

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs.-

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

PETER ERIC HENDRICKSON and  
DOREEN M. HENDRICKSON,

Defendants.

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**BRIEF IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS,  
FOR A MORE DEFINITE STATEMENT, TO STRIKE  
AND NOTICE OF VIOLATION OF RULE 11**

This is an action under section 7405 of the Internal Revenue Code (26 U.S.C.) ("IRC") to recover the erroneous refunds of federal income, social security and Medicare taxes totaling \$20,380.96 that defendants Peter and Doreen Hendrickson received as a result of the false statements that they made on their 2002 and 2003 federal income tax returns. The Government also seeks injunctive relief under IRC § 7402 in order to prevent defendants from filing false tax forms and returns in the future, and to compel them to amend their 2002 and 2003 returns.

Based on defendants' untenable distinction between a "central" and "general" government, defendants initially contend that the United States of America "does not exist in any capacity to file a suit or seek injunctive relief against Defendants." (Def. Br., p. 2). Defendants next assert, albeit incorrectly, that the complaint fails to state a claim for injunctive relief under IRC § 7402. Defendants have also moved for a more definite statement with respect to 19 paragraphs of the complaint without any explanation as to why they are unable to understand or answer those allegations.

Defendants have moved to strike certain words from the complaint, as well as the details of Peter Hendrickson's prior convictions in Eastern District of Michigan for conspiracy to place an incendiary device in the United States mail and willful failure to file an income tax return. Finally, defendants gratuitously assert that the attorneys for the plaintiff, the United States of America, have violated Rule 11 of the Federal Rules of Civil Procedure by making "false representations" that include the assertion "[t]hat the Hendricksons were issued refunds of 'taxes.'" Defendants' motions to dismiss, for a more definite statement, and to strike are spurious and should be denied.

### **QUESTIONS PRESENTED**

1. When the United States makes an erroneous tax refund to a taxpayer, the Government may bring a civil action under IRC § 7405 to recover the refund. Section 7405(b) provides, in pertinent part, that "[a]ny portion of a tax which has been erroneously refunded . . . may be recovered by civil action brought in the name of the United States." The complaint also alleges that jurisdiction exists under 28 U.S.C. §§ 1340 and 1345. With respect to the Government's claim for injunctive relief, IRC § 7402(a) provides that "[t]he district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunctions . . . and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws." Should defendants' motion to dismiss, insofar as it argues that this Court is without jurisdiction to entertain this action because the United States of America lacked the capacity to commence this suit to: (1) recover the erroneous tax refunds made to defendants; and (2) obtain injunctive relief barring defendants from filing false tax returns, be denied?

2. For purposes of defendants' motion to dismiss for failure to state a claim, the factual allegations of the complaint are accepted as true and viewed in the light most favorable to the United States. Here, the complaint alleges that defendants filed tax returns falsely reporting that Peter Hendrickson received no wages in 2002 and 2003 in order to fraudulently obtain refunds of the federal income, social security and Medicare taxes that were withheld by his employer. The complaint further alleges that the taxes withheld from Peter Hendrickson's 2002 wages were erroneously credited to his wife's 2000 unpaid income tax liabilities and his own tax liabilities for 2000 and 2001. The taxes withheld from Peter Hendrickson's 2003 wages were erroneously credited to his unpaid 2000 tax liability and three frivolous return penalties, with the balance refunded to the defendants. Because a tax credit, improperly allowed, is in the nature of an erroneous refund and can be recovered under IRC § 7405, does the complaint state a claim upon which relief can be granted?

