

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Civil No.
RAPOWER-3, LLC, INTERNATIONAL) 2:15-cv-00828-DN-EJF
AUTOMATED SYSTEMS, INC., LTBI,)
LLC, R. GREGORY SHEPARD,)
NELDON JOHNSON, and ROGER)
FREEBORN,)
)
Defendants.)

ORAL DEPOSITION OF

JOHN HOWELL

AUGUST 23, 2017

ORAL DEPOSITION of JOHN HOWELL, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 23rd of August, 2017, from 8:37 a.m. to 6:13 p.m., before Karen L. Shelton, RDR/CRR/CSR in and for the State of Texas, reported by machine shorthand at the offices of Internal Revenue Service, 4309 Old Jacksboro Highway, Wichita Falls, Texas, pursuant to the Federal Rules of Civil Procedure and any provisions stated on the record or attached hereto.

Plaintiff Exhibit

683-A

Howell, John

August 23, 2017

2 (Pages 2 to 5)

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<p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE PLAINTIFF: MS. ERIN HEALY GALLAGHER MS. ERIN R. HINES (telephonically) TRIAL ATTORNEYS, TAX DIVISION U.S. DEPARTMENT OF JUSTICE P.O. Box 7238 Ben Franklin Station Washington, D.C. 20044 (202) 353-2452 erin.healygallagher@usdoj.gov erin.r.hines@usdoj.gov</p> <p>FOR THE DEPONENT: MR. JOHN R. TEAKELL LAW OFFICE OF JOHN R. TEAKELL 2911 Turtle Creek Boulevard Suite 300 Dallas, Texas 75219 (214) 523-9076 jteakell@teakelllaw.com</p> <p>FOR THE DEFENDANTS RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, and NELDON JOHNSON: MR. STEVEN R. PAUL (telephonically) NELSON, SNUFFER, DAHLE & POULSEN, P.C. 10885 South State Street Sandy, Utah 84070 (801) 576-1400 spaul@nsdplaw.com</p>	<p>Exhibit 591 Documents Entitled "Series #1 Solar Lenses," "Series #2 Solar Lenses," "Series #3 Solar Lenses," "Series #4 The IAUS Turbine" and "Series #5 The Bonus Contract" 154</p> <p>Exhibit 592 Network Marketing Questions 156</p> <p>Exhibit 593 Information on Small Business and Self-Employed Section of IRS Website 157</p> <p>Exhibit 594 Publication 535 Business Expenses 162</p> <p>Exhibit 595 Screen Shot of Howell Financial & Tax Service Facebook Post 169</p> <p>Exhibit 596 Screen Shot of Howell Financial & Tax Service Facebook Post 171</p> <p>Exhibit 597 1/24/13 E-Mail to Undisclosed Recipients from Greg Shepard 176</p> <p>Exhibit 598 2014 Tax Return of Charles and Tammy Kowing 186</p> <p>Exhibit 599 2013 Tax Return of James and Jo Ann Woodson 196</p> <p>Exhibit 600 10/5/12 Document Re Opinion of Counsel on Matters Pertaining to Purchase of Solar Lenses 207</p> <p>Exhibit 601 June 2014 E-Mail String Between William Coates and Greg Shepard 215</p> <p>Exhibit 602 12/21/13 E-Mail to Multiple Recipients from Greg Shepard 216</p> <p>Exhibit 603 Document Entitled "Form 4564 (Part 2) Information Document Request" 218</p> <p>Exhibit 604 6/20/13 Letter to Bob from John Howell 220</p> <p>Exhibit 605 7/17/13 Letter to IRS, Attn: Steven Miller from John Howell 221</p>																																																																			
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1 P R O C E E D I N G S
2 MS. HEALY GALLAGHER: We are on the record
3 in the case of United States versus RaPower3,
4 et al., on August 23rd at approximately 8:37 Central
5 Time. My name is Erin Healy Gallagher of the
6 United States Department of Justice's tax division
7 appearing on behalf of the United States.
8 Counsel, would you please make your
9 appearances.
10 MR. TEAKELL: John Teakell for Mr. John
11 Howell.
12 MR. PAUL: Steven Paul by telephone for
13 the RaPower3 defendants.
14 MS. HEALY GALLAGHER: Erin Hines and
15 Christopher Moran, who also represent the
16 United States, are not presently on the line. And
17 Donald Reay, who currently still represents R.
18 Gregory Shepard and Roger Freeborn, is also not
19 present.
20 All right. This deposition will be
21 governed by the Federal Rules of Civil Procedure.
22 All of the exhibits that we use today will be sent
23 with the court reporter to be made part of this
24 proceeding, and any other stipulations will be
25 addressed as the need arises.

