "[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective." and "The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action." *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

those allegations have been rebutted.[2] The invalidity of favoring of third-party forms such as these without further evidence once rebutted has been repeatedly recognized by the courts.[3] Without additional factual evidence in the record, Plaintiff's claim is based entirely on unsubstantiated hearsay and is therefore without any basis, and the Court is deprived of jurisdiction. Jurisdiction does not arise simply because Plaintiff asserts a claim.[4] Plaintiff must demonstrate with positive evidence that we could be liable for the taxes it alleges to be due in order for any judicable matter involving us to be properly before the Court. Absent such evidence connecting us to a cognizable claim by the government of a debt owed to it and damages suffered by it, the government lacked standing to bring the suit, and the Court had the obligation to dismiss the case, even *sua sponte*, but certainly in response to our Motion.[5]

5. Plaintiff is NOT entitled to ANY presumptions of correctness in its own assertions or allegations or those of others that it introduces in support of its assertions and claims. Plaintiff has made no formal assessments or other determinations in this matter; it merely presents and repeats allegations made by third-parties. WE, on the other hand, ARE entitled to such

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[2] 26 USC §§6201(d) and 7491.

[3] *Portillo v. CIR*, 932 F.2d 1128 (5th Cir., 1991); *Mason v. Barnhart*, 406 F.3d 962 (8th Cir., 2005); *Rendall v. CIR*, 535 F.3d 1221 (10th Circ., 2008) and cases cited.

[4] *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir., 1992)

[5] *Days Inns Worldwide, Inc. v. Patel*, 445 F.3d 899 (6th Cir. 2006), *In re Lewis*, 398 F.3d 735, 739 (6th Cir., 2005); *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee* ("Bauxites"), 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

> "[T]he rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record."

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

presumptions, both as defendants in this action, and as respondents more generally to the initial third-party allegations of payments to us of "wages" and "non-employee compensation" upon which the United States rests its assertions of our having a tax liability (and that therefore the return of our property was "refund of tax" and "erroneous"). Absent fact evidence proving the contrary, the Court was, and remains, obliged to presume our declarations of having received no "wages" and/or "non-employee compensation" to be true and correct, to recognize Plaintiff's failure to properly assert the Court's jurisdiction, and to dismiss the case.[6]

6A. All earnings DO NOT qualify as "taxable", and there is NO circumstance in which any payment to anyone can be determined to qualify as "wages" and/or "non-employee compensation" and subject to tax absent additional factual evidence. Even payments made to federal workers and office-holders by the government office or department for which they work do not automatically qualify as taxable "wages". Both the definition of "wages" at 26 USC §3401(a) and the "employment" definition at §3121(b) upon which the definition of "wages" at §3121(a) hinges contain a vast number of exceptions listing payments "for services rendered" which DO NOT QUALIFY as "wages", and upon which NO TAX LIABILTY arises. Plaintiff's own Department of Treasury has helpfully explained this (emphasis is added):

> § 31.3121(b)-4 Employment; excepted services in general.
> (a) **Services performed by an employee for an employer do not constitute employment for purposes of the taxes if they are specifically excepted from employment under any of the numbered paragraphs of section 3121(b). Services so excepted do not constitute employment for purposes of the taxes even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft, or are performed outside the United States by a citizen of the United States for an American**

[6] *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

employer. …

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

§ 31.3401(a)-2 Exclusions from wages.
(a) *In general.* (1) **The term "wages" does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a)**.

§ 31.3401(c)-1 Employee.
(h) **Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).**

6B. Just as NO payment can be taken to be "wages", even if labeled as such by a payer, absent <u>additional fact evidence</u> once that characterization has been controverted, the treatment of any payment as "wages" by a payer-- such as by "withholding" amounts from it -- can't be taken as evidence of the payment actually being a payment of "wages".[7] Nor can calling an amount withheld from any payment a "tax" constitute evidence that such a payment actually was a payment of "wages" or that a tax was or could be due, any more than calling the payment "wages" makes it so. Once the characterization of a payment as "wages" has been rebutted, all such treatments and labels must be deemed errors and of no more substance than merely calling a

[7] …any more than your credit card being charged constitutes incontrovertible evidence that you really did buy lingerie from that company in East Slovenia…

payment “wages”, until proven otherwise.

