

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>5: 1 P R O C E E D I N G S 2 (Witness cautioned and sworn) 3 MIKE PENN, 4 called as a witness after first being duly cautioned and 5 sworn to testify to the truth, the whole truth, and 6 nothing but the truth, testified on his oath as follows: 7 EXAMINATION 8 BY MS. HINES: 9 Q. So I introduced myself to you just a few moments 10 ago. 11 A. Right. 12 Q. But my name is Erin R. Hines. I'm with the 13 United States Department of Justice, Tax Division. I'm 14 representing the United States in this case along with 15 my colleague and I'll have her introduce herself here in 16 a minute. Actually why don't we do that now? Go ahead. 17 MS. HEALY-GALLAGHER: Okay. Erin 18 Healy-Gallagher. I am also here for the United States. 19 Chris Moran, who also</p>				



Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>represents the United States, is 20 not present for this deposition. 21 A. Okay. 22 MS. HINES: Mr. Austin? 23 MR. AUSTIN: Christian Austin for the 24 Defendants. 25 MS. HINES: And let's go ahead and make a 6: 1 note for the record that Donald Ray who represents 2 Defendants, Gregory Shepard and Roger Freeborn, is not 3 here today. 4 A. Okay.</p>				
<p>7:20 Q. Okay. All right. Since we are here to get an 21 accurate as record as possible I'm going to have to ask 22 you is there anything that you can think of today that 23 would keep from you answering my questions or inhibit 24 your memory or ability to answer my questions? 25 A. No. I'll answer to my best of my ability on 8: 1 memory, yes. 2 Q. Okay. Are you on any medications that may affect 3 your memory? 4 A. No.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>5 Q. Okay. In the last twelve hours have you had 6 anything alcoholic to drink? 7 A. No. 8 Q. Are you feeling sick or unwell at all today? 9 A. No. Just a little nervous. 10 Q. All right. Are you currently under care for any 11 kind of illness? 12 A. No.</p>				
<p>9: 9 Q. All right. Let's see. All right. Mr. Penn, 10 will you state your name and your current address? 11 A. Yes, it's Mike Wayne Penn. The address is 2208 12 Berkley Drive here in Wichita Falls Texas 76308. 13 Q. Okay. And how long have you lived at that 14 address? 15 A. Seven years I think. It's close. Maybe -- gosh, 16 I wish -- eight years -- seven or eight years. I can't 17 remember for sure. We need my wife to answer that one. 18 Q. All right. And where did you live before -- 19 A. Yeah, 1800 Victory.</p>				
<p>9:24 Q. (By Ms. Hines) Where did</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>you live before? 25 A. Okay. At 1800 Victory Avenue in Wichita Falls, 10: 1 Texas. 2 Q. Okay. How long did you live there? 3 A. I owned a home for 20 years. I moved out of the 4 area in two-thousand -- no, I'm sorry. Let me rephrase 5 that. 1994, '95 and '96. I still owned the home but I 6 did not live in this area in those years. 7 Q. Okay. Mr. Penn, what is your current age? 8 A. 58. 9 Q. So what is your current occupation? 10 A. I work for MW Penn Well Service. I'm the sole 11 member of -- a sole member LLC and that's my occupation. 12 I run and operate an oil well service rig. 13 Q. Okay. And what exactly do you do when you 14 operate an oil service rig? 15 A. I actually run the machine. And we clean out old 16 oil wells and repair mechanical problems inside wells --</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>17 or well failures, you know, open bore failures so --</p> <p>18 Q. How long have you been doing that?</p> <p>19 A. I started when I was 18 years old and did it -- I</p> <p>20 probably only had about six years from 1990 to '96 that</p> <p>21 I was not involved in the oil well servicing business.</p> <p>22 Q. Okay. So do you have any education after high</p> <p>23 school?</p> <p>24 A. No.</p> <p>25 Q. Okay. When you happen graduate from high school?</p> <p>11: 1 A. 1977.</p> <p>2 Q. And do you have any kind of employment training</p> <p>3 or any kind of continuing education?</p> <p>4 A. No.</p> <p>5 Q. And what was it that you were doing during that</p> <p>6 time period in the nineties when you weren't working?</p> <p>7 A. Actually there was another time period I thought</p> <p>8 of. It would have been from -- from '98 to 2002. I</p> <p>9 worked for Carz Auto Sales. And then the other time I</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>10 was entrepreneuring (sic) out in Santa Fe, New Mexico, 11 from '94 to '96 and lived there. And that's when I was 12 not occupying 1800 Victory. 13 Q. And what did you do out in -</p> <p>14 A. Well, we had a -- let's see -- just a tourist 15 business. We were renting out motorcycles. We had a 16 bunch of Harley Davidson's. Yeah, so myself and a 17 partner put that together and rode motorcycles for two 18 years.</p> <p>19 Q. And what did you do at the auto sales?</p> <p>20 A. Sales. I was in sales.</p> <p>21 Q. All right. Okay. Mr. Penn, is there a time 22 period where you came to learn about RaPower3?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Tell me about that. How did you learn 25 about RaPower3?