7

1 JOHN HOWELL,
2 having been first duly sworn, testified as follows:
3 E X A M I N A T I O N
4 BY MS. HEALY GALLAGHER:
5 Q. All right. Mr. Howell, good morning.
6 A. **Good morning.**
7 Q. Would you please say and spell your name
8 for the record.
9 A. **John Howell, J-O-H-N H-O-W-E-L-L.**
10 Q. And would you please give me the city and
11 state where you live.
12 A. **Wichita Falls, Texas.**
13 Q. Do you work in the same place?
14 A. **Yes.**
15 Q. All right. Mr. Howell, have you ever been
16 deposed before?
17 A. **Yes, a number of years back.**
18 Q. How many times?
19 A. **Just once.**
20 Q. Okay. All right. So you may have gone
21 over these ground rules then or you may have talked
22 to your attorney about them today, but I'd like to
23 just cover the ground rules for a deposition so that
24 we're on the same page.
25 So in this deposition I will ask you

8

1 questions, and my questions and your answers will be
2 recorded by the court reporter here. So you're
3 doing a good job so far, but please speak loudly
4 enough for her to hear you and answer my questions
5 verbally. Do you understand?
6 A. **Yes.**
7 Q. The court reporter cannot record a nod or
8 shake of the head, and words like uh-huh or huh-uh
9 are not clear on the transcript that we will create,
10 so if either one of us does that, I'll just stop and
11 remind us and we'll carry on. Okay?
12 A. **Yes.**
13 Q. We have a tendency in casual conversation
14 to speak over one another; for example, to start
15 answering a question before it's finished being
16 asked. Again, so that we get a clear transcript,
17 I'll ask that you wait until I finish asking a
18 question before you start to answer. Will you do
19 that?
20 A. **Yes.**
21 Q. And when I do finish asking each question,
22 your task for today is to give full and complete
23 answers. Do you understand that obligation?
24 A. **Yes.**
25 Q. Now, my obligation is to ask

9

1 understandable questions. So if you don't
2 understand a question for any reason, please let me
3 know and I'll do my best to clarify. Will you do
4 that?
5 A. **Yes.**
6 Q. All right. And occasionally another
7 attorney who's present may object to a question that
8 I ask. That objection is solely to make a note on
9 the record. Otherwise, you must answer the question
10 that I ask as if the objection was never made. Do
11 you understand that?
12 A. **Yes.**
13 Q. Sometimes it'll happen that you'll give an
14 answer as completely as you can but then later on in
15 the deposition you may remember additional
16 information or different information that may
17 clarify or amplify your previous answer.
18 When that occurs, if it occurs, please let
19 me know that there's something you would like to add
20 and we'll take care of it immediately. Will you do
21 that?
22 A. **Yes.**
23 Q. When you're answering a question, if you
24 think that there's a document or some documents that
25 may help you remember information that's relevant,

Howell, John

August 23, 2017

40 (Pages 154 to 157)

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1 Q. Do you have an idea of how much money you
 2 have made from RaPower3 since you joined?
 3 **A. Not exactly. Probably over the last five,
 4 six years maybe 20,000.**
 5 Q. Do you put any income from RaPower3 on
 6 Rocking H tax returns?
 7 **A. Yes, if they receive a commission check.**
 8 Q. Sure. Do you put any depreciation from
 9 RaPower3 on Rocking H tax returns?
 10 **A. If they've purchased any equipment.**
 11 Q. How many systems has Rocking H purchased
 12 over time?
 13 **A. Maybe ten, twelve systems.**
 14 Q. Since 2011?
 15 **A. Since 2011.**
 16 **(Exhibit 591 marked)**
 17 Q. Mr. Howell, you've been handed what's been
 18 marked Plaintiff's Exhibit 591. Please take a look
 19 at that and let me know when you're ready to answer
 20 questions.
 21 For the record, this is Bates numbered
 22 Howell_John 2989 through 2984 (sic).
 23 **A. Okay.**
 24 Q. Do you recognize Plaintiff's Exhibit 591?
 25 **A. Vaguely. These were printed off off of an**

155

1 **e-mail that Greg Shepard had sent out.**
 2 Q. So to your knowledge Plaintiff's
 3 Exhibit 591 came to you from Greg Shepard?
 4 **A. Yes.**
 5 Q. And for the record, Plaintiff's
 6 Exhibit 591 starts with a document called Series 1
 7 Solar Lenses?
 8 **A. Yes.**
 9 Q. And then is followed by a couple of
 10 different documents, all in the series, Series 1
 11 through 5, correct?
 12 **A. Yes.**
 13 Q. Does this appear to be a true and accurate
 14 copy of a document you produced to the
 15 United States?
 16 **A. I believe so. This is something I printed
 17 off from an e-mail that I had received.**
 18 Q. What, if anything, did you do with
 19 Plaintiff's Exhibit 591?
 20 **A. I'm not sure if I even read all of them or
 21 not. I just probably just glanced at them, read
 22 some of it. I'm not positive I read all of it or
 23 not.**
 24 Q. Did you ever show this document to anybody
 25 else?

