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14 District of Arizona
15 *Of Counsel*

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiffs,

v.

JAMES LESLIE READING, CLARE L.
READING, FOX GROUP TRUST,
MIDFIRST BANK, CHASE, FINANCIAL
LEGAL SERVICES, STATE OF ARIZONA

Defendants.

Civ. No. 11-698-PHX-FJM

JOINT MOTION BY THE UNITED STATES, JAMES READING, CLARE READING AND FOX GROUP TRUST REQUESTING A THIRTY (30) DAY EXTENSION OF THE DISCOVERY AND DISPOSITIVE MOTION DEADLINES

On February 28, 2012, all of the parties herein requested the Court to extend the Rule 26(a)(3) disclosure, discovery cutoff and dispositive motion deadlines that are set forth in the September 2, 2011 scheduling order for sixty (60) days. The February 28, 2012 request was the first instance that the parties asked the Court to extend the referenced deadlines. The parties cited to the various stipulations that they filed in this matter to resolve various issues herein. On March 6, 2012, the Court denied the request ruling, among other things, that “[t]here was nothing in the [request] that

1 would support a finding of diligence.”

2 Prior to the filing of the parties’ February 28, 2012 request, defendants James Reading, Clare
3 Reading and Fox Group Trust served two sets of Interrogatories and Requests for Production of
4 Documents on the United States.¹ On March 2, 2012, the United States responded to the referenced
5 Interrogatories and Requests for Production of Documents. *See* Exhibit 1 attached herewith. On
6 March 8, 2012, the Readings and the Fox Group Trust raised various issues regarding the United
7 States’ discovery responses. *See* the March 8, 2012 e-mail, a copy of which is attached as Exhibit
8 2.

9 On March 9, 2012 the United States responded to the March 8, 2012 e-mail. *See* the
10 Government’s March 9, 2012 letter, a copy of which is attached as Exhibit 3. Counsel for the
11 Readings and the Fox Group Trust further responded by sending an e-mail dated March 10, 2012 and
12 a letter dated March 14, 2012. *See* Exhibits 4 and 5 attached hereto. On March 15, 2012, the United
13 States sent another letter which, *inter alia*, addressed some of the discovery disputes. *See* Exhibit
14 6 attached hereto.

15 The basis for this joint motion is that the referenced parties are trying to at least narrow some
16 of the discovery disputes without the Court’s intervention and the additional time would allow the
17 referenced parties to continue to work to that end. If the Court permits the additional time, the
18 extended discovery and dispositive deadlines would be as follows:

- 19 – Discovery deadline: May 11, 2012; and
- 20 – Dispositive Motion filing deadline: June 11, 2012.

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¹ The referenced first set was served on January 3, 2012 and the second set was served on January 4, 2012. Counsel for the Readings and the Fox Group Trust agreed to an extension of time for the United States to respond to the discovery.

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A proposed order consistent with this stipulation is lodged herewith.

Dated this 15th day of March, 2012.

JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
U.S. Department of Justice

By: /s/ Charles M. Duffy
CHARLES M. DUFFY
Trial Attorney, Tax Division

Of Counsel:

ANN SCHEEL
Acting United States Attorney

/s/ Tommy K. Cryer
TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue, Suite 1102
Shreveport, LA 71105
Telephone: (318) 797-8949
(Attorney for James and Clare
Reading and the Fox Group Trust)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system to the foregoing and served the following through that system and by first class mail:

ROBERT P. VENTRELLA
Assistant Attorney General
State of Arizona
1275 West Washington Street
Phoenix, Arizona 85007-2926

PAUL M. LEVINE, ESQUIRE
LAKSHMI JAGANNATH, ESQUIRE
McCarthy, Holthus, Levine Law Firm
8502 E. Via de Ventura, Suite 200
Scottsdale, Arizona 85258

On this 15th day of March, 2012, I also served the foregoing by Federal Express mail and by E-Mail on the following:

TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue
Shreveport, Louisiana 71105

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice



Tax Division

Facsimile No. (202) 307-0054
Trial Attorney: Charles M. Duffy
Attorney's Direct Line: (202) 307-6406

Please reply to: Civil Trial Section, Western Region
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

JAD:RRW:CMDuffy
5-8-12648
CMN 2010101335

March 2, 2012

FEDERAL EXPRESS

Tommy K. Cryer
Attorney at Law
7330 Fern Avenue, Suite 1102
Shreveport, LA 71105

Re: United States of America v. James and Clare Reading et al.,
Case No. CV 11-00698-PHX-FJM (USDC Arizona)

Dear Mr Cryer:

Enclosed please find the United States' Responses to the First and Second Sets of Interrogatories and Production of Documents in this matter. Please note that the documents that are referenced in the enclosed Responses are on the enclosed computer disc.

If you have any questions, please contact me at (202) 307-6406.

Sincerely yours,

CHARLES M. DUFFY
Trial Attorney
Civil Trial Section, Western Region

Enclosure-as stated.



Tommy K. Cryer
Attorney at Law
7330 Fern Avenue, Suite 1102
Shreveport, LA 71105
318 797-8949
318 797-8951 (fax)
CryerLaw@aol.com

Attorney for James Leslie Reading, Clare Louise Reading and Fox Group Trust

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff

v.

JAMES LESLIE READING, CLARE
LOUISE READING, FOX GROUP TRUST
MIDFIRST BANK, CHASE, FINANCIAL
LEGAL SERVICES and STATE OF
ARIZONA

Defendants

2:11-cv-00698-FJM

**UNITED STATES' RESPONSES TO THE
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF
DOCUMENTS FROM DEFENDANTS
JAMES AND CLARE READING AND
THE FOX GROUP TRUST**

TO: United States of America, through its Counsel of Record:

ANN SCHEEL
Acting U.S. Attorney
Two Renaissance Square
40 North Central Ave. Suite 1200
Phoenix, AZ 85004

CHARLES M. DUFFY
U.S. Department of Justice, Tax Div.
PO Box 683
Ben Franklin Station
Washington, DC 20044

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure, Rules 33
and 34, you are hereby requested by Defendants, James Leslie Reading, Clare Louise Reading

and Fox Group Trust, to respond categorically, fully, in writing signed and sworn to or and affirmed under penalty of perjury to the interrogatories set out hereinbelow and to produce for inspection and copying at the office of Tommy K. Cryer, Attorney at Law, 7330 Fern Ave., Suite 1102, Shreveport, Louisiana 71105, within the delays provided by Law, the documents, materials and tangible items listed herein below.

These requests are continuing in character and require you to file supplementary answers if you obtain further or different information after your initial answers and before trial, including in such supplemental answers the date upon and the manner in which such further or different information came to your attention.

DEFINITIONS:

As used in these interrogatories and document requests, the terms listed below are defined as follows:

(A) "You," "your," or "yourself" means the INTERNAL REVENUE SERVICE, its commissioner, agents, employees, officers, principals and all other persons acting or purporting to act on its behalf.

(B) "Document" or "documents" mean any writing of any kind, including originals and all non-identical copies (whether different from the originals by reasons of any notation made on such copies or otherwise), including without limitation, agreements, cables, correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations, or any sort of conversations, bulletins, magazines, publications, printed matter, photographs, computer printouts, telex, teletypes, telefax, invoices, worksheets, and all drafts,

alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or aural records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control.

(C) "Relates to," "regarding," "concerning" mean supports, evidences, describes, mentions, refers to , contradicts or compromises.