</p> <p>12: 1 A. Well, the first time I was approached by my tax 2 preparer, John Howell Tax Services here in Wichita 3 Falls. And he mentioned it to me</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>in passing while 4 preparing my taxes. And that's the first time I heard 5 about it. 6 Q. Do you remember about what year that was? 7 A. I would say 2010 would be the first time. 8 October probably of 2010 because I usually have to do an 9 extension. 10 Q. Okay. So that would have been during a 11 conversation with respect to your personal tax return? 12 A. Yes. 13 Q. Okay. And what were the circumstances 14 surrounding that conversation? 15 A. Well, he mentioned the units that you could 16 purchase. And then he had a program where he had it on 17 his computer where he could just punch it in and you 18 could see how it reflected on your taxes, the purchase 19 of these units, the RaPower. 20 Q. So what were these units? 21 A. I -- I didn't pay a lot of attention that first 22 year or two. I just was not</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>entered. 23 Q. Okay. So when did you pay attention? 24 A. The -- well, it gets kind of personal right here. 25 I had cancer in 2012. And I missed a lot of work. And 13: 1 all of a sudden I wasn't going to be able to pay my 2 taxes. And John Howell had this -- of course, you know 3 how your tax preparer and you become close and kind of 4 friends, you know. And he said, Mike, you really need 5 to do this. And he plugged it in and showed me how much 6 I could save on taxes. 7 Q. So how did that process work? Did he ask you for 8 information that he put into the computer program? 9 A. Well, he had all my financial information 10 exactly. So he showed me how it would reflect on my 11 personal income taxes that year. 12 Q. And what's your understanding of what the -- this 13 RaPower3 program would do for your taxes? 14 A. Well, it would just bring</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>your fax liability way 15 down from -- from what I would have to pay. 16 Q. Okay. 17 A. And like I said, I was afraid of my own situation 18 at that time with the taxes. 19 Q. Did he explain how it all worked? 20 A. Not really. Honestly, John never talked about 21 the business very much, you know. And, of course, I did 22 look it up on my own on the internet at that time. And 23 I was -- frankly was not very impressed with the 24 business at all, you know, 'cause I've -- in the oil 25 business we see a lot of tax-type situations with 14: 1 drillers and promotions and stuff like that. I've been 2 doing that my whole life. So I had no interest -- 3 that's why I had no interest until I came into a 4 personal bind and then fear got me. 5 Q. So what time period did you say that was? 6 A. That was -- that would have</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>started -- I had 7 surgery in October of '12 right before -- we probably 8 went ahead and filed my taxes. And then -- I know we 9 did 'cause I've never filed late. And so we would have 10 -- and had that surgery maybe four or five days before 11 taxes. I can't remember the exact date. Taxes were due 12 October the 15th. I think I had that surgery on the 13 9th, 10th, or 11th. And my son's birthday is right in 14 there so I know it was within that three-day time 15 period. I don't know when exactly I had that surgery. 16 Q. So at that time period then, October of 2012, 17 what all did you do to look into the RaPower3 program? 18 A. I didn't. I didn't. He -- he presented it to me 19 and I just -- i just kind of put it on the back of my 20 mind. I wasn't really interested. And then you'll note 21 on my purchase, I mean, it actually happened on December 22 the 31st or the 30th -- the 30th</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>'cause that was my last 23 day to be able to do it. And so I just woke up that 24 night and punched the button the midnight deadline or 25 whatever it was to get them on that tax year. 15: 1 Q. So between October and December of 20 -- 2 A. I didn't do any research on that. I was fighting 3 my own battles. 4 Q. Did you speak to anyone at the company? 5 A. Huh-huh, never. 6 Q. Okay. Did you subsequently do any research on 7 the company? 8 A. I never even logged in once I bought these 9 things. 10 Q. Did you -- after you purchased in December of 11 2012 did you talk to anyone at the company? 12 A. No. 13 Q. Okay. 14 A. And there's another thing. I never paid for them 15 either. 16 Q. Okay. So explain that process. How did you go</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>17 online and purchase something and then not pay for it? 18 A. I was supposed to send a check in or something. 19 I can't remember the time period. I'm just trying to 20 remember right now. I was supposed to make a payment 21 and I just did not make it and never did. 22 Q. Did anything happen? 23 A. Nothing. I never got a letter from anybody.</p>				
