

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
	:	Civil Action No. 3:08-cv-0074 (CFD)
v.	:	
	:	
DEOWRAJ BUDDHU, individually	:	
and D/B/A/ Paradise Consulting, A/K/A	:	
Phoenix Consulting, and	:	
	:	
SUNITA BUDDHU, individually and	:	
D/B/A Paradise Consulting, A/K/A	:	
Phoenix Consulting and D/B/A	:	
Lotus Consulting,	:	
Defendants.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Government alleges that defendant Sunita Buddha and her father, defendant Deowraj Buddha prepared and filed, on behalf of their clients, fraudulent tax returns for the years 2003 through 2007. The Government has moved for a permanent injunction under 26 U.S.C. §§ 7402(a), 7407 and 7408 prohibiting Sunita and Deowraj Buddha from filing tax returns, and for a preliminary injunction prohibiting Sunita Buddha from the same activity.¹ For the reasons stated below, the Court grants the Government's request for a preliminary injunction.

¹ The Government does not seek a preliminary injunction against Deowraj Buddha because he is currently incarcerated on an unrelated state conviction. On May 6, 2008, the Court issued a temporary restraining order ("TRO") enjoining Sunita Buddha from preparing tax returns. Following the hearing on the Government's motion for a preliminary injunction, the Court extended the TRO through May 26, 2008.

I. Findings of Fact²

A. Background

Prior to his incarceration on unrelated state charges in August 2005 and beginning in at least 2003, Deowraj Buddha operated a tax return preparation business under the name Paradise Consulting Services (“Paradise”). Sunita Buddha prepared tax returns for Paradise for the tax years 2004 and 2005. Sunita Buddha took over Paradise and began operating a tax return preparation business under the name of Lotus Consulting (“Lotus”) after her father’s incarceration. Since 2003, the Buddhus have prepared several thousand individual income tax returns.

B. IRS Investigation of the Buddhus

In early 2005, the Internal Revenue Service (IRS) began a tax preparer investigation of Deowraj Buddha after the IRS discovered large deficiencies in returns prepared by Paradise. This investigation was eventually expanded to include Sunita Buddha. The Connecticut office of the IRS has examined 684 of the returns prepared by Paradise or Lotus, approximately 234 of

² The following findings of fact are based on the April 2, 2008 Declaration of Supervisory Tax Specialist Lucille Jessey; Jessey’s May 1, 2008 Declaration; testimony by Jessey, Richard Ferrara (one of the Buddhus former clients), and Diana Leyden (counsel for Ferrara and other former clients of the Buddhus); and the documents filed with the Court by the Buddhus. Neither Sunita nor Deowraj Buddha chose to testify at the evidentiary hearing, or submitted evidence challenging the factual assertions made by Jessey, Ferrara or Leyden (beyond cross examining these witnesses at the evidentiary hearing). In their post-argument brief in opposition to the Government’s motion for a preliminary injunction, the Buddhus refer to an exhibit which was not provided to the Court.

In considering a motion for a preliminary injunction, the Court may rely on affidavits, depositions, and sworn testimony, even when they include hearsay. SEC v. Prater, 289 F. Supp.2d 39, 50 (D. Conn. 2003) (internal citations omitted); see also SEC v. Frank, 388 F.2d 486, 490-91 (2d Cir. 1968); Federal Savings & Loan Ins. Co. v. Dixon, 835 F.2d 554, 558 (5th Cir. 1987).

which were signed by Sunita Buddha.³

In December 2006, Sunita Buddha was interviewed by the Criminal Investigation Division of the IRS, and informed that she was the subject of a criminal investigation. Since then, Sunita Buddha has been interviewed by the Criminal Investigation Division a number of times.

C. Improper Tax Preparer Conduct

1. Improper Schedules A, C and E

In total, the IRS has examined 655 returns prepared by Paradise for tax years 2003 through 2005, and determined that approximately 600 contained false business losses reported on Schedule C.⁴ Returns prepared for other clients contained Schedule C deductions that were inflated, were not permissible deductions under the Internal Revenue Code, or had no basis in fact. Other returns contained false deductions on Schedule E.⁵

The IRS examinations included interviews with taxpayers who used Sunita Buddha's services to prepare their income tax returns. During the interviews, the IRS discovered that many of these taxpayers should not have had a Schedule C included with their tax returns because they were wage earners and were not self-employed in any capacity. During their interviews, many taxpayers indicated that they did not tell the Buddhus that they were self-employed, and did not provide the Buddhus with a factual basis for claiming amounts as either business losses, or

³ The Court notes that it appears Urmila Buddha, the mother of Sunita Buddha and wife of Deowraj Buddha, signed some of these returns on behalf of Sunita Buddha.

⁴ Schedule C is used to report profit or loss from a sole proprietorship.