(E) "Person," "individual," or "entity" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural person, or other association separately identifiable, whether or not such association has a separate legal existence in its own right.

(F) The terms "identify," "state," and "describe";

(1) When used in reference to an individual, shall mean to state his full name, both real and any and all aliases he has used, title, present or last known residence, business affiliation and business address, phone number and relation, if any, to you;

(2) When used in reference to a corporation shall mean to state its full name, its state of incorporation, its principal place of business and the name and address of its agent for service of process;

(3) When used in reference to a person other than an individual or corporation, shall mean to state its official name, its organizational chart form and its address;

(4) When used in reference to a document, shall mean to state the type of document, date, author, date, addressee, title; its present location, name and address of its custodian, and the substance of the contents thereof; and

(5) When used in reference to any act, occurrence, occasion, meeting, transaction, or conduct, shall mean to set forth the event or events constituting such act, its location, the date and persons participating, present or involved, and the documents relating or referring to any way thereto.

(G) The term "NOD" shall mean any or all of the Notices of Deficiency forming the basis for any of the various assessments giving rise to this litigation and if references to any of the same are made in responses to these interrogatories and/or requests for production are to less than all the NOD to which reference is made shall be identified by the calendar years and party(s) to which they apply.

INSTRUCTIONS

(A) With respect to each request, in addition to supplying the information asked for and identifying the specific documents referred to, identify all documents or items which were referred to in preparing your answer thereto.

(B) If any document or item is no longer in your possession, or subject to your custody or control, or was known to you, but is no longer in existence, state what disposition was made of it or what became of it.

(C) If any request is deemed to call for the disclosure of privileged matters or materials and such privilege is asserted, a list is to be furnished identifying each matter alleged to be privileged with the following information:

(1) The reason for withholding; and

(2) A statement of the facts constituting the basis for any claim of privilege, work product, or other ground of non-disclosure.

INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NUMBER ONE:

Please identify all persons assisting and/or participating in the preparation of your responses to these interrogatories and requests for production and as to each provide a general description of the nature and substance of that assistance and/or participation.

RESPONSE: The Government objects to the extent that the interrogatory seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. The United States also objects to the extent that the interrogatory seeks information that is protected by the attorney client and attorney work product privileges. Preserving those objections, the responses are based on documents that the IRS provided to the United States Department of Justice Tax Division in this case.

INTERROGATORY NUMBER TWO:

Please identify all Notices of Deficiency (NOD's) issued for the tax years at issue to defendants and/or any of them, whether jointly or individually, and as to the *actual* author/issuer of each please state the author's name, true name, mailing address, phone number, employee identification number and official grade and title as of the time of issuance of the NOD. (*Please note that the person named as the issuer on the NOD is not necessarily the person referred to herein as the author/issuer. For the purposes of this interrogatory the author/issuer is the person who actually prepared, made, affixed a signature or signature stamp, whether his/her own or that of another, and sent the NOD.*)

RESPONSE: The United States objects since the interrogatory request seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence (*e.g.*, the “actual author/issuer” of each notice of deficiency and the identifying information of IRS employees). The United States also objects because the meaning of parts of the interrogatory are unclear (*e.g.*, “actual author” or “issuer”). The United States also objects since the referenced notices are likely already in the requestors’ possession. Preserving those objections, and pursuant to Federal Rule of Civil Procedure 33(d), please see Exhibits A through E submitted herewith.

Please note that the Notice of Deficiency procedures do not apply with regard to the assessment and collection of penalties assessed pursuant to 26 U.S.C. Section 6702. (*See* the fourth and fifth claims in the complaint).

REQUEST FOR PRODUCTION NUMBER ONE:

Please produce a copy of each NOD identified in your response to Interrogatory Number Two and any documents, forms or disclosures enclosed therewith.

RESPONSE: *See* the Response to interrogatory number 2.

INTERROGATORY NUMBER THREE:

As to each NOD identified in response to the foregoing interrogatory please identify all evidence, whether documentary or testimonial (identifying fully the person able to provide such testimonial evidence), proving or disproving or tending to prove or disprove that the NOD was mailed by certified or registered mail to the last known address(es) of the person(s) named thereon, including, but not by way of limitation, Postal Service Form 3800 (certificate of mailing), Postal Service form 3849 (receipt for delivery), and IRS Form 3877 (record of certified and registered mailings).

RESPONSE: The United States objects since the interrogatory seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence. Preserving that objection, and pursuant to Federal Rule of Civil Procedure 33(d), please see, for example, Exhibits A through G submitted herewith.

Please note that the Notice of Deficiency procedures do not apply with regard to the assessment and collection of penalties assessed pursuant to 26 U.S.C. Section 6702. (*See* the fourth and fifth claims in the complaint).

REQUEST FOR PRODUCTION NUMBER TWO:

Please produce a copy of each document identified in your response to Interrogatory Number Three.

RESPONSE: *See* the Response, above, to interrogatory number 3.

INTERROGATORY NUMBER FOUR:

Please identify any and all returns for the calendar years at issue in this cause, whether filed by defendant(s) or filed by the Secretary or his delegate pursuant to 26 U.S.C. § 6020(b) (sometimes erroneously referred to by the misnomer, “substitute for return” or “SFR”) and with respect to each § 6020(b) return identified please identify the person making and filing the same by name, true name, mailing address, phone number, employee identification number and official grade and title as of the date of the § 6020(b) return.

RESPONSE: The United States objects to the interrogatory in that at least some of the requested information, *e.g.*, copies of returns filed by defendants, is already in the requestors’ possession. The United States also objects since the interrogatory seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence (*e.g.*, identifying information of IRS employees). In this regard also, to the extent that the United

States is seeking to reduce the assessments set forth in the complaint to judgment, this court proceeding is *de novo* in nature. Preserving those objections, and pursuant to Federal Rule of Civil Procedure 33(d), see Exhibits A through AA submitted herewith.

REQUEST FOR PRODUCTION NUMBER THREE:

Please produce copies of any and all returns and/or § 6020(b) returns identified in your response to Interrogatory Number Four, including all attachments thereto.

RESPONSE: *See* the Response, above, to interrogatory number 4.

INTERROGATORY NUMBER FIVE:

As to each NOD and/or § 6020(b) return identified in your responses to Interrogatories Number Two and Four please identify all documents, records, statements and/or other information available to or obtained by and considered by the person(s) compiling, calculating, completing and/or signing the same in order to complete the form and make calculations on the basis thereof and as to each such document, record, statement and/or other information please identify its source by name, address and phone number, and state the date accessed and/or received.

RESPONSE: The Government objects since the discovery request seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence. For example, to the extent that the United States is seeking to reduce the assessments set forth in the complaint to judgment this court proceeding is *de novo* in nature. Also, the identifying information of IRS employees is irrelevant. The United States also objects because the interrogatory is unclear and calls for speculation regarding various matters, such as what information was "available." Preserving such objections, and pursuant to Federal Rule of Civil Procedure 33(d), see Exhibits A through CCC submitted herewith.

REQUEST FOR PRODUCTION NUMBER FOUR:

If your answer to Interrogatory Number Five identified documents, statements or other information described therein please produce true and correct copies of all such documents, statements or other information identified and copies of any and all work sheets, memoranda, phone notes, memoranda of interview and/or correspondence relating to or sent to, received from or by the persons identified either as those involved in the preparation and filing of such NOD's or § 6020(b) returns and/or the person(s) or entity(s) providing such documents, records, statements and/or other information.

RESPONSE: *See* the Response, above, to interrogatory number 5.