<p>18:23 Q. (By Ms. Hines) Okay. So earlier I think you 24 were talking about you were getting nervous. And I was 25 going to ask you, what -- what was making you nervous? 19: 1 A. Well, the main thing was I should have been 2 billed or I never received any billing in the mail at 3 all on these purchases and that was something I didn't 4 like. And at that time I just -- as I stated earlier I 5 was never comfortable with my tax preparer showing me 6 this as an investment. It just -- it was treated more 7 like a tax situation than an</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>investment and I just was 8 never comfortable with that. And, therefore, you know, 9 I did it under my circumstances. I made that decision 10 at the last minute, not feeling right about it at that 11 time. And -- but then again, I did it again that next 12 fall when it was tax season was due. 13 Q. So what -- what particular things stuck out at 14 you that made you uncomfortable? 15 A. Well, at that time if you looked it up on the 16 internet it was just -- you know, it looked like a 17 couple of guys with a -- it didn't look like a 18 revenue-generating investment to me. I mean, and -- and 19 that's just my observation. It looked like very 20 simplistic. You know, there was nothing detailed about 21 their -- their work. And another thing that made me -- 22 it always was presented to me as a tax incentive versus 23 an investment and that made me</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
 Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>nervous 'cause I had seen 24 that in the oil industry. 25 Q. Was there ever any discussion about what kind of 20: 1 revenue you might receive from this investment? 2 A. I don't remember a revenue. There had to be 3 though. I mean, let me think a minute. I wish I 4 wouldn't have thrown that paperwork away. I don't -- I 5 don't -- you know, I just never bought it with revenue 6 in mind to be honest. I mean, that's just the way it 7 was. I was looking at it from a tax viewpoint. 8 Q. Did you ever receive any kind of revenue? 9 A. No. 10 Q. Okay. So you have been talking about this as a 11 -- two guys on the website. Do you know what website or 12 who those people were? 13 A. No. I just remember going to the RaPower -- 14 Ra3Power, yeah, you know. And the -- I would go there 15 and it -- it was real simplistic, their investment was,</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>16 you know, as far as -- it looked like, you know, just 17 very -- their solar panels looked like almost made out 18 of plastic and things like that. It just didn't look 19 right to me as far as putting my money there to invest 20 in.</p>				
<p>20:23 Q. You've also referred to I think the program as an 24 it. Can you just give me a basic understanding of how 25 that program worked? What was your understanding? 21: 1 A. It was a tax credit situation with some type of 2 solar deal. Supposedly it was written up in the -- in 3 the US Tax Codes that this solar electricity qualified 4 for certain tax credits. And that's -- that's where the 5 tax credit came from was that. And then it broke into a 6 dividend situation after so many years. And I'm not 7 very good to help you there. I just don't remember the 8 investment side of the deal. 9 Q. But -- so when you have been talking about the</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>10 deal or, you know, what you were going to put your money</p> <p>11 in --</p> <p>12 A. Right.</p> <p>13 Q. -- what exactly did you think you were buying or</p> <p>14 putting your money in?</p> <p>15 A. Well, what you are supposed to be buying at this</p> <p>16 time is into a solar panel company. That was my basis</p> <p>17 of what I thought this was. And I was investing in</p> <p>18 these solar panels.</p> <p>19 Q. Do you believe you were actually buying, like,</p> <p>20 shares of the company or were you buying particular</p> <p>21 parts?</p> <p>22 A. No, I think it was into a particular part the</p> <p>23 best I remember. And that was how your deduction was,</p> <p>24 through that part that you owned.</p> <p>25 Q. And so how did you come to learn or -- who was it</p> <p>22: 1 that explained the program to you?</p> <p>2 A. John Howell was my tax preparer. I didn't pay a</p> <p>3 lot of -- I just -- he did the -- he</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>always showed it to 4 me from a tax credit viewpoint. And that's just the way 5 I looked at it at that time because you've got to 6 understand that I didn't like the idea when I was 7 presented it two years prior to that. I was not 8 interested. 9 Q. And two years prior was also with Mr. Howell? 10 A. Yes. 11 Q. He was the one -- 12 A. Yes. Yes. 13 Q. -- who told you about it? 14 A. Yes. 15 Q. Okay. All right. So did you have discussions 16 with anyone other than Mr. Howell? 17 A. No. 18 Q. Were these discussions in Mr. Howell's office? 19 A. Yes. 20 Q. Was there ever anyone else present? 21 A. No. No. He just you sat there with him at his 22 desk. 23 Q. Did Mr. Howell ever give you any marketing</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>24 materials for RaPower3? 