

TOMMY K. CRYER
7330 Fern Ave., Suite 1102
Shreveport, LA 71105
318 797-8949
318 797-8951 fax
CryerLaw@aol.com

*Attorney for Defendants, James Leslie Reading,
Clare L. Reading and Fox Group Trust*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,
Plaintiff

2:11-cv-00698-FJM

v.

(OPPOSED)

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

**MOTION TO COMPEL DISCOVERY ON
BEHALF OF JAMES LESLIE READING,
CLARE L. READING AND FOX GROUP
TRUST**
(ORAL ARGUMENT BY
TELEPHONE REQUESTED)

Now come JAMES LESLIE READING, CLARE L. READING and FOX GROUP TRUST (hereinafter collectively referred to as "Readings" or "the Readings"), through undersigned counsel, who, pursuant to Federal Rules of Civil Procedure Rule 37 move the court to compel complainant, United States of America (hereinafter referred to as "plaintiff" or "the government") to provide responses to interrogatories and requests for production of documents as hereinafter shown and additional remedies more fully described hereinbelow, in support of which the Readings offer the following:

1. On January 3, 2012, Readings served plaintiff with their First Set of Interrogatories and Requests for Production of Documents, consisting of nine interrogatories and five requests for production of documents.

2. Due to an oversight resulting in the unintended exclusion of additional discovery needs on the following day, January 4, 2012, the Readings supplemented their initial discovery by serving plaintiff with their Second Set of Interrogatories and Requests for Production of Documents consisting of two interrogatories and one request for production of documents, a copy of both sets of discovery, including government responses, is attached hereto and made a part hereof by reference as Exhibit 1.

3. Approximately one week following service the undersigned received a call from opposing counsel, who indicated that he and his staff were preparing and compiling responses to the discovery requests but that it may take more time to obtain the information and documents sought than the thirty days permitted. The undersigned asked opposing counsel if he had an estimate regarding the amount of additional time needed and was told "a week, perhaps a little longer". Counsel readily, of course, indicated that "a week or so's" delay would pose no problem and the extension was agreed to. At no time during that conversation did plaintiff's attorney indicate that any of the discovery requests were at issue or objectionable. Opposing counsel also requested an editable digital version (Word or WP) of the Readings' discovery requests in order for his staff to avoid having to retype the interrogatories and requests, to which counsel also readily agreed and immediately provided.

4. Plaintiff's responses were not, however, forthcoming within the agreed upon period and, in fact, were not served until March 2, 2012, almost exactly a full two months after service. More surprising, however, is that the two months of the Readings' discovery clock consumed by plaintiff's delayed response were not used as indicated, for the purpose of preparing and compiling responses to the discovery requests, none of which was afforded a response. The two months were, instead, used in the complicated ten minute process of copying and pasting

identical boiler plate "irrelevant, immaterial and not likely to lead etc." objections to all eleven interrogatories and all six requests for production of documents.¹

5. Although plaintiff failed to provide one single document requested, it did enclose with its objections a CD containing many other documents, consisting of over 2,600 pages, that were not sought, the reason for which is still a total mystery.²

6. Among those documents the government preferred to provide are a number of Form 4340's, which opposing counsel indicates the government intends to submit (relative to the 26 U.S.C. § 7401 based actions) in lieu of proving the existence of valid assessments that are entitled to be reduced to judgment and to submit (relative to the 26 U.S.C. § 7403 actions) in lieu of proving that valid lien interests have been allegedly perfected pursuant to 26 U.S.C. §§ 6321 and 6303.

7. It is Readings' belief, on the basis of which the Readings allege, that the purpose in the government's stonewalling their discovery is to employ the tactic it successfully employed in *U.S. v. Gabel*, (N.D.Cal. 2002), No. C 98-04241 SBA. In that case the court had permitted the government to introduce Form 4340's, admittedly hearsay, as though they were excepted "public records" and held that the certificates were presumed correct and, therefore constituted "presumptive proof" of the assessments. The effect of that holding, which was based upon current 9th Circuit holdings, was to shift the burden to defendants to rebut the presumed correctness of the Form 4340's before requiring the government to prove all of the many prerequisites for a valid assessment. Since taxpayers are not present and participating in the assessment process, the only way a taxpayer can rebut an incorrect or false Form 4340 certificate

¹ Noted en passant, that this response represents a new benchmark in refusal of discovery experienced heretofore by counsel in that in spite of nearly 40 years of practice counsel has never received such a universal and uniform response, objecting on the same basis to 100% of everything requested, *including the initial standard request for identification of persons assisting and providing information for the responses.*

² Had counsel been aware that complainant intended to substitute other documents for those requested he could have saved the government significant time and effort by suggesting that a gift subscription to *National Geographic* or *Sports Illustrated* would be more useful and would cost far less than what was apparently expended in assembling and copying the 2,600+ pages of documents the government would have preferred the Readings seek.

is to obtain evidence one way or the other from the government's *actual* public records (as opposed to an after the fact, no personal knowledge based, ex parte declaration, the Form 4340's). The defendants in that case, therefore, sought discovery of such. By stonewalling the Gabels' discovery the government precluded their being able to dispute the presumed correctness of the 4340 certificates, blocking any revelation of inaccuracies or falsehoods. When the Gabels complained that they were precluded from disproving the presumed correctness of the Form 4340 certificates because the government had stonewalled their discovery, the court rejected the argument on the basis that *the Gabels had failed to file a motion to compel*.

8. Counsel is cognizant of and agrees with the Court's admonition to parties that it does not expect or appreciate being subjected to discovery issues the parties should be capable of resolving between themselves. Toward that end counsel has engaged opposing counsel in numerous phone conversations and has provided a detailed showing of relevance of the information through emails and fax communications, providing detailed authorities and explanations, but to no avail. Counsel has even, against his better judgment, offered to forgive the lesser components of the discovery requests in order to induce at least partial compliance (an offer that is no longer outstanding). In order to avoid filing documents that are already of record, the Readings incorporate and reiterate herein by reference Exhibits 2, 4 and 5 attached to Doc. 40, Second Joint Motion to Extend Deadlines. Unable to afford to commit the same fatal error illustrated in *Gabel*, supra, the Readings are compelled to file this motion or suffer the same fate.

9. The Readings believe and allege on the basis of such belief that the blanket refusal to comply with discovery in this instance is more than a mere attempt to preserve a non-existent right to government privacy or to preserve and assert any privilege, but is, rather, being employed as a tool of offensive effect, blinding defendants from the facts of their internal procedures relative to these alleged assessments. The total refusal, based solely on a groundless claim of irrelevance when the relevance and materiality of the facts and documents sought is not

only central to the core issues of this case, but equally apparent, is the best indicia of less than a good faith disagreement. Therefore, Readings respectfully contend that mere compulsion to comply alone is an insufficient remedy. The Readings have been injured in that two months, now three including efforts to persuade the government to comply without the necessity for this motion, have been consumed out of defendants' discovery clock; by the time this motion is adjudicated and responses obtained follow-up discovery will not be an option due to the current May 11, 2012, discovery deadline; dispositive motions revealed by the examination of the government's ultimate, but very late compliance with discovery will surely act as a very uncomfortable restraint on the Readings' opportunity to seek dispositive relief based upon such disclosures; counsel has been forced to expend significant time and effort in order to demonstrate and illustrate the Readings' right to the discovery sought, all at the Readings' additional expense; and, his having done so notwithstanding, has been forced to file and prosecute this Rule 37 motion.

10. The Readings, however, are not asking for costs or financial sanctions associated with this motion because they contend that a more appropriate sanction is available and far more fitting. Since the evident purpose of the government's stonewalling is to preclude the Readings from being able to examine the actual records for flaws, omissions and deficiencies with which they can rebut the presumed correctness of the Form 4340's, thereby re-shifting the burden back to the government, the Readings respectfully suggest that the most appropriate and fitting resolution to this matter would be to deny the government the benefit of such presumption of correctness by excluding said Form 4340 ex parte writings, the effect of which would be to keep the burden to prove all of the many prerequisites for the existence of a valid assessment and the prerequisites for the perfection of a lien interest where it belongs in the first place—with the plaintiff who has propounded such allegations.

WHEREFORE, the Readings respectfully move the Court to order and direct plaintiff to respond to the interrogatories and requests for production of documents served upon them by James Leslie Reading, Clare L. Reading and Fox Group Trust within such time limits as the Court deems sufficient; that as further sanction for plaintiff's failure and refusal to comply with the Readings' discovery requests and in order to reduce prejudice caused the Readings by plaintiff's failure and refusal, order and direct that the introduction of Form 4340's in this case by the government shall not result in any presumption of correctness on their part and that the burden of proof to establish that the assessments sued upon are valid and that lien rights for those assessment have been properly perfected; and that the Readings be granted leave to file dispositive motion on or before May 26, 2012.

Dated this 29th day of March, 2012.

Respectfully submitted,

/s/ Tommy K. Cryer

Tommy K. Cryer, La. Bar 4634
Atty for Defendants, James Leslie Reading,
Clare L. Reading and Fox Group Trust
7330 Fern Ave., Suite 1102
Shreveport, LA 71105
318 797-8949
318 797-8951 fax

CERTIFICATE OF SERVICE

I hereby certify that I have on this date electronically filed the foregoing Motion to Compel Discovery pursuant to FRCP 37 with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel for the parties:

DENNIS K. BURKE, 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

ROBERT P. VENTRELLA
Asst. Attorney General
1275 West Washington St.
Phoenix, AZ 85007

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

Shreveport, Louisiana, this 29th day of March, 2012.

/s/ Tommy K. Cryer

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

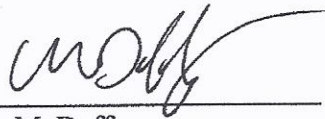
Of Counsel:

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.

2:11-cv-00698-FJM

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

Defendants

**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).

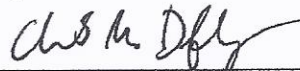
REQUEST FOR PRODUCTION NUMBER ONE:

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