INTERROGATORY NUMBER SIX:

In making the calculations set out in the § 6020(b) returns and NOD's upon which the assessments giving rise to this litigation are based, please state what basis was assigned to the labor personally performed by James Leslie Reading in order to determine what, if any, profit (income) could be derived from the gross proceeds received by James Leslie Reading in exchange for such labor, and if no basis or a basis of zero under the IRS's "zero basis" rule was applied to that labor, please state the statutory basis for failing to assign a basis pursuant to 26 U.S.C. §§ 1001 et seq.

RESPONSE: The Government objects since the discovery request seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence. Also, the interrogatory appears to misstate applicable law in that, to the extent that the Readings are asserting that their wages or other income are not subject to the federal income tax, that assertion is without merit. *See e.g., Lonsdale v. U.S.*, 919 F.2d 1440, 1448 (10th Cir. 1990).

INTERROGATORY NUMBER SEVEN:

With respect to each penalty assessment described in your complaint please identify with particularity the offending submission and state whether the offending submission was

- (a) a return;
- (b) a request for a Collection Due Process Hearing pursuant to 26 U.S.C. § 6320 and/or § 6330;
- (c) an application proposing an installment agreement pursuant to 26 U.S.C. § 6159;
- (d) an application proposing a compromise pursuant to 26 U.S.C. § 7122;
- (e) an application for taxpayer assistance order pursuant to 26 U.S.C. § 7811; or
- (f) none of the above.

RESPONSE: Pursuant to Federal Rule of Civil Procedure 33(d), see Exhibits H through TT submitted herewith.

INTERROGATORY NUMBER EIGHT:

With respect to each penalty assessment described in your complaint please identify the person or persons, including, but not by way of limitation, name, true name and grade and title at the time of the determination, who made the determination that an argument or issue advanced by the person penalized was frivolous as described by 26 U.S.C. 6702(b)(2)(A) and as to each such penalty assessment state whether prior to imposition of such penalty the person identified as having made such determination sent notice to the person penalized that an argument or issue advanced was a frivolous argument (or, if someone else sent such notice, please identify such person, including, but not by way of limitation, name, true name, and grade and title at the time the notice was sent) and, if so, whether such notice:

- (a) Specifically identified the argument or issue determined to have been frivolous;

(b) Stated the reasons for determining the argument or issue was frivolous.

RESPONSE: The United States objects since the interrogatory seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence (*e.g.*, identifying information of IRS employees). In this regard also, to the extent that the United States is seeking to reduce the assessments set forth in the complaint to judgment this court proceeding is *de novo* in nature. The United States also objects on the grounds that interrogatory assumes that the United States was required to act consistent with statements set forth therein. Preserving such objection, and pursuant to Federal Rule of Civil Procedure 33(d), see Exhibits H through TT and Exhibits AAA and BBB submitted herewith.

REQUEST FOR PRODUCTION NUMBER FIVE:

With respect to each penalty assessment described in your complaint please produce the following:

- (a) copy of the offending submission;
- (b) copy of the notification, if any, sent accompanied by all records proving or tending to prove that such notice was sent and the manner of delivery, including, but not by way of limitation, Postal Service Form 3800 (certificate of mailing), Postal Service form 3849 (receipt for delivery), and IRS Form 3877 (record of certified and registered mailings);
- (c) copy of all orders issued by the Secretary delegating his authority under 26 U.S.C. § 6702 to determine an argument or issue to be frivolous and copies of any all re-delegations of that authority;

- (d) copy of all orders issued by the Secretary delegating his authority to send notices to citizens affording an opportunity to withdraw a frivolous argument pursuant to 26 U.S.C. § 6702(b)(3) and copies of any and all re-delegations of that authority; and
- (e) copy of all orders issued by the Secretary delegating his authority to assess penalties under 26 U.S.C. § 6702 and copies of any and all re-delegations of that authority.

RESPONSE: The United States objects since the discovery request seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence. Preserving such objection, and pursuant to Federal Rule of Civil Procedure 33(d), see Exhibits H through TT and Exhibits AAA and BBB submitted herewith.

INTERROGATORY NUMBER NINE:

Please state which of the categories of income tax returns enumerated in 26 CFR 1.6091-3(a)-(l) you have determined applies to defendants or any of them and state what facts, information, documentation, or other evidence formed the basis for that determination.

RESPONSE: The United States objects since the discovery request seeks information that is not relevant nor is reasonably calculated to lead to the discovery of admissible evidence. The United States also objects in that the meaning of the interrogatory is unclear in the context of the instant case. Also, to the extent that the requestors are seeking declaratory-type information about what returns they are required to file, the request has no basis in law. *See e.g.*, the Declaratory Judgment Act (28 U.S.C. Section 2201(a)).

JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
U.S. Department of Justice

By: _____



CHARLES M. DUFFY
Trial Attorney, Tax Division
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6406

Of Counsel:

ANN SCHEEL
Acting United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2012, I mailed the foregoing by
overnight express mail to:

TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue
Shreveport, Louisiana 71105



Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

Tommy K. Cryer
Attorney at Law
7330 Fern Avenue, Suite 1102
Shreveport, LA 71105
318 797-8949
318 797-8951 (fax)
CryerLaw@aol.com

Attorney for James Leslie Reading, Clare Louise Reading and Fox Group Trust

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff

v.

JAMES LESLIE READING, CLARE
LOUISE READING, FOX GROUP TRUST
MIDFIRST BANK, CHASE, FINANCIAL
LEGAL SERVICES and STATE OF
ARIZONA

Defendants

2:11-cv-00698-FJM

**UNITED STATES' RESPONSES TO THE
SECOND SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF
DOCUMENTS FROM DEFENDANTS
JAMES AND CLARE READING AND
THE FOX GROUP TRUST**

TO: United States of America, through its Counsel of Record:

ANN SCHEEL
Acting U.S. Attorney
Two Renaissance Square
40 North Central Ave. Suite 1200
Phoenix, AZ 85004

CHARLES M. DUFFY
U.S. Department of Justice, Tax Div.
PO Box 683
Ben Franklin Station
Washington, DC 20044

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure, Rules 33 and 34, you are hereby requested by Defendants, James Leslie Reading, Clare Louise Reading

and Fox Group Trust, to respond categorically, fully, in writing signed and sworn to or and affirmed under penalty of perjury to the interrogatories set out hereinbelow and to produce for inspection and copying at the office of Tommy K. Cryer, Attorney at Law, 7330 Fern Ave., Suite 1102, Shreveport, Louisiana 71105, within the delays provided by Law, the documents, materials and tangible items listed herein below.

These requests are continuing in character and require you to file supplementary answers if you obtain further or different information after your initial answers and before trial, including in such supplemental answers the date upon and the manner in which such further or different information came to your attention.

DEFINITIONS:

As used in these interrogatories and document requests, the terms listed below are defined as follows:

(A) "You," "your," or "yourself" means the INTERNAL REVENUE SERVICE, its commissioner, agents, employees, officers, principals and all other persons acting or purporting to act on its behalf.

(B) "Document" or "documents" mean any writing of any kind, including originals and all non-identical copies (whether different from the originals by reasons of any notation made on such copies or otherwise), including without limitation, agreements, cables, correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations, or any sort of conversations, bulletins, magazines, publications, printed matter, photographs, computer printouts, telex, teletypes, telefax, invoices, worksheets, and all drafts,

alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or aural records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control.

