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6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT TACOMA**

9 UNITED STATES OF AMERICA)

10 Plaintiffs,)

11 v.)

Civil No. 04-5648 RJB

12 RAYMOND LEO BELL individually and)
13 d/b/a AMERICAN BEAUTY ROSE; and)
THE BEST WAY, INC.)

PRELIMINARY INJUNCTION

14 Defendants.)
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17 Upon motion by Plaintiff, the United States of America, the Court makes the following
18 findings of fact and conclusions of law and enters this preliminary injunction. This order will
19 remain in effect until further order of the Court.

20 **Standards for Preliminary Injunction**

21 To obtain a preliminary injunction under 26 U.S.C. (I.R.C.) § 7408, the United States
22 must show that defendants engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701,
23 and (3) injunctive relief is appropriate to prevent the recurrence of such conduct.

24 In order to obtain a preliminary injunction under I.R.C. § 7402, the United States must
25 show that a preliminary injunction is necessary or appropriate for the enforcement of the internal

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28 **PRELIMINARY INJUNCTION**
(Civil No. 04-5648 RJB)

- 1 -

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revenue laws and that the following two factors weigh in favor of granting a preliminary injunction against Defendants: (1) that the United States has a high likelihood of success on the merits; and (2) that the equities weigh in favor of granting the temporary relief.

FINDINGS OF FACT

Based on the evidence and the parties' arguments, the Court finds as follows:

1. Defendants, Raymond Leo Bell, individually and d/b/a American Beauty Rose; and The Best Way, Inc., knowingly organize and promote abusive tax schemes whereby they assist customers in evading federal tax liabilities and IRS collection efforts through the fraudulent use of trusts and business entities.

Defendants' Abusive Trust Scheme

2. Defendants promote the use of sham business and family trusts as a means of fraudulently concealing income and assets from the IRS. Defendants advise and assist customers in transferring their businesses to a business trust or "Unincorporated Business Organization" (UBO). The customer continues to operate the business in the same manner as he or she previously did. Defendants advise customers to distribute the business trust profits to a family trust, also controlled by the customer, to avoid paying wages subject to income and employment tax.
3. Defendants advise and assist customers in transferring their personal assets and real property to a family trust, while maintaining the same control over the assets as before the transfer. Defendants advise customers to use the business trust distributions, which have not been subject to tax, to maintain the family residence and other personal assets of the customer. Defendants falsely claim this is permitted because the family trust holds customers' personal assets, and the maintenance of those assets is a legitimate trust expense. Defendants falsely advise customers that they need only report on their tax

returns the remaining family trust income after the trust had paid the customers' living expenses.

4. The relationship of defendants' customers to their income and assets is not altered by participation in this abusive trust scheme. Participants, typically self-employed persons, operate their businesses in virtually the same manner under defendants' program as they did before using the program. The "trusts" that defendants create for their customers are shams, devoid of economic substance. Alternatively, the "trusts" are grantor trusts that may be disregarded for federal-income-tax purposes. As a result of this scheme, defendants' customers illegally fail to report on their tax returns a substantial portion, if not all, of their business profits and other income.

Defendants' Fraudulent Tax Exempt Corporation Scheme

5. Defendants promote the use of a second abusive tax scheme whereby they advise and assist customers in incorporating their businesses, falsely claiming tax-exempt status, and fabricating and inflating improper deductions in a fraudulent attempt to evade income and employment taxes. Defendants assist customers in preparing incorporation documents, lease agreements, and other forms and documents necessary to the abusive scheme.
6. Defendants market this scheme as a way to create a purported tax-exempt organization. In fact, defendants merely instruct customers to falsely designate their corporations as tax exempt when requesting a Taxpayer Identification Number on IRS Form SS-4, despite knowing that such designation is false. Defendants do not advise customers to apply for tax exempt status, despite instructing them to claim this status when submitting Form SS-4.
7. Defendants advise customers to draw a nominal salary from the corporation, to minimize wage income, which is the amount of their income subject to employment tax. Defendants falsely advise customers that their corporations can "lease" assets from the customer at an

1 inflated rate, and that the customer can claim deductions for expenses related to the
2 “leased” property. Defendants advise customers to draw inflated “lease payments” from
3 their corporations, ostensibly for the corporations’ use of the customers’ personal
4 residences and other personal property. These sham “lease expenses” are nothing more
5 than the customers’ personal living expenses.