3. The United States seeks an injunction under IRC § 7402(a) barring them from filing returns that falsely claim that they have "zero" or no taxable income under the theory that only government workers or corporate officers are liable for the payment of income taxes under IRC § 3401(c). The complaint alleges that defendants' actions in filing false Form 1040 tax returns (including, but not limited to, Forms 4852) are specifically calculated to cause substantial interference with the revenue laws of the United States by (1) causing the IRS to make erroneous refunds or credits of tax to defendants; (2) administratively burdening the IRS by requiring the IRS to expend considerable resources to detect the erroneous refunds, conduct examinations of defendants' returns, and reassess and collect defendants' federal tax liabilities; and (3) administratively burdening the IRS by requiring it to detect the erroneous tax refunds made to

taxpayers who imitate defendants based on their tax fraud schemes in filing false and fraudulent returns and Forms 4852. Lastly, the complaint also alleges that defendants' actions in filing false and fraudulent returns imposes an immediate and irreparable injury upon the United States by impeding, obstructing and impairing the assessment and collection of federal taxes, and that the public interest favors enjoining the defendants because an injunction will stop their illegal conduct and harm to the public, while defendants will not be harmed if they are required to obey the law. Under the foregoing circumstances, has the United States stated a claim for an injunction under IRC § 7402(a) against the defendants?

4. Defendants have moved for a more definite statement with respect to the allegations contained in 19 paragraphs of the complaint on subjects ranging from the identity of the specific identities of the Department of Justice and IRS Chief Counsel officials who authorized this erroneous refund suit to the characterization, as fraudulent, of defendants' conduct in filing tax returns that falsely reported "zero" or no income in order to obtain refunds of withheld federal taxes. Such motions are not favored, and are rarely granted in light of the availability of discovery under the Federal Rules of Civil Procedure. Should defendants' motion for a more definite statement be denied because the Government's claims for erroneous refunds and injunctive relief are sufficiently definite and the defendants are reasonably able to respond?

5. The purpose of a motion to strike under Rule 12(f) of the Federal Rules of Civil Procedure is to simplify the pleadings and save time and expense by excising from the complaint "any redundant, immaterial, impertinent, or scandalous matter" which will not have any bearing on the outcome of the litigation. Defendants have moved to strike portions of the complaint with which they disagree or take offense (primarily the allegations of defendants' fraudulent conduct)

without specifying in detail the grounds or reasons for their motion. Defendants' false statements and fraudulent course of conduct are central to the complaint in this case because they demonstrate the need for an injunction and trigger the application of the five-year statute of limitations for erroneous refund suits provided by IRC § 6532(b). Should defendants' motion to strike be denied because the allegations they seek to strike are not redundant, immaterial, impertinent or scandalous?

### **STATEMENT OF THE CASE**

#### **Peter Hendrickson's 2002 and 2003 wages**

1. During 2002 and 2003, Peter Eric Hendrickson was employed by Personnel Management, Inc., in Farmington Hills, Michigan. Declaration of Kim Halbrook ("Halbrook Decl."), ¶¶1 and 4.<sup>1</sup>

2. As an employee of Personnel Management, Inc., Hendrickson was paid a salary during 2002 and 2003. Halbrook Decl., ¶5.

3. In 2003 and 2004, Personnel Management, Inc., issued Hendrickson Form W-2 Wage and Tax Statements for the 2002 and 2003 tax years, respectively. True and correct copies of the Forms W-2 issued to Hendrickson for the 2002 and 2003 tax years are attached to the Declaration of Kim Halbrook. Halbrook Decl., ¶5; Complaint, ¶17.<sup>2</sup>

4. The W-2 Wage and Tax Statements that were issued to Hendrickson for the 2002 and

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<sup>1</sup> The Declaration of Kim Halbrook has been filed with the Court in support of our Brief in Opposition to the Defendants' Motions to Dismiss, for a More Definite Statement, Motion to Strike, and Notice of Violation of Rule 11.

<sup>2</sup> For purposes of defendants' motion to dismiss for failure to state a claim, the factual allegations of the complaint are accepted as true. *Herrada v. City of Detroit*, 275 F.3d 553, 556 (6<sup>th</sup> Cir. 2001).

2003 tax years were based upon (1) the wages paid to him, and (2) the amounts of the federal income, social security and Medicare taxes that were withheld from his wages in 2002 and 2003 and paid over to the Internal Revenue Service. Halbrook Decl., ¶6; Complaint, ¶17.