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1 **A. I might have. I'm not sure if I ever did.**
 2 Q. So a couple of these series documents have
 3 dates at the top, August 28, 2012, through
 4 September 8, 2012. Do you see that?
 5 **A. Yes.**
 6 Q. Is that approximately when you would have
 7 received these documents?
 8 **A. I would think so. I'm not positive.**
 9 Q. To your knowledge, did you use the
 10 information in Plaintiff's Exhibit 591 in the course
 11 of telling people about RaPower3 or preparing tax
 12 returns?
 13 **A. Not that I really recall.**
 14 **(Exhibit 592 marked)**
 15 Q. Showing you what's been marked Plaintiff's
 16 Exhibit 592. Please take a look at that and then
 17 let me know when you are ready to answer questions.
 18 For the record, it's Bates numbered
 19 Howell_John 2793 through 2794.
 20 **A. Okay.**
 21 Q. Do you recognize Plaintiff's Exhibit 592?
 22 **A. Yeah, I've seen it.**
 23 Q. Is this a document that you created?
 24 **A. No. This was from an e-mail from Greg
 25 Shepard.**

157

1 Q. Okay. So you got Plaintiff's Exhibit 592
 2 from Greg Shepard?
 3 **A. Yes.**
 4 Q. Did you ever use the information in
 5 Plaintiff's Exhibit 592 to tell people about
 6 RaPower3?
 7 **A. Not that I'm aware of.**
 8 Q. Did you ever use it in helping you prepare
 9 tax returns related to RaPower3?
 10 **A. No.**
 11 **(Exhibit 593 marked)**
 12 Q. Actually before you take a look at
 13 Plaintiff's Exhibit 593, is Plaintiff's Exhibit 592
 14 a true and accurate copy of a document you produced
 15 to the United States?
 16 **A. I would guess it is.**
 17 Q. Any reason to think it's not?
 18 **A. No.**
 19 Q. Okay.
 20 **A. I think it is.**
 21 Q. All right. Take a look at 593, please.
 22 And let me know when you're ready. 593 is marked
 23 Howell_John 2006 through 2007.
 24 **A. Okay.**
 25 Q. Do you recognize Plaintiff's Exhibit 593?

186	<p>1 and then never see them again. So, hard to say how</p> <p>2 many are exactly for RaPower.</p> <p>3 (Exhibit 598 marked)</p> <p>4 Q. Mr. Howell, you're being handed what's</p> <p>5 been marked Plaintiff's Exhibit 598. Please take a</p> <p>6 look at that. Plaintiff's Exhibit 598 is Bates</p> <p>7 marked Howell_John 8285 through 307, 8307.</p> <p>8 Please take a look at Plaintiff's</p> <p>9 Exhibit 598 and let me know when you are ready.</p> <p>10 A. Okay.</p> <p>11 Q. Okay. Let's take a look, please, at --</p> <p>12 well, first off, do you recognize Plaintiff's</p> <p>13 Exhibit 598?</p> <p>14 A. Yes.</p> <p>15 Q. What is it?</p> <p>16 A. It's a tax return for Charles and Tammy</p> <p>17 Knowing.</p> <p>18 Q. Knowing?</p> <p>19 A. Kowing.</p> <p>20 Q. Kowing. And the Kowings are in</p> <p>21 Burkburnett, Texas?</p> <p>22 A. Yes.</p> <p>23 Q. Have they been long-time customers of</p> <p>24 Howell Tax Service?</p> <p>25 A. Yes.</p>
187	<p>1 Q. When did they start coming to you for tax</p> <p>2 prep?</p> <p>3 A. Really don't recall exactly when.</p> <p>4 '12, '13, fourt -- no, it was about '12, '13, so a</p> <p>5 number of years. They were recommended by somebody</p> <p>6 else.</p> <p>7 Q. And this tax return is a 2014 tax return,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. If you'd take a look at the signature</p> <p>11 lines on Howell_John 8290, the date says</p> <p>12 September 19, 2016. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is that the result of an auto-update field</p> <p>15 for the date?</p> <p>16 A. Most likely.</p> <p>17 Q. So you would have prepared this 2014 tax</p> <p>18 return sometime in 2015, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And just to close that loop, your</p> <p>21 name is in the paid preparer's signature line,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. So you prepared this return?</p> <p>25 A. Yes.</p>
188	<p>1 Q. Take a look, please, at the last page of</p> <p>2 Plaintiff's Exhibit 598.</p> <p>3 A. Okay.</p> <p>4 Q. Oh, actually real quick, does Plaintiff's</p> <p>5 Exhibit 598 appear to be a true and accurate copy of</p> <p>6 the Kowings' tax return for 2014?</p> <p>7 A. Yes.</p> <p>8 Q. Take a look, please, at the last page.</p> <p>9 It's a Form 4562 depreciation and amortization --</p> <p>10 A. Yes.</p> <p>11 Q. -- form, right? Take a look, please, at</p> <p>12 the box that says "Business or activity to which</p> <p>13 this form relates." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. It says "Schedule C Alternate Energy</p> <p>16 Systems." Did I --</p> <p>17 A. Yes.</p> <p>18 Q. -- read that correctly? Yes?</p> <p>19 A. Yes.</p> <p>20 Q. Does that indicate a business related to</p> <p>21 RaPower3?</p> <p>22 A. Yes.</p> <p>23 Q. Then in the description of property, line</p> <p>24 6A, it says 600-watt thermal solar lens, correct?</p> <p>25 A. Yes.</p>
189	<p>1 Q. And in your mind does that mean the</p> <p>2 system?</p> <p>3 A. The system.</p> <p>4 Q. The alternative energy system?</p> <p>5 A. Yes.</p> <p>6 Q. The cost in line 6B is \$92,225, correct?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. Yes?</p> <p>9 A. Yes, it is.</p> <p>10 Q. And you entered that number, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Take a look, please, at the page marked</p> <p>13 Howell_John 8292.</p> <p>14 A. Okay.</p> <p>15 Q. This is a Schedule C, correct?</p> <p>16 A. Yes.</p> <p>17 Q. The name of the proprietor is Charles</p> <p>18 Kowing, right?</p> <p>19 A. Correct.</p> <p>20 Q. And then the principal business or</p> <p>21 profession identified there is Alternate Energy</p> <p>22 Systems, right?</p> <p>23 A. Correct.</p> <p>24 Q. And that is to indicate the -- a</p> <p>25 connection to RaPower3?</p>