6C. Just as the treatment of a payment as though it were “wages” such as by withholding amounts from it, doesn’t make the payment “wages”, declaring that an amount was withheld from a payment doesn’t make the payment “wages”. Similarly, declaring that an amount was withheld from a payment “as tax” doesn’t make the payment “wages”, or subject to the tax, nor does it make the amount withheld into an actual amount of tax.[8]

6D. Payments of “non-employee compensation”, even if accurately reported themselves, something which is impossible to determine in the face of rebuttal without the introduction of additional fact evidence beyond a mere declaration (subject as they are to the accuracy of the payer’s belief that he is making the payment actually in the course of a “trade or business” as defined in the law), find their application to the tax when qualified as “self-employment income”. There is NO circumstance in which any payment to anyone can be determined to qualify as “self-employment income” absent additional factual evidence. As Plaintiff’s own Department of Treasury has helpfully explained this (emphasis is added):

> § 1.1401-1
> (c) **In general, self-employment income consists of the net earnings derived by an individual (other than a nonresident alien) from a trade or business** carried on by him as sole proprietor or by a partnership of which he is a member, including the net earnings of certain employees as set forth in §1.1402(c)–3, and of crew leaders, as defined in section 3121(o) (see such section and the regulations thereunder in part 31 of this chapter (Employment Tax Regulations)). **See, however, the exclusions, exceptions, and limitations** set forth in §§1.1402(a)–1 through 1.1402(h)–1.
>
> § 1.1402(a)-1 Definition of net earnings from self-employment.

[8] …any more than listing the bogus charge that showed up on your credit card as a charge for “East Slovenia lingerie” on the “VISA Disputed Transaction Form” means that you really did purchase that black silk negligee… Also see *Rosenman v. US*, 323 US 658 (1945)

(a) **Subject to the special rules set forth in §§1.1402(a)–3 to 1.1402(a)–17, inclusive, and to the exclusions set forth in §§1.1402(c)–2 to 1.1402(c)–7, inclusive, the term "net earnings from self-employment" means:**
(1) The gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by chapter 1 of the Code which are attributable to such trade or business, plus
…

§ 1.1402(c)-1 **Trade or business**.
In order for an individual to have net earnings from self-employment, he must carry on a trade or business, either as an individual or as a member of a partnership. **Except for the exclusions discussed in §§1.1402(c)–2 to 1.1402(c)–7, inclusive, the term "trade or business", for the purpose of the tax on self-employment income, shall have the same meaning as when used in section 162**. An individual engaged in one of the excluded activities specified in such sections of the regulations **may** also be engaged in carrying on activities which constitute a trade or business for purposes of the tax on self-employment income. **Whether or not he is also engaged in carrying on a trade or business <u>will be dependent upon all of the facts and circumstances in the particular case</u>.**

7A. Because no payment can ever be deemed one of "wages" or "non-employee compensation", or one giving rise to a corresponding tax liability "as a matter of law" simply by virtue of having been made (or purportedly made), it follows inescapably that mere records declaring payments cannot serve as evidence of the payment of "wages" or "non-employee compensation", or in support of the existence or arising of a tax liability. This is true no matter how such payments are labeled, how they have been treated, or by whom the record has been made.[9]

7B. Whether any payment is or is not "wages" or "non-employee compensation", or

[9] This Court may take judicial notice of the fact that it is not information returns that give rise to tax liability, but privileged activity. *"The income tax... ...is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce."* F. Morse Hubbard, legislative draftsman for the U.S. Treasury Department, in testimony before Congress, House Congressional Record, March 27, 1943, page 2580. Judicial notice may also be taken of the fact that companies reporting payments as "wages," for example, are not infallible and can make mistakes both in amounts paid and also in the character of the payments themselves.

"taxable" in the context of the relevant laws is an intricate matter of both law and fact. The factual character of some payments causes them to legally qualify as "wages", "non-employee compensation", and "taxable" in the context of federal internal revenue laws and the factual character of other payments causes them to NOT qualify as "wages", "non-employee compensation", or "taxable" in that context, as a matter of law.[10] These distinctions remain no matter the nature of the individual receiving the payments, or that of the payer, or what the payments may have been called by the payer or by the government, or how they may have been treated by the payer, or whether the manner in which the payer labeled or treated the payments is described or reported by anyone else. Therefore, whatever is reported by anyone on a tax-related document as to payments (or receipts) is necessarily a conclusion as to how certain facts related to the payment mesh with certain provisions of law, and is not objective data. This is why the instructions for the reporting forms such as W-2s and 1099s do NOT ask for reports of objective data such as, "how much money was paid", but only ask for conclusory reports of "how much was paid that meets the qualifications specified in the relevant law".[11]

