UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No. 2:14-cv-10511
	)	
v.	)	
	)	Hon.
HATCHETT, DEWALT & HATCHETT, PLLC,	)	
	)	
Defendant.	)	

COMPLAINT

The United States of America, with the authorization of a delegate of the Secretary of the Treasury and at the direction of the Attorney General of the United States pursuant to 26 U.S.C. §§ 7401 and 7402, brings this civil action: (1) to enjoin Defendant Hatchett, DeWalt & Hatchett, PLLC from continuing to pay wages to employees without paying the associated payroll taxes; and (2) to reduce to judgment certain unpaid assessed federal tax liabilities of Defendant Hatchett, DeWalt & Hatchett, PLLC. Specifically, the United States complains and alleges as follows:

1. Jurisdiction over this action is conferred upon the district court in 28 U.S.C. §§ 1331, 1340, 1345 and 26 U.S.C. § 7402.

2. Venue is proper under 28 U.S.C. §§ 1391(b) and 1396.

Background Facts

3. Hatchett, DeWalt & Hatchett, PLLC (hereinafter, "HDH"), is a law firm primarily specializing in criminal law that is located at 485 Orchard Lake Rd., Pontiac, MI 48341, which is within the jurisdiction of this Court.

4. Based on its most recent annual report filed with the State of Michigan in 2011 (Corp. ID No. B5597H), HDH has the following members/attorneys: Marcellus Long Jr. (who is the registered agent), Elbert L. Hatchett, William M. Hatchett, and Darryl Segars. In addition to the attorneys, upon information and belief HDH maintains a small clerical and administrative staff.

Count I – Injunction

5. For various tax periods from 2003 to the present date, HDH has failed to comply with its federal tax obligations as established by the Internal Revenue Code (hereinafter, "I.R.C.") and has been engaging in an activity known as "pyramiding" by which a business withholds taxes from its employees but intentionally fails to remit them to the Internal Revenue Service as mandated by law. Such activity has been and continues to be a drain on the United States Treasury.

6. At all times relevant to this action, HDH has had employees and, as an employer, the law firm has been subject to the payroll tax obligations imposed by the I.R.C., including the duties to:

   a. Withhold, account for, and pay over the employee portion of the tax imposed upon wages by the Federal Insurance Contributions Act ("FICA") from each employee's paycheck;

b. Withhold, account for, and pay over an estimated amount of income tax for each employee from each paycheck;

c. Pay the employer portion of the tax imposed upon employee wages by the FICA; and

d. Submit Form 941 (Employer's Quarterly Federal Tax Return) to the United States, along with any withheld employee income tax, withheld employee FICA, and the employer FICA not already deposited on or before the legal due date (approximately 30 days after the close of each calendar quarter), and make federal tax deposits of a frequency required by the I.R.C. and regulations.

7. Since 2004, the IRS has been attempting to bring HDH into compliance with its I.R.C. payroll tax obligations and to collect past due payroll taxes from the law firm. Its efforts have included the following:

a. On August 13, 2008, a representative of the IRS delivered Form Letter 903 to Mr. Long's personal residence. Letter 903 alerted Mr. Long of the provisions of the Employment Tax Regulations Section 31.6302.

b. On August 27, 2008, a representative of the IRS visited HDH and informed Mr. Long and Mr. Elbert Hatchett of their payroll responsibilities and their duty to comply with federal tax obligations and to timely deposit payroll taxes.

c. Despite their promise to comply with federal tax obligations, HDH began accruing unpaid taxes again in 2010.

d. The IRS assessed the trust fund recovery penalty ("TFRP") under 26 U.S.C. § 6672 against Mr. Long, individually, for several quarterly periods, making him personally liable for a portion of HDH's unpaid employment tax debts, which total about $39,220, as of January 21, 2014. And for those periods that have not yet been assessed, the IRS will be recommending additional TFRP assessments for those quarters, as well.

e. The IRS began issuing Forms Letter 1058 ("Final Notice/Notice of Intent to Levy and Notice of Your Rights to a Hearing") on March 31, 2005 (and continuing for every delinquent tax period thereafter), with respect to unpaid balances owed for several quarterly periods and recorded Notices of Federal Tax Liens for all of the quarterly periods listed in paragraph 15, below, for which HDH was assessed.

f. Repeated administrative enforcement actions have been unsuccessful in satisfying the unpaid tax debts and in bringing HDH into compliance. Further, HDH does not own any real estate upon which the IRS may conduct an administrative seizure, and the remaining assets have very little or no value and only include furniture and fixtures with minimal equity.

g. Despite these efforts to collect taxes owed by HDH, none of the steps that the IRS has undertaken to date have prompted HDH to comply – on a prospective basis – with I.R.C. payroll tax obligations.

8. HDH has a long history of failing to timely file federal unemployment tax returns (Form 940), federal employment tax returns (Form 941), and partnership tax returns and failing to make the requisite federal tax deposits of the assessments due thereunder, which continue to this date. Such noncompliance has resulted in an amount due totaling $122,994.12, as of November 4, 2013, plus such additional amounts as may continue to accrue as provided by law.

9. HDH continues to incur liabilities with each passing quarter and has not demonstrated a willingness or ability to comply with its obligations under the I.R.C. And there is no evidence that HDH will take the necessary efforts to return to compliance.

10. When HDH files returns, it often does so after the date on which the returns are due, and in any event, fails to remit the taxes due thereon. HDH has not made any deposits or payments for its most recently-filed Forms 940, 941, and 1065 tax returns.

11. The foregoing indicates that HDH has and continues to engage in "pyramiding" that thwarts the United States' efforts to collect delinquent payroll taxes from the law firm.