⁵ Schedule E is used to report supplemental income and loss including income and loss from rental real estate, royalties, partnerships, S corporations, estates, or trusts.

employee business expenses. The Buddhus encouraged some clients to list hobbies as businesses.⁶

After learning of the IRS examinations, Sunita Buddhu began preparing and filing Form 1040X, Amended Individual Income Tax Returns, on behalf of clients whose returns had been examined. In these amended tax returns, Sunita Buddhu eliminated the disallowed Schedule C business losses, and replaced these losses with corresponding amounts for employee business expenses on Schedule A.⁷

To date, the IRS has completed eighteen examinations of returns Sunita Buddhu prepared for the 2006 tax year and determined that all eighteen returns contained false employee business expenses reported on Schedule A. There are currently 126 ongoing examinations of 2006 returns that contain suspect employee business expenses.

2. False Preparer Information

Sunita Buddhu prepared federal income tax returns for her customers listing false preparer identifications numbers.

3. Frivolous Tax Arguments

_____ Sunita Buddhu represented to her clients that the IRS does not have authorization or jurisdiction to conduct examinations of Connecticut residents' tax returns. Sunita Buddhu also prepared letters for her clients to submit to the IRS stating this unfounded position.

⁶ The Buddhus maintain that all information included on returns prepared by them was provided by their clients. However, the Buddhus admit that they "explained to the clients that they are only required to pay Social Security and Medicare tax under Subtitle C and no income tax under Subtitle A, because they do not live and work in a foreign country and they were not non-resident aliens."

⁷ Schedule A is used to itemize deductions, including employee expenses.

D. Recent Activity

_____ During the 2007 federal income tax filing season, Sunita Buddha electronically filed 542 federal income tax returns that she prepared for customers. These returns are currently subject to examination by the IRS.

As recently as March 11, 2008, over a year after she learned that she was the subject of a criminal investigation and almost three months after this case was filed, Sunita Buddha filed a Form 1040X Amended U.S. Individual Tax Return for one of her clients. In the past, Sunita Buddha has filed numerous Forms 1040X, Amended U.S. Individual Tax Returns for clients after April 15 of the calendar year when the deadline for filing a timely federal income tax return has passed.

E. Damage Caused

684 fraudulent returns prepared by the Buddhus resulted in \$3.5 million in tax harm, not including penalties and interest, to the IRS. The Connecticut office of the IRS has spent over 3000 hours to examine these 684 tax returns.

Sunita Buddha's customers are responsible for paying all additional taxes, interest and penalties that are assessed after they have paid her to prepare their tax returns. Some of her clients have had to borrow money or suffered other hardships to pay the additional tax assessments. For example, Ferrara had to borrow against his house to pay his debt to the IRS, including over \$1000 in interest.

II. Conclusions of Law⁸

⁸ The Buddhus argue that the IRS is not authorized to collect taxes on the wage-based income of United States citizens residing in Connecticut. Because it is beyond cavil that the IRS has such authority, the Court will not address each of the Buddhus' arguments on this point,

A. Legal Standard

When an injunction is expressly authorized by statute, the standard preliminary injunction test does not apply. SEC v. Mgmt. Dynamics, Inc., 515 F.2d 801, 808 (2d Cir. 1975) (“As the issuance of an injunction in cases of this nature has statutory sanction, it is of no moment that the plaintiff has failed to show threatened irreparable injury or the like, for it would be enough if the statutory conditions for injunctive relief were made to appear”). Instead, the Court must look to the “statutory conditions for injunctive relief,” and may issue a preliminary injunction if it is clearly established that those conditions are met. Id. at 808.

Sections 7407 and 7408 of Title 26 of the United States Code contain express statutory conditions for issuance of an injunction. United States v. Broccolo, No. 06-cv-2812, 2006 WL 3690648 (S.D.N.Y. Dec. 13, 2006) (applying statutory conditions set forth at 26 U.S.C. § 7407 and 7408). However, “in deciding whether to grant injunctive relief [in such a case], a district court is [still] called upon to assess all those considerations of fairness that have been the traditional concern of equity courts.” SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1102 (2d Cir. 1972).

Section 7402(a) authorizes injunctive relief, but does not provide “statutory conditions.” Accordingly, the traditional equitable considerations must be applied. United States v. Broccolo, No. 06-cv-2812, 2006 WL 3690648.

B. Internal Revenue Code § 7407

Pursuant to 26 U.S.C. § 7407, a district court is authorized to enjoin an income tax return preparer from: (A) engaging in conduct subject to penalty under 26 U.S.C. § § 6694 or 6695; or

although it has considered each argument.

(B) engaging in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, if the Court finds that injunctive relief is appropriate to prevent recurrence of such conduct. 26 U.S.C. § 7407(b)(1).

