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

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 08-20585
	:	
PETER HENDRICKSON,	:	
	:	
Defendant.	:	

PETER HENDRICKSON'S REPLY TO THE GOVERNMENT'S RESPONSE TO HIS MOTION TO VACATE AND DISMISS

1. The government simply evades the "person" issues in Mr. Hendrickson's Motion and newly-cited precedents in three circuits which fully support Mr. Hendrickson's position

Rather than engage Mr. Hendrickson on the first two issues in his Motion, concerning the limiting effect of 26 U.S.C. § 7343, the government tries to simply brush them aside as settled and done with. However, collateral attacks to a judgment always involve matters previously deemed to have been adjudicated and concluded. Such past events are irrelevant.

Furthermore, contrary to the assertion in that attempted brush-off, the Court DID NOT "soundly reject" Mr. Hendrickson's previous motion on these issues. Instead, the Court denied Mr. Hendrickson's previous motion cautiously and in a very qualified way, acknowledging that the decision should actually go the other way if it were shown that: "the definition set forth at § 7343 is … a "distinct [] express[ion]" [overriding the "any individual" of 26 U.S.C. § 7701(a)(1)]." See docket #70, page 39.

That § 7343 is such a distinct expression, and is intended by Congress to limit the application of charges such as those in this case, is thoroughly demonstrated in Mr. Hendrickson's Motion. The Motion makes clear that:

- the "person" definition at § 7701(a)(1) embraces any individual;
- the "person" definition at § 7343 specifies a class of some individuals as being "persons" for purposes of charges such as those in this case;
- "some individuals" is inescapably a subset of "any individual"; and therefore
- § 7343 can only exist in order to distinguish a subset of individuals as "persons" for purposes of charges such as those in this case, and any look outside that subset requires treating the section as superfluous, and is therefore manifestly incompatible with the intent of the statutory structure.

Mr. Hendrickson's Motion also makes clear that construing § 7343 as the exclusive specification defining "persons" subject to charges such as those in this case is uniformly and unambiguously the law in multiple Circuits, including this one, and no contrary case-law can be found.

2. The government's response to Mr. Hendrickson's arguments concerning the statutory mandate at 26 U.S.C. § 6020(b) are a studied exercise in mendacity, ultimately proving that no authority exists in conflict with those arguments

Unlike its complete evasion of Mr. Hendrickson's "person"-related arguments, the government does put up a façade of opposition to Mr. Hendrickson's arguments concerning its statutory obligation to produce returns on its own behalf and over the signature of a liability-accepting officer when it deems a filed return to be required and false. But the appearance of opposition is, in fact, just a façade. No argument is offered, no authority is produced.

Instead, the effort is an exercise in mendacity. The government simply asserts that "every court that has addressed this issue, including this Court, has read the statute to be permissive and not to create an obligation for the IRS to create a substitute return," followed by the citation of eleven cases supposedly standing in opposition to Mr. Hendrickson's positions. However, each and every case cited is entirely irrelevant to the issue in Mr. Hendrickson's Motion. What's more, the excerpts of rulings that are presented in order to convey a contrary impression are revealed, upon adding the portions omitted, as saying nothing of the kind.

Two rulings are quoted. The first of these, *United States v. Schiff*, 919 F.2d 830, 832-33 (2d Cir. 1990), is quoted as saying: *"There is no requirement that the IRS complete a substitute return."* Omitted is the immediately preceding language of the ruling, which reads:

> *"First, Schiff contends that since 26 U.S.C. Sec. 6201(a)(1) (1988) requires that assessments be made from returns or lists, the IRS must prepare a substitute return pursuant to 26 U.S.C. Sec. 6020(b) (1988) prior to assessing deficient taxes. It is clear,*

however, that when a taxpayer does not file a tax return, it is as if he filed a return showing a zero amount for purposes of assessing a deficiency."

Plainly, the *Schiff* ruling has nothing to do with the mandate of § 6020(b) generally, or a case in which a return WAS filed (as opposed to a non-filing like Schiff's). The ruling says merely that the IRS can, by some contrivance, assess a deficiency without preparing a substitute return, and makes clear that this conclusion is specifically related to Schiff's having failed to file a return.