- 6 8. Defendants’ advice concerning “lease payments” results in their customers’ improper
7 evasion of employment and income tax. When customers personally draw lease payments
8 from their corporations for phony business expenses, the corporate profits, which
9 customers previously received as wages, are not reported for employment tax purposes.
10 Furthermore, when customers deduct “lease expenses” against that income, they are
11 claiming unallowable personal expense deductions, improperly shielding that income from
12 tax. As a result of this scheme, defendants’ customers illegally shield a substantial
13 portion, if not all, of their business profits from income and employment tax.

14 **Defendants’ False Statements about the Internal Revenue Laws**

- 15 9. In promoting their schemes, defendants falsely and fraudulently claim that the following
16 benefits are available to participants:
- 17 a. “SAVES \$\$\$\$\$\$ SIGNIFICANTLY REDUCES INCOME TAXES both personal and
18 business;”
 - 19 b. “HELPS PREVENT SEIZURE OF YOUR ASSETS;”
 - 20 c. “PROTECTS YOUR ASSETS - LIMITS YOUR LIABILITIES;”
 - 21 d. “UNIVERSALLY ELIMINATES UNNECESSARY ESTATE TAXATION;”
 - 22 e. “The Hunts and the Rockefellers have spent over \$15,000,000.00 researching and
23 instituting Common Law Trust Organization structures;”
 - 24 f. “With creation of more trusts and a little effort, taxes disappear. With more effort even
25 the value of the holdings can be completely hidden;” and
 - 26 g. “Look what Business and Family Trusts Can Do for You: Glamourous Vacations!...Exotic
27 Automobiles!...Luxury Boats!...\$\$\$ Investments!...”

10. Defendants have made the following false and fraudulent claims about their schemes:

- a. The trusts are “IRS-proof,” in that “the only entities who can break a trust are the trustees;”
- b. The IRS does not need to know about the trusts;
- c. The IRS cannot obtain trust documents;
- d. Trust customers can use trust income to pay their personal bills;
- e. Trust customers can avoid self-employment tax and “control, manage, and limit both estate tax and current tax liabilities;” and
- f. Corporation customers can rent their personal residence, personal vehicles and other personal property to the corporation, and then deduct expenses associated with maintaining those assets against the rental income on their tax returns.

The Defendants’ Promotion Results in Grossly Understated Federal Tax Liabilities.

11. Defendants are known to have customers in Washington, California, Minnesota and Florida, and to have created at least 40 corporations for customers. Civil examinations of just six of defendants’ customers uncovered tax understatements, during the period 1996 to 2001, per participant of over \$17,700 annually. The annual tax understatements of these audited customers ranged from \$2,623 to \$45,947. Because Bell has refused to provide to the government his customer lists or any other information concerning the scope of his promotion, the true extent of defendants’ promotions is unknown.

Defendants’ Additional Interference with Enforcement of the Internal Revenue Laws.

12. The defendants have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws. Besides advising customers to not report substantial amounts of income to the IRS, defendants also instruct customers to fraudulently hinder and obstruct legitimate IRS collection efforts.

13. Defendants advised customers that their purported trusts are “IRS-proof,” that their existence and income can be kept secret from the IRS, and that the trusts are not subject to IRS administrative summonses seeking financial records and other documents.

Defendants' advice led their customers to impede and obstruct civil tax examinations of their individual income tax liabilities. On defendants' advice, their customers have refused to cooperate with legitimate IRS requests, and have repeatedly cancelled audit appointments. Additionally, defendants advised customers to transfer their assets into trusts and other entities, in order to obstruct the IRS's ability to detect and locate assets from which to collect defendants' customers' unpaid tax liabilities.