5. According to the 2002 Form W-2 Wage and Tax Statement that Personnel Management issued to him, Hendrickson received taxable wages of \$58,965.00 in 2002. His employer withheld federal income taxes of \$5,642.20, social security taxes of \$3,655.83, and Medicare taxes of \$854.93 and paid them over to the IRS. Halbrook Decl., ¶¶5-7; Complaint, ¶17.

6. According to the 2003 Form W-2 Wage and Tax Statement that Personnel Management issued to him, Hendrickson received taxable wages of \$60,608.00 in 2003. His employer withheld federal income taxes of \$5,620.02, social security taxes of \$3,757.60, and Medicare taxes of \$878.72 and paid them over to the IRS. Halbrook Decl., ¶¶5-7; Complaint, ¶17.

**Peter and Doreen Hendrickson's 2002 federal income tax return**

7. Peter Eric Hendrickson and his wife, Doreen M. Hendrickson (“defendants” or “taxpayers”) filed a joint U.S. Individual Income Tax Return (Form 1040) for the 2002 tax year in August of 2003. Declaration of Shauna Henline (“Henline Decl.”), ¶4 and Exhibit 1 thereto.<sup>3</sup>

8. Taxpayers reported “zero” or no wages or salaries on line 7 of their 2002 tax return. On line 62 of their 2002 return, they reported, incorrectly, federal income tax withheld from Forms W-2 and 1099 of \$10,152.96. Based on the information furnished to the IRS by Peter

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<sup>3</sup> The Declaration of Shauna Henline has been filed with the Court in support of our Brief in Opposition to the Defendants’ Motions to Dismiss, for a More Definite Statement, Motion to Strike, and Notice of Violation of Rule 11.

Hendrickson's employer, Personnel Management, Inc., it is apparent that this amount included not only the federal income taxes that his employer withheld from his wages or salary during 2002, but also the social security and Medicare taxes withheld from Hendrickson's wages or salary. Henline Decl., ¶4 and Exhibit 1 thereto; Complaint; ¶13.

9. Attached to the Hendricksons' 2002 Form 1040 tax return was a Form 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc") for Peter Eric Hendrickson which reported that he received no wages for 2002. The Form 4852 also reported that federal income taxes (\$5,642.20), social security taxes (\$3,655.83) and Medicare taxes (\$854.93) had been withheld from his wages or compensation during 2002. The total of these amounts is \$10,152.96. Henline Decl., ¶5 and Exhibit 1 thereto; Complaint, ¶16.

10. In response to the request made on line 9 of the Form 4852 attached to the Hendricksons' 2002 (and 2003) federal income tax return to "[e]xplain your efforts to obtain Form W-2, 1099-R, or W-2c, Statement of Corrected Income and Tax Amounts," the following words were entered:

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

Henline Decl., ¶¶6 and 12, and Exhibits 1 and 2 thereto; Complaint, ¶18.

11. On line 70 of their 2002 Form 1040 tax return, the defendants reported overpaying their 2002 federal income tax liabilities by \$10,152.96, which is equal to the total of the federal income, social security and Medicare taxes withheld from Peter Hendrickson's wages in 2002, as reported by his employer, Personnel Management, Inc. On line 71a of their 2002 return, the defendants requested a refund of the entire amount of the federal taxes that had been withheld

from Peter Hendrickson's salary during 2002 (\$10,152.96). Henline Decl., ¶7 and Exhibit 1 thereto; Halbrook Decl., ¶¶4-6; Complaint, ¶19.

**The 2002 Tax Refund made to Defendants Peter and Doreen Hendrickson**

12. Based on the 2002 Form 1040 tax return that defendants filed, the IRS treated the \$10,152.96 in federal taxes that had been withheld from Peter Hendrickson's pay during 2002 as a tax overpayment. From this erroneous overpayment, a credit of \$1,699.86 was transferred and applied to an outstanding balance owed by Doreen Hendrickson for the 2000 tax year. The remaining erroneous overpayment for 2002 was transferred and applied to the outstanding balances owed by Peter Hendrickson for 2001 (\$6,521.11) and 2000 (\$1,931.99). Henline Decl., ¶9 and Exhibits 3 and 5 thereto; Complaint, ¶19.