If a court finds that the preparer's misconduct is continual or repeated, and that a narrower injunction prohibiting only the specific conduct would not be sufficient to prevent a preparer's interference with the proper administration of the internal revenue laws, 26 U.S.C. § 7407 authorizes the court to enjoin the preparer from preparing returns altogether.

Section 6694(a) of the Internal Revenue Code penalizes a return preparer if she understates a customer's liability based on a position for which there is no realistic possibility of being sustained on the merits, if the return preparer knew or reasonably should have known of the unrealistic position and the unrealistic position was not disclosed or was frivolous.

Section 6694(b) of the Internal Revenue Code penalizes a return prepared who wilfully attempts to understate a taxpayer's liability or who understates a taxpayer's tax liability due to reckless or intentional disregard of rules and regulations.

Section 6695(c) of the Internal Revenue Code penalizes a return preparer who fails to provide an identifying number to secure the proper identification of the tax return preparer.

The Government has sufficiently established that Sunita Buddha engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns that understated her customers' tax liabilities based on positions for which there was no realistic possibility of being sustained on the merits. Specifically, there is strong evidence that Sunita Buddha has continually and repeatedly prepared returns that contain false deductions on Schedules A, C and E. Also, Sunita Buddha knew or should have known that the positions taken in the returns she prepared and filed

for customers were unrealistic, frivolous and without a reasonable basis.

The Government has sufficiently established that Sunita Buddha violated 26 U.S.C. § 6694(b) because her understatement of her customers' tax liabilities was willful or due to reckless or intentional disregard of internal revenue rules and regulations.

Sunita Buddha also failed to provide a correct identifying number on the returns that she prepared that would secure her proper identification as the tax return preparer.

Sunita Buddha has engaged in fraudulent or deceptive conduct that substantially interfered with the administration of the internal revenue laws by inflating or fabricating deductions on Schedules A, C and E and by writing letters on behalf of her clients for submission to the Internal Revenue Service that assert that the Internal Revenue Service has no authority to conduct an examination of her clients' tax returns.

Sunita Buddha's continual, repeated violations of 26 U.S.C. §§ 6694 and 6695 and her fraudulent, deceptive conduct fall within the provisions of 26 U.S.C. 7407(b)(1)(A) and (D), and are subject to injunction under § 7407. A narrow injunction prohibiting only specific misconduct would not prevent her continued interference with the proper administration of the internal revenue laws. An injunction preliminarily barring Sunita Buddha from acting as a tax return preparer or providing tax advice to others is warranted.

C. Internal Revenue Code § 7408

Section 7408 of the Internal Revenue Code authorizes a district court to enjoin a person from engaging in conduct subject to penalty under either 26 U.S.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

Section 6701 imposes a penalty on any person who aids or assists in, procures or advises

with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and that if it is so used it would result in an understatement of another person's tax liability.

The Government has presented strong evidence that Sunita Buddha knowingly inflated and fabricated deductions on her customers' federal income tax returns. Sunita Buddha has engaged in conduct that is subject to penalty under § 6701, and an injunction under 26 U.S.C. § 7408 is appropriate to prevent her from engaging in such conduct in the future.

D. Internal Revenue Code § 7402(a)

Section 7402(a) of the Internal Revenue Code authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing the internal revenue laws.

The Court finds the United States has presented persuasive evidence that it, the public, and Sunita Buddha's clients will suffer irreparable harm if she is not preliminarily enjoined. The United States has also presented sufficient evidence to convince the Court that the United States has a strong likelihood of success on the merits. Further, the United States has presented evidence that the public interest will be served by granting this preliminary injunction. While Sunita Buddha will be denied the right to earn a livelihood preparing income tax returns, the harm to her is substantially outweighed by the harm to which her clients are subjected by having fraudulent tax returns prepared in their names. The Court therefore finds a preliminary injunction is also appropriate under 26 U.S.C. § 7402.

III. Conclusion

The Government's motion for a preliminary injunction [Dkt. # 12] is GRANTED. Sunita Buddhu shall be and is hereby precluded from:

1. preparing federal income tax returns, amended federal income tax returns and other related documents and forms for others;
2. representing customers before the Internal Revenue Service;
3. advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return; and
4. from promoting tax-fraud schemes.

Deowraj Buddhu's motions to appear in court for the preliminary injunction hearing [Dkt. ## 30, 31] are DENIED as moot. The Court notes that Deowraj Buddhu was present at and participated in the hearing. The defendants' motion to quash the temporary restraining order against Sunita Buddhu [Dkt. #34] is DENIED. The Government's third motion for a temporary restraining order [Dkt. # 41] is DENIED as moot in light of the preliminary injunction.

SO ORDERED this 5th day of June 2008, at Hartford, Connecticut.

/s Christopher F. Droney
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE