

Denver C. Snuffer, Jr. (#3032) denversnuffer@gmail.com

Steven R. Paul (#7423) spaul@nsdplaw.com

Daniel B. Garriott (#9444) dbgarrriott@msn.com

Joshua D. Egan (15593) Joshua.egan@me.com

NELSON, SNUFFER, DAHLE & POULSEN

10885 South State Street

Sandy, Utah 84070

Telephone: (801) 576-1400

Facsimile: (801) 576-1960

*Attorneys for RAPower-3, LLC, International Automated Systems, Inc.,
LTB1, and Neldon Johnson*

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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>DECLARATION OF PAUL JONES IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Paul W. Jones.
2. I am an attorney in good standing with the Utah State Bar.
3. I am admitted to practice in the United States Tax Court (the “Tax Court”).
4. I represent a large number of taxpayers in the Tax Court that have purchased solar energy equipment from Rapower-3, LLC (the “Solar Equipment”).

5. The Internal Revenue Service (the “IRS”) has audited, and continues to audit, taxpayers who have purchased Solar Equipment from Rapower-3, LLC.
6. With only a handful of exceptions, I have not been involved in the audits of the taxpayers who have purchased Solar Equipment before the IRS.
7. Once an IRS audit is complete the IRS issues a notice of deficiency to the taxpayer.
8. A notice of deficiency is a proposed tax assessment and notifies the taxpayer of a difference between the tax liability as determined by the IRS and the tax shown on the taxpayer’s tax return. A notice of deficiency must: (i) state that it is a notice of deficiency, (ii) indicate an amount of tax due, and (iii) identify the tax period.
9. If the IRS issues a notice of deficiency, the recipient taxpayer(s) have the right, within specified time limits, to litigate the correctness of the tax deficiency in the Tax Court without first paying the tax.
10. I file a petition to the Tax Court from the taxpayer’s notice of deficiency so that the correctness of the deficiency as to the Solar Equipment can be litigated.
11. At present, there are 193 of pending Tax Court cases related to the Solar Equipment.
12. There are currently more cases pending in audit before the IRS for which I will be filing a petition to the Tax Court to appeal the deficiency(ies) determined by the IRS.
13. When I file a petition to the Tax Court for a taxpayer that has purchased Solar Equipment, counsel for the IRS will file an answer to that petition.
14. At the same time that IRS counsel files its answer, IRS counsel will also file a “Motion to Assign Judge”. A redacted copy of a Motion to Assign Judge is attached as Exhibit 1 to this Declaration.

15. As the Motion to Assign Judge indicates, myself and IRS counsel understand and agree that there are still taxpayer audits ongoing and the group of taxpayers is not yet finalized. See Exhibit 1 ¶5.
16. It is my understanding that all of the cases involving the Solar Equipment are assigned to Judge Albert Lauber of the Tax Court.
17. As the Motion to Assign Judge indicates, the parties will ask the Court to try one or more test cases to determine the tax merits of the [Solar Equipment] activity” See Exhibit 1 ¶10.
18. It is my understanding that the test case(s) will be heard on a special trial session in Salt Lake City, Utah.
19. As of the date of this declaration, the Solar Equipment cases are still being pending in the Tax Court and no trial has been scheduled.
20. I am not aware of any Solar Equipment case that has been tried on the merits in the Tax Court, U.S. District Court, or the U.S. Court of Federal Claims.

I declare under the penalty of perjury, that the foregoing is true and correct.

DATED this 17th day of November, 2017.

/s/ Paul W. Jones

Paul W. Jones

Exhibit 1 to the Declaration of Paul Jones

UNITED STATES TAX COURT

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██████████ ██████████)	
██████████ ██████████,)	
)	
Petitioners,)	
)	
v.)	Docket No. ██████████
)	
COMMISSIONER OF INTERNAL REVENUE,)	Filed Electronically
)	
Respondent.)	

MOTION TO ASSIGN JUDGE

THE RESPONDENT MOVES that the Court assign this case to the Honorable Albert G. Lauber.

IN SUPPORT THEREOF, the respondent respectfully states:

1. Petitioners reside in ██████████, ██████████.
2. Petitioners filed a federal income tax return for tax year 2013, in which they claimed deductions and/or credits related to an investment in what petitioners called "equipment rental services" of solar "lenses" (hereinafter referred to as "solar investment" or "energy property").
3. The Court calendared many cases involving this same solar investment on the Tax Court calendar beginning on June 1, 2015 in Salt Lake City, Utah. The Court granted motions to continue from the June 1, 2015 calendar all of the cases that involve the "energy property" investment with Judge Lauber retaining jurisdiction.

Docket No. [REDACTED] 2

4. The Court did not schedule for trial many additional cases involving this same "energy property" investment.

5. The Internal Revenue Service has informed counsel for respondent that there are additional cases in the audit stage involving this same "energy property" investment.

6. Counsel for petitioners and counsel for respondent have discussed the related and docketed cases. At this time, they do not believe that it is appropriate to request consolidation of these cases.

7. On February 19, 2015, respondent's counsel and petitioners' counsel held a conference call with Judge Lauber to discuss these cases.

8. Respondent's counsel intends to or has filed similar motions for the other cases involving this same claim of "energy property" investment.

9. Counsel for respondent and counsel for petitioners have arranged for expert witness reports evaluating the solar activity the taxpayers have invested in.

10. As discussed in the February 19, 2015 conference call, the parties likely will ask the Court to try one or more test cases to determine the tax merits of the solar investment activity.

Docket No. [REDACTED]

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11. Assigning this case and the related cases to Judge Lauber will allow the parties a more efficient and consistent method for resolving this large group of cases involving a common issue.

12. On March 11, 2015, counsel for respondent contacted counsel for petitioners by e-mail and asked for his views regarding a motion to assign judge in common cases as they were identified. Counsel for petitioners responded by e-mail indicating that he had no objection to the granting of such motions.

13. On March 10, 2017, counsel for respondent and counsel for petitioners agreed via email to continue the course of respondent's counsel filing, without objection from petitioners, a motion to assign judge in these common cases as identified.

Docket No. [REDACTED]

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WHEREFORE, respondent requests that the Court grant this Motion to Assign Judge and order that the Honorable Albert G. Lauber be assigned jurisdiction for this case.


WILLIAM M. PAUL

Acting Chief Counsel
Internal Revenue Service

Date: _____

MAR 15 2017

By: _____


SKYLER K. BRADBURY
Attorney
(Small Business/Self-Employed)
Tax Court Bar No. BS0665
150 Social Hall Avenue
Suite 313A
Salt Lake City, UT 84111
Telephone: 801-799-6636

OF COUNSEL:

BRUCE K. MENEELY
Division Counsel
(Small Business/Self-Employed)
EDWIN A. HERRERA
Area Counsel (Area 5)
(Small Business/Self-Employed)
CHARLES B. BURNETT
Associate Area Counsel (Salt Lake City)
(Small Business/Self-Employed)

CERTIFICATE OF SERVICE

On this 26th day of May, 2016, I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' 12(f) MOTION TO STRIKE IMMATERIAL, IMPERTINENT, OR SCANDALOUS ALLEGATIONS IN PLEADINGS** was served on the following by the method identified:

Party/Attorney	Method
Donald S. Reay Reay Law PLLC 43 W. 9000 S., Ste. B Sandy, Utah 84070 Tel. (801) 999-8529	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: donald@reaylaw.com <input type="checkbox"/> Electronic Filing Notice
John K. Mangum US Attorney's Office (UT) Tel. (801) 325-3216	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: john.mangum@usdoj.gov <input type="checkbox"/> Electronic Filing Notice
Erin Healy Gallagher Christopher R. Moran US Department of Justice (TAX) P.O. Box 7238 Washington, DC 20044 Tel. (202) 353-2452	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: erin.healygallagher@usdoj.gov christopher.r.moran@usdoj.gov <input type="checkbox"/> Electronic Filing Notice
Erin R. Hines US Department of Justice Central Civil Trial Section RM 8921 555 4 th St NW Washington, DC 20001 Tel. (202) 514-6619	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: erin.r.hines@usdoj.gov <input type="checkbox"/> Electronic Filing Notice

/s/Denver C. Snuffer, Jr.
Attorneys for Defendants