IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 3-03-0311
	)	J. Haynes
	)	M. J. Brown
DANIEL J. GLEASON, individually and d/b/a TAX TOOLBOX, INC., and MY TAX MAN, INC.	)	
Defendant.	)	

Plaintiff United States' Motion for and
Memorandum of Law in Support of Preliminary Injunction

Question Presented

Daniel Gleason promotes the Tax Toolbox, a sham home-based business package that falsely promises taxpayers they can legally reduce or eliminate federal income taxes merely by setting up a home-based business. Should Gleason be preliminarily enjoined under 26 U.S.C. § 7408 from promoting this sham home-based business package?

Procedural Posture

The government previously moved to permanently enjoin Gleason from misrepresenting his education and experience as a federal income tax preparer and from preparing federal income tax returns. These motions are pending. This motion seeks different relief, namely, to preliminarily enjoin Gleason under 26 U.S.C. § 7408 from promoting a sham home-based business package.

Statement of Facts

Gleason falsely promises customers they can legally reduce or eliminate their federal income taxes merely by setting up a home-based business, regardless of whether the business is intended to show a profit or the deductions claimed are properly deductible "ordinary and necessary" business expenses.[1] As part of this promotion, Gleason falsely tells customers that they can

- "make[their] taxes disappear forever" by the TaxToolbox "magic wand" and "legally deduct more of what [they're] already spending on those things like travel, meals, golf, cars, medical expenses, kids' allowances, everyday household expenses, and much, much more";[2]
- legally deduct 100% of their spouses' medical expenses;[3]
- receive an early tax-refund each year by changing their IRS Forms W-4 so that they have zero withholding;[4]
- deduct their childrens' allowance as a "wage" for services performed for their small business;[5]
- claim "a home office deduction if you use space in your residence for business administration purposes."[6] and
- take "audit-proof" deductions.[7]

---

[1]Government's Complaint, ¶ 7; 26 U.S.C. § 162.

[2]Pahl Dec., Ex. 1.

[3]Pahl Dec., Ex. 2 (hereinafter Gleason Dep.); Gleason Dep. 52-54, 57-60, Gleason Dep. Ex. 7.

[4]Gleason Dep. 73-74, Ex. 10.

[5]Gleason Dep. 43, 50, 61; Gleason Dep. Ex. 6.

[6]Gleason Dep. Ex. 7.

[7]Gleason Dep. Ex. 5.

Gleason's false statements are contradicted by the Internal Revenue Code. In addition, Gleason does not inform his customers that under the Internal Revenue Code, "no deduction shall be allowed for personal, living, or family expenses."[8] Gleason also does not tell his customers that a home-based business must have a business purpose, have the intent to make a profit, and that business expenses must be necessary and related to the business purpose.[9] Moreover, Gleason fails to inform his customers that the IRS has issued a public warning that many home-based business packages sold by promoters are shams, and that courts have repeatedly rejected taxpayers' attempts take business deductions for personal expenses.[10] Gleason disingenuously defends his failure to disclose this information on the phony ground that it is not "relevant"[11] and "would make [the Tax Toolbox] as long as the tax code and nobody would read it."[12]

Gleason also fails to verify that his customers either have or plan to set up home-based businesses with an intent to make a profit.[13] In addition, after selling the Tax Toolbox, Gleason does not follow up with his customers to determine if they understand or are even entitled to the deductions they claim.[14] And, despite the seriousness of the government's allegations, Gleason

---

[8]26 U.S.C. § 262.

[9]Gleason Dep. 26, 69.

[10]Gleason Dep. 64.

[11]Gleason Dep. 64-65.

[12]Gleason Dep. 92-93.

[13]Gleason Dep. 32.

[14]Gleason Dep 71.

has not reviewed his materials at the Tax Toolbox and My Tax Man websites since this suit was filed to remove the numerous misrepresentations contained there.[15] Gleason should be preliminarily enjoined from promoting the Tax Toolbox.