**Peter and Doreen Hendrickson's 2003 federal income tax return**

13. Taxpayers reported "zero" or no wages or salaries on line 7 of their 2003 tax return. On line 61 of their 2003 return, they reported, incorrectly, federal income tax withheld from Forms W-2 and 1099 of \$10,256.34. Based on the information furnished to the IRS by Peter Hendrickson's employer, Personnel Management, Inc., it is apparent that this amount included not only the federal income taxes that his employer withheld from his wages or salary during 2003, but also the social security and Medicare taxes withheld from Hendrickson's wages or salary. Henline Decl., ¶10 and Exhibit 2 thereto.

14. Attached to the Hendricksons' 2003 Form 1040 tax return was a Form 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc") for Peter Eric Hendrickson which reported that he received no wages for 2003. The Form 4852 also reported that federal income taxes (\$5,620.02), social security taxes (\$3,757.60) and Medicare taxes (\$878.72) had been

withheld from his wages or compensation during 2003. The total of these amounts is \$10,256.34. Henline Decl., ¶11 and Exhibit 2 thereto; Complaint, ¶17.

15. On line 34 of their 2003 return, the Hendricksons reported adjusted gross income of \$286.14. On line 60, they reported a total tax of \$28.34. Henline Decl., ¶13 and Exhibit 2 thereto.

16. On line 68 of their 2003 Form 1040 tax return, the defendants reported overpaying their 2003 federal income tax liabilities by \$10,228.00, which is equal to the total of the federal income, social security and Medicare taxes withheld from Peter Hendrickson's wages in 2003 minus the total tax they owed for 2003 (\$28.34). On line 70a of their 2003 return, the defendants requested a refund of \$10,228.00 (\$10,256.34-\$28.34) in federal income, social security, and Medicare taxes that had been withheld from Peter Hendrickson's salary during 2003. Henline Decl., ¶14; Halbhook Decl., ¶¶4-6 and Exhibit 2 thereto; Complaint, ¶20.

**The 2003 Tax Refund made to Defendants Peter and Doreen Hendrickson**

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

18. A credit of \$5,551.44 from the amount that would otherwise have been erroneously refunded to defendants was applied to Peter Hendrickson's unpaid 2000 federal income tax liabilities. Additionally, credits of \$515.66, \$553.17 and \$529.18 were transferred and applied to IRC § 6702 frivolous return penalties assessed against defendants. Henline Decl., ¶16 and Exhibits 4, 6, 7 and 8 thereto; Complaint, ¶20.

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

### **The Complaint for Erroneous Tax Refunds and Permanent Injunction**

20. The United States filed its complaint in the instant civil action against the defendants on April 12, 2006, seeking to recover the erroneous refunds of federal income, social security and Medicare taxes totaling \$20,380.96 that defendants received as a result of the misrepresentations made on their 2002 and 2003 federal income tax returns, and to enjoin defendants under IRC § 7402 from filing false and fraudulent tax returns and forms with the IRS. Doc. #1.

21. The complaint alleged that jurisdiction was conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and by IRC (26 U.S.C.) §§ 7402(a) and 7408.

### **ARGUMENT**

#### **I. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THIS SUIT FOR ERRONEOUS REFUNDS AND INJUNCTIVE RELIEF**

##### **A. The legal capacity of the United States of America.**

The Hendricksons argue that the United States of America lacked the capacity to sue and that this Court lacks subject matter jurisdiction because the “United States of America” and the “United States” are not synonymous, and the United States of America is not the proper plaintiff in the present action. Contrary to defendants’ frivolous assertions, the complaint properly asserted jurisdiction under 28 U.S.C. §§ 1340 and 1345 and IRC §§ 7402(a) and 7405. Such allegations are sufficient. *See United States v. Ekblad*, 732 F.2d 562, 563 (7<sup>th</sup> Cir. 1984); *United*

*States v. Poole*, 916 F. Supp. 861, 862 (C.D. Ill. 1996). See also *United States v. Furman*, 168 F. Supp.2d 609 (E.D. La. 2001) (rejecting objection to indictment based on distinction between the “United States of America” and the “United States”).