(C) "Relates to," "regarding," "concerning" mean supports, evidences, describes, mentions, refers to , contradicts or compromises.

(E) "Person," "individual," or "entity" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural person, or other association separately identifiable, whether or not such association has a separate legal existence in its own right.

(F) The terms "identify," "state," and "describe";

(1) When used in reference to an individual, shall mean to state his full name, both real and any and all aliases he has used, title, present or last known residence, business affiliation and business address, phone number and relation, if any, to you;

(2) When used in reference to a corporation shall mean to state its full name, its state of incorporation, its principal place of business and the name and address of its agent for service of process;

(3) When used in reference to a person other than an individual or corporation, shall mean to state its official name, its organizational chart form and its address;

(4) When used in reference to a document, shall mean to state the type of document, date, author, date, addressee, title; its present location, name and address of its custodian, and the substance of the contents thereof; and

(5) When used in reference to any act, occurrence, occasion, meeting, transaction, or conduct, shall mean to set forth the event or events constituting such act, its location, the date and persons participating, present or involved, and the documents relating or referring to any way thereto.

(G) The term "NOD" shall mean any or all of the Notices of Deficiency forming the basis for any of the various assessments giving rise to this litigation and if references to any of the same are made in responses to these interrogatories and/or requests for production are to less than all the NOD to which reference is made shall be identified by the calendar years and party(s) to which they apply.

INSTRUCTIONS

(A) With respect to each request, in addition to supplying the information asked for and identifying the specific documents referred to, identify all documents or items which were referred to in preparing your answer thereto.

(B) If any document or item is no longer in your possession, or subject to your custody or control, or was known to you, but is no longer in existence, state what disposition was made of it or what became of it.

(C) If any request is deemed to call for the disclosure of privileged matters or materials and such privilege is asserted, a list is to be furnished identifying each matter alleged to be privileged with the following information:

(1) The reason for withholding; and

(2) A statement of the facts constituting the basis for any claim of privilege,

work product, or other ground of non-disclosure.

INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NUMBER ONE:

Please identify all persons assisting and/or participating in the preparation of your responses to these interrogatories and requests for production and as to each provide a general description of the nature and substance of that assistance and/or participation.

RESPONSE: The Government objects to the extent that the interrogatory seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. The United States also objects to the extent that the interrogatory seeks information that is protected by the attorney client and attorney work product privileges. Preserving those objections, the responses are based on documents that the IRS provided to the United States Department of Justice Tax Division in this case.

INTERROGATORY NUMBER TWO:

With respect to each assessment described in your complaint please state whether Notice of Assessment and Demand for Payment (NADP) was issued and sent pursuant to 26 U.S.C. § 6303 to the person(s) named on the assessment and, if so, as to each such NADP identify the person who prepared and sent the same, the date it was sent and the manner in which it was sent, and as to each such NADP identified in response to this interrogatory please identify all evidence, whether documentary or testimonial (identifying fully the person able to provide such testimonial evidence), proving or disproving or tending to prove or disprove that the NADP was mailed by certified or registered mail to the last known address(es) of the person(s) named thereon, including, but not by way of limitation, Postal Service Form 3800 (certificate of

mailing), Postal Service form 3849 (receipt for delivery), and IRS Form 3877 (record of certified and registered mailings).

RESPONSE: The Government objects to the extent that the interrogatory seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. The United States also objects to the extent that the referenced notices are already in the defendants' possession. Preserving that objection, please see, for example, Exhibits YY through CCC submitted herewith. *See also e.g., Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

REQUEST FOR PRODUCTION NUMBER ONE:

Please produce a copy of each document referred to or identified in your response to Interrogatory Number Two.

RESPONSE: See the Response to interrogatory two, above.

JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
U.S. Department of Justice

By:



CHARLES M. DUFFY
Trial Attorney, Tax Division
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-683
Telephone: (202) 307-6406

Of Counsel:

ANN SCHEEL
Acting United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2012, I mailed the foregoing by
overnight express mail to:

TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue
Shreveport, Louisiana 71105



Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

Duffy, Charles M. (TAX)

From: CryerLaw@aol.com
Sent: Thursday, March 08, 2012 4:26 AM
To: Duffy, Charles M. (TAX)
Subject: Reading



Charles,

I've devoted most of the evening to thinking about the Reading situation, looking for a mutual solution to the time squeeze. Both of us need at least another 30 days, a compromise I think he'll probably let us have.

But the big problem I have is that I can find no way to avoid having to file a motion to compel on the interrogatories. I cannot use objections as support for my MSJ. The motion to dismiss the suit to set aside the transfer to the trust is based on the Texas statute of limitations on that action and can be filed separately, but I have to have responses in order to complete and file the obvious MSJ on the merits of the suits to reduce assessments to judgment. The only way out of that short of malpractice would be to reach some compromise with you on which ones are too essential for me to forego answers on and which are not.

I can't brief the issues here, but to put it in a nutshell, in order to prove your lien interest or your right to seize and sell you have to prove that you have a valid assessment and that within 60 days of that assessment notice of assessment and demand for payment was mailed to defendants at their last known address. 6303, 6321, 6331. That makes them relevant and material. If you don't have those, and I have not found them among the material you provided, then I need an answer admitting that you don't.

In order to prove you have a valid assessment that is entitled to be reduced to judgment you have to prove the essential elements behind the assessment. Those can be identified in 6212, 6211 and 6020(b) and are too numerous for me to list here and still catch my plane in a little bit. Those sections clearly make the interrogatories I've filed not only relevant and material, but essential for the Readings' defense.

So I'm asking you to reconsider your objections and to provide answers to at least the most important of the interrogatories. I've gone back through them with both the spirit of compromise and my duty to client to diligently defend in mind and would suggest to you that if I can get complete and thorough answers to the following interrogatories I would be willing to forego answers to the rest:

First Set: Interrogatory Nos. 2, 3, 4

Second Set: Interrogatory No. 2

If all of the NOD's and 6020 returns issued are in the materials you provided, then I can dispense with the rest and, *if your answers to the above provide enough detail on name, grade and official title at the time of issuance of those issuing and filing 6020 returns and NOD's* I may be able to dispense with the necessity of depositions of the issuing agents. Those are a lot of fun, but I'm willing to give up some of my fun in order to get this case handled.

Insofar as getting an extra 30 days, I believe he would do that, but not without a showing of due diligence. Point out that this case covers an extensive period and is paper intensive and that defendants commenced discovery as soon as counsel's case load permitted (well over two months ago) and, in fact, the complainant has provided over 2,600 pages of documentation in response. I'd point out that the sixty days originally requested is needed, but counsel have agreed to cooperate and expedite the remaining discovery needs in order to get discovery completed within the additional thirty days in this request and that thirty days would still allow sufficient time for consideration of dispositive motions. I'd be glad to authorize your representing that to be a joint filing. I think that's the way to go.

Please let me know about getting answers to those four interrogatories today, since I'm going to have to move promptly to avoid his saying I haven't been diligent. I'll have my cell phone on me and can receive and respond to emails from Florida. 318 564-9044.