Defendants' Knowledge of the Illegality of Their Scheme and the Likelihood of Recurrence

14. Bell claims to have spent substantial time studying the tax laws and therefore he should be aware that no court has upheld the validity of his schemes.¹ Bell has associated himself with other abusive scheme promoters and groups that deny the validity of federal tax laws, and should know that many of these promoters, such as Jack Cohen of Fircrest, Washington; and Jim Mattatall, of Harbor City, California, have been enjoined under I.R.C. §§ 7408 and 7402 from promoting illegal tax schemes.² Moreover, the IRS has audited several of defendants' customers, due to their participation in defendants fraudulent schemes, revealing tax understatements. Yet despite all of this, defendants

¹ See, e.g., *Muhich v. Commissioner*, 238 F.3d 860 (7th Cir. 2001) (holding that a trust arrangement where the defendants placed personal assets into five trusts but retained total control over the assets lacked economic substance and therefore should not be recognized by the IRS); *Zmuda v. Commissioner*, 731 F.2d 1417, 1421 (9th Cir. 1984) (rejecting a trust where the taxpayer retained control over the trust assets); *O'Donnell v. Commissioner*, 726 F.2d 679, 681 (11th Cir. 1984) (rejecting a trust where the taxpayer transferred his income to the trust and claimed business deductions for living expenses); *Schulz v. Commissioner*, 686 F.2d 490, 493 (7th Cir. 1982) (rejecting a trust because "income is taxed to the person who earns it, regardless of what arrangements he makes to divert the payment of it elsewhere"); *United States v. Welti*, No. C-1-02-243, Doc. No. 55 (S.D. Ohio Sept. 24, 2003) (permanently enjoining a promoter of abusive trusts); *United States v. Mosher*, No. 1:03-CV-208, Doc. No. 45 (W.D. Mich. Oct. 27, 2003) (preliminarily enjoining an abusive trust promoter). See generally *United States v. Buttorff*, 761 F.2d 1056 (5th Cir. 1985) (discussing abusive trusts); *United States v. Sweet*, No. 8:01-CV-331-R-23TGW, 2002 WL 963398 (M.D. Fla. Feb. 20, 2002) (enjoining abusive trust promoter).

² See *United States v. Cohen*, No. 04-332 (W.D. Wash. May 7, 2004); *United States v. Mattatall*, No. 03-7016 (C.D. Cal. Apr. 6, 2004).

1 continue to promote their fraudulent schemes. Therefore, the defendants will not
2 permanently cease this illegal activity unless they are enjoined.

3 **Harm to the Government**

4 15. The tax loss as a result of this promotion is estimated to be substantial, and much of it may
5 never be recovered. Therefore, the harm to the government is material, and if defendants'
6 promotional activity is not stopped, it will result in additional harm with each new return
7 filing season. The defendants' false and fraudulent statements have induced numerous
8 customers to participate in their illegal schemes. Defendants have created at least 40
9 corporations for customers. Defendants have created numerous trusts for customers.
10 Defendants charge \$1,000 for incorporation. Defendants charge approximately \$1,500 for
11 trust packages.

12 **CONCLUSIONS OF LAW**

13 Based on the evidence presented by the United States, Raymond Leo Bell, individually and
14 d/b/a American Beauty Rose; and The Best Way, Inc., are engaging in conduct subject to penalty
15 under I.R.C. §§ 6700 and 6701. Accordingly, the Court finds that Defendants should be
16 preliminarily enjoined under I.R.C. § 7408.

17 The Court finds that the United States has presented persuasive evidence that defendants
18 are engaging in conduct subject to injunction under I.R.C. § 7402 and that it will suffer irreparable
19 harm in the absence of this preliminary injunction and that defendants will suffer little, if any, harm
20 if the preliminary injunction is granted. The United States also has presented evidence and
21 argument sufficient to convince the Court that the United States has a high likelihood of success
22 on the merits. Further, the United States has presented credible evidence and argument that
23 shows the public interest will be served through granting this preliminary injunction. Finally, the
24 evidence presented shows that absent this preliminary injunction, defendants will continue to
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1 violate I.R.C. §§ 6700 and 6701. Accordingly, the Court finds that a preliminary injunction under
2 I.R.C. § 7402 is necessary and appropriate for the enforcement of the internal revenue laws.