**B. The IRS erroneously issued refunds to defendants based on their fraudulent tax returns.**

Next, the Hendricksons argue that the Court lacks subject matter jurisdiction over this action under IRC § 7405 because “[d]efendants did not receive any refund of ‘tax’ for the years 2002 or 2003.” (Def. Br. at 3) Defendants further argue that “[t]here is a lawful assessment in existence for defendants for each of the years 2002 and 2003” and that “[a]ny funds returned to defendants by the Internal Revenue Service for the years 2002 and 2003 were merely the return of the Defendant’s [sic] own funds, held as a credit toward any potential tax liability, which did not and does not exist.” (Def. Br. at 3). These arguments are patently frivolous.

Section 7405 of the Internal Revenue Code provides that the United States may bring a civil action to recover a refund of any tax imposed by the Code that the IRS erroneously makes. It embraces two kinds of erroneous refunds. First, IRC § 7405(a) provides that the United States may sue to recover a refund described as erroneous in IRC § 6514, *i.e.*, a refund that should not have been issued because it was barred by the applicable statute of limitations. Second, IRC § 7405(b) provides that the United States may sue to recover any other refund of tax it has erroneously made. In the present case, the United States seeks to recover tax refunds of \$10,152.96 and \$10,228.00 from defendants under IRC § 7405(b). The United States also seeks interest on the amounts erroneously refunded, as provided by IRC § 7405(c). Because the refunds were induced by the defendants’ fraudulent misrepresentations that Peter Hendrickson

received no wages in 2002 or 2003, the five-year statute of limitations provided by IRC §§ 7405(d) and 6532(b) applies and the instant suit is timely.

The United States has established, through the Declaration of Kim Halbrook, that defendant Peter Eric Hendrickson was employed by Personnel Management, Inc., which paid him wages of \$58,965 in 2002 and \$60,608 in 2003. Personnel Management withheld federal income, social security and Medicare taxes from his wages and issued him W-2 Wage and Tax Statements that reflected those withholdings in 2002 and 2003. The Hendricksons subsequently filed tax returns which falsely reported that Peter Hendrickson earned no wages in 2002 or 2003. As they acknowledge in the affidavit attached to their motions, defendants did not attach the W-2 forms issued by Peter Hendrickson's employer to their 2002 and 2003 Form 1040 tax returns.

Instead, defendants attached Forms 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc") that falsely reported that Peter Hendrickson earned no wages to their 2002 and 2003 tax returns. The Forms 4852 set forth the amounts of the federal income, social security and Medicare taxes that had been withheld from Peter Hendrickson's wages by his employer, Personnel Management, Inc., in 2002 and 2003. The IRS subsequently issued credits and/or refunds in the amounts claimed by defendants on their 2002 and 2003 federal income tax returns (\$10,152.96 and \$10,228.00, respectively).<sup>4</sup> The refunds, which comprised all the federal taxes withheld from Peter Hendrickson's wages in 2002 and 2003, were erroneously made because they were based on the defendants' misrepresentations on their tax returns and Forms 4852 that

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<sup>4</sup> Instead of refunding all of the withheld taxes to the defendants, the IRS applied the credits to outstanding taxes and penalties owed by Peter and Doreen Hendrickson for other tax periods. It is well settled, though, that a tax credit, improperly allowed, is in the nature of an erroneous refund and may be recovered under IRC § 7405. *United States v. Guy*, 978 F.2d 934, 939 (6<sup>th</sup> Cir. 1992).

they earned no wages or taxable income during the taxable years at issue.

There is no merit to defendants' argument that they did not receive any "tax" refunds for 2002 or 2003. Their W-2 forms show the amounts were withheld as tax, and the Hendricksons' tax returns show they were claimed as refunds of tax. The argument that wages are not income, *i.e.*, are not subject to tax, has been rejected as frivolous for more than 20 years by every court that has considered it. *See, e.g., Kelly v. United States*, 789 F.2d 94, 97 (1<sup>st</sup> Cir. 1986); *Lovell v. United States*, 755 F.2d 517, 519 (7<sup>th</sup> Cir. 1984); *Olson v. United States*, 760 F.2d 1003, 1005 (9<sup>th</sup> Cir. 1985).<sup>5</sup> *See also Perkins v. Commissioner*, 746 F.2d 1187 (6<sup>th</sup> Cir. 1984) (argument that wages paid for labor were nontaxable receipts was frivolous).

