

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

EDWARD LEWIS BROWN, and  
ELAINE A. BROWN,

Defendants.

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Criminal No.: 06-071-SM

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S NOTICE  
OF MOTION AND MOTION TO DISMISS THE INDICTMENT  
DUE TO LACK OF PERSONAL JURISDICTION (DOC. NO. 87)**

The United States, by and through its undersigned attorney, hereby opposes the defendants’ motion to dismiss the indictment against them. (See Doc. No. 87.)

In support of its opposition, the government states as follows:

1. Though its caption suggests that it is based on jurisdictional grounds, the defendants’ motion seeks dismissal on the alleged ground that the indictment fails to state the charged offenses with adequate specificity.
2. For example, the defendants complain that the indictment fails to:
  - a. specify the means by which they allegedly earned the income that makes them liable for, triggers the requirement to pay or subjects them to any federal income tax; and
  - b. identify the statutes that subject defendant Elaine Brown’s employees to mandatory withholding or that make defendant Elaine Brown a withholding agent.
3. The defendants then argue that such alleged deficiencies are fatal because, as a result, the indictment fails to demonstrate that they are subject to the Internal

Revenue Code.

4. The indictment, however, does not have to include all of the evidence the government will use to prove the offense conduct at trial. An indictment is legally sufficient if it "contains the elements of the offense charged[,] ... fairly informs [the] defendant of the charge against which he must defend, and ... enables him to plead an acquittal or conviction in bar of prosecution for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974); accord Russell v. United States, 369 U.S. 749, 763-64 (1962); United States v. Penagaricano-Soler, 911 F.2d 833, 839 (1<sup>st</sup> Cir. 1990); United States v. Indorato, 628 F.2d 711, 719 (1<sup>st</sup> Cir.) cert. denied, 449 U.S. 1016 (1980). "An indictment is generally sufficient if it sets forth the offense in the words of the statute including all the elements." United States v. Holmes, 632 F.2d 167, 169 (1<sup>st</sup> Cir.1980); accord United States v. Fusaro, 708 F.2d 17, 23 (1<sup>st</sup> Cir.), cert. denied, 464 U.S. 1007 (1983).
5. Each offense in the indictment in this case is set forth in the words of the statute, including all of the elements. The indictment also adequately informs the defendants of the essential facts underlying the charged offenses. Over a span of eighteen pages, the indictment describes in great specificity the nature of the defendants' agreements to defraud the United States (including 33 overt acts) and to structure financial transactions (including six overt acts) as well as the defendants' substantive illegal conduct. Finally, the factual allegations for each count include the details of time, place and circumstances.
6. The defendants also complain that the indictment fails to set forth the specific provisions that make them liable for and impose other obligations with regard to the taxes relevant to the conspiracy and substantive tax charges. The indictment,

however, clearly identifies the type of tax relevant to each charge (i.e., federal income taxes with respect to counts 1 through 6 and federal employment taxes with respect to count 1 and counts 7 through 14.) The absence of references to the specific statutory provisions making them liable for and imposing other requirements for those taxes does not prevent the defendants from preparing any defense to the charges that they may have and thus does not render the indictment insufficient.<sup>1</sup>

7. In sum, the alleged deficiencies in the indictment do not, as the defendants allege, create any issues of personal jurisdiction. Moreover, the indictment includes the elements of each offense charged, puts the defendants on adequate notice of the charges against which they must defend and enables them to plead an acquittal or conviction in bar of prosecution for any of the same offenses. Accordingly, the indictment is sufficient and the defendants' motion should be denied.

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<sup>1</sup> Nonetheless, the government notes that, with respect to federal income taxes, the defendants need go no further than Section 1 of Title 26, which could hardly be more clear in imposing a tax on income. Section 1 states a tax is "hereby imposed on the taxable income of every individual ... determined in accordance with" tables also set out in the statute. 26 U.S.C. § 1. Sections 6001, 6011 and 6012 of the Tax Code require all individuals to make and file an income tax return in accordance with prescribed forms and regulations if, in the calendar year, they received gross income that equals or exceeds amounts specified by statute and regulations. 26 U.S.C. §§ 6001, 6011 and 6012. Section 6151 requires the payment of any tax due without assessment, notice or demand. 26 U.S.C. § 6151.

With respect to employment taxes, the duty of employers to collect withholding and other taxes is created by Sections 3102(a), 3111(a) and 3402 of the Tax Code. 26 U.S.C. §§ 3102(a), 3111(a) and 3402.

For the above-mentioned reasons, the United States respectfully requests that the defendants' motion be denied.

Dated: January 4, 2006

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing was forwarded this date by overnight delivery (Saturday service) to Elaine Brown and Edward Brown, defendants, 401 Center of Town Road, Plainfield, New Hampshire 03781.

/s/William E. Morse