7C. Conclusions reflected on reporting forms such as W-2s and 1099s can not only be simply wrong, but can be entirely empty, as, for instance, when those making the reports are unaware that some payments DO NOT qualify as "wages", "non-employee compensation", and are not subject to reporting at all, but instead mistakenly imagine that all payments qualify, and report all payments accordingly. Absent knowledge of the facts involved in any payment, the

[10] United States Constitution, Article 1, Section 9; *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429 (1895); *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916); *Stanton v. Baltic Mining Co*., 240 U.S. 103 (1916); *Peck v. Lowe*, 247 U.S. 165 (1918); *South Carolina v. Baker*, 485 U.S. 505 (1988); 26 USC §§3401(a) and 3121(b); 26 CFR §§ 31.3121(b)-4, 31.3401(a)-2, 31.3401(c)-1, 1.1401-1, 1.1402(a)-1 and 1.1402(c)-1

[11] 26 USC §§6041, 6051

fitness, true character and accuracy of any report cannot be known by Plaintiff or the Court. Indeed, we have furnished the Court with sworn testimony of the person responsible for producing the W-2s relied upon by Plaintiff in this case, in which that person admits to having no knowledge of the laws under which such conclusions are properly drawn, and reports are properly made (Docket # 58, Defendants' Motion to Vacate, Exhibit 1); and testimony of the comptroller of the same company to the effect that the company's practice is simply to do what it thinks the IRS wants it to, out of fear (Docket # 58, Defendants' Motion to Vacate, Exhibit 2).

7D. Absent the introduction of additional fact evidence in the face of a dispute over the legal character and "taxable" status of any alleged payment of "wages", or "non-employee compensation", a court lacks the knowledge by which to make a determination; is prohibited from doing so by law;[12] and is without jurisdiction.[13] Plaintiff introduced ZERO additional factual evidence to support the third-party reports upon which its entire claim, suit, and request for injunctive relief are based, and thus failed to establish standing in this case and failed to establish the Court's subject matter jurisdiction.[14]. Further, since the issue is a fact-issue, not an issue of law, and thus is the province of a jury, the Court would be unable to make such a determination in any event, absent our agreement to waive our right to a jury trial.[15]

8A. Our use of forms 4852 and 1040 DO NOT constitute evidence that payments made to us were "wages" and/or "non-employee compensation". Our forms explicitly declare that we

[12] 26 USC §§6201(d) and 7491

[13] *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

[14] *Id.*

[15] United States Constitution, Seventh Article of Amendment: *"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."*

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

8B. It would be an obvious violation of the Fifth Amendment protection against self-incrimination for a court to presume someone's effort to say one thing is actually an "admission" or "acknowledgement" of something else, and particularly something adverse to that person's intended meaning or interests. Anyone can be convicted of anything, or be made the loser in any litigation, if the government or a court can ascribe the testimonial meaning it prefers to things that person has done. This truly Stalin-esque notion is prohibited in the civil realm, as well, in that it would also be a violation of Federal Rules of Evidence, Rule 301, which requires that relevant underlying facts be proven before presumptions can be entertained. As the Advisory Committee to the Federal Rules Of Evidence put it:

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

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

8C. There are no hidden implications of meaning to the effect that the use of Form 4852

amounts to “acknowledgement” or “admission” of the receipt of “wages” and /or “non-employee compensation”. Form 4852 is explicitly intended to be used to rebut inaccurate assertions of “wage” payments. As the pre-printed declaration on the form itself puts it:

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

8D. There are no hidden implications of meaning to the effect that the use of Form 1040 amounts to “acknowledgement” or “admission” of the receipt of “wages” and /or “non-employee compensation”. Form 1040 is explicitly intended to be used to rebut allegations of tax liability (and thus the allegations of the conduct of taxable activity on which such liabilities arise), and to claim the return of amounts improperly withheld:

> “And be it further enacted,…that any party, in his or her own behalf,…shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,… liable to be assessed,… and the same so declared shall be received as the sum upon which duties are to be assessed and collected.” *Section 93 of The Revenue Act of 1862*

> Section 6401- Amounts treated as overpayments
> (b) Excessive credits
> (1) In general
> If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, and G of such part IV), the amount of such excess shall be considered an overpayment.
> (c) Rule where no tax liability
> An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

> Sec. 6402. - Authority to make credits or refunds
> (a) General rule
> In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon,

against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e) *[deductions for past due obligations to federal or state agencies]* refund any balance to such person.

26 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.
…
(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).

"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.