Tom



Tax Division

Facsimile No. (202) 307-0054
Trial Attorney: Charles M. Duffy
Attorney's Direct Line: (202) 307-6406

Please reply to: Civil Trial Section, Western Region
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

JAD:RRW:CMDuffy
5-8-12648
CMN 2010101335

March 9, 2012

**Government
Exhibit**

Ex 3

E-MAIL and FEDERAL EXPRESS

Tommy K. Cryer
Attorney at Law
7330 Fern Avenue, Suite 1102
Shreveport, LA 71105

Re: United States of America v. James and Clare Reading et al.,
Case No. CV 11-00698-PHX-FJM (USDC Arizona)

Dear Mr Cryer:

Enclosed please the **UNITED STATES' NOTICE OF TAKING DEPOSITIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS and RULE 26(a)(3) DISCLOSURES**. Pursuant to the enclosed, I would like to take your clients' depositions and obtain documents from them on April 10th and 11th in Phoenix. However, in our telephone conversation of March 7, 2012 you mentioned that you might have a conflict on those dates. If it better suits your schedule, we could do the referenced depositions on 2 days during the March 27th-March 30th time period in Phoenix as long as you produce the requested documents before the depositions. Please let me know by March 14, 2012 so that I can plan accordingly. Please note that I cannot do the depositions during the week of April 2nd because I have longstanding vacation plans and I am scheduled to be in Las Vegas, Nevada on another case on March 22nd and March 23rd.

You also mentioned in the referenced telephone conversation that you may want to take the depositions of IRS employees in this matter. Please note that to the extent it is not otherwise objectionable, such testimony would have to comply with applicable federal regulations, such as Treasury Regulation § 301.9000-1.

I am also in receipt of the e-mail that you sent yesterday. I do not agree with many of your characterizations and statements such as, for example, your statement that the Texas statute of limitations applies in this case. However, I would like to try to resolve any discovery disputes without the Court's intervention and I agree it would be helpful if we had an additional 30 days to do discovery in this case. But I am hesitant to ask the Court for the additional 30 days since it recently denied the joint motion filed by all of the parties in this case that requested a 60 day extension of the discovery period. Perhaps early next week, after you review this letter, we can discuss asking for the additional 30 days.

In the e-mail that you sent yesterday, you also asked me to "reconsider [my] objections and provide answers" to requests numbers 2, 3 and 4 in your first set of Interrogatories and

- 2 -

request number 2 in your second set of Interrogatories. As a preliminary matter, the objections raised by the United States to the referenced requests are proper. Also, you appear to be ignoring the fact that, in addition to the objections, the Government provided answers to the requests by referring to specific documents that were produced to you. For example, in response to your request number 2 (first set of Interrogatories) which relates to notices of deficiency, I directed you to copies of the notices of deficiency in the documents that I produced and also explained that the notice of deficiency procedures are not applicable to the assessments at issue in the complaint that were made under 26 U.S.C. § 6702.

For example, in response to your request number 4 (first set of Interrogatories) I provided you with copies of many of the relevant returns filed by your clients, which was responsive to the request. Please note in this regard that our production of copies of returns filed by your clients was onerous in that such returns are likely already in their possession.

For example, regarding your request number 2 (second set of Interrogatories), you asked, *inter alia*, for evidence that notices and demand under 26 U.S.C. § 6303 were issued and sent. In response, I directed you to the copies of the Certificates of Assessments and Payments, which set forth that such notices were sent. *See e.g.*, the Statutory Notice of Balance Due entries on the Certificates. Regarding that point also, the notices and demand are not relevant in the instant judicial collection action in any event. *See e.g., United States v. Chila*, 871 F.2d 1015, 1018 (11th Cir. 1989).

In sum, it would be very helpful if you would first consider the documents referenced in the responses to determine if there are, in fact, legitimate discovery disputes regarding the Interrogatories. Also, much of the information in your discovery requests relating to the identifying information of IRS employees is irrelevant since this court proceeding is *de novo* in nature.

Please note that I called you yesterday on your cell phone to discuss these issues and left a voice mail message for you.

Also, please note that enclosed are an additional 78 pages of documents. These documents were not requested by you in your discovery requests but they might be relevant to the issues in this case.

I will not be in the office on March 12th and 13th but can respond to emails on those days and also can call you to discuss the above matters if you would like.

Sincerely yours,



CHARLES M. DUFFY
Trial Attorney
Civil Trial Section, Western Region

Duffy, Charles M. (TAX)

From: CryerLaw@aol.com
Sent: Saturday, March 10, 2012 5:38 AM
To: Duffy, Charles M. (TAX)
Subject: Re: U.S. v. Reading et al., Case No. 11-698 (D. Ariz)



Charles,

I'm sorry I missed your call yesterday. I spent the first half of the day in the air or rushing to make a very close connection in Atlanta. Cell phones have to be turned off so the terrorists can't get calls through to the passengers. By the time I got through baggage claim and rental I barely made it to a meeting with associated counsel who was on a tight departure schedule. As soon as I finished that meeting I got your message, but was scheduled to meet with my client to go through a few thousand pages of discovery in a criminal case. Although this is his time he was gracious enough to agree to my calling you back yesterday, but I missed you and had to leave a message on your voice mail.

I did not intend for any part of my email to be offensive, but if it did I apologize for the offense. My message was intended to resolve the problems and get to the root of the issues in this case so it can be heard, both with respect to pretrial motions and on the merits at trial. After all, that's our job. I also did not intend to initiate a debate, since I do not like to argue cases unless and until there is someone to rule on it. But I do believe that sometimes some open discussion can result in agreements that are, often, better for both parties than what a ruling would provide.

So some quick points.

6303 Notices and Demands

Chila has no application to this case. It's been some time since I've read it, but if I remember correctly *Chila* was a 7401 action to reduce a 6672 "responsible party" penalty to judgment. Since no lien recognition or enforcement was sought in *Chila*, 6303 was not a factor. This action is filed as a 7401 and 7403 action, seeking to foreclose federal tax liens against property and, as such, requires a showing of a lien interest in the property.

There is ample authority for the absolute necessity for timely compliance with 6303's requirement of notice and demand before any lien interest exists, much less attaches to the property. The same authority and 6303 require that notice and demand be sent to the tp's last known address within sixty days of the assessment. Transcripts prove nothing and directing me to a transcript that does not say that a 6303 notice and demand was sent proves less. The best evidence of the notice and demand is a copy of it which would set forth the date and the address to which it was sent, establishing that the notice was timely and complied with the requirements of 6303. Those notices and demand are, then, relevant and material. If you do not have them, then I need an answer saying so because their absence is equally relevant and material.

Fraudulent transfer act time limitations.

You got me. I admit that the Texas statute has no bearing on this case and I also admit that I'm at that age when I get the occasional brain fart. But the AZ act imposes a five year limitation and the transfer complained of occurred over five years prior to filing your complaint. But this has nothing to do with our discovery problem.

NOD issuer

You are suing to have assessments reduced to judgment and in order to do so must prove that you have valid assessments in which case you enjoy the benefit of certain presumptions. But in order to have a valid assessment you must (I know, 6702 penalty assessments excluded) have proof that a valid NOD was issued in accordance with law (numerous citations omitted). In order for the NOD to be valid it must be made, signed and sent by the Secretary (or his delegate). Thus, knowing who issued the NOD and sent it to the tp and his grade and job title at the time is relevant because that information permits us to determine whether that person was a delegate of the Secretary with authority to make, sign and send an NOD.

The copies of NOD's you produced do not provide that information, particularly when the common practice is to sign someone else's name to the document, hence the italicized clarification of the interrogatory.