25 A. No. 23: 1 Q. Never gave you any documents or forms to look at? 2 A. I received some. That's what I was looking for, 3 some documents that I had. But he did not give those to 4 me. They had to have come in the mail because I never 5 received any documentation from him. 6 Q. Do you know who would have sent those to you? 7 A. No. I would have assumed it came from the 8 company in Utah. 9 Q. Did you ever contact the company? 10 A. No. 11 Q. And you're talking about the company meaning 12 RaPower3, right? 13 A. Yes. Yes. 14 Q. Okay. Did you ever attend or participate in any 15 webinars? 16 A. No. 17 Q. Any conference calls? 18 A. No. 19 Q. Did you ever -- oh, I think you said you reviewed</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>20 websites, right? 21 A. Yes. 22 Q. And what were those websites again? 23 A. It was the RaPower3 exactly. 24 Q. Any other websites? 25 A. No. 24: 1 Q. Were there ever any meetings that you attended? 2 A. No. 3 Q. Are you still part of RaPower3? 4 A. Well, what happened -- do you want to move 5 into -- 6 Q. Yeah, go ahead. 7 A. -- when I got out of this? 8 Q. Yeah. 9 A. As I told you I was uneasy with this investment 10 from the beginning or this purchase or tax credits, 11 however you want to look at it, and when I was called in 12 by the local IRS to discuss this, I was very frank and 13 open with him and told him, you know, I didn't -- I 14 hadn't sent them a penny 'cause I didn't believe in 15 what we were doing, you know.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>And I was really kind of 16 thankful that I was there at that point because I had 17 not been -- I hadn't been pleased with my own personal 18 decision. I felt like I had been caught up in 19 something I didn't need to be a part of. I just didn't 20 believe -- believe that -- from a taxpayer's viewpoint I 21 just didn't like the whole thing and I was not 22 comfortable with that. 23 And so I told him exactly the way I felt. And we 24 had a good discussion, probably a little over an hour 25 here in these offices. And then he told me that he had 25: 1 a certain way that the IRS would look at this and then I 2 collected all the taxes that would have had to have been 3 paid without these credits, I took those taxes upon 4 myself to go ahead and get rid of those taxes 'cause 5 it's hard to fight for something you didn't believe in 6 and I just didn't believe in what I had purchased so</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>7 that's just kind of what I did. 8 So I went ahead and when I met with the IRS I 9 told him -- and I told him I had not made any payments, 10 never gotten any kind of a bill in the mail or anything 11 for any monies, so -- and he told me thank goodness 12 because, you know, a lot of people had spent money and 13 they're probably going to be in the same position I was 14 in. And so -- so we cleared it up that day and I got my 15 tax bill that day.</p>				
<p>28:10 Q. (By Ms. Hines) Mr. Penn, I'm going to hand you 11 what has been marked as 387. 12 A. Okay. 13 Q. Okay. Can you tell me what this is? 14 A. Yeah, this would have been an e-mail receipt I 15 would have gotten from my purchase. And that was an 16 internet -- I do remember how I did the purchase. It 17 was a -- you just pushed a button on how many units you 18 wanted to buy on their website. That's how the purchase</p>			387	

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Mike Penn taken March 13, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>19 was made. 20 Q. Okay. So how did you know how many units you 21 wanted to purchase? 22 A. I was told -- John Howell had worked that out 23 with me on my taxes and he told me approximately how 24 many units I needed to buy. And you did it in two 25 separate forms. I think this one says twelve and I 29: 1 think you'll have another form that shows six 2 additional. And this other form looks a little 3 different because I -- at that time I guess I was 4 already a member after purchasing the first one.</p>				
<p>29: 7 (Deposition Exhibit 388 marked for 8 identification) 9 Q. (By Ms. Hines) I'm going to go ahead and hand 10 you -- 11 A. Yes. Yes. 12 Q. -- 388 because I think that's what you are 13 pointing at. 14 A. Right, that is what I am pointing at. Right.</p>			<p>388 387</p>	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>15 Q. So what is 388?</p> <p>16 A. That's an additional six units purchased.</p> <p>29:25 Q. (By Ms. Hines) So you bought six and twelve in</p> <p>30: 1 two separate purchases?</p> <p>2 A. Two separate purchases, yes. The best of my</p> <p>3 memory I did the twelve purchase first. And yeah, you</p> <p>4 can even see the time difference on the receipts.</p> <p>5 Because it had something to do with I needed to be a</p> <p>6 member and he wanted to do the twelve on -- to get in.</p> <p>7 And then he wanted me to purchase the six additional.</p> <p>8 It had to do with my taxes so --</p> <p>9 Q. And you're --</p> <p>10 A. Yes.</p> <p>11 Q. -- saying he --</p> <p>12 A. As in John Howell, tax preparer.</p> <p>13 Q. Okay. So did he explain to you why you needed to</p> <p>14 have two separate purchases?