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

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| **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

Exhibit 1
Testimony of Warren Rose

Because I'm not interested in trying to trap you or trick you in any way, shape or form.

Now I believe you testified, sir, that you are the Vice-President of Personnel Management, Incorporated. Is that correct?

A Yes, sir. That's correct.

Q Are you also a shareholder?

A Not in that particular entity, no.

Q Are you an officer?

A Yes. I'm an officer.

Q On the Board of Directors?

A Yes, I am.

Q That's a Michigan corporation; is that correct?

A Yes, it is.

Q Is that a wholly owned subsidiary of any company?

A No, it is not.

Q Now you have the government exhibits in front of you?

A Yes, I do.

Q Okay. Let me direct your attention to Government Exhibit 50, if I could.

And I believe government counsel just asked you about this. I think you described it as a statement of Mr. Hendrickson's view on whether the

remuneration he was receiving from Personnel Management, Incorporated constituted wages as that termed is defined by the Internal Revenue Service.

Is that correct, sir?

A Yes, I believe so.

Q You highlighted a portion of it; is that correct, sir?

A Yes, I did.

Q Could you read the highlighted portion, sir?

A Certainly. Starting would be second paragraph?

Q Yes.

A

What many of us don't seem to know is that they're significant legal implications both civil and criminal associated with sufficient diligence in producing these forms such as simply listening on a W-2 the amount of wages paid as opposed to amount of wages as defined in 3401(a) and 3101(a) or just putting down on a 1099 the number of dollars paid to someone instead of the amount paid in the course of trade or business.

Each of these errors expose the producer of such forms to substantial penalties.

They also create paperwork burdens for

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?

A Yes.
Q And I believe government counsel asked you if you ever recall getting a telephone call from Mr. Hendrickson.
Is that correct?
A Yes.
Q You said you wouldn't recall.
A Not specifically, no.
Q You did engage in some discourse with Mr. Hendrickson concerning the subject after this time, did you not?
A Yes. That's correct.
Q And, specifically -- well, specifically, Government Exhibit 50 addresses this very -- which is, which is an email from Mr. Hendrickson to you dated October 18, 2003 addressing this very issue, the definition of wages. Right?
A Correct.
Q So, obviously, you had some discourse would him concerning this issue, although you might not remember a telephone call.
A Yes.
Q Okay. In addition and on April 4, 2009 -- I'm sorry 2004, as evidenced by Government Exhibit 50, you continued to have some discourse concerning

Exhibit 2
Testimony of Larry Bodoh

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.