190	<p>1 A. Yes.</p> <p>2 Q. Mr. Howell, when you prepared Schedule Cs</p> <p>3 for customers who had bought RaPower3 systems, was</p> <p>4 it your typical practice to put Alternate Energy</p> <p>5 Systems in line A --</p> <p>6 A. Yes.</p> <p>7 Q. -- of Schedule C?</p> <p>8 A. Yes, it was.</p> <p>9 Q. The business name in line C is blank. Do</p> <p>10 you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Why is that blank?</p> <p>13 A. They're using their own name. "If no</p> <p>14 separate business name, leave blank."</p> <p>15 Q. I see. Okay. All right. Line G asks,</p> <p>16 "Did you materially participate in the operation of</p> <p>17 this business during 2014?" Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. The box "Yes" is checked at the end of</p> <p>20 that line. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Who checked that box?</p> <p>23 A. Probably -- I probably did.</p> <p>24 Q. Why did you check that box?</p> <p>25 A. Because they participated in the business.</p>
191	<p>1 They're the sole proprietorship. Nobody else is</p> <p>2 involved in it other than themselves. They</p> <p>3 purchased lenses. We probably asked them if they</p> <p>4 had talked to anybody else about it or if they did</p> <p>5 any promotion for their business or whatever.</p> <p>6 Q. Other than purchasing lenses -- I'll</p> <p>7 withdraw that.</p> <p>8 Let's see. Did you keep track at all of</p> <p>9 asking your customers questions about their material</p> <p>10 participation in any business related to RaPower3?</p> <p>11 A. It would be in -- in the notes for their</p> <p>12 particular tax return. Usually it's given back to</p> <p>13 them in their customer file.</p> <p>14 Q. So you did keep track of asking people?</p> <p>15 A. Yeah, we would notate it, but it would be</p> <p>16 in with their workpapers and everything.</p> <p>17 Q. Did you keep the documentation showing</p> <p>18 that you had asked people about aspects of their</p> <p>19 material participation in their business?</p> <p>20 A. Probably not.</p> <p>21 Q. Any reason why not?</p> <p>22 A. We usually just had a information sheet</p> <p>23 that we asked them some questions, and it stayed</p> <p>24 with their -- their papers that we gave back to</p> <p>25 them. We have enough papers in our office without</p>
192	<p>1 adding more and more and more.</p> <p>2 Q. Did any of your tax return preparation</p> <p>3 customers ask you what it took to qualify as a</p> <p>4 material participant in any business?</p> <p>5 A. Probably some did. And I'd probably tell</p> <p>6 them what the publication for businesses. Sometimes</p> <p>7 I'd have a copy of it and give to them. Maybe it</p> <p>8 was Publication 535 or something like that.</p> <p>9 Q. So, Mr. Howell, did you make sure that</p> <p>10 your customers met material participation standards</p> <p>11 before you checked yes in Box G?</p> <p>12 A. We tried to. And with the information</p> <p>13 that was given to us, if they were operating their</p> <p>14 business, did they have a separate checking account.</p> <p>15 We normally had some questions that we asked them,</p> <p>16 and that would have been given back to them in their</p> <p>17 file.</p> <p>18 Q. Did you ask them how many hours they spent</p> <p>19 in furtherance of their business related to</p> <p>20 RaPower3?</p> <p>21 A. Typically in a sole proprietorship where</p> <p>22 it's only them, your time, hours aren't really as</p> <p>23 critical.</p> <p>24 Q. Did you ask?</p> <p>25 A. Typically we'd ask them did you spend some</p>
193	<p>1 time doing your business, was it weekly, daily,</p> <p>2 monthly. Some of them might have responded to one</p> <p>3 of Greg's e-mails. Some of them said they talked to</p> <p>4 people that they worked with, family members about</p> <p>5 the benefits of it.</p> <p>6 Q. Did you ever talk to any customers about</p> <p>7 the difference between an investor in an activity</p> <p>8 and someone who actually had a trade or business</p> <p>9 with respect to that activity?</p> <p>10 A. Typ -- if they asked about it.</p> <p>11 Q. How would you explain that?</p> <p>12 A. Well, an investor is like a person that</p> <p>13 buys stocks, bonds, securities, but all they do is</p> <p>14 they put in their money and then they are investing</p> <p>15 in that particular thing.</p> <p>16 And a person of business is actually going</p> <p>17 to promote their business. They're going to expect</p> <p>18 income from their business, do advertising for their</p> <p>19 business. So there's just different guidelines that</p> <p>20 we use on whether they're just an investor or they</p> <p>21 are a business owner.</p> <p>22 Q. Take a look, please, at Box 32A. Box 32A</p> <p>23 has an "X" checked next to the statement "All</p> <p>24 investment is at risk."</p> <p>25 A. Mm-hmm.</p>

