

VP

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OCT -4 PM 3:15
703-021111

KC FILED
OCT 04 2006
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

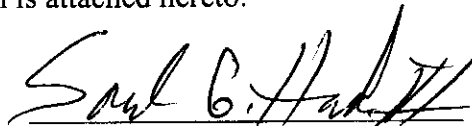
United States of America)
)
Plaintiff,)
)
v.)
)
Robert W. Hallock)
)
Defendant.)

No. 05 CR 190
Judge Matthew F. Kennelly

NOTICE OF FILING

To: Susan Coppedge

PLEASE TAKE NOTICE that on October 4, 2006, I filed with the Clerk of the United States Court, Northern District of Illinois, Defendant's Trial Memorandum on the Issue of Willfulness. A copy of such Memorandum is attached hereto.


Samuel G. Harrod III


CERTIFICATE OF SERVICE

I, Samuel G. Harrod III, the attorney for Robert W. Hallock, certify that I served this notice, together with all attachments, by personally delivering a copy to:

Susan Coppedge

, on October 4, 2006.

Date: October 4, 2006


Samuel G. Harrod III

INWOOD COMMUNITY CENTER
7806 OCT -4 2006
702-5311
**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KC FILED
OCT 04 2006
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

United States of America)
)
Plaintiff,)
)
v.)
)
Robert W. Hallock)
)
Defendant.)

No. 05 CR 190
Judge Matthew F. Kennelly

**TRIAL MEMORANDUM
ON THE ELEMENT OF WILLFULNESS**

The defendant, Robert W. Hallock, respectfully submits this Memorandum. This Memorandum addresses the element of willfulness.

THE GOVERNMENT MUST PROVE WILLFULNESS

The indictment charges Hallock with a violation of 26 U.S.C. § 7201. Hallock cannot be found guilty of the charged offense unless, among other things, the Government proves, beyond a reasonable doubt, that Hallock acted willfully. *United States v. King*, 126 F.3d 987, 989 (7th Cir. 1997). To prove willfulness the Government must prove “that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.” *Cheek v. United States*, 498 U.S. 192, 201, 111 S. Ct. 604, 609 (1991). Moreover, willfulness is a specific intent that “must be proven by independent evidence and which cannot be inferred from the mere understatement of income.” *Holland v. United States*, 348 U.S. 121, 139, 75 S. Ct. 127, 137 (1954).

A GOOD-FAITH BELIEF, EVEN IF CRAZY, NEGATES WILLFULNESS

The Government cannot carry its burden on the issue of willfulness “without negating a defendant’s claim of ignorance of the law or a claim that, because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws.” *Cheek v. United States*, 498 U.S. 192, 202, 111 S. Ct. 604, 610 (1991); *Unites States v. Pensyl*, 387 F.3d 456, 459 (6th Cir. 2004) (if a person honestly, but incorrectly believes he is not obligated to pay income tax, he is not guilty of tax evasion because the willfulness element is not present). This is so “whether or not the claimed belief or misunderstanding is objectively reasonable.” *Id.* Even, “a crazy belief can be a defense to a charge of false filing.” *United States v. Pittman*, 82 F.3d 152, 155 (7th Cir. 1996).

HALLOCK’ GOOD-FAITH BELIEF

Hallock honestly believed that the money which the Government claims Hallock should have reported as income was not income because Hallock was obligated to repay that amount plus over Two Million Dollars more. Hallock’s obligation to repay arose, in part, under the applicable provisions of the Uniform Commercial Code.

Hallock received money from the sale of certificates of deposit which Hallock believed were issued by Deutsche Bank (the “Certificates”). Deutsche Bank dishonored the Certificates because they were fraudulent.

Because the Certificates were negotiable instruments under the Uniform Commercial Code, 810 ILCS 5/3-104, and Hallock indorsed the certificates, he was liable as an indorser under Section 3-415 of the Code. That Section states, in pertinent part: “if an instrument is dishonored, an indorser is obligated to pay the amount due on the instrument (i) according to the

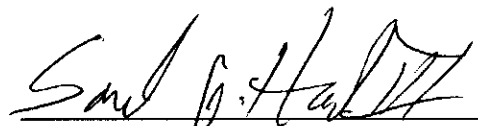
terms of the instrument the time it was indorsed.” 810 ILCS 5/3-415 (a). In addition, Hallock was liable under Section 3-416 of the Code. Section 3-416 provides that “a person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that *** (2) all signatures on the instrument are authentic and authorized *** (4) the instrument is not subject to a defense.” 810 ILCS 5/3-416. Hallock made the foregoing warranties when he indorsed and transferred the Certificates. As a result, when the Certificates were dishonored Hallock was liable for any loss suffered as a result. 810 ILCS 5/3-416 (b).

Hallock’s indorsement and warranty liability was fixed and determinable in 1997, the same year he received the money. In Hallock’s mind, his indorsement and warranty liability more than offset money he had received. He, therefore, did not believe he had any taxable income.

Interestingly, Hallock’s belief is consonant with the principles stated by the Supreme Court in *Commissioner v. Indianapolis Power & Light Co.*, 493 U.S. 203, 110 S. Ct. 589 (1990). There, the Government claimed that customer deposits which the Company was obligated to repay under certain conditions constituted taxable income. The principal arrow in the Government’s quiver was the fact that the Company had unrestricted use of the deposits. The Court rejected the Government’s position. In doing so, the Court first said that “it is settled that receipt of a loan is not income to the borrower.” *Indianapolis Power & Light Co.*, 493 U.S. at 207, 110 S. Ct. at 591. The Court then said: “[i]n determining whether a taxpayer enjoys ‘complete dominion’ over a given sum, the crucial point is not whether his use of the funds is unconstrained during some interim period. The key is whether the taxpayer has some guarantee that he will be allowed to keep the money.” *Indianapolis Power & Light Co.*, 493 U.S. at 210,

110 S. Ct. at 593. Here, when Hallock filed his return he did not have any guarantee that he would be allowed to keep the money he had received. Instead, Hallock had every reason to believe that because of his indorsement and warranty liability he would have to pay back that money and more.

Respectfully submitted,



Samuel G. Harrod III

ATTORNEY FOR DEFENDANT:
Samuel G. Harrod III
1907 S. Mitchell
Eureka, IL 61530
309-467-2247