Defendants are also incorrect when they argue (Br. at 3) that "[n]o tax is due and owing to the United States other than as established by means of a lawful assessment[]" and "there was no liability for any tax against the Defendants and in favor of the United States[]" for the 2002 and 2003 taxable years." First, the tax assessments made against defendants for 2002 and 2003 were based on their fraudulent income tax returns for those years, which omitted (1) the wages of \$58,965 and \$60,608 paid to the defendant, Peter Eric Hendrickson, by his employer, Personnel

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<sup>5</sup> In all of these cases (*Kelly*, *Lovell*, and *Olson*, *supra*), the taxpayer plaintiffs attempted to obtain refunds of the federal taxes that had been withheld from their wages or salaries on the frivolous grounds that wages were not income. On appeal, the taxpayers challenged the imposition of the IRC § 6702 penalties assessed against them based upon the Form W-2 Wage and Tax Statements filed with the tax returns that demonstrated that the taxpayers received taxable income within the meaning of IRC § 61. The only differences between the Hendricksons and the taxpayers in *Kelly*, *Lovell*, and *Olson*, *supra*, are that the Hendricksons (1) falsely reported on their 2002 and 2003 tax returns that Peter Hendrickson received no wages during the tax years in question; and (2) falsely reported on the sworn Forms 4852 that Peter Hendrickson signed for 2002 and 2003 that he had no income for those years. Because the IRS was not alerted to the Hendricksons' fraudulent acts by the genuine W-2 forms issued by Peter Hendrickson's employer, it erroneously made refunds of the federal income, social security and Medicare taxes withheld from his wages in 2002 and 2003.

Management, Inc., in 2002 and 2003, respectively; and (2) the non-employee compensation paid to Doreen Hendrickson by Una E. Dworkin in 2002 and 2003.

Second, the timing of an assessment does not affect a taxpayer's tax liability. *See State Farm Life Ins. Co. v. Swift*, 129 F.3d 792, 799, 800 n.41 (5<sup>th</sup> Cir. 1997) (recognizing that "under the Internal Revenue Code, taxes are owed and payable to the IRS at a given time" and that "[a]n assessment does not create or change the taxpayer's initial tax obligation that was owed"). To the contrary, a tax liability arises, as a matter of law, as a consequence of realizing income over the course of a particular tax year, not as a consequence of an assessment. On the date the return is due to be filed, a taxpayer has "a positive obligation to the United States: a duty to pay its tax." *Manning v. Seeley Tube & Box Co.*, 338 U.S. 561, 565 (1950). Thus, defendants' argument that they were not liable for any taxes at the time the taxes were collected through wage withholding because no taxes had been assessed is mistaken. *See* IRC § 3402(a)(1) (providing for income tax withholding from wages); *Zeier v. United States*, 80 F.3d 1360, 1364 (9<sup>th</sup> Cir. 1996) (rejecting taxpayer-estate's argument that there can be no payment of tax before the IRS makes a formal assessment of the estate's tax liability); *Moran v. United States*, 63 F.3d 663, 666 (7<sup>th</sup> Cir. 1995) ("An assessment is not a prerequisite to tax liability. Though the [taxpayers] make it out to be more, an assessment is only a formal determination that a taxpayer owes money."); *see also Laing v. United States*, 423 U.S. 161, 170 n.13 (1976) (assessment is "essentially a bookkeeping notion [that] is made when the Secretary or his delegate establishes an account against the taxpayer on the tax rolls").