</p> <p>15 A. Oh, I know he did because I would have had an</p> <p>16 understanding of why to do that, but I can't remember.</p> <p>17 It had something to do with -- I</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>could go back and trap 18 some from an earlier year. I think that's what it -- I 19 -- it allowed me to get some tax credit for my earlier 20 year. In other words, it worked its way back. And 21 that's why he wanted me to do the twelve and then the 22 six. It had to do with prior year taxes. 23 Q. Okay. And did Mr. Howell go through the details 24 of how this allowed you to access prior years taxes? 25 A. Yes, he -- he did. I didn't do it just 31: I completely blind. He would have gave me details. 2 Q. And do you recall what he told you in terms of -- 3 A. No. 4 Q. -- how this worked? 5 A. No. 6 Q. On 387 -- 7 A. Uh-huh. 8 Q. -- 387, looks like -- the third paragraph down 9 talks about logging into the member office. 10 A. Yes. 11 Q. I think earlier you may have</p>				

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Mike Penn taken March 13, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>testified that you 12 never went on the website. Is this the website you were 13 referring to? 14 A. Yes.</p>				
<p>32: 8 Q. So how did you know where to make your purchase 9 like to go on the website and click a button; how did 10 you learn -- 11 A. John Howell showed me that. In fact, he was a 12 member to where he could allow me to go in under his 13 membership. 14 Q. As in like underneath him or he was a sponsor? 15 A. A sponsor I would call him, yes.</p>				
<p>33:22 Q. There is -- let's go back to 387, the line right 23 before the purchase details -- 24 A. Uh-huh. 25 Q. -- says when referring new members they'll need 34: 1 your username which is spudderman. 2 A. Uh-huh. 3 Q. Is spudderman you? 4 A. Well, that's me because that's the type of oil 5 field machinery I run is referred</p>			<p>387 388</p>	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>to as a spudder. 6 Q. Okay. Did you choose that username? 7 A. I did. I'm ashamed to say. 8 Q. Did you ever refer any new members to RaPower? 9 A. No. No, that was not my deal so -- I wasn't 10 interested in that. 11 Q. Okay. So 387 and 388, these are documents you 12 produced today, right? 13 A. Yes. 14 Q. Okay. And they are from RaPower3 administration 15 at that e-mail address, admin@RaPower3.net? 16 A. That's correct. 17 Q. And you understand that to be from RaPower3? 18 A. Yes. 19 Q. Okay. And then the 2linerig5s@aol.com? 20 A. That's still my current e-mail address. 21 Q. Okay. Do you recall the -- what year your tax 22 liability was reduced with respect to these purchases, 23 your twelve and six? 24 A. Actually, I -- well, of course, it was for the</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>25 year '12. And I really would say that it went back to 35: 1 '11 for some -- I really think it went back to '11 with 2 some credits of some sort. Let me think about this a 3 minute. I'm gonna say, yes, it went back to '11 and 4 it's '12. '11 and '12 for sure. And then we carried it 5 on into '13 too because it involved three years, '11, 6 '12 and 113. I remember that when I went over that with 7 the IRS. It was a three-year span.</p>				
<p>35:10 Q. (By Ms. Hines) Okay. So this is 389. 11 A. Uh-huh. 12 Q. Mr. Penn, do you recognize this document? 13 A. Yes. 14 Q. Okay. What is this? 15 A. This would be my wife and I's tax return from 16 '11. 17 Q. Okay. From 2011? 18 A. Yes, ma'am. 19 Q. Okay. And if you turn to -- and if you look on 20 the top right-hand corner there are page numbers? 21 A. Yes.</p>			389	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>22 Q. And if you turn to page -- Page 4 of 24, and you 23 can see the date on that. What is the date? 24 A. Shows 10/11/12. 25 Q. Okay. So that would have been when you filed 36: 1 your 2011 tax return? 2 A. Correct. 3 Q. The first time? 4 A. Yes. 5 Q. Okay. And I think on Page 3 you see a 6 third-party designee the name of - - at the bottom is 7 right before the signature line. 8 A. Yes, Mr. Howell. 9 Q. Okay. And so he would have been your tax 10 preparer? 11 A. Correct.</p>				
<p>36:14 Q. (By Ms. Hines) All right. I'm also going to 15 hand you a copy of Exhibit 390. Do you recognize 390? 16 Page 2 might help. 17 A. Yeah. Yes. Amended form. 18 Q. And you can feel free to look at the document 19 before I ask you questions. Let me know when you have 20 finished.</p>			<p>390 389</p>	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>21 A. We're still on 2011, right?</p> <p>22 Q. Yes.</p> <p>23 A. Yeah, I think I'm familiar with all of this.</p> <p>24 Q. Okay. So do you -- Exhibit 390, you said you're</p> <p>25 familiar with. Have you had a chance to review 389?</p> <p>37: 1 A. Yeah. Let me review a little more please.</p> <p>2 Q. Sure.</p> <p>3 A. Okay. Yeah, I'm familiar now. This is where we</p> <p>4 went back, yeah.</p> <p>5 Q. Okay. I'm sorry. You were pointing at Exhibit</p> <p>6 390, and what do you mean when you say this is when you</p> <p>7 went back?</p> <p>8 A. This is where it shows the credits that we</p> <p>9 purchased on this -- on this 390.