Legal Argument

A. Standards for Granting An Abusive-Tax-Scheme Promoter Injunction.

Under 26 U.S.C. § 7408, an abusive-tax-scheme promoter may be enjoined if a court finds "(1) that the person has engaged in any conduct subject to penalty under section 6700 (relating to penalties for promoting abusive tax shelters). . . and (2) that injunctive relief is appropriate to prevent recurrence of such conduct." Here, the undisputed facts establish that: (1) Gleason engaged in conduct that subjects him to penalty under 26 U.S.C. 6700; and (2) an injunction is necessary to prevent recurrence of such conduct.

Because a statute expressly authorizes the injunction, Gleason may be preliminarily enjoined without considering the traditional equitable prerequisites.[16] Under 26 U.S.C. § 7408, the government must prove five elements to enjoin Gleason as a promoter of an abusive tax shelter:

> (1) Gleason organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement;
>
> (2) Gleason made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;

---

[15]Gleason Dep. 129.

[16] *See United States v. Szoka*, 260 F.3d 516, 523-24 (6th Cir. 2001) (noting that if statute provides for injunctive relief, "Congress has replaced the traditional equitable factors with a different inquiry."); *see also CSX Transp., Inc. v. Tennessee State Bd. of Equalization*, 964 F.2d 548, 551 (6th Cir. 1992) (same); *United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985)(finding of § 7408 violation sufficient to enjoin promoter).

(3) Gleason knew or had reason to know that the statements were false or fraudulent;

(4) Gleason's false or fraudulent statements pertained to a material matter; and

(5) an injunction is necessary to prevent recurrence of this conduct.[17]

The government must prove each element by a preponderance of the evidence.[18]

As set forth below, the government has established each of these five elements. Thus, Gleason should be preliminarily enjoined from promoting this abusive tax scheme.

1. Gleason Participated in the Sale of an Entity, Plan, or Arrangement.

Gleason does not dispute that he sold the Tax Toolbox, which is as an entity, plan, or arrangement within the meaning of 26 U.S.C. § 6700(a)(1)(A).[19]

2. Gleason Repeatedly Makes False Statements Regarding the Tax Deductions that Can Purportedly be Derived from a Home-Based Business.

Though The Tax Toolbox, My Tax Man, and seminars promoting them, Gleason repeatedly makes false statements regarding the tax deductions that can purportedly be derived from a home-based business.

a. How to Write-Off Personal Expenses Using the Tax Toolbox.

Gleason falsely represents that with the Tax Toolbox, his customers can "transform [their] personal expenses into audit-proof deductions with the blessings of Congress."[20] The

---

[17]26 U.S.C.A. §§ 6700(a), 7408(b).

[18]*United States v. Estate Preservation Services,* 202 F.3d 1093, 1097 (9th Cir. 2000).

[19]*See, e.g. United States v. Mid-South Music Corp*, 624 F.Supp. 673, 676 (M.D.Tenn. 1985) (discussing "abusive tax shelter" for § 6700 purposes).

[20]Gleason Dep. Ex. 5.

personal expenses that can supposedly be deducted by using the Tax Toolbox include "travel, meals, golf, cars, medical expenses, kids' allowances, everyday household expenses, and much, much more."[21] Gleason also falsely asserts that the deductions are "audit-proof" if taxpayers merely open a bank account and keep "good records."[22]

Gleason's representations are baseless. Although 26 U.S.C. 162(a) permits taxpayers to deduct "ordinary and necessary business expenses," taxpayers bear the burden of proving that they are entitled to claimed deductions.[23] Moreover, personal, living, or family expenses generally are not deductible.[24] As explained in *Muhich v. Commissioner,* "[i]t is fundamental to our income tax regime that personal consumption expenditures-food, clothing, travel, education, entertainment-do not generate income tax deductions unless they are somehow inextricably linked to the production of income."[25] Thus, contrary to Gleason's assertion, taxpayers cannot turn their families' activities–golf, entertainment, travel–into "business activities" and then claim these family expenses as business expenses. "If this device worked, [Gleason's customers] would, unlike the rest of us, make all their consumptive expenditures with pre-tax dollars."[26]

As a self-proclaimed tax expert, Gleason is or should be aware that the foregoing tax

---

[21]Ex. 1.

[22]Gleason Dep. Ex. 17.

[23]See 26 U.S.C. 142(a); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934).

[24]26 U.S.C. § 262(a).