Howell, John

August 23, 2017

50 (Pages 194 to 197)

194	<p>1 Q. How did you know that all of the money</p> <p>2 that the Kowings had put into RaPower3 was at risk?</p> <p>3 A. Because if they don't pay for their units</p> <p>4 or meet up to their obligation, RaPower can take</p> <p>5 them all back.</p> <p>6 Q. So to your understanding, because the</p> <p>7 system was collateral, that meant that the</p> <p>8 Kowings' --</p> <p>9 A. Yes.</p> <p>10 Q. -- money was all at risk?</p> <p>11 A. Yes, because they represented the systems</p> <p>12 themselves. And if they default on it, then the</p> <p>13 systems are taken back. Like put a down payment on</p> <p>14 a car, you don't pay your monthly payments, they</p> <p>15 take your car back.</p> <p>16 Q. Was there any other risk to the Kowings if</p> <p>17 they didn't make their payments on the lenses?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Take a look, please, at the depreciation,</p> <p>20 line 13. It says \$96,715. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. You entered that number on the line for</p> <p>23 depreciation, correct?</p> <p>24 A. It'll be carried directly over from the</p> <p>25 4562.</p>
195	<p>1 Q. Can you show me where on the 4562?</p> <p>2 A. At line 22.</p> <p>3 Q. Okay. And we're on page Howell_John 8307.</p> <p>4 A. Yes.</p> <p>5 Q. And you entered the information on Form</p> <p>6 4562, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And then line 22 on Form 4562 carried over</p> <p>9 to line 13 on the Schedule C.</p> <p>10 A. Correct.</p> <p>11 Q. Then line 31 on the Schedule C, does that</p> <p>12 automatically appear on line 12 of the 1040?</p> <p>13 A. Yes, it does.</p> <p>14 Q. And, in fact, on page Howell_John 8289,</p> <p>15 the first page of the 1040, we see that number on</p> <p>16 line 12.</p> <p>17 A. Correct.</p> <p>18 Q. Let's take a look, please, at Form 3800,</p> <p>19 which is at -- the page is marked 8295 through 8298.</p> <p>20 Did you complete this Form 3800?</p> <p>21 A. Yes.</p> <p>22 Q. So where -- let's see. So then in part 3,</p> <p>23 you checked that Box A that indicates this credit is</p> <p>24 a general business credit from a non-passive</p> <p>25 activity.</p>
196	<p>1 A. Yes.</p> <p>2 Q. Where, if at all, are the credits related</p> <p>3 to any systems purchased for the Kowings on this</p> <p>4 Form 3800?</p> <p>5 A. It's a carryover from Form 3468.</p> <p>6 Q. Which is on what page?</p> <p>7 A. 8305, line 12B.</p> <p>8 Q. Thank you. All right. So Form 3468 is</p> <p>9 the form for the investment credit, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And line 12B has \$108,500 entered into it,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. You entered that number?</p> <p>15 A. Correct.</p> <p>16 Q. And then your tax preparation program does</p> <p>17 the rest?</p> <p>18 A. It calculates the proper percentage.</p> <p>19 Q. Is that process consistent with how you</p> <p>20 prepared people's RaPower3 tax returns?</p> <p>21 A. Typically, yes.</p> <p>22 Q. You can put that aside.</p> <p>23 (Exhibit 599 marked)</p> <p>24 Take a look, please, at what's been handed</p> <p>25 to you marked Plaintiff's Exhibit 599, Bates numbers</p>
197	<p>1 US046188 through 46232.</p> <p>2 A. Okay.</p> <p>3 Q. Are James and Jo Ann Woodson customers of</p> <p>4 yours?</p> <p>5 A. Yes.</p> <p>6 Q. Well, let's just start with this.</p> <p>7 Plaintiff's Exhibit 599 is a printout of a Form 1040</p> <p>8 for James and Jo Ann Woodson, correct?</p> <p>9 A. Yes.</p> <p>10 Q. You prepared this return?</p> <p>11 A. I believe so.</p> <p>12 Q. Any reason to think you didn't?</p> <p>13 A. It's just in a different format than we</p> <p>14 typically do.</p> <p>15 Q. Sure. But your name is in the</p> <p>16 preparer's --</p> <p>17 A. Yes.</p> <p>18 Q. -- box, correct?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And your firm's EIN appears there as well?</p> <p>21 A. Yes, it does.</p> <p>22 Q. And your PTIN appears in that box as well.</p> <p>23 A. Yes, it does.</p> <p>24 Q. James and Jo Ann Woodson live in Powhatan,</p> <p>25 Virginia. Do you see that?</p>