12. Defendant's pyramiding undermines the traditional tools available to the United States for collecting delinquent taxes, as indicated by the substantial liabilities in paragraph 15, below. For example, despite IRS levies on bank accounts to recover a portion of the sums owed by HDH, such levies have only been minimally successful, yielding only $700.03 in the last two years. And, in any event, such levies are routinely ignored by the attorneys.

13. Under 26 U.S.C. § 7402(a), the federal district courts have broad authority to issue injunctions and other orders necessary and appropriate to enforce provisions of the I.R.C.

14. An injunction against the Defendant by this Court to comply with the payroll tax provisions of the I.R.C. is necessary and appropriate for several reasons, including the following:

   a. Traditional collection methods have not and will not convince HDH to stop pyramiding payroll tax liabilities.

   b. Anything other than an injunction will encourage HDH to continue pyramiding because it gives the law firm an unfair advantage over tax-paying competitors.

   c. The IRS estimates that, for each new quarter for which HDH fails to pay its employment taxes, the loss of revenue is approximately $6,000.00 per quarter (including penalties and interest), which the United States will be unable to collect. The withheld employee income taxes must nevertheless be credited to the individual taxpayers whose taxes are withheld from their wages. Similarly, the FICA taxes (withheld portion and employer's portion) must in any event be credited to the employees for purposes of eligibility for social security benefits when they retire. In essence, HDH is effectively stealing trust funds from the government.

   d. An injunction will not injure HDH as it will merely compel it to conduct business like every other tax-paying business in the United States. Moreover, an injunction will protect the public's interest in fair competition by halting the Defendant's unfair practices and effectively leveling the playing field.

Count II – Reduce Defendant's Unpaid Tax Liabilities to Judgment

15. A delegate of the Secretary of the Treasury of the United States made assessments against Defendant-taxpayer Hatchett, DeWalt & Hatchett, PLLC, for its failure to pay federal employment taxes (Forms 941), unemployment taxes (Form 940), and penalties for late filing partnership income tax returns (Forms 1065) as follows:

Tax Type	**Tax Period**	**Assessment Date**	**Unpaid Balance of Assessment**	**Accrued Interest and Penalties to 11/04/13**	**Unpaid Balance as of 11/04/13**
Form 940	12/31/2003	05/08/2006	$3,783.10	$845.31	$4,628.41
Form 941	03/31/2004	07/05/2004	$8,429.95	$5,733.13	$14,163.08
Form 941	06/30/2004	10/04/2004	$10,912.92	$5,870.57	$16,783.49
Form 941	09/30/2004	12/27/2004	$13,746.62	$6,926.82	$20,673.44
Form 1065	12/31/2006	03/02/2009	$1,506.00	$269.07	$1,775.07
Form 1065	12/31/2007	09/21/2009	$4,250.00	$646.33	$4,902.33
Form 941	06/30/2010	10/04/2010	$4,233.04	$529.08	$4,762.12
Form 941	09/30/2010	12/06/2010	$2,449.21	$253.61	$2,702.82
Form 941	12/31/2010	04/11/2011	$7,167.44	$1,055.63	$8,223.07
Form 941	03/31/2011	07/04/2011	$5,565.98	$866.63	$6,432.61
Form 941	09/30/2011	12/19/2011	$3,054.88	$460.41	$3,515.29
Form 941	12/31/2011	04/23/2012	$6,060.99	$1,148.57	$7,209.56
Form 941	03/31/2012	11/19/2012	$8,315.16	$879.53	$9,194.69
Form 941	06/30/2012	11/19/2012	$8,580.55	$966.93	$9,547.48
Form 941	09/30/2012	11/26/2012	$7,548.30	$932.36	$8,480.66
				Total:	**$122,994.12**

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16. A delegate of the Secretary of the Treasury issued notice of the assessments on or about the dates of those assessments described in paragraph 15, above, to HDH and made demand for payment of the same. Despite notice and demand, however, HDH has failed or refused to fully pay the liabilities, and as a result, there remains due and owing to the United States $122,994.12, as of November 4, 2013, plus such additional amounts as may continue to accrue as provided by law.

WHEREFORE, United States of America prays for judgment (1) against the Defendant-Hatchett, DeWalt & Hatchett, PLLC, in the amount of $122,994.12, as of November 4, 2013, plus such additional amounts as may continue to accrue as provided by law, (2) for the United States for its costs in the action, and (3) for injunctive relief in the form of a Preliminary Injunction and a Permanent Injunction:

A. ordering Hatchett, DeWalt & Hatchett, PLLC to deposit in an appropriate federal depository bank, in accord with federal deposit regulations, withheld employee income tax, withheld employee FICA tax, and employer FICA tax, all as required by the Internal Revenue Code;

B. ordering Hatchett, DeWalt & Hatchett, PLLC to sign and deliver affidavits to a revenue officer or to some other person or location designated by the IRS, on the first day of each month, verifying that the requisite deposits of withheld income tax, withheld FICA tax, and employer FICA tax have been made in a timely manner;

C. ordering Hatchett, DeWalt & Hatchett, PLLC to timely file all employment (Form 941), unemployment (Form 940), and partnership (Form 1065) tax returns coming due after the date of the injunction;

D. ordering Hatchett, DeWalt & Hatchett, PLLC to timely pay all required outstanding liabilities due on each return required to be filed herein;

E. enjoining Hatchett, DeWalt & Hatchett, PLLC from assigning and/or transferring money or property to any other entity to have that entity pay the salaries or wages of its employees; and

F. enjoining Hatchett, DeWalt & Hatchett, PLLC from assigning and/or transferring property or making any payments after the preliminary injunction is issued until the employment tax and withholding liabilities incurred after the date of the preliminary injunction are first paid to the Internal Revenue Service.

Respectfully submitted,

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