[25]*See Muhich v. Commissioner*, TC Memo 1999-192 (U.S. Tax Ct.), 1999 WL 390695, *aff'd*, 238 F.3d 860 (7th Cir. 2001).

[26]*Id.* (quoting from *Schulz v. Commissioner*, 686 F.2d 490, 492-93 (7th Cir.1982).

principles are well-known and long-standing. Yet there is not even the briefest mention of them in the Tax Toolbox promotional materials. Rather than telling his customers they can only deduct ordinary and necessary *business* expenses, and that the business must have a business purpose, Gleason falsely promises his customers that they can "structure [their] life. . .to get deductions"[27] simply by spending "3 minutes a day keeping records of business activity."

As noted above, Gleason fails to inform his customers that in order to claim these deductions, the customer must engage in an activity with an "actual and honest objective of making a profit."[28] Gleason also fails to inform his customers that in reviewing claimed deductions, courts focus on substance over form, consider a number of factors, and have repeatedly stated that business records alone do not establish that a taxpayer is engaged in an activity for profit.[29] These are not minor errors or omissions. They are part of a scheme that is entirely fraudulent.[30] Courts have repeatedly disallowed deductions for taxpayers who, like Gleason's customers, "believed that the only point in maintaining records was to help to

---

[27]Gleason Dep. Ex. 22, Bates 306,307.

[28]*Dreicer v. Commissioner*, 78 T.C.M. (CCH) 642, 644-645 (1982); *aff'd without opinion* 702 F.2d 1205 (D.C. Cir. 1993).

[29]*See, e.g. Meyer v. Commissioner*, 2001 WL 1922686 (U.S.Tax Ct.) (analyzing nine non-exhaustive factors set forth in 26 CFR § 1.183-2(b) tending to show whether a business is actively engaged in profit); *Poast v. Commissioner*, 68 T.C.M. (CCH) 430, 1994 WL 444434 (1994) (business records alone do not establish that taxpayers engaged in business for profit).

[30]*See United States v. Estate Preservation Services*, 38 F.Supp.2d 846 (E.D.Ca. 1998) (noting that promoters' repeated omissions or failure to provide complete information regarding the tax laws constitutes a false statement for purposes of § 7408).

substantiate claimed deductions for tax purposes."[31] Contrary to Gleason's assertion, personal living expenses cannot be magically transformed into business expenses simply because the taxpayer has "an expense noted in their daytimer or other records."[32]

For similar reasons, Gleason's claim that customers can use the Tax Toolbox to "[d]educt your vacation travel expenses without any 'loopholes'"[33] is also false. In determining whether travel expenses are deductible, the Supreme Court long-ago stated that the expense

> must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade.[34]

Gleason never mentions these restrictions. To the contrary, Gleason states that once a home-based business is created, all major vacation expenses–including airfare and hotel–are deductible so long as some business, no matter how incidental, is done on the trip. Courts have repeatedly rejected similar arguments.[35]

b. How to Write-Off 100% of Your Family's Medical Expenses

Gleason also falsely represents that customers can make their family's medical expenses

---

[31]*See, e.g. Poast, supra* (business records irrelevant for substantiation purposes if all they establish is that taxpayers attemted to claim business deductions for personal expenses).

[32]*Poast, supra.*

[33]Gleason Dep. Ex. 10, Bates No. 128.

[34]*Commissioner v. Flowers*, 326 U.S. 465 (1946).

[35]*See, e.g. Nichols v. Commissioner*, 47 T.C.M. (CCH) 1156, 1984 WL 15401 (1984); *Schwartz v. Commissioner*, 20 T.C.M. (CCH) 725, 1961 WL 427 (1961).