198	<p>1 A. Yes.</p> <p>2 Q. Did they come to you through RaPower3?</p> <p>3 A. Yes.</p> <p>4 Q. Take a look, please, at the page that's</p> <p>5 marked 46217. This is the Wood -- or James</p> <p>6 Woodson's Schedule C, correct?</p> <p>7 A. Yes.</p> <p>8 Q. I'm curious because the -- in line A the</p> <p>9 principal business or profession is Solar Energy</p> <p>10 here. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Was it your practice to -- I'm sorry.</p> <p>13 Well, I'll ask the question. Was it your practice</p> <p>14 to put Solar Energy down when there was a Schedule C</p> <p>15 related to RaPower3?</p> <p>16 A. No. He could have had a prior year which</p> <p>17 he most likely did, and we would have typically put</p> <p>18 it in to get the historical data from it and then</p> <p>19 automatically transferred over to the 2013. So that</p> <p>20 would have transferred over what he had had in a</p> <p>21 previous year.</p> <p>22 Q. Okay. So let me make sure I understand</p> <p>23 and it's clear for the record here. So if James</p> <p>24 Woodson had filed a 2012 Schedule C and the 2012</p> <p>25 Schedule C had Solar Energy as the principal</p>
199	<p>1 business or profession, that information would have</p> <p>2 automatically populated for 2013?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Nonetheless, to your knowledge,</p> <p>5 this Schedule C has to do with RaPower3?</p> <p>6 A. Correct.</p> <p>7 Q. Mr. Howell, when you first started</p> <p>8 preparing returns with RaPower3, for RaPower3</p> <p>9 customers, I should say, did you always separate out</p> <p>10 RaPower3 as a separate Schedule C?</p> <p>11 A. Typically we did.</p> <p>12 Q. So like, for example, if someone already</p> <p>13 had a Schedule C, would you create a second Schedule</p> <p>14 C for RaPower3?</p> <p>15 A. We tried to if it was in a -- most of the</p> <p>16 time we tried to make it a separate Schedule C.</p> <p>17 Q. So Mike Penn testified that you did not do</p> <p>18 that with his return in the first instance.</p> <p>19 A. Possibility we didn't.</p> <p>20 Q. And it's possible that that happened with</p> <p>21 other people as well?</p> <p>22 A. It could have. It depends on how many</p> <p>23 Schedule Cs they have. They have three or four or</p> <p>24 five, you know, you're just getting so many</p> <p>25 different ones in their tax return. And typically</p>
200	<p>1 when IRS looks at them, they -- after your third</p> <p>2 one, it's just going to group everything together</p> <p>3 anyways.</p> <p>4 But we tried to separate it out so we</p> <p>5 would know the depreciation assigned to RaPower3.</p> <p>6 If they had any income from it, we associated with</p> <p>7 that. Like on the Woodsons, he did have some</p> <p>8 commissions that were generated through his</p> <p>9 RaPower3, so they were put on his Schedule C. And</p> <p>10 his wife had a separate Schedule C.</p> <p>11 Q. Other tax return preparers at Howell Tax</p> <p>12 Service prepared tax returns with RaPower3</p> <p>13 customers, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Who were the people who prepared those</p> <p>16 returns?</p> <p>17 A. It was usually my brother, Daniel.</p> <p>18 Q. Anyone else?</p> <p>19 A. My father and mother probably did some in</p> <p>20 2011, 2012, possibly 2013.</p> <p>21 Q. Mr. Howell, are you familiar with</p> <p>22 something that we've been calling in this suit the</p> <p>23 Anderson letter?</p> <p>24 A. I believe that is what RaPower had posted</p> <p>25 on their website. There was two attorney letters.</p>
201	<p>1 Anderson letter I think was one, and another law</p> <p>2 firm had another one.</p> <p>3 Q. Kirton McConkie ring a bell?</p> <p>4 A. That one, then I think there was also a</p> <p>5 third one.</p> <p>6 Q. Okay. I'm going to show you what's</p> <p>7 previously been marked Plaintiff's Exhibit 23. Do</p> <p>8 you recognize Plaintiff's Exhibit 23 as the Anderson</p> <p>9 letter that was on the website?</p> <p>10 A. Yes.</p> <p>11 Q. Did you review the Anderson letter when</p> <p>12 you were -- at any time?</p> <p>13 A. Yes.</p> <p>14 Q. What, if anything, did you do with the</p> <p>15 Anderson letter?</p> <p>16 A. Probably looked at it, then I looked up</p> <p>17 the different IRS code sections, IRC 48, the QPEP,</p> <p>18 so -- and used that to do some research into what</p> <p>19 they actually had in their -- in their letter.</p> <p>20 Q. Would it surprise you to learn,</p> <p>21 Mr. Howell, that Todd Anderson testified not long</p> <p>22 ago that Plaintiff's Exhibit 23, the Anderson</p> <p>23 letter, was a draft and not a finished product?</p> <p>24 A. I'm not aware of any of that.</p> <p>25 Q. Would it surprise you to learn that</p>