3 **ORDER**

4 Based on the foregoing factual findings and for good cause shown, the Court ORDERS

5 A. That pursuant to I.R.C. §§ 7402(a) and 7408, defendants Raymond Leo Bell, individually
6 and doing business as or through any other entity, and The Best Way, Inc., and anyone
7 acting in concert with them, are preliminarily enjoined and restrained from, directly or
8 indirectly, by use of any means or instrumentalities:

- 9 1. Organizing, promoting, marketing, or selling any tax shelter, plan or
10 arrangement that advises, encourages, or assists taxpayers to attempt to
11 violate the internal revenue laws or unlawfully evade the assessment of
12 their federal tax liabilities;
- 13 2. Causing other persons and entities to understate their federal tax liabilities
14 and avoid paying federal taxes;
- 15 3. Making false statements about the allowability of any deduction or credit,
16 the excludability of any income, or the securing of any tax benefit by reason
17 of participating in such tax shelters, plans or arrangements;
- 18 4. Encouraging, instructing, advising or assisting others to violate the federal
19 tax laws, including to evade the payment of taxes;
- 20 5. Engaging in any other conduct subject to penalty under I.R.C. § 6700; i.e.,
21 by making or furnishing, in connection with the organization or sale of a
22 shelter, plan or arrangement, a statement the defendants know or have
23 reason to know to be false or fraudulent as to any material matter under the
24 federal tax laws;
- 25 6. Further engaging in any conduct subject to penalty under I.R.C. § 6701,
26 i.e., aiding, assisting, or advising with respect to the preparation or
27 presentation of any portion of a return or other document knowing that
28 such assistance or advice will result in the understatement of another
person's income tax liability;
7. Advising customers to impede, hinder, or obstruct IRS civil tax
examinations of their liabilities; and
8. Further engaging in any conduct that interferes with the administration and
enforcement of the internal revenue laws.

- 1 B. Pursuant to I.R.C. § 7402, that defendants within eleven days file with the Court and serve
2 upon the government a complete list of customers (including names, addresses, phone
3 numbers, email addresses if known, and social security numbers or employer identification
4 numbers) who have purchased any trust or other type of entity from defendants, or sought
5 or received any tax advice from defendants;
- 6 C. Pursuant to I.R.C. § 7402, that defendants within eleven days file with the Court and serve
7 upon the government a complete list of all entities, including but not limited to family
8 trusts, business trusts, unincorporated business trusts, they have created for their
9 customers;
- 10 D. Pursuant to I.R.C. § 7402, that defendants within eleven days file with the Court and serve
11 upon the government a complete list of all UCC filings they have filed or directed to be
12 filed with any jurisdiction on behalf of their customers or any entity affiliated with any of
13 their customers;
- 14 E. Pursuant to I.R.C. § 7402, that defendants within eleven days file with the Court and serve
15 upon the government a list of all SS-4s prepared for customers, including copies of those
16 Forms SS-4 if available;
- 17 F. Pursuant to I.R.C. § 7402, that defendants, at their own expense and as a corrective
18 measure, provide a copy of the complaint and injunction to each of their customers,
19 current and former, within ten days of entry of the injunction. Defendant Raymond Leo
20 Bell must file a sworn certificate of compliance stating that the defendants have complied
21 with this portion of the Order, within eleven days of the date of this Order, and must
22 attach a copy of all correspondence sent with the complaint and injunction; and
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1 G. The United States shall be permitted to engage in post-injunction discovery to monitor
2 defendants' compliance with this and any other order entered by this Court.

3 SO ORDERED this 16th day of February, 2005.

6 /S/ Robert J. Bryan
UNITED STATES DISTRICT JUDGE

7 Prepared by:

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