"100% deductible" merely by employing their spouse in the home-based business.[36] But even Gleason concedes that his materials do not mention that the spouse must perform work that is necessary for the business.[37] And Gleason admits that it is "unusual for a small business to enter into an employment agreement, especially with family members."[38]

In promoting this scam, Gleason fails to disclose that because a family relationship is involved, the IRS and the courts will closely scrutinize the relationship to determine whether a bona fide employer-employee relationship exists and whether the payments received were made on account of the employer-employee relationship or the family relationship.[39] Rather than alerting his customers to this scrutiny, Gleason once again relies on bogus record-keeping, asserting that all customers need is a "employment agreement between spouses and/or children"[40] and a "company medical reimbursement plan" to pass IRS scrutiny.[41]

Gleason's representations are nothing more than a sham for customers to get around 26 U.S.C. § 213, which prohibits taxpayers from deducting medical expenses that are less than 7.5% of adjusted gross income. An identical "medical reimbursement" scam was recently rejected in the case of *Haeder v. Commissioner.*[42] In *Haeder,* the taxpayer claimed a business deduction for

---

[36]Gleason Dep. Ex. 7.

[37]Gleason Dep. 57-58.

[38]Gleason Dep. 116.

[39]*See Jenkins v. Commissioner*, T.C. Memo.1988-292, *affd. without published opinion* 880 F.2d 414 (6th Cir.1989).

[40]Gleason Dep. Ex. 24.

[41]Gleason Dep. Ex. 7.

[42]81 T.C.M. (CCH) 987, 2001 WL 40100 (2001).

medical payments to his wife/employee. Like Gleason's customers, the taxpayer in *Haeder* attempted to write off his wife's medical expenses through his business using an "employee reimbursement plan." And, like Gleason's customers, the taxpayer in *Haeder* did not issue an IRS Form W-2 for supposed payments for his wife's services.[43]

In disallowing the taxpayer's claimed medical expense deduction, the court first noted that the taxpayer must establish that his wife was a bona fide employee for the years in issue, that the reimbursement of medical expenses was an ordinary and necessary business expense, and that taxpayer paid the expenses during the applicable years.[44] The court gave little weight to the "employee medical reimbursement plan," however, focusing instead on the lack of evidence establishing that clerical or secretarial services were actually performed by wife in connection with the taxpayer's law practice.[45] Because this evidence was lacking, the court found that the purported employer-employee relationship between taxpayer and his wife was a scam to deduct personal medical and dental expenses as business expenses and denied the taxpayer's claim.[46]

Gleason assert that this promotion is not a scam, however, claiming "I never promote [the employee medical reimbursement plan] just to W-2 employees. *All of my clients are businesses before we meet them.*"[47] With this statement, Gleason crosses the line into perjury. To begin with, Gleason's own promotional materials for the medical reimbursement plan state that for

---

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] Gleason Dep. 54 (italics added).

customers to deduct 100% of their medical expenses, "[a]ll it takes is a business you have, *or can start*, and a spouse who can become an employee."[48] Moreover, Gleason's promotional materials are replete with appeals to potential customers to set up home-based businesses:

- The Tax Toolbox Affiliate Guide, which Gleason provides to potential salespersons, states, "Been Looking for a Real Home Business That Has Credibility and Real Income Potential?"[49]
- The Tax Toolbox Marketing Supplies Order Form lists "Why a Home-Based Business" as a brochure;[50]
- Promotional materials include a section entitled, "Business Start-Up Checklist,"[51] which invites potential customers to "[i]nvestigate the possibility of starting your own business for fun, profit and huge tax savings";[52]
- Promotional materials including an Entity Selection Guide, instructing potential customers that a partnership or LLC "may be appropriate for you and your unique circumstances *after* your business is established."[53]

Gleason also admits that his materials do not contain any disclaimer that the Tax Toolbox is only sold to those with existing businesses.[54]

Thus, as in *Haeder*, Gleason is advising customers to use the fiction of a home-based business to manipulate the deductibility limits for medical expenses set forth in 26 U.S.C. § 213, and to claim a tax deduction that even Gleason concedes is "rarely used" by most W-2

---

[48]Gleason Dep. Ex. 26 (italics added).

[49]Gleason Dep. 75, Ex. 11.

[50]Gleason Dep. Ex. 12.

[51]Gleason Dep. Ex. 8.

[52]Gleason Dep. Ex. 9.

[53]Gleason Dep. Ex. 23, Bates No. 319 (italics added).

[54]Gleason Dep. 55.

employees.[55]

c. How to Get an Early Tax Refund Each Year.