The other ruling quoted is *United States v. Stafford*, 983 F.2d 25, 27 (5th Cir. 1993). The language quoted is: *"[A]lthough [§ 6020(b)] authorizes the Secretary to file for a taxpayer, the statute does not require such a filing"*. Left off is the remainder of the sentence: *"nor does it relieve the taxpayer of the duty to file."* That omitted portion draws the reader's attention to the fact that what IS presented concerns merely an argument that the Secretary is obliged to file a return "*for a taxpayer"*. *Stafford* has nothing to do with the § 6020(b) mandate on the government to file a signed return on its own behalf in response to a filed return it considers required and false. In fact, this ruling concerns nothing more than Stafford's frivolous argument that he could not be liable to "failure to file" charges because the IRS was obliged to file a return for him under the provisions of § 6020.

Like *Stafford* and *Schiff*, the remainder of the cases cited all involve non-filers, and also like *Stafford* and *Schiff*, each of these cited cases only concern the ability of the government to propose assessment of deficiencies without reliance on a § 6020(b) return, or the frivolous argument that the provisions of § 6020(b) relieves someone from criminal liability for failure to file. Thus, like *Stafford* and *Schiff,* none has anything to do with the issue raised in Mr. Hendrickson's Motion.

Of the remaining cases cited, *Deutsch v. Commissioner*, 478 F.3d 450, 452 (2d Cir. 2007), is virtually identical to *Schiff*, which it quotes as the basis and substance of its ruling. Like Schiff, the

ruling merely supports the proposition that a deficiency assessment can be proposed without reliance on a § 6020(b) return. Another, *Selgas v. Commissioner*, 475 F.3d 697, 700 (5th Cir. 2007), is a variation on this theme, in that the IRS HAD produced what it calls a "substitute for return" (not necessarily an actual § 6020(b) return), which Selgas argued was improperly prepared, a point the court deemed irrelevant, under the same reasoning as the courts in *Schiff* and *Deutsch*:

> *"We need not consider whether the substitute return was properly calculated and presented on the appropriate forms because, for the purpose of determining a deficiency, there is no need for the Commissioner to prepare a substitute tax return."*

Every other cited case addresses only the frivolous argument made in the Stafford case that the government is obliged to prepare returns for others, and this relieves those others of their own obligation to file. These include *United States v. Cheek,* 3 F.3d 1057, 1063 (7th Cir. 1993), *Geiselman v. United States*, 961 F.2d 1, 5 (1st Cir. 1992), *United States v. Powell*, 955 F.2d 1206, 1213 (9th Cir. 1992), *In re Bergstrom*, 949 F.2d 341, 343 (10th Cir. 1991), *United States v. Barnett* 945 F.2d 1296, 1300 (5th Cir. 1991), *United States v. Verkuilen,* 690 F.2d 648, 657 (7th Cir. 1982) and *United States v. Tarrant*, 798 F. Supp. 1292, 1302-03 (E.D. Mich. 1992).

In sum, then, the government has demonstrated support merely for the notion that where no return has been filed, and allegations of taxable activity made on information returns such as W-2s have thus been acquiesced-to by silence or at least have gone unrebutted, the IRS can propose deficiencies without filing a return asserting the claims it seeks to pursue. Also thoroughly demonstrated is that the 6020 provisions don't relieve anyone of liability for failure to file required returns.

At the same time, the government has demonstrated that there IS no case-law supporting the proposition that it can ignore the plainly stated mandate of § 6020(b) generally, and, while actually of the "view" that a filed return is required and false, create no return of its own in

contradiction thereof. In failing to defend its position, the government has failed to substantively oppose Mr. Hendrickson's Motion on these issues, just as it has failed to substantively oppose the Motion on the "person" issues.

CONCLUSION

Mr. Hendrickson is not a "person" relevant to the charges in this case. Nor was he alleged or proven to be before either the Grand or petit juries. Thus, the Court has been without jurisdiction and his conviction is invalid and void. Further, the government never controverted Mr. Hendrickson's returns as it is required by law to do when sincerely of a view that a filed return is required and false, thereby never making a cognizable accusation of falseness and never defining an obligation on Mr. Hendrickson's part or a claim on its own behalf. Instead, the government committed a fraud upon the Court by deliberately lying to at least the trial judge and jury (if not the Grand Jury, also) as to the official "view" of the legal character of Mr. Hendrickson's earnings. On these grounds as well, Mr. Hendrickson conviction is invalid and void.

In light of the foregoing, as well as the fact that his Motion is unopposed in substance, Mr. Hendrickson asks this honorable Court to grant his Motion to Vacate the conviction and Dismiss the charges with prejudice, and afford him such other relief as the Court may find appropriate.

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Peter E. Hendrickson, in propria personam