<p style="text-align: right;">230</p> <p>1 Q. The date at the top is February 26, 2016. 2 Do you see that? 3 A. Yes. 4 Q. Do you think you sent this to the IRS on 5 or about that date? 6 A. Yes. 7 Q. All right. So this is three years after 8 the 2013 letter about an Auds audit with respect to 9 RaPower3, right? 10 A. Mm-hmm. 11 Q. Yes? 12 A. Yes. 13 Q. And Plaintiff's Exhibit 608 is also in 14 response to an audit of RaPower3 tax benefits. 15 A. Yes. 16 Q. If you take a look, please, at page 345. 17 A. Okay. 18 Q. Once again, we see the offer that the 19 taxpayers can provide additional evidence and expert 20 testimony from special witnesses. Do you see that? 21 A. On 345? 22 Q. Third paragraph from the bottom. 23 A. Yes. 24 Q. Okay. So you've known about this special 25 witness for three years now. Why didn't you submit</p>	<p style="text-align: right;">232</p> <p>1 (Exhibit 609 marked) 2 Q. Take a look, please, at what's been marked 3 Plaintiff's Exhibit 609. 609 is Bates marked 4 Howell_John 1559 through 1565. 5 A. Okay. 6 Q. Do you recognize Plaintiff's Exhibit 609? 7 A. Yes. 8 Q. What is it? 9 A. It's a statement of disputed issues from 10 an audit for appeals. 11 Q. And did you draft Plaintiff's Exhibit 609? 12 A. I believe I did. 13 Q. Did you send it to the IRS? 14 A. Yes, I did. 15 Q. Did you send it on or about the date at 16 the top of the page, July 20, 2016? 17 A. Yes. 18 Q. This audit and appeal, did this have to do 19 with tax benefits related to RaPower3? 20 A. Part of it, yes. 21 Q. What part of this did not have to do with 22 RaPower3? 23 A. The logbook, charitable contributions. 24 Q. So, Mr. Howell, if we take a look at the 25 last couple of lines on page 1559 that starts "The</p>
<p style="text-align: right;">231</p> <p>1 that special witness's information during this audit 2 process? 3 A. Well, because this was going to the -- for 4 the appeals. 5 Q. Why didn't you submit it -- 6 A. The audit -- 7 Q. -- in the first place? 8 A. The auditor has already determined the 9 outcome of them. 10 Q. Right. And the auditor asked for 11 information, right? 12 A. Based for the tax return, yes. 13 Q. Okay. So did you ever submit this special 14 witness's testimony to anyone at the IRS? 15 A. No, because they had already determined 16 that no matter what we said or did, their outcome 17 was it was going to be denied. So we said, okay, 18 we'll go to appeals then. That's what this was for. 19 Q. And if the IRS said, yes, we do want to 20 hear from this person, what would you do? 21 A. I'd have probably found out who they were 22 and a phone number to contact them. 23 Q. But you don't have that information today, 24 do you? 25 A. No, I do not.</p>	<p style="text-align: right;">233</p> <p>1 first thing to remember," do you see that? 2 A. Mm-hmm. 3 Q. Yes? 4 A. Yes. 5 Q. So starting from there through the rest of 6 the letter, that all has to do with RaPower3, 7 correct? 8 A. Yes. 9 Q. Mr. Howell, were you aware that in late 10 2016 RaPower3 stopped promoting depreciation as a 11 tax benefit related to buying one of its lenses? 12 A. I had heard that. 13 Q. What did you hear about it? 14 A. That they were adjusting their -- their 15 pricing for just the energy credit and not the 16 depreciation. 17 Q. Who did you hear it from? 18 A. I believe there was a e-mail or memo or 19 something that was sent out from Greg Shepard 20 concerning it. 21 Q. Did that decision have any impact on how 22 you prepared RaPower3 customer returns for tax year 23 2016? 24 A. Because I asked them under what 25 presumption are they saying not to take depreciation</p>