Gleason also falsely states in the Tax Toolbox and in other promotional materials that his clients can legally "Get Your IRS Tax Refund Early Every Year–Year After Year."[56] Gleason fails to inform his customers that the only way they can get an early refund is by fraudulently reducing their W-4 withholding.

In a case with strikingly similar facts, the court in *United States v. Savoie* enjoined a federal income tax return preparer who instructed his customers to set up LLCs not to make a profit, but so that customers could reduce their withholding on IRS Form W-4 for "anticipated business losses."[57] Like Gleason's customers, the customers in *Savoie* set up LLCs merely to claim bogus personal deductions through the LLCs and to receive early refunds through reduced W-4 withholding. Emphasizing that the return preparer failed to inform his customers that they were only entitled to these deductions and reduced withholding if they actually had a business with the intent to make a profit, the court noted that "[t]hese omissions reduce Savoies' statements [that customers can receive a early refund without actually operating a business] to gross frauds."[58]

Similarly, in *Hofstetter v. Fletcher,*[59] the Sixth Circuit affirmed a jury verdict in a civil

---

[55]Gleason Dep. 54.

[56]Gleason Dep. Ex. 10.

[57]594 F.Supp. 678, 651 (W.D.La. 1984).

[58]*Id.*

[59]905 F.2d 897 (6th Cir. 1988).

RICO action brought against insurance agents who falsely represented to potential investors that they could completely avoid paying federal income taxes. As in Gleason's promotion, insurance agents there required investors to submit new IRS W-4 forms, prepared by the promoters, claiming enough exemptions to lower the investors' federal tax withholding on their paychecks to zero. In affirming that the insurance agents had violated RICO, the court noted that repeatedly instructing an investor to claim withholdings that are not allowed under the Internal Revenue Code is "part of a [RICO] scheme, since the defendants continued to dupe the plaintiff into believing that she would not be liable for federal income taxes and, thereby, lulled her into a false sense of security."[60]

As in *Hofstetter*, Gleason falsely promises his customers that they can receive an immediate, and legal, tax refund by reducing their W-4 withholding. But as *Savoie* and *Hofstetter* establish, Gleason's early-tax-refund scheme has long been recognized by the courts as a scam. Gleason's claim that this tax strategy is permitted under the Internal Revenue Code is as false as that of the promoters in *Savoie* and *Hofstetter*.

d. How to Write off Your Childrens' Allowances

Gleason also falsely promises customers that through the Tax Toolbox, they can pay their minor childrens' allowances "as a wage for services performed on your small business."[61] Gleason also falsely states that "[a]s long as the payment is reasonable for the child's age and experience, the expense is deductible as a business expense."[62]

---

[60]*Id.* at 903.

[61]Gleason Dep. 50; Ex. 7, Bates No. 117.

[62]Gleason Dep. Ex. 7, Bates No. 117.

This is an obvious scam. Gleason provides his customers a "promissory agreement" so that the parents can pay the minor children "a salary and the children will loan the money back to the parents."[63] Yet even Gleason admits that he is not aware of "any other businesses where employees are asked to loan back their salaries to their employers."[64] When asked why minor children would loan money to their parents, Gleason testified that the promissory note is needed for parents who are in "such dire straits that they can't afford to just let that money lay in a bank account for year until the kid goes to college to use it."[65] But Gleason does not explain why parents would employ their children to clean their home office or perform other chores, instead of performing the work themselves, if they were in "dire straits," or why the Tax Toolbox does not have a disclaimer that these promissory notes should only be used as an emergency measure for his indigent customers.[66]

Gleason's nonsensical justification aside, his position is unsupported by the Internal Revenue Code. Gleason fails to mention that salaries for a home-based business are only deductible if they are an "ordinary and necessary," "reasonable," and for "services actually rendered."[67] Gleason's attempt to defend deducting minor childrens' allowances as "salaries" on the grounds that *offices* generally hire janitorial services is also nonsensical: Gleason's customers are purporting to operate home-based businesses, where only one room would need

---

[63]Gleason Dep. 106-107, Ex. 21.

[64]Gleason Dep. 107.

[65]Gleason Dep. 114.

[66]Gleason Dep. 114-115.