Means of Mailing NOD

In order for a NOD to be valid and support the validity of a purported assessment it must have been sent to the tp's last known address by certified or registered mail (again, numerous citations omitted). That makes evidence of means of transmission relevant and material. The Post Office issues its Form 3800 and the IRS maintains its internal record of registered and certified mailings on its own form, 3877. Thus, those records are important in determining whether a NOD was or was not sent by registered or certified mail. None of the NOD's produced reflect the means of mailing and although a couple of them have a partial blank 3800 visible neither the NOD nor the blank form provides any showing that either is related to the other, much less that the NOD was sent by means required by 6212.

6020(b) Filer

In order to have a valid NOD there must first be a deficiency to notice (6211) and in order to have a deficiency a return to compare to the determined tax due and owing is necessary (6211). 6020(b) authorizes only the Secretary or his delegate to make and file a 6020(b) return. It is, therefore, relevant and material to know the name, and grade and title of the person making and filing a 6020 return in order to determine whether he is a duly authorized delegate of the Secretary for that purpose.

Depositions of Agents

I'm hoping that by getting responses to those interrogatories dealing with the identity, grade and job title as of the actions taken we can forego depositions. But with respect to Touhy regs you might want to take a look at *Exxon Shipping Co. v. US Dept. of Interior*, 34 F3d 774 (9th Cir. 1994).

Your Depositions of the Readings

I am tied up in final preparations for a trial on the April dates you've suggested but I've emailed my secretary and the Readings to check on availability of the March dates. I may have to participate, however, by phone. As soon as I have responses on those dates I will let you know what I found out. I cannot think of any conflict but I do not keep my own calendar and I'm given scheduling information on a need to know basis.

Thirty Day Deal

I'm confident that we can get the thirty with another joint motion, but, again, we need to point out that we have not been idle and that even with the thirty days we are having to and will continue to work hand in glove to resolve all discovery needs.

Charles, I'm bending over backwards trying to avoid motions, but I can't resolve these issues unilaterally. I have to have some cooperation on your part, too. I've clearly demonstrated that the information sought by those selected interrogatories, 2, 3, 4 and 2, are relevant, material and necessary for the presentation of the Readings' defense. It is not that onerous to say this agent, name, grade and job title signed that NOD or return and this etc. Nor is it onerous to say "We do (or do not) have records of certified or registered mailings of the NOD's" or "We do (or do not) have copies of 6303 notices and demands and here they are".

For the last two days I have been totally consumed with the tasks at hand in this criminal case in Ft. Myers. For the next two days I will be equally consumed with sifting through ten years of correspondence and disputes regarding a tax court case in Naples and won't be returning to Shreveport until late Sunday evening. So I will not be able to prepare and file motion to compel before Monday. Think about this and let's get it handled ourselves.

Tom

In a message dated 3/9/2012 1:33:50 P.M. Pacific Standard Time, Charles.M.Duffy@usdoj.gov writes:

Mr. Cryer, please see the attached documents re the above case.

Thanks, Charles.

<<Letter.pdf>>

<<NoticeofDepsProd.pdf>>

<<Rule26(3).pdf>>

Charles M. Duffy

Trial Attorney,

U.S. Department of Justice

Tax Division

Washington D.C.

(202) 307-6406

Tommy K. Cryer

Attorney at Law

7330 Fern Avenue, Suite 1102
Shreveport, LA 71105
Ph. 318 797-8949 Fax 318 797-8951
CryerLaw@aol.com

March 14, 2012

VIA E-MAIL, FAX TO (202) 307-0054 AND MAIL



Mr. Charles M. Duffy
Attorney at Law
P. O. Box 683
Ben Franklin Station
Washington, D.C. 20044

Re: Resolution of discovery issues
U. S. v. Reading et al., No. CV 11-00698-PHX-FJM
USDC, District of Arizona

Dear Charles:

This is the fourth and final attempt on my part to persuade you to at least respond to the few selected interrogatories and requests for production to which you have made a blanket, stonewall objection based on relevance. The Court has clearly indicated it has no desire to have to deal with our discovery issues and I have no desire to file a motion to compel unless it is absolutely necessary. But this is my last and final attempt to resolve this matter.

I have repeatedly demonstrated and described the obvious relevance of the information and documentation sought, but you have, essentially, asked me to lay my hand down. Although a refusal to respond to every interrogatory and every request for production would be generally construed as bad faith stonewalling, your demeanor and tone seem sincere and in fairness to you I must presume that you are genuinely unaware of the significance of that information and documentation and its necessity to prove your claims against the Readings and

others. I believe, and certainly hope, you are acting in good faith and on that basis I am providing the following partial baring of my case in hopes of resolving this dispute without the Court's intervention.

In an effort to resolve our disagreement I have offered to reduce my discovery scope to four subjects:

1. Interrogatory 2 and request for production 1 calling for you to identify and produce copies of all § 6212 Notices of Deficiency for the subject tax years and to identify the person making and issuing the same by name, address, phone number, employee identification number, grade and job title as of the time of issuance of the same;
2. Interrogatory 3 and request for production 2 calling for you to identify and produce evidence of the NOD's referred to in the foregoing having been mailed by certified or registered mail to the Readings' last known address, including, but not by way of limitation, Postal Service Form 3800 (certificate of mailing) and IRS internal Form 3877 (register of certified and registered mailings);
3. Interrogatory 4 and request for production 3 seeking identification and production of any and all returns, including § 6020(b) returns for the subject years and to identify the person making and filing the same by name, address, phone number, employee identification number, grade and job title as of the time of issuance of the same; and
4. Interrogatory 2 and request for production 1 (second set, which followed the first by one day to correct an oversight) seeking identification and production of any and all notices of assessment and demand for payment pursuant to § 6303 with respect to all assessments.

Let's start with the 6303 notices and work our way upstream.

Timely § 6303 Notices essential to existence of lien

You are claiming and seeking enforcement of a lien interest in property formerly belonging to the Readings. In order to perfect a lien, much less establish a lien interest in a particular property, an assessment is not enough. See § 6321, which provides that a lien arises only after failure to pay following notice and demand. That notice and demand is described in § 6303 which requires that it

must be sent 1) within sixty (60) days after assessment and 2) to the citizen's last known address. Those two elements, along with a *valid assessment*, are essential to your proof of your case. See *U.S. v. Berman*, 825 F.2d 1053 (6th Cir. 1987); *Bauer v. Foley*, 408 F.2d 1331, 1333 (2nd Cir. 1969).

Accordingly, the relevance and materiality of whether the IRS perfected the lien and can prove that it did so could not be any greater, since the proof of such a notice would, necessarily, consist of copies of the notices and testimony of the person(s) who created and sent those notices that they were sent as addressed on the date shown. If you have no such notices of assessment and demands for payment, I am entitled to know that no such evidence exists.

You have referred me to transcripts, but those transcripts do not indicate that any notice of assessment and demand for payment pursuant to § 6303 were sent. Entries of unknown origin in a transcript, like Walter Mitty's diary, prove nothing, since they are mere entries of what may or may not have happened. Evidence in other cases has revealed that the IRS's computer system is programmed to make an entry of a "notice of balance due" automatically when an assessment is entered, but § 6303 requires more than a "notice of balance due" and an automatic entry does not constitute evidence that a notice of assessment and demand for payment ever existed, much less that it was sent properly addressed.

Thus, the information and documentation sought by Item 4 above, namely Interrogatory 2, request for production 1 (second set) is relevant and material and I am entitled to see that evidence or, if it does not exist, to a response acknowledging that you have no such evidence.

Requirements for existence of a valid assessment

Your client is seeking to have assessments reduced to judgment in this case, which, in and of itself, requires that there be valid assessments to be reduced to judgment. A valid assessment is also essential to the perfection of a lien interest, recognition and enforcement of which is also sought.

