

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 06-CR-062-TCK</b>
	)	
<b>RICHARD MAYNOR BLACKSTOCK,</b>	)	
	)	
<b>Defendant.</b>	)	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION FOR  
RECONSIDERATION OF ORDER DENYING ARREST OF JUDGMENT**

Comes Now, the Plaintiff, the United States of America, by and through Loretta F. Radford and Kenneth P. Snoke, Assistant United States Attorneys for the Northern District of Oklahoma, and hereby enters its response to the Defendant’s Motion for Reconsideration of Order Denying Arrest of Judgment. The Government reasserts its legal position presented to the Court in its original response to Defendant’s previous requests for dismissal and asks the Court to uphold the Court’s previous ruling entered by Order dated July 24, 2006, denying Defendant’s motions for arrest of the Superseding Indictment (hereafter, “indictment”) and dismissal.

On June 9, 2006, the Government filed a Superseding Indictment against the Defendant, Richard Maynor Blackstock. On June 22, 2006, a jury rendered verdicts of guilty against the Defendant on each of the thirty-two counts alleged in the indictment. The indictment alleges the Defendant “did willfully aid and assist in, and procure, counsel and advise” the preparation and presentation of false and fraudulent tax returns to the Internal

Revenue Service in violation of 26 U.S.C. Section 7206 (2).

On July 24, 2006, by written order, this Court denied Defendant's request to arrest judgment and dismiss the indictment. Defendant now seeks reconsideration of the Court's Order.

The Defendant seeks reconsideration on two issues:

1. Whether the indictment is required to allege more than the wilfulness of the Defendant where the Government is required to prove a voluntary, intentional violation of a known legal duty?  
  
And,
2. Whether the voluntary, intentional violation of a known legal duty means the Government was required to prove at trial that the Defendant was aware of the specific provision of the tax code which he was accused of violating, i.e., 26 U.S.C. Section 7206 (2), before he aided or assisted, procured, counseled or advised in the preparation of a false and fraudulent tax return?

**I.**

**The Government Is Not Required to Allege Anything More Than  
The Wilfulness of the Defendant's Misconduct In The Indictment**

Again, the Defendant's primary complaint is that the indictment does not identify what he did to aid and assist, counsel, procure or advise in the preparation of a false and fraudulent tax return to the Internal Revenue Service. To establish a violation of 26 U.S.C. Section 7206 (2), the Government was required to prove (1) the Defendant aided or assisted or otherwise

caused the preparation and presentation of a return, (2) the return was false or fraudulent as to a material matter, and (3) the Defendant acted wilfully. *United States v. Guidry*, 199 F.3d 1150, 1157 (10<sup>th</sup> Cir. 1999). The indictment filed in this case sufficiently informs the Defendant of the crime he is alleged to have committed and sets forth the unlawful premise upon which the Defendant aided and assisted numerous taxpaying citizens into filing false and fraudulent tax returns. The indictment explicitly alleges the Defendant falsely and fraudulently represented to these taxpayers that they were entitled under the provisions of the Internal Revenue laws to claim deductions for the entire amount of wages, salaries and other compensation for labor, or for personal services rendered, during the tax years in question by citing to a so-called “claim of right” tax philosophy. As well, the trial evidence established the manner in which the Defendant convinced these taxpayers that the total dollar amount of the wages and salaries for which they were taxed in previous tax periods were deductible and should be submitted for refund by filing an amended return. This total dollar amount submitted on the amended returns is the false and fraudulent statement submitted to the Internal Revenue Service for the purpose of obtaining a refund of the total claim amounts.

A sensible reading of the indictment plainly discloses the Government’s position that the Defendant aided and assisted, procured, counseled and advised in the preparation of false and fraudulent tax returns. This fact is further evidenced by the Jury’s verdict of guilty on all thirty-two counts alleged in the indictment. An indictment which contains the elements of the offense, sufficiently apprises the Defendant of the evidence against him, and shows the

Defendant to what extent he may plead a former acquittal or conviction as a bar to further prosecution for the same cause is a sufficient indictment. *United States v. Harrold*, 796 F.2d 1275 (10<sup>th</sup> Cir. 1986); *United States v. Radetsky*, 535 F.2d 556 (10<sup>th</sup> Cir. 1976), *cert. denied*, 429 U.S. 820 (1976).

## II.

### **There Is No Legal Requirement That the Government Prove the Defendant Was Aware of the Specific Tax Provision or Statute Which He Is Accused of Violating**

The Defendant argues once again for dismissal of the indictment on the basis that the indictment does not allege that he was aware of the specific Internal Revenue Service provision which makes his tax philosophy or “claim of right” deduction materially false and fraudulent. The Defendant also argues that the Government must allege that he was aware that his conduct would violate the specific statutory provision at issue before the misconduct occurred. The Defendant insists the Government must show he was aware of the existence of 26 U.S.C. Section 7206 (2) in order to prevail at trial. (See, Defendant’s Motion to Reconsider, p. 8).

An indictment is sufficient if it contains the elements of the offense charged and fairly informs the Defendant of the charge against which he must defend. The filed indictment should enable a defendant to plead an acquittal or conviction in bar of further prosecution for the same offense. Further, it is generally sufficient that an indictment set forth the offense in the words of the statute itself, so long as the words expressly set forth all of the elements necessary to constitute the offense to be punished. *See, United States v. Harrold*, 796 F.2d

1275, 1277 (10<sup>th</sup> Cir. 1986); *See also, United States v. Carll*, 105 U.S. 611, 612 (1882).

As the Court instructed in this case, the Government must establish the Defendant acted wilfully. Wilfulness is defined as the voluntary, intentional violation of a known legal duty. *Cheek v. United States*, 498 U.S. 192, 201 (1991); *United States v. Guidry*, 199 F.3d 1150, 1157 (10<sup>th</sup> Cir. 1999); *See, United States v. Blackstock*, Case No. 06-CR-062-TCK, Jury Instruction on Essential Elements of the Offense Charged in Counts One Through Thirty-Two, filed in the case on June 22, 2006, Doc. 58, p. 23. This does not mean the Government is required to prove the Defendant knew of a specific statute making his conduct illegal before the misconduct occurs. The Government is merely required to establish the wilfulness of the Defendant. Knowledge of the illegality of the Defendant's conduct may be established indirectly since rarely would the prosecution have direct evidence of wilfulness.

As a whole, the jury instructions given by the Court in this case sufficiently apprised the jury that knowledge of the illegality was required for the Government to prevail. The evidence presented during the trial, to include but not limited to, evidence that the Defendant asked taxpayers to sign nondisclosure agreements regarding the documents they were filing with the Internal Revenue Service and the testimony of Agent Steve Scheets that during his undercover investigation the Defendant said he did not want any one to know about the tax services he was providing because he did not want to go to jail, provided the jury with sufficient circumstantial evidence of wilfulness.

The indictment filed in this case mirrors the statute. For the Defendant to argue that the Government must allege in the indictment a known violation of a specific statute goes beyond the legal requirements for pleading a lawful indictment. The Defendant cannot in good faith maintain that he is entitled to any more than this. Additionally, any inadequacy in an indictment requires reversal only if it prejudices the Defendant. *United States v. Harrold*, 796 F.2d 1275, 1278 (10<sup>th</sup> Cir. 1986). The Defendant in this case has yet to show how he has been prejudiced by the failure of the indictment to specifically plead that he knew his conduct would violate 26 U.S.C. Section 7206 (2) before he began to provide the unlawful tax services to the taxpayers.

**III.  
CONCLUSION**

Wherefore, premises considered, the Government respectfully requests the Court deny the Defendant's Motion for Reconsideration of Order Denying Arrest of Judgment.

Respectfully submitted,

DAVID E. O'MEILIA  
United States Attorney

*s/ Loretta F. Radford*

LORETTA F. RADFORD, OBA No. 11158  
KENNETH P. SNOKE, OBA No. 8437  
Assistant United States Attorney  
110 West 7th Street, Suite 300  
Tulsa, Oklahoma 74119-1029  
(918) 382-2700

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of August, 2006, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and mailed postage prepaid or transmittal of a Notice of Electronic Filing to the following:

Oscar Stilley  
[oscar@oscarstilley.com](mailto:oscar@oscarstilley.com)

Richard Maynor Blackstock  
10632 S. Memorial Drive #190  
Tulsa, OK 74133

Richard Maynor Blackstock  
10632 S. Memorial Drive #190  
Tulsa, Oklahoma  
The United States of America

*s/ Loretta F. Radford*  
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Loretta F. Radford