[67]26 U.S.C. § 162(a)(1).

maintenance.[68] And, Gleason's promised tax savings are not picayune, as he promotes this scam as a way to "write off your kids's college education."[69]

Moreover, although Gleason insists this scam is legal, he has no idea whether his customers' deductions are valid, and does nothing to verify that his customers' claimed deductions comply with the Internal Revenue Code:

> Q: So if a child was getting a $10.00 a week allowance, you think that taking out the trash and vacuuming is going to equal ten hours of work?
> A: I have no idea. I mean, that's set when they set their contract and based on [the] number of hours they really work.
> Q: Buy you don't have any way of verifying, correct? You just rely on the clients and whatever they say in their cards?
> A: They have to submit them to us if they want us to do payroll, yes.[70]

Gleason admits that he is aware of the "numerous other cases where the Tax Court has disallowed those payments to children."[71] Gleason suggests he does not provide copies of these cases to his customers, however, because "we want to show them how they can do it instead of how they can not do it."[72]

Gleason's justifications are disingenuous. Gleason has a fiduciary duty[73] to his customers to provide them all information, favorable or not, regarding the legality of deductions they may

---

[68]Gleason Dep. 104.

[69]Gleason Dep. 74, Ex. 11.

[70]Gleason Dep. 104-105.

[71]Gleason Dep. 52.

[72]Gleason Dep. 52.

[73]*See Hofstetter*, 905 F.2d at 907 (concluding insurance agents breached fiduciary duty to investors by inducing investor into plan where she would pay no federal income taxes by reducing her withholding to zero).

claim using the Tax Toolbox. Any reputable tax consultant would expose all risks of a particular tax strategy, in order to protect their clients from audit or simply to avoid being sued for malpractice. By failing to provide this information, Gleason exponentially increases the risk that his customers will be audited, owe back taxes, penalties, and interest, and possibly face criminal prosecution. He does this, along with his false representations about his qualifications, so he can continue to enjoy his $4.5 million annual income stream from this scam.[74]

e. Home Office Deduction

Gleason also falsely states that "[y]ou can take a home office deduction if you use space in your residence for business administration purposes."[75] When pressed, however, Gleason conceded that this is a "misstatement of the actual requirements."[76] Although Gleason concedes he misstates these requirements, Gleason has not changed his websites or other promotional material, or otherwise informed his customers that he has given them incorrect advice regarding the requirements for home-based business deductions.

f. Never Worry About An IRS Audit Again![77]

Gleason also falsely states in the Tax Toolbox and in other promotional materials that by purchasing the Tax Toolbox, his customers never need to worry about an IRS audit. This is patently false. There is no tax arrangement that is immune from IRS scrutiny. What is worse, Gleason dupes his customers into buying the Tax Toolbox with a deceptive "100% Accuracy

---

[74]Gleason testified to this amount at the August 1, 2003 hearing.

[75]Gleason Dep. Ex. 7.

[76]Gleason Dep. 62.

[77]Gleason Dep. Ex. 10.

Guarantee." Although Gleason promises to pay any "*penalties or interest* from our mistake,"[78] he does not guarantee to pay the underlying *tax* resulting from participation in his abusive tax scheme. Gleason's guarantee is thus false–there is no "100% Guarantee" for his customers. Any Gleason customer unfamiliar with the difference between back taxes, penalties, and interest, will find this guarantee as false as the others promoted in Gleason's scam.

In addition to the numerous false statements discussed above, Gleason duped potential customers into buying the Tax Toolbox by:

- falsely claiming to be an attorney, an enrolled agent with the IRS, an adjunct professor of business law and taxation, and an editor, reviewer of articles for Newsweek, among other misrepresentations;
- falsely claiming that all of his tax coaches were CPAs and IRS Enrolled Agents, and later admitting that some of his tax coaches did not have these credentials;[79]
- falsely claiming that he is such a good attorney that the government pays his fees, when he is not an attorney, has only been awarded fees in one case, and for the relatively minor sum of $318.75;[80]
- falsely claiming that he has never "lost a case in tax court" when Gleason admits that he has never even *tried* a case in Tax Court;[81]
- disingenuously claiming that he has "*never* lost a tax court dispute to date" and that he "has a 100% success record in tax court" when Gleason is referring to cases he has *conceded* and defines "loss" to mean that he has "never had a client receive a decision that they didn't agree to";[82]

---

[78]Gleason Dep. Ex. 6.