Although you have referred to a set of 4340 certificates as "proof" of assessments, there are several problems with that position. First, those certificates are rank hearsay and meet none of the exceptions to the hearsay rule. They are not business records kept in the course of business, so cannot be tendered as such in good faith.

Second, they merely claim that there is an entry in the IRS computer system saying a certain amount was assessed, but do not speak to, hearsay or no hearsay, personal knowledge or no personal knowledge, the necessary elements for the existence of a valid lien, i.e., a valid return which was determined to be deficient (§ 6211), followed by a valid Notice of Deficiency (§ 6212) properly addressed to the taxpayers's last known address and sent via registered or certified mail.

Third, the best evidence of the assessment is the assessment itself. The law requires that in order to be an assessment the purported assessment must contain essential information and must be signed and dated by an *Assessment Officer* who has been appointed and duly authorized by both the *District Director* and the Director of the Service Center. Since there have been no District Directors (and therefore, any Assessment Officers possible) since 1999, I have good reason to question whether your client has such an instrument and, if not, then its evidence of an assessment is lacking. Programming a computer to accept an entry of an event that has not occurred or persuading an employee to certify that the computer was so duped does not constitute proof of a valid assessment.

Finally, those 4340 "certificates" are, admittedly, prepared and created for "use in litigation", which is an euphemism for "fabricated evidence", something that would no doubt have serious consequences to anyone less formidable than the IRS who might decide to "make up" its own batch of evidence to submit to the Court.

In order to provide notice of assessment and demand for payment in accordance with § 6303 there must be an assessment of which to provide notice and in order to have a valid assessment, entitled to judicial recognition your client must prove that a valid assessment exists. It is obvious that without an assessment no tax is due and without an assessment there can be no § 6303 notice of assessment and demand for its payment. *Crompton & Knowles Loom Works v. White*, 65 F2d 132 (1st Cir. 1933) (collector has no authority to collect unassessed interest); *Radinsky v. United States*, 622 FSupp 412 (D Colo, 1985) (collector cannot collect an unassessed tax).

In *United States v. Camejo*, 666 F.Supp 1542, 1545 (S.D.Fla. 1987), the court stated:

"When the government seeks the aid of the Courts in enforcing an assessment, it opens the assessment to judicial scrutiny in all respects... Thus, in an action instituted by the Government to enforce

its tax liens under [section] 7403, the merits of the claim are clearly open to challenge. *United States v. O'Connor*, 291 F.2d 520 (2nd Cir. 1961); *Quinn v. Hook*, 231 F. Supp. 718 (E.D.Penn. 1964)."

See also See *Murray's Lessee v. Hoboken Land & Improvement Co.*, 1855, 18 How. 272, 283-285, 15 L.Ed. 372.

So what is required for there to be a valid assessment? In order for the Secretary to assess it is absolutely essential that he notify the citizen that he is claiming a deficiency is outstanding and provide the citizen with an opportunity to dispute that claim. Notice is the foundation for due process because without notice there can be no opportunity to be heard nor a meaningful hearing and adjudication made.

But in order to determine that a deficiency exists it is essential that a return exists. § 6211 defines a deficiency as the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the amount shown on the taxpayer's return. We know that although the Readings submitted returns for some of the years at issue, none of those returns were accepted and processed by the service. We also know that both the Code, § 6020(b), and IRS procedures in such cases *require* the Secretary *or his delegate* (See § 6020(b) and § 7701(a)(11)(B)) to prepare and file a return for the taxpayer and that once that is done the internally created return serves as the taxpayer's return "for all purposes".

But § 6020(b) does not permit the filing of returns on behalf of taxpayers without first making a determination that the taxpayer was required to file but failed to do so or, if he did file, he falsely or fraudulently stated his liability, nor does it permit the Secretary to enter numbers and figures willy-nilly:

26 U.S.C. § 6020. Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary — If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(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)

Thus if a taxpayer who is required to file fails to do so then the Secretary is required ("**shall** make such return") to do so after gathering sufficient information. Since the service rejected the Readings' returns and refused to process them, the statutorily mandated 6020(b) return becomes an essential component in determining whether there is a deficiency. That makes the 6020(b) return relevant and material with respect to the issue of whether a valid assessment has been made in this case.

Equally relevant is whether the person who made and filed the return was properly authorized to do so, since only the "Secretary or his delegate" is authorized to make such a return. I am, therefore, entitled to know who made the 6020(b) returns and his grade and job title. I have the Delegation Orders relative to § 6020(b), but without proper responses to the interrogatories I have no way of determining whether the return maker is among those to whom that authority has been duly delegated. The validity of those returns also hinges on whether they were in compliance with § 6020's requirement that they be made "from his own knowledge and from such information as he can obtain through testimony or otherwise", hence production of those returns is equally relevant, material and subject to discovery.

Accordingly, I think I have demonstrated that the § 6020(b) returns sought are relevant and material, that identification of the maker(s) of those returns in order to determine whether he/they are duly authorized delegates of the Secretary are proper subjects of discovery and I am entitled to responses and productions sought by Interrogatory 4 and request for production 3.

The statutory requirement for the essential notice of the Secretary's claim that there is a deficiency in this instance is set forth in 26 U.S.C. § 6212, which provides in pertinent part:

26 U.S.C. § 6212. Notice of deficiency

(a) In general — If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to **send notice of such deficiency** to the taxpayer **by certified mail or registered mail**. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes — In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his **last known address**, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. (emphasis added)

In conjunction with § 6212 we also have, in pertinent part, § 6213(a):

26 .S.C. § 6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment — Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. . . .

Due to the 90-day time period for filing a petition with Tax Court the Notice of Deficiency is often referred to as the "90-day letter". There can be no valid assessment, and, accordingly, no required § 6303 notice of assessment and demand, and, therefore, no lien in existence unless the Secretary or his delegate 1) mails a proper Notice of Deficiency to the citizen, 2) by certified mail or registered mail, and 3) to his last known address.

The absolute necessity for a properly mailed Notice of Deficiency pursuant to § 6212(a) as well as a notice and demand pursuant to § 6303 is well recognized by the courts. In *United States v. Ball*, 326 F.2d 898, (4th Cir. 1964) the court stated at 900-901:

"In the usual case, § 6212(a) of the Code, 26 U.S.C.A. § 6212(a), requires the Government, as a first step, to send a notice of deficiency to the taxpayer, by registered mail.[fn2] Thereafter, the Government may make an assessment of unpaid tax (26 U.S.C.A. § 6201), provided that the assessment is made within the period of time after the notice of deficiency prescribed by 26 U.S.C.A. § 6213. Once the assessment has been made, § 6303(a) of the Code, 26 U.S.C.A. § 6303(a), requires notice and demand for payment of the tax as a condition precedent to the taking of additional steps to enforce its collection and payment.

"Thus, in the usual case the Code contemplates the giving of two notices by the Government, first, the notice required by § 6212(a) of a deficiency, and the notice required by § 6303(a) of assessment and demand for payment. The notice of deficiency is specified to be by registered mail (26 U.S.C.A. § 6212(a)), while no such restriction is applicable to the notice of assessment and demand for payment (26 U.S.C.A. § 6303(a)).

" . . .

