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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD,
NELDON JOHNSON, and ROGER
FREEBORN,

Defendants.

Civil No. 2:15-cv-00828-DN-EJF

**DEFENDANTS' OPPOSITION TO
MOTION TO DEPOSE RICHARD
JAMESON OUT OF TIME**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Defendants oppose the government's request to depose Mr. Jameson out of time. Mr. Jameson has already been deposed in this matter as a fact witness because Mr. James is an IRS Enrolled Agent, meaning he is authorized to represent taxpayers before the IRS after having passed a comprehensive IRS test covering tax matters and has demonstrated experience as a tax preparer. Enrolled agent status is the highest credential the IRS grants. Individuals who obtain

the enrolled agent status must adhere to ethical standards and complete 72 hours of continuing education courses every three years.¹

Mr. Jameson was deposed on September 20, 2017 from 9:00 am to 5:20 pm. The court reporter recorded 7 hours and 20 minutes on the record. See Exhibit 1 hereto. A vast majority of the time in Mr. Jameson's deposition was the government arguing with him over the applicability of certain tax provisions to the facts of this case. Another deposition would involve the identical issues. The government should not be allowed to retake the deposition and re-argue its interpretation of the tax code.

Mr. Jameson gave two opinions in his expert report:

OPINIONS

You have asked that I answer the following two questions. My answers are as indicated below:

QUESTION 1: Do the solar lenses purchased by individuals or business entities from RaPower-3, LLC qualify under section 48 of the Internal Revenue Code as "energy equipment" and for tax reporting purposes, can those people claim the energy credit for the year their lens(es) are placed in service?

ANSWER: For the reasons explained and stated herein, yes.

QUESTION 2: Do buyers of solar lenses from RaPower-3, LLC qualify to deduct depreciation on their federal tax returns?

ANSWER: For the reasons explained and stated herein, yes.

See Exhibit 2 hereto, excerpt from Mr. Jameson's expert report.

¹ <https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information>

Both of these topics were thoroughly addressed in the prior deposition of Mr. Jameson. The applicability of a client taking the IRC Section 48 tax credits was discussed for hours during the earlier deposition. See Exhibit 3 hereto. The prior deposition inquired into other aspects of what qualifies for claiming the energy credit of Section 48 and how that applies to several other sections of the IRS code. *Id.* In addition, the depreciation deduction was discussed extensively in Mr. Jameson's testimony. It is referenced 9 times during the course of the deposition. See Exhibit 3.

The cost and effort of a second deposition of Mr. Jameson would be prejudicial to Defendants. Mr. Jameson resides near St. George, Utah. While Plaintiff may have unlimited resources to spend on taking depositions and undertaking discovery, Defendants do not. To require the expenditure of time and travel to take the deposition on the same subject matter as the earlier deposition would be unfairly prejudicial to Defendants.

The government should not be allowed to re-open Mr. Jameson's deposition and repeat its examination of Mr. Jameson's understanding of the tax code and justification for claiming tax credits and depreciation on behalf of his clients. The motion to take the deposition should be denied.

Dated this 20th day of October, 2017.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul
Denver C. Snuffer, Jr.
Steven R. Paul
Daniel B. Garriott
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO MOTION TO DEPOSE RICHARD JAMESON OUT OF TIME** was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher
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/s/ Steven R. Paul
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