[79]Gleason Dep. 29-30, 39-41; Gleason Dep. Ex. 6.

[80]Gleason Dep. 25; Ex. 4.

[81]Gleason Dep. 84.

[82]Gleason Dep. 84; Ex. 13.

conduct is enjoinable under 26 U.S.C. § 7408.

3. Gleason Knew or Had Reason to Know of the Falsity of the Statements.

The government must also establish that Gleason knew or had reason to know of the falsity of the statements made.[89] The following factors are relevant: (1) a particular defendant's familiarity with tax matters; (2) his level of sophistication and education; and (3) whether he obtained the opinion of knowledgeable professionals.[90]

Gleason proclaims himself a "nationally recognized authority in the field of tax reduction."[91] Gleason also asserts that he is an attorney and that he has obtained a doctorate degree in tax law.[92] In addition, Gleason represents that he is a member of the American Bar Association's Taxation Section, that he is an author of numerous tax-related articles, that he is an Adjunct Professor of Business Law and Federal Taxation, and that he has appeared on radio talk shows throughout the United States as a tax expert.[93] Gleason also represents that he is the "President and CEO of a nationwide company offering professional tax advice to over 250,000 clients annually" and that he is the nation's foremost expert on home-based businesses.[94]

Gleason also admits that he is aware of the many tax court decisions disallowing business

---

[89]See 26 U.S.C. § 6700(2)(A).

[90]*See, e.g.*, *United States v. Kaun*, 827 F.2d 1144, 1149 (7th Cir.1987).

[91]Gleason Dep. Ex. 13.

[92]Gleason Dep. 9, Ex. 1.

[93]Gleason Dep. 20; Ex. 1.

[94]Gleason Dep. Ex. 18.

expenses for person who are not engaged in a business for profit[95] and disallowing deductions for salaries paid to children or other family members.[96] Gleason also concedes that the rules pertaining to when a business owner can deduct expenses paid to family members are complex,[97] and that the IRS has issued several warnings to taxpayers about home-based business scams.[98] In addition, Gleason claims in his promotional materials that he and his team, unlike other accountants, have mastered the rules pertaining to home-based businesses.[99] Thus, there is substantial evidence that Gleason either knew or had reason to know of the falsity of the statements he was making.

Gleason attempts to distance himself from numerous false statements in his promotional materials by blaming others or claiming lack of knowledge. When asked how he can claim in his promotional material that "turning children's [allowances] into tax deductible payroll and hiring your spouse for the wonderful [deductions you can claim]" is a "no brainer!," Gleason first stated "I didn't write the phrase," and then claimed he did not know what it meant.[100] When pressed, Gleason conceded that the internal revenue rules regarding claiming deductions for hiring spouses and children are complex, not simple, and thus presumably not a "no brainer."[101]

---

[95]Gleason Dep. 33.

[96]Gleason Dep. 52.

[97]Gleason Dep. 43.

[98]Gleason Dep. 64.

[99]Gleason Dep. Ex. 22, Bates No. 312.

[100]Gleason Dep. 43.

[101]Gleason Dep. 43-44.

Gleason also attempts to distance himself from his promotion by pinning the blame on marketing people or reckless salespersons. As noted above, Gleason claims that he only marketed the Tax Toolbox to existing business owners. Yet the cover page of Gleason's "Affiliate Guide," which he used to recruit "purchasing affiliates" for his multi-marketing scheme, states: "BEEN LOOKING FOREVER FOR A REAL HOME BUSINESS THAT HAS CREDIBILITY AND REAL INCOME POTENTIAL?"[102] When asked why his brochure states a "*real* home business," Gleason replied, "Marketing people wrote it. I didn't write every word of it."[103] Similarly, when asked why the "Marketing Supplies Order Form" used by his salespersons included a document entitled, "Why a Home Based Business," Gleason disclaimed any responsibility, explaining that this document was "supplied by one of our vendors."[104]

Gleason even attempts to distance himself from his own salespersons, claiming that he had no knowledge whether they only sold the Tax Toolbox to existing business owners:

Q: Well then, were they recruiting people that already had a home-based business or not?
A: I don't know.

Given Gleason's control of all aspects of his business and his obvious financial interest in selling the Tax Toolbox, it strains credulity that Gleason lacked knowledge of his salespersons' pitches. Moreover, under agency principles, Gleason's professed lack of knowledge is irrelevant: he is responsible for those who marketed and sold the Tax Toolbox on his behalf.

4. Gleason's False Statements Pertained to a Material Matter.

---

[102]Gleason, Dep. 75-76, Ex. 11.

[103]Gleason Dep. 76.

[104]Gleason Dep. 81, Ex. 12.

The government also must establish that the statements made pertained to a "material" matter. If a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material" within the meaning of section 6700.[105] Here, all of the statements pertain to the availability of tax deductions and other mechanisms for reducing tax liability. As a result, Gleason's repeated false statements are "material" within the meaning of section 6700.

5. An Injunction is Necessary to Prevent Recurrence.

The court must also determine whether "injunctive relief is appropriate to prevent recurrence of such conduct."[106] This element is satisfied where there is a reasonable likelihood of continued fraudulent conduct.[107] Other factors are: (1) whether mechanisms are in place for continuing the business or scheme; (2) whether the defendant had a high degree of knowledge and level of intent; (3) whether the actionable conduct was an isolated occurrence; (4) whether the defendant insists on the legality of his actions; and (5) whether the defendant has provided assurances that he will change his behavior in the future.[108]

In *United States v. Estate Preservation Services,*[109] the Ninth Circuit affirmed the district court's entering of an injunction based on the promoter's high degree of knowledge and the sophistication of his marketing scheme:

---

[105] *See Buttorff*, 761 F.2d at 1062.

[106] 26 U.S.C. § 7408(b)(2).

[107] *See Kaun*, 827 F.2d at 1150.

[108] *Id.*

[109] 202 F.3d 1093 (9th Cir. 2000).

> Henkell's level of education and the nature of the enterprise he conducted also demonstrate that his conduct is likely to recur. As previously discussed, Henkell is highly educated and has familiarity with a wide range of tax issues. He marketed and sold APTs through a nationwide multi-level marketing network of financial planners. Given the number of APTs that were sold, it cannot be said that the objectionable conduct was merely an isolated occurrence. Henkell also created an exceedingly complex organizational structure of various entities to facilitate his business operations. To a large degree, this network and the mechanisms for continuing the business enterprise appear to still be in place.[110]

Like the promoter in *Estate Preservation Services*, Gleason purports to be highly educated, even calling himself a "nationally recognized authority in the field of tax reduction."[111] As in *Estate Preservation Services*, Gleason "marketed and sold the [Tax Toolbox] through a nationwide multi-level marketing network of [purchasing affiliates]."[112] And, because Gleason's promotional materials indicate that he has over 250,000 clients,[113] and Gleason admits that he sold at least 1,200 Tax Toolboxes in January 2002 alone,[114] the objectionable conduct was not an isolated occurrence. Moreover, since this case was filed, Gleason has not made any sincere effort to correct the numerous false statements and representations in the Tax Toolbox and promotional materials.[115] As in *Estate Preservation Services*, Gleason's "network and the mechanisms for continuing the business enterprise"[116] are still in place. For the reasons set forth in *Estate*

---

[110]38 F.Supp.2d 846, 856 (E.D.Ca.), *aff'd* 202 F.3d 1093 (9th Cir. 2000).

[111]Gleason Dep. 83, Ex. 13.

[112]38 F.Supp.2d at 856.

[113]Gleason Dep. Ex. 18.

[114]Gleason Dep. 36.

[115]Gleason Dep. 129.

[116]38 F.Supp.2d at 856.

Preservation Services, Gleason should be preliminarily enjoined from promoting the Tax Toolbox.

Conclusion

Gleason has repeatedly made false promises to taxpayers that they can legally reduce or eliminate federal income taxes by setting up a home-based business. For the reasons set forth above, Gleason should be preliminarily enjoined from promoting this abusive tax scheme.

JAMES K. VINES
United States Attorney

MICHAEL R. PAHL
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6488