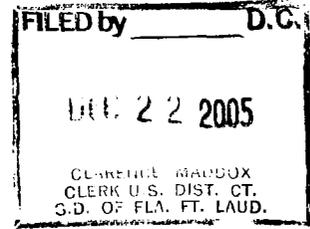


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-60565-CIV-ZLOCH



UNITED STATES OF AMERICA,

Plaintiff,

vs.

**PRELIMINARY INJUNCTION ORDER**

JEAN-MARIE BOUCICAUT, MARIE  
THELEMARQUE, and TAX REVIEW  
CORPORATION,

Defendants.

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THIS MATTER is before the Court upon Plaintiff United States of America's Motion For Preliminary Injunction (DE 2). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

Plaintiff United States of America (hereinafter the "Government") commenced the above-styled cause on April 13, 2005 with the filing of its Complaint (DE 1) pursuant to certain provisions of the Internal Revenue Code, namely 26 U.S.C. (hereinafter "I.R.C.") §§ 7402(a), 7407, and 7408. The Government alleges, in pertinent part, that Defendants Jean-Marie Boucicaut (hereinafter "Boucicaut") and Marie Thelemarque (hereinafter "Thelemarque") operating through Defendant Tax Review Corporation (hereinafter the "Corporation" and collectively as "Defendants") provide tax-preparation services, and that they particularly target immigrants from Haiti who live in Broward and Miami-Dade counties in South Florida. See DE 4, ¶ 20.

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Defendants allegedly prepare, inter alia, amended federal tax returns by first requiring new customers to submit returns already filed with the Internal Revenue Service (hereinafter the "IRS"). After receiving these returns, the Government alleges that Defendants prepare and file, without the knowledge of their customers, fraudulent amended tax returns which represent that the client has a reduced tax liability. See DE 4, ¶¶ 31-48. Defendants then request a refund, and give their address as the place where the refund is to be sent. See DE 4, ¶¶ 17 and 21. The Government represents that the IRS has discovered 593 erroneous tax refund checks obtained by Defendants in the above-described manner totaling \$772,249, see DE 4, ¶ 16, and that these checks were deposited into Boucicaut's checking account after he signed them in his customers' names. See DE 4, ¶ 22. Although Boucicaut represented to the IRS that he would then write a personal check to the customer for their refund less his preparation fee, see DE 4, ¶ 22, the Government alleges that Defendants have returned these refunds to less than half of the customers on whose behalf they received them. See DE 1, ¶ 34; DE 3, p. 1. Finally, the Government represents that upon meeting with the IRS in 2003 regarding the activities described above, Boucicaut promised to stop filing amended tax returns in the aforementioned manner. See DE 4, ¶ 23. The Government further states, however, that Boucicaut did not cease his activities, and that he has since filed over 100

such returns. See id.

While the aforementioned Complaint (DE 1) seeks permanent injunctive relief against Defendants, the Government also filed the instant Motion (DE 2) requesting an Order enjoining Defendants from engaging in the behavior recounted above as well as other activities implicated by the Internal Revenue Code based on the aforementioned allegations. The Court notes that Defendants have not filed a response to the instant Motion (DE 1) either within the time allowed by Local Rule 7.1(C) of the United State District Court for the Southern District of Florida, or upon being ordered to respond by prior Order (DE 11) of the Court. While the instant Motion may therefore be granted by default pursuant to Local Rule 7.1(C), the Court notes that “[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant *clearly establishes* the burden of persuasion . . . .” Alabama v. United States Army Corps of Eng’rs, 424 F.3d 1117, 1136 (11<sup>th</sup> Cir. September 19, 2005) (quoting All Care Nursing Serv., Inc. v. Bethesda Mem’l Hospital, Inc., 887 F.2d 1535, 1537 (11<sup>th</sup> Cir. 1989) (emphasis in original)). In making the findings below, therefore, the Court has carefully considered the evidence filed by the Government in support of the instant Motion (DE 2), and in particular, the Declaration Of [IRS Revenue Agent] Donald Townsend

(DE 4) and its accompanying Exhibits A through and including P.<sup>1</sup>

In order to obtain a preliminary injunction to enjoin a person from acting as an income tax preparer pursuant to I.R.C. § 7407, the Government must show that Defendants have continually and repeatedly engaged in fraudulent or deceptive conduct substantially interfering with the administration of the tax laws. See I.R.C. § 7407(b)(1)-(2). The Government must also show that a narrower injunction prohibiting only specific misconduct would be insufficient. See id. In order to obtain a preliminary injunction pursuant to I.R.C. § 7408, the Government must show that Defendants engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief is appropriate to prevent the recurrence of such conduct. The Court may issue a preliminary injunction under I.R.C. § 7402 "as may be necessary or appropriate for the enforcement of the internal revenue laws."

#### Findings of Fact

1. The Court has subject matter jurisdiction over the above-styled cause pursuant to 28 U.S.C. § 1331.

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: The Court notes that Boucicaut filed a Letter (DE 19) with the Court which has been construed as an Answer, and which contains a general disavowal of any wrongdoing. While said disavowal is sufficient to put the above-styled cause at issue, it is accompanied by no documentation that could be considered opposing evidence to the Government's filings in support of the instant Motion. The Government's aforementioned Declaration (DE 4) for example, contains detailed sworn averments by an IRS Revenue Agent regarding his investigation of Defendants, interviews with victims, and admissions made by Boucicaut to the IRS at meetings conducted prior to the initiation of the above-styled cause.

2. Boucicaut and Thelemarque, operating through the Corporation, and formerly through the Leadership Network Corporation, provide tax preparation services to customers to prepare original and amended individual tax returns.

3. Defendants have prepared and filed amended tax returns that claim credits and deductions for which their customers are not eligible and to which they have not claimed eligibility.

4. Defendants knew that the false credits and deductions would result in understatement of their customers' tax liabilities.

5. Defendants filed amended returns for customers who did not authorize them to file returns, and who were not aware that Defendants were filing said returns.

6. Defendants did not provide customers with copies of the returns they prepared and filed for the customers.

7. Defendants filed returns that listed Defendants' post office box as the return address for their customers.

8. Defendants received at their post office box refund checks from the IRS made out to their customers. These checks were issued based on the false and fraudulent amended income tax returns filed by Defendants.

9. Defendants endorsed and deposited these erroneous refund checks into their bank accounts. Defendants retained all or part of the refund amount of each check for themselves.

10. The IRS has issued at least 593 refund checks totaling

over \$770,000 to Defendants' customers that were received and deposited by Defendants into their own bank accounts.

11. By preparing returns for their customers, Defendants aided or assisted in the preparation of tax returns. Defendants knew or had reason to know that the returns would be used in connection with the determination of their customers' tax liabilities, a material matter, and that the returns would result in an understatement of their customers' tax liabilities.

12. Defendants have prepared and submitted tax returns without providing their names or the names of their firms as the return preparer and without including their identifying numbers on the tax returns.

13. Defendants' activities substantially interfere with the administration of the tax laws.

14. Defendants' activities undermine public confidence in the fairness of the federal tax systems and incite violations of the internal revenue laws. They cause the Government irreparable harm. The Government's remedies at law in the above-styled cause are inadequate.

15. Injunctive relief is appropriate and necessary to prevent Defendants from promoting services that interfere with tax enforcement and from future occurrences of this conduct.

#### Conclusions of Law

1. Based upon the factual findings and evidence presented by

the parties, the Court finds that Defendants continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695 and have continually and repeatedly engaged in other fraudulent or deceptive conduct substantially interfering with the administration of the tax laws. The Court also finds that a narrower injunction prohibiting only this specific misconduct would be insufficient.

2. Accordingly, the Court finds that Defendants, and all those in active concert or participation with them, should be preliminarily enjoined from acting as income tax preparers under I.R.C. § 7407.

3. The Court also finds that Defendants engaged in conduct violative of I.R.C. § 6701, and that injunctive relief is appropriate to prevent the recurrence of that conduct.

4. Accordingly, the Court finds that Defendants, and all those in active concert or participation with them, should be preliminarily enjoined under I.R.C. § 7408.

5. The Court further finds that Defendants engaged in conduct that interferes with the enforcement of the internal revenue laws, and that the Government and the public will suffer irreparable harm in the absence of a preliminary injunction. Based on the evidence and argument presented, the Government has a high likelihood of success on the merits. The public interest will be served by granting a preliminary injunction.

6. Based upon the evidence presented, the Court further finds that it is likely that Defendants will continue to violate the Internal Revenue Code absent an injunction.

7. Accordingly, the Court finds that Defendants, and all those in active concert or participation with them, should be preliminarily enjoined under I.R.C. § 7402(a).

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** that Plaintiff United States of America's Motion For Preliminary Injunction (DE 2) be and the same is hereby **GRANTED**. Defendants Jean-Marie Boucicaut, Marie Thelemarque, and Tax Review Corporation, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, are preliminarily enjoined from directly or indirectly:

(1) Acting as federal tax return preparers or requesting, assisting in or directing the preparation and/or filing of federal tax returns for any person or entity other than themselves, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the IRS;

(2) Understating customers' tax liabilities as penalized by I.R.C. § 6694;

(3) Engaging in activity subject to penalty under I.R.C. § 6695, including failing to furnish tax returns to customers,

failing to sign returns as the paid tax return preparer, failing to list a tax identification number, and endorsing or otherwise negotiating tax refund checks;

(4) Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know would result in an understatement of another person's tax liability;

(5) Engaging in any other conduct subject to penalty under the Internal Revenue Code or that interferes with the administration and enforcement of the internal revenue laws; and

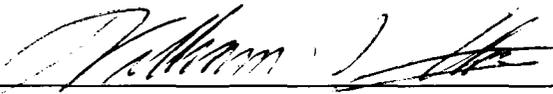
(6) Obtaining, using, or retaining any other person's Social Security number or other federal tax identification number or federal tax return information in any way for any purpose without that person's express written consent.

**IT IS FURTHER ORDERED AND ADJUDGED** that on or before Friday, January 20, 2006, Defendants, at their own expense, shall contact by United States Mail, and if an e-mail address is known, by e-mail, all persons for whom they or Leadership Network Corporation prepared a federal tax return to inform these persons of the Court's findings concerning the falsity of Defendants' filings with the IRS. Defendants shall file with the Clerk of the Court a certification that the aforementioned Notice has been achieved on or before Wednesday, January 25, 2006. The aforementioned Notice

must include a copy of this Preliminary Injunction Order and, for each person, a list of all tax returns and documents that Defendants prepared and filed purportedly on behalf of that person and the date and amount and tax year of all tax refunds obtained, and must include copies of all documents submitted to the IRS purportedly on behalf of those persons.

**IT IS FURTHER ORDERED AND ADJUDGED** that on or before Friday, January 20, 2006, Defendants shall produce to counsel for the United States of America a list that identifies by name, social security number, address, e-mail address, telephone number and tax periods all persons for whom Defendants or Leadership Network Corporation prepared federal tax returns or claims for refund since January 1, 2002. On or before Wednesday, January 25, 2006, Defendants shall file with the Clerk of the Court a certification that said documentation has been so produced.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 22<sup>nd</sup> day of DECEMBER, 2005.

  
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WILLIAM J. ZLOCH  
Chief United States District Judge

Copies furnished:

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For Plaintiff

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