</p> <p>10 Q. Okay.</p> <p>11 A. 'Cause it goes back and shows the -- you see it</p> <p>12 in on the second page. You see the amount refunded to</p> <p>13 you on Line Number 21. So this would have been our</p> <p>14 amended after I purchased the RaPower3.</p> <p>15 Q. Okay.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>16 A. Took me a minute to familiarize myself.</p> <p>17 Q. Now, did Mr. Howell go through these tax returns</p> <p>18 with you after you purchased your RaPower3 units?</p> <p>19 A. He did. He did, yes.</p> <p>20 Q. Did he explain the changes between the original</p> <p>21 2011 return, which is Exhibit 389 and the amended on</p> <p>22 390.</p> <p>23 A. Yes, he showed me how the tax credits work.</p> <p>24 Q. And so what did he tell you, how did they work?</p> <p>25 A. Well, it went back to a program where you had a</p> <p>38: 1 tax credit from a solar power investment is the way I</p> <p>2 was -- presented to me. In other words, it was a</p> <p>3 program to get tax credit for solar power.</p> <p>4 Q. Okay. But did he show where on your return that</p> <p>5 made a difference to your taxes?</p> <p>6 A. He would have. And I say he would have because I</p> <p>7 don't recall exactly him pointing it out to me.</p>				
<p>38:10 Q. (By Ms. Hines) Okay. I</p>			<p>391</p>	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>want to hand you Exhibit 11 391. 12 A. Okay. 13 Q. Take a minute or two and look at that and make 14 sure you get familiar with it. 15 A. I'm familiar with this one too. 16 Q. Okay. And what is Exhibit 391? 17 A. This would have been my returns of 2012. 18 Q. And on Page 4 of 47, that's using the faxed page 19 numbers -- 20 A. Numbers -- 21 Q. -- in the top right-hand corner. 22 A. Yes. 23 Q. There's a date. 24 A. It's 10/11/13 -- 2013. 10/11/2013. 25 Q. Okay. So that would have been about the time 39: 1 this was submitted to the IRS? 2 A. Correct. Correct. 3 Q. And the paid preparer? 4 A. John Howell. 5 Q. So on Page 8 of 47 -- 6 A. Yes, I'm on Page 8. 7 Q. -- this Form 3468 regarding investment credits --</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>8 A. Uh-huh. 9 Q. -- do you recall if Mr. Howell talked about this 10 form or discussed it with you? 11 A. Of course, looking at it I know what it is. It's 12 from my, you know, investment in that you can read on 13 Page 9 what it refers to is my investment in the units 14 of RaPower3 reflected in 12B. 15 Q. And -- 16 A. I -- I know he would have pointed this out to me. 17 But he would usually point it out to me on the screen 18 and we'd sit together and he'd show me -- on the 19 computer screen, he'd go through things and we'd go 20 through pretty quick and didn't spend a lot of time on 21 it. And -- and that's where I knew I was getting the 22 credits. 23 Q. Okay. So on that Line 12B on Page 9 of 47 in 24 Exhibit 391 on the left-hand side there is a number, a 25 \$63,000 number there; do you see that? 40: 1 A. Yes.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>2 Q. What is that number; do you know?</p> <p>3 A. I remember that when you purchased them you only</p> <p>4 paid so much money, but it gave you a credit for -- it's</p> <p>5 almost like a down payment situation and you had a</p> <p>6 credit on these units. In other words, you'd have a lot</p> <p>7 more value in your units than you actually paid for</p> <p>8 them --</p> <p>9 Q. Okay.</p> <p>10 A. -- through whatever -- however it was set up</p> <p>11 accounting-wise. I mean, that's just not my deal, you</p> <p>12 know, to understand that.</p> <p>13 Q. So who told you that, that that was how it</p> <p>14 worked?</p> <p>15 A. Mr. Howell.</p> <p>16 Q. Okay. Did Mr. Howell explain how he arrived at</p> <p>17 \$63,000?</p> <p>18 A. I wouldn't -- I just wouldn't recall how it's set</p> <p>19 up.</p> <p>20 Q. But you didn't pay \$63,000?</p> <p>21 A. I didn't pay attention and no, I did not pay -- I</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>22 never paid -- I never paid a dollar to RaPower3. 23 Q. On Page 17 of 47 -- 24 A. Uh-huh. 25 Q. -- this is the Form 4562 regarding depreciation 41: 1 and amortization. Look at Line 6, these thermal solar 2 lenses and thermal lenses. 3 A. Uh-huh. right. 4 Q. Do you know what that entry is for? 5 A. That was part of the RaPower3 program. 6 Q. Okay. And did Mr. Howell go over this form with 7 you? 8 A. No. 9 Q. Okay. Do you know why these were included on 10 your tax return for 2012? 11 A. It would have been because of my purchase on the 12 internet of the RaPower3, correct. 13 Q. Did Mr. Howell explain anything? I know you 14 talked a lot about tax credits. But did he explain 15 anything about other types of tax deductions to you? 16 A. Well, I just, you know,</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>basically been running a 17 small business my whole life so I'm aware of your normal 18 fuel expenses and depreciation on -- you know, when I'd 19 buy a truck or, you know, however -- however we would 20 depreciate mileage. In other words, what I would call 21 your standard business deductions, I was familiar with 22 those. I was not familiar with something like this, an 23 investment credit. 24 Q. Did Mr. Howell explain that there was 25 depreciation associated with the RaPower? 42: 1 A. Yes. Yes, I knew there was. Right. 2 Q. Okay. What did he tell you? 3 A. I -- I just don't recall. I mean, I don't so -- 4 Q. But you recall that if you purchased a unit there 5 was some kind of an associated depreciation.</p>				
<p>42: 8 A. Yes. 9 Q. Do you know where those particular line items, 10 Line 6 there, would have shown up on your return</p>			391	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>11 elsewhere? 12 A. No. 13 Q. Okay. 14 A. That was on Page 17 of 45, right? 15 Q. Of 47. 16 A. Yeah. Okay. Yeah. 17 Q. Can you turn to Page 33 of 47? 18 A. Yes, I'm there. 19 Q. Okay. And Page 33 of 47, Schedule C, profit or 20 loss from business with respect to MW Penn Well Service, 21 LLC. 22 A. Uh-huh. 23 Q. That's -- you're sole proprietor? 24 A. Yes. 25 Q. Okay. So that Line 13, there's a depreciation 43: 1 expense. 2 A. Yes. 3 Q. For 54,198? 4 A. Right. 5 Q. Do you know if that number included the 6 depreciation from the solar lenses? 7 A. Yes. 8 Q. It did? 9 A. Because I would not have had</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>that much 10 depreciation in a normal -- it had to have. 11 Q. What would a normal amount of depreciation be? 12 A. Well, I know that we ran all my vehicles on 13 mileage versus capital cost or how you'd refer to that. 14 I ran all my vehicles on mileage. And I had purchased a 15 rig in 2005, which would have been depreciated out by -- 16 I don't think he carried it that long. You know, I 17 wouldn't know. I'd have to look. In other words, 18 there's no way I had 55, 56,000 - - 54,000 and change on 19 depreciation. I do know that. 20 Q. Okay. Put that one aside. 21 A. Okay.</p>				
<p>43:24 Q. (By Ms. Hines) Hand you 392. Okay. Take a look 25 at it and let me know when you have -- 44: 1 A. Okay. I'm ready. 2 Q. Okay. So what is Exhibit 392? 3 A. It's our -- my wife and I's 2013 tax returns. 4 Q. Okay. And then on Page 4 of</p>			392	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>30, there's a date. 5 A. Yes, it's 10/10 of 2014. 6 Q. Okay. So it would have been prepared on or about 7 that date and submitted to the IRS? 8 A. Yes. 9 Q. Okay. And there's a paid preparer listed? 10 A. Yes, Howell Tax Service. 11 Q. Okay. So who is Howell Tax Service? 12 A. John Howell. 13 Q. Turn to Page 8 of 30 for me. And this is the 14 Form 3800 regarding the general business credits? 15 A. Uh-huh. 16 Q. I think on Line 34 of that form, which is 17 actually on Page 9, you had a carryforward? 18 A. Yes. 19 Q. Okay. And it's 12,991? 20 A. Uh-huh. 21 Q. What's your understanding of what that 22 carryforward was? 23 A. That would have been from my -- my purchase of 24 RaPower3 units. 25 Q. Okay. So the tax credits?</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>45: 1 A. Yes, tax credits. 2 Q. That hadn't been used? 3 A. That's right. 4 Q. Okay. And if you turn to Page 22 of 30 for me. 5 A. I've got it. 6 Q. So this is your Schedule C for MW Penn Well Service, LLC? 7 A. Uh-huh. 8 Q. And Line 13, the depreciation is \$7,780? 9 A. (Indicates) 10 Q. Is that amount a more typical amount of depreciation? 11 A. Oh, a lot more than the -- yes, than the other one, right. 12 Q. Okay. So the 2011, 2012 and 2013 tax returns are the only tax returns that you are aware of that had items related to RaPower3 units? 13 A. Yes. 14 Q. Okay. And so in 2011 and 2013 there you testified there was a carryback and a carryforward of unused credits? 15 A. Right. 16 Q. Did Mr. Howell explain how</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>that worked to you? 24 A. He would have -- he would have -- he would have 25 showed me on a screen like I've told you. But as far as 46: 1 accounting details, I mean, that's just -- I would have 2 just trusted him to do what needed to be done with that. 3 Q. Did he -- when he recommended you purchase twelve 4 and then have a second purchase of six units, did he 5 explain how he arrived at those numbers in terms of 6 whether or not they were including these carryback and 7 carryforward? 8 A. That -- yes. Yes, I do remember that because 9 that's why he wanted two separate purchase. 10 Q. Okay. But you don't recall exactly why you 11 needed two separate purchases? 12 A. No.</p>				
<p>46:23 Q. (By Ms. Hines) Mr. Penn, I think earlier you 24 were testifying about your situation as to why you got 25 involved in RaPower3 in the first place.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
47: 1 A. Uh-huh. 2 Q. I think you testified that Mr. Howell said it 3 would help you. Can you explain what that -- what that 4 means, what you meant by that?				
47: 6 A. The -- well, it had to do with how much taxes I 7 owed at that time. And he would -- showed me how the 8 credits would benefit me on a tax basis. 9 Q. (By Ms. Hines) Okay. 10 A. On purchasing the units from RaPower3. 11 Q. And what was the benefit that you understood? 12 A. The simplest one was the reduction in taxes.				