Finally, defendants' claims that they had no income tax liability for 2002 or 2003, and that the IRS accordingly did not erroneously refund the taxes that had been withheld from Peter

Hendrickson's wages are based on his fallacious interpretation of IRC § 3401(c) in Cracking the Code, which Peter Hendrickson published in July of 2003.<sup>6</sup> Henline Decl., ¶24. Cracking the Code ("CtC") was published shortly before the time when IRS employees in the Frivolous Return Program at the Ogden Compliance Services Campus began to observe taxpayers filing Form 1040 tax returns which reported "zero" or no income, and which claimed, using Forms 4852 that were attached to those tax returns, refunds of the federal income, social security and Medicare taxes that had been withheld from their wages or salaries.<sup>7</sup> Henline Decl., ¶24.

On page 76 of CtC, Peter Hendrickson erroneously states that "So, actually, withholding only applies to the pay of federal government workers, exactly as it always has (plus "State" government workers, since 1939, and those of the District of Columbia since 1921)." Henline Decl., ¶25. This is a stale argument which has been rejected numerous times in years past. *See, e.g., Sullivan v. United States*, 788 F.2d 813, 815 (1<sup>st</sup> Cir. 1986); *United States v. Latham*, 754 F.2d 747, 750 (7<sup>th</sup> Cir. 1985) (contention that "under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute."); *O'Connor v. United States*, 669 F. Supp. 317, 322 (D. Nev. 1987). Peter Hendrickson was obviously an employee of Personnel Management, Inc., in 2002 and 2003 within the

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<sup>6</sup> Section 3401(c) of the Internal Revenue Code provides as follows:

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

<sup>7</sup> A copy of a Form 4852 ("Substitute for Form W-2, Wage and Tax Statement, etc.") appears on page 230 of CtC in its Appendix. Declaration of Shauna Henline, ¶25.

meaning of IRC § 3401(c). Hendrickson's employer properly withheld federal income and employment taxes from his wages, and defendants fraudulently obtained refunds of those withheld taxes which the United States is now attempting to recover through the present erroneous refund suit. Because the complaint clearly states a claim for an erroneous tax refund for 2002 and 2003 under IRC § 7405, defendants' motion to dismiss for failure to state a claim should be denied.

**C. The complaint states a claim for an injunction under section 7402(a)**

Defendants have moved to dismiss the complaint insofar as it seeks an injunction under IRC § 7402(a) compelling them to (1) file correct and accurate tax returns for 2002 and 2003; and (2) bar them from filing false tax returns and forms in the future, *i.e.*, tax returns and forms similar to those attached to those that they actually filed for the 2002 and 2003 tax years which reflected that they earned "zero" or no taxable income despite overwhelming evidence to the contrary. The Hendricksons claim that IRC § 7402(a) grants no jurisdiction in the absence of a violation of a specific statute, and that the complaint violates Fed.R.Civ.P. 8(a) and (e) because it allegedly does not include a "statement of the grounds upon which the courts [sic] jurisdiction depends." (Br. at 6).

Section 7402(a) of the Internal Revenue Code gives the district courts jurisdiction to issue writs and orders of injunction, and such other orders "as may be necessary or appropriate for the enforcement of the internal revenue laws." *See United States v. Raymond*, 228 F.3d 804, 809 (7<sup>th</sup> Cir. 2000). This broad language manifests "a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws." *Brody v. United States*, 243 F.2d 378, 384 (1<sup>st</sup> Cir. 1957). *See also United States v. First*

*Nat'l City Bank*, 568 F.2d 853 (2<sup>d</sup> Cir. 1977). Contrary to defendants' argument, an injunction may be issued under IRC § 7402(a) "to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11<sup>th</sup> Cir. 1984).

Furthermore, the complaint contains allegations that are more than sufficient to state a cause of action against the defendants under IRC § 7402(a). In Court I of the complaint, the United States alleged that the defendants filed sworn income tax returns and W-2 forms for 2002 and 2003 that fraudulently reported that they received no income or wages when they knew they had gross incomes of more than \$60,000 during each of the taxable years in question. Defendants filed these false tax returns in order to obtain refunds of the federal income, social security and Medicare taxes that had been withheld from Peter Hendrickson's wages in 2002 and 2003. The complaint further alleged that the IRS applied the refunds to other tax liabilities owed by Peter and Doreen Hendrickson, and sent them a check for the balance.