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1 on equipment that the taxpayer has purchased.

2 Q. So the answer is no?

3 A. No. So the answer is no.

4 Q. So just to make it clear for the record,

5 for RaPower3 customers who purchased lenses in 2016,

6 when you prepared their tax return, you claimed

7 depreciation for those lenses?

8 A. Most of my clients, yes, we claimed

9 depreciation because they had bought prior to any

10 changes.

11 Q. What if they bought after the changes?

12 A. I don't think I had any.

13 Q. Okay. So have any of your customers, to

14 your knowledge, bought lenses in 2017?

15 A. I am sure that they have. None of them

16 have told me specifically that they have.

17 Q. Do you plan to make any changes? Are you

18 going to claim depreciation for those customers?

19 A. If they're entitled to depreciation, yes.

20 Q. And will you make that decision based on

21 what RaPower3 says or based on your interpretation

22 of the law?

23 A. My interpretation.

24 Q. Mr. Howell, have you ever been arrested?

25 A. Arrested?

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1 Q. Yes.

2 A. I think way back when I was a teenager.

3 Q. We don't have to go into that. Have you

4 ever been convicted of any crime?

5 A. Not unless they did it without me being

6 there.

7 Q. Have you ever been subject to any

8 professional discipline?

9 A. No.

10 Q. Are there any answers to my questions that

11 you wish to change or amplify before I pass you as a

12 witness?

13 A. Make one thing clear. If I think

14 something is going to defraud the government or is a

15 actual tax scam or such, I'm not going to do it. If

16 it's cut and dried that this is definitely against

17 the regulations, there's nothing to substantiate it,

18 then, no, we're not going to do that.

19 But tax law isn't precise. There's a lot

20 of gray area. There's a lot of exceptions to tax

21 law. And if it says, no, it comes down to you

22 cannot do this, then we don't do it. If it says if

23 you've got some gray area here, well, what is that

24 particular area. But if it's cut and dried, if tax

25 law was simple to where, yes, you can, no, you

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1 cannot, that there's nothing -- no leeway there, if

2 it says, no, you cannot, then we're not going to do

3 it.

4 Because, I mean, everybody files a tax

5 return or they should file a tax return and the

6 government has to live on the tax dollars that are

7 collected. And so if it's cut and dried and it's

8 totally over here, no, you cannot do it, we're not

9 going to do it.

10 Q. Mr. Howell, whose job is it to prove that

11 they're entitled to a tax benefit?

12 A. The taxpayer themselves.

13 MS. HEALY GALLAGHER: At this time I will

14 pass the witness.

15 MR. PAUL: I have just a couple questions.

16 EXAMINATION

17 BY MR. PAUL:

18 Q. Okay. And, Mr. Howell, I'm going to

19 introduce myself briefly. I'm Steven Paul, P-A-U-L.

20 I'm the attorney for RaPower3 entities and

21 Mr. Johnson, and I just want to ask a couple of

22 questions.

23 In advising a tax client to take either

24 the solar tax credit or a depreciation relating to

25 RaPower3, did you analyze the facts of each client's

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1 needs individually at the time of preparing a tax

2 return?

3 A. Yes, based on information that they gave

4 us and their overall tax return preparation.

5 Q. And is it your practice to make a

6 determination whether any tax treatment is

7 appropriate on a case-by-case basis for any of your

8 individual clients?

9 A. Yes.

10 Q. And did you perform your own analysis to

11 confirm the application of the tax code to your

12 clients and specifically related to Sections 48 and

13 45 of the tax code and Sections 469 of the code

14 relating to tax credits and depreciation?

15 MS. HEALY GALLAGHER: Objection.

16 Compound.

17 You can answer.

18 A. Yes.

19 BY MR. PAUL:

20 Q. Okay. So you performed your own analysis?

21 You didn't rely on anybody from RaPower or any

22 website related to RaPower to make a determination

23 as to the application of tax code to your clients,

24 correct?

25 MS. HEALY GALLAGHER: Objection.