48: 5 EXAMINATION 6 BY MR. AUSTIN:				
65: 6 Q. I mean, is it fair to say, you know, you didn't 7 feel comfortable because you didn't really understand 8 what it was exactly you were buying and how exactly it 9 qualified for credits or deductions? 10 A. Well, I mean, I have to be honest, I didn't -- I 11 think I understood in my				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>viewpoint that I didn't like -- 12 I felt like it was purchased -- set up to purchase it 13 for a tax credit. And that's why - - and I stated I was 14 uncomfortable with it. See, I refused it for two years 15 before I purchased it. 16 Q. It seemed too good to be true to you? 17 A. That's -- that's one phrase that's used. It 18 didn't seem right is what I would say. 19 Q. If -- if you had complete and utter assurance and 20 confidence, a letter from the IRS that said you can do 21 this all day long everyday and reduce your tax 22 liability, would you -- would you do it?</p>				
<p>65:24 A. Well, I think -- and I'm -- the way I would view 25 an investment because I told you guys and I have seen it 66: 1 in the oil business before is you need to invest money 2 not for a tax deduction but for -- to make a profit. I 3 mean, that's -- I see it in the oil business all the</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017*

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>4 time so I mean, it's something I am familiar with. I</p> <p>5 would purchase tax-wise for equipment that I need or if</p> <p>6 I'm investing I would invest in the intent to make a</p> <p>7 profit.</p> <p>8 Q. (By Mr. Austin) And you weren't doing that in</p> <p>9 this case; is that right?</p> <p>10 A. No, I didn't. I didn't.</p> <p>11 Q. I mean, you didn't understand the technology</p> <p>12 necessarily; is that true?</p> <p>13 A. Well, what I saw I didn't -- I didn't -- it</p> <p>14 didn't look too technological to me. I mean, it was</p> <p>15 very simple. Looked like two guys in a pickup and a</p> <p>16 little machine and the solar panels didn't even look</p> <p>17 right to me, didn't look like anything else I'd seen.</p> <p>18 Q. You didn't think it was real, right?</p> <p>19 A. Yeah. Well, I know they were doing something. I</p> <p>20 don't doubt that. I mean, they had to be putting</p> <p>21 something together.</p> <p>22 Q. But you didn't think you</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>were going to make money 23 from this investment? 24 A. I did not feel like I would be making any money. 25 Q. I mean, as you're sitting here right now you're 67: 1 calling it an investment, right? Is that what you 2 thought you were doing, investing? 3 A. I would have probably looked at it as an 4 investment. I mean, yeah, but I was purchasing tax 5 credits is what I felt like I was doing.</p>				
<p>68:12 Q. Okay. But in terms of -- and I asked you that 13 just so I can understand whether or not you have any 14 technical background or expertise that would cause you 15 to, you know, question the technology at least as far as 16 you -- 17 A. I had no knowledge of electrical or solar power, 18 no school at all on any of that. 19 Q. Do you know what a fresnel lens is? 20 A. A what? 21 Q. A fresnel lens?</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>22 A. No. 23 Q. And do you know what a concentrator is? 24 A. I would assume that I could probably figure out 25 what it is, but I don't -- I don't -- to say that, no, 69: 1 but I could probably bring a good guess. 2 Q. Are you familiar with any solar technology? 3 A. No.</p>				
<p>74: 2 Q. And is that one of the reasons why it felt a 3 little hinky to you because you were -- in your case you 4 paid nothing? 5 A. Right. 6 Q. That you were paying very little up front and yet 7 you were able to claim the full depreciable amount of 8 the full purchase price? 9 A. Yes. Nothing about that's right.</p>				
<p>88:20 FURTHER EXAMINATION 21 BY MS. HINES:</p>				
<p>89:10 Q. I think you had also testified that you didn't 11 expect or see a profit from this endeavor. What was it 12 that made you think you would</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Mike Penn taken March 13, 2017

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>not expect to see a 13 profit? 14 A. Well, at the time -- I stated several times today 15 on the -- at that time on the internet when you looked 16 it all up it just did not seem like a business. I mean, 17 it was very simplistic. Very simplistic at that time 18 when I looked it up. You didn't see some giant array of 19 beautiful solar panels and stuff like that. So I just 20 -- I saw it more as a tax deal is the way I looked at it 21 versus an investment. 22 Q. And did you ever talk to Mr. Howell about 23 receiving any kind of profit? 24 A. I -- I didn't discuss that with him. 25 Q. Did he mention it? 90: 1 A. Vaguely. I remember him talking a little bit 2 about profit, but it was always more about my tax 3 credits than anything else. Maybe I didn't show enough 4 interest in the profit side of it. I don't know. But 5 he did not discuss that with me</p>				

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Mike Penn taken March 13, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
very much at all.				
93:14 MS. HINES: Okay. Mr. Penn, we are going to 15 ask if you would read and sign your deposition. 16 A. Sure.				
94: 4 MS. HINES: Off the record.				
DEFENDANT COUNTER-DESIGNATIONS	PLAINTIFF COUNTER-DESIGNATIONS			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.