In addition to the monetary loss occasioned by the erroneous tax refunds that the IRS made to or on behalf of the defendants, the defendants' conduct in filing their false tax returns caused substantial interference with the internal revenue laws by administratively burdening the IRS, requiring the agency to expend considerable resources to detect the erroneous refunds, examine defendants' 2002 and 2003 Form 1040 tax returns, and obtain the documents necessary to prove that the refunds were erroneous. Defendants' actions, as alleged in Count II of the complaint, imposed an immediate and irreparable injury on the United States by impeding, impairing and obstructing the assessment and collection of federal taxes in accordance with the internal revenue laws. In the absence of an injunction, the United States will continue to suffer

irreparable injury, while defendants will not be harmed by an injunction that prohibits them from filing false tax returns in the future. Because the complaint sets forth all of the proper standards and the traditional equitable criteria for the entry of a permanent injunction under IRC § 7402(a), defendants' motion to dismiss for failure to state a claim should be denied.

**II. DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT SHOULD BE DENIED**

This is a simple and straightforward case. Defendants filed false tax returns in order to obtain tax refunds to which they were not entitled. Instead of answering the complaint, which would require them to admit or deny what they have done, they have responded by moving for a more definite statement without any real explanation as to why such a more definite statement is necessary or desirable. Defendants' Rule 12(e) motion should be denied.

Under Fed.R.Civ.P. 8(a), the complaint need only contain a "short and plain statement of the claim showing the pleader is entitled to relief." Notice pleading, and the availability of pretrial discovery in civil cases, means that Rule 12(e) motions are not favored. *See Cox v. Maine Maritime Academy*, 122 F.R.D. 115, 116 (D. Me. 1988). Only where the complaint is unintelligible, vague, or contains insufficient information to formulate a responsive pleading should the plaintiff be required to furnish a more definite statement of his or her claim under Fed.R.Civ.P. 12(e). *Compuware Corp. v. Int'l Business Machines*, 259 F. Supp.2d 597, 600 (E.D. Mich. 2002).

The allegations of the complaint, as previously discussed, are sufficient to place the Hendricksons on notice for the purpose of answering the complaint that (1) refunds of sums certain were made to them for the 2002 and 2003 tax years; (2) that the Government's action is timely; and (3) that the Hendricksons were not entitled to the refunds. *See United States v. Com.*

*Nat'l Bank*, 874 F.2d 1165, 1169 (7<sup>th</sup> Cir. 1989) (elements of erroneous refund suit under IRC § 7405). The non-objectionable information sought by defendants in their motion for a more definite statement is available and more properly sought through discovery. Defendants' Rule 12(e) motion should be denied.

### **III. DEFENDANTS' MOTION TO STRIKE IS FRIVOLOUS AND SHOULD ALSO BE DENIED**

Striking a pleading is a drastic remedy which is often sought as a dilatory or harassing tactic; accordingly, it is viewed with disfavor and rarely granted. *See, e.g., Lunsford v. United States*, 570 F.2d 221, 229 (8<sup>th</sup> Cir. 1977); *Garlanger v. Verbeke*, 223 F. Supp.2d 596, 609 (D. N.J. 2002). Not surprisingly, this case does not constitute an exception to the general rule. Defendants have moved the Court to strike several words or phrases as pejorative or frivolous as well as the "fraudulent and misleading words 'of America' appended to 'United States[' in the first sentence of paragraph 32." Defendants have also moved to strike paragraph 30, which deals with the prior federal convictions of Peter Hendrickson in this Court, in its entirety. Defendants' false statements and fraudulent course of conduct are central to the complaint in this case, however, because those allegations trigger the application of the five-year statute of limitations for erroneous refund suits provided by IRC § 6532(b). Peter Hendrickson's past crimes involving tax administration are directly relevant to the injunction complaint. Furthermore, as defendants have not demonstrated that the allegations in question have no possible relation to the present action or may cause prejudice to them in this non-jury case, their motion to strike should be denied.

**CONCLUSION**

For the foregoing reasons, defendants' motions to dismiss, for a more definite statement, and to strike should be denied.

Respectfully submitted this 23<sup>rd</sup> day of May, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

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