8E. The Court has no basis for construing our use of Treasury Department forms for their intended purposes as somehow supporting Plaintiff-serving presumptions that what we say on the forms is objectively wrong, or is an "acknowledgement" or "admission" of our receipt of "wages" and/or "non-employee compensation", or has any meaning other than what we intended to communicate with the marks we added to the forms. Our use of the forms DOES NOT support

Plaintiff's claims, which remain entirely reliant on nothing but hearsay purporting to report conclusions reached by third-parties, the veracity and accuracy of which has been rebutted and which is unsubstantiated by any additional evidence.

9. No payment can be deemed "wages" or "non-employee compensation" or "taxable" absent additional fact evidence concerning the payment, of which none was produced by the Plaintiff or can be known to the Court. Our use of various forms for their intended purposes of rebutting allegations about payments made to us and for reclaiming amounts improperly withheld cannot be creatively construed into the evidence that Plaintiff has failed to produce. Therefore, the Court has always been incapable of any rational knowledge-- or even rational speculation-- as to whether we did or did not receive "wages" or "non-employee compensation" or anything taxable under any name, and therefore has always lacked any basis for assuming its jurisdiction; for making any findings; for ruling in Plaintiff's favor in any regard; and for not having dismissed Plaintiff's complaint upon our initial Motion to that effect.[16] Further, since no payment can be deemed "wages" or "non-employee compensation" absent additional fact evidence concerning the payment, of which none was produced by the Plaintiff or can be known to the Court, the Court has never had any basis for conclusions of its own regarding the character of any payments allegedly made to us, and therefore none from which to command us to adopt or declare conclusions with which we disagree as it has done in response to Plaintiff's pernicious

[16] "[T]he mere allegation of facts necessary for jurisdiction without supporting proof is fatally defective. Under Rule 12(h)(3) the Court is directed to dismiss an action when it appears the Court lacks jurisdiction over the subject matter." *United States v. One 1972 Cadillac*, 355 F.Supp. 513, 514-15 (E.D.Ky.1973). See also *United States v. Isaac*, 968 F.2d 1216 (6th Cir. 1992)

request, even if this "relief" weren't abhorrent to the United States Constitution[17] and unavailable for that reason, in any event.

CONCLUSION

For the foregoing reasons, those set forth in our Motion, and the new evidence introduced, this Honorable Court should reconsider its June 10 denial of our Motion to Vacate its judgment and related orders in this case and should grant that Motion, and the Court should also reconsider and deny Plaintiff's Motions for Contempt. Or, should this relief be denied, the Court should stay execution of its rulings on Plaintiff's Motions for Contempt and other rulings in this case pending the outcome of our appeal of these issues to the Circuit Court.

Respectfully submitted this 21st day of June, 2010.

_____
Peter Eric Hendrickson

_____
Doreen M. Hendrickson

[17] United States Constitution, First Article of Amendment; "As we stated in *Board of Education v. Barnette*, 319 U. S. 624, 319 U. S. 642, 'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'" *First Unitarian Church v. Los Angeles*, 357 U.S. 545 (1958); "The right to speak and the right to refrain from speaking are complementary components of the broader concept of "individual freedom of mind." *Wooley v. Maynard*, 430 U.S. 705 (1977)

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2010 a true and correct copy of the above and foregoing document was served on the Plaintiff as listed below by First Class Mail to:

Daniel Applegate, Trial Atty Tax Div.
U.S. DoJ (sic)
P.O. Box 7238
Ben Franklin Stn.
Washington, DC 20044

_____
Peter Eric Hendrickson

Copies are also being served on:

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Detroit, MI 48226

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…and to millions of other Americans via the internet.

they are. That's what's being ordered to me. I'm being told to say over my own signature that I do believe my earnings qualify as wages, and I don't believe that, Your Honor.

THE COURT: Simply by filing the tax return, you admit that, you acknowledge that.

DEFENDANT PETER HENDRICKSON: I'm sorry, no, I --

they are not filed within two weeks of this date, then I am going to incarcerate you.

If you want to file something along with your return that states that you disagree with having to file it and that you disagree that they're wages and you disagree that there are taxes owed on it, append whatever you want to your return, but it must be filed. They must be filed.

DEFENDANT PETER HENDRICKSON: Your Honor, can I ask, what is the point? If we are able to append something or in some fashion affect the return so as to make it so that it does not reflect our own beliefs, then what is the point of our being required to do this?

THE COURT: The point is that every American citizen is required to accurately report their wages and their earnings to the United States government because they owe federal taxes on it, and I understand that you protest that system and reject