" . . . **The validity of the tax lien to serve as a basis for the judgment granted here depends upon whether the notice requirements of § 6212(a) were met, because 26 U.S.C.A. §§ 6321 and 6322, which create tax liens, require, *inter alia*, a valid assessment.**" (Emphasis added)

See also *Steiner v. Nelson*, 259 F.2d 853 (7th Cir. 1958), and *Enochs v. Muse*, 270 F.2d 528 (5th Cir. 1959): Assessment void if no 90 day letter sent; *Heinemann Chemical Co. v. Heiner*, 92 F.2d 344 (3rd Cir. 1937): 90 day letter is mandatory; *Wiley v. United States*, 20 F.3d 222 (6th Cir. 1994); *Robinson v. United States*, 920 F.2d 1157, 1158 (3rd Cir. 1990) (the notice of deficiency is a pivotal feature of the Code's assessment procedures, because it serves as a prerequisite to a valid assessment by the IRS); *Holif v. Commissioner*, 872 F.2d 50, 53 (3rd Cir. 1989)

(same); *Goldston v. United States*, 97-1 U.S.T.C. ¶50,148 (D.Kansas 1995) ("If an assessment is void, the IRS is prohibited from proceeding administratively..."); *Luhring v. Glotzbach*, 304 F.2d 560 (4th Cir. 1962); *Schreck v. United States*, 301 F.Supp. 1265, 1268 (D. Maryland 1969) ("Reduced to essentials, section 6213(a) makes injunctive relief available against the assessment, levy or collection of a tax when the IRS does not send to the taxpayer a deficiency notice as required by the tax laws."). Section 6213(a) of the Internal Revenue Code is clear that "no assessment of a deficiency ... and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer...."). See also *Laing v. United States*, 423 U.S. 161, 184 n. 27 (1975) (Section 7421(a) does not forbid suits to enjoin the assessment of a deficiency, or a levy or proceeding in court for its collection, if the taxpayer has not been mailed a notice of deficiency and afforded an opportunity to secure a final Tax Court determination.)

Thus evidence regarding how and to whom and where any purported NOD was addressed and the manner of mailing are clearly relevant and material with respect to the essential notice required for the existence of a valid assessment, and, accordingly, I am entitled to a full and complete response to Interrogatory 3 and request for production 2 described hereinabove. If you have no such evidence, then I am also entitled to your acknowledgement that such evidence does not exist.

Without repeating all of the above, you will surely note that § 6212 authorizes the Secretary alone to make and send a Notice of Deficiency. By virtue of § 7701(a)(11)(B), that means "the Secretary or his delegate". I have the Delegation Orders relative to § 6212, but without proper responses to the interrogatories I have no way of determining whether the maker and issuer of the Notice of Deficiency is among those to whom that authority has been duly delegated. Knowing whether the person(s) who made and sent those NOD's in this case were duly authorized to act in the stead of the Secretary insofar as § 6212 is concerned is, then, equally relevant to determine whether the NOD's are valid or, if not, unable to form the basis for a valid assessment, an essential element to both your claim for reduction of assessments to judgment and to the recognition and enforcement of a purported lien interest.

Accordingly, I believe I have established that I am entitled to responses and productions called for by Interrogatory 2 and request for production 1.

Due to the fact that, depending on what those responses reveal there may be a necessity for either depositions or requests for admission and that we are within

thirty days of the discovery deadline in the Judge's scheduling order, I would request that you provide your response to this final appeal no later than tomorrow, March 15, 2012. If I delay in acting any longer I am concerned that the Court may be entitled to contend that I have moved less than diligently in pursuit of discovery needs.

With kindest regards, I remain

Yours very truly,

Tommy K. Cryer



U.S. Department of Justice

Tax Division

Facsimile No. (202) 307-0054
 Trial Attorney: Charles M. Duffy
 Attorney's Direct Line: (202) 307-6406

Please reply to: Civil Trial Section, Western Region
 P.O. Box 683
 Ben Franklin Station
 Washington, D.C. 20044

JAD:RRW:CMDuffy
 5-8-12648
 CMN 2010101335

March 15, 2012

E-MAIL and FEDERAL EXPRESS

Tommy K. Cryer
 Attorney at Law
 7330 Fern Avenue, Suite 1102
 Shreveport, LA 71105

**Government
 Exhibit**
 Ex 6

Re: United States of America v. James and Clare Reading et al.,
Case No. CV 11-00698-PHX-FJM (USDC Arizona)

Dear Mr Cryer:

Based on our telephone conversation yesterday, enclosed please find a **JOINT MOTION TO EXTEND CERTAIN DATES and a (proposed) ORDER** thereon. If the Joint Motion and proposed Order are satisfactory, please let me know today and I will file them with the Court.

Also enclosed is the **UNITED STATES' AMENDED NOTICE OF TAKING DEPOSITIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS**. Because of your scheduling issues, I agreed to change the dates for depositions of your clients - the Readings and the Fox Group Trust - to March 29th and March 30th in Phoenix. In return, you agreed to produce documents that are requested in the enclosed amended notice prior to such depositions. Thus, my understanding is that you will produce the requested documents on March 29th at 9 a.m., pursuant to the enclosed request for production of documents. If my understanding is not correct, please let me know as soon as possible.

I also told you yesterday that I would try to provide additional authority for some of the positions that we took in our March 9, 2012 letter. Regarding the notice and demand issue that you have raised, courts have held that the information set forth on the Form 4340's that we produced to you, such as the "Statutory Notice of Balance Due" entries, provide evidence that the notice and demand was properly issued. *See e.g., United States v. Scott*, 290 F. Supp.2d 1201, 1206-07 (S.D.Cal. 2003). Furthermore, "a mere declaration on the part of the taxpayer that he did not receive a notice and demand is insufficient to raise a genuine issue of material fact as to whether such notice and demand was actually sent." *Id.*, at 1206.

Regarding your assertion that the referenced Form 4340's are hearsay, courts have held that such forms are not hearsay. *See e.g., Hood v. United States*, 2009 WL 1385974 *1 (9th Cir. 2009), *citing Hughes v. United States*, 953 F.2d 531, 540 (9th Cir. 1992).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles M. Duffy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

CHARLES M. DUFFY
Trial Attorney
Civil Trial Section, Western Region

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Principal Deputy Assistant Attorney General

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12 ANN SCHEEL
13 Acting United States Attorney
14 District of Arizona
15 *Of Counsel*

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

29 UNITED STATES OF AMERICA,
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31 Plaintiffs,
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33 v.

34 JAMES LESLIE READING, CLARE L.
35 READING, FOX GROUP TRUST,
36 MIDFIRST BANK, CHASE, FINANCIAL
37 LEGAL SERVICES, STATE OF ARIZONA
38
39 Defendants.

Civ. No. 11-698-PHX-FJM

**ORDER EXTENDING CERTAIN DATES
IN THE SCHEDULING ORDER**

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– Discovery deadline: May 11, 2012; and

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– Dispositive Motion filing deadline: June 11, 2012.

IT IS SO ORDERED,

Dated this ____ day of _____, 2012.

FREDERICK J. MARTONE
United States District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system to the foregoing and served the following through that system and by first class mail:

ROBERT P. VENTRELLA
Assistant Attorney General
State of Arizona
1275 West Washington Street
Phoenix, Arizona 85007-2926

PAUL M. LEVINE, ESQUIRE
LAKSHMI JAGANNATH, ESQUIRE
McCarthy, Holthus, Levine Law Firm
8502 E. Via de Ventura, Suite 200
Scottsdale, Arizona 85258

On this 15th day of March, 2012, I also served the foregoing by Federal Express mail and by E-Mail on the following:

TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue
Shreveport, Louisiana 71105

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice