FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 17 2005

at 4 o'clock and 10 min. P M
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)Civil No. CV-05-00262 ACK-BMK
	)
Plaintiff,	)
	) FINDINGS AND RECOMMENDATION
	) TO GRANT PLAINTIFF'S
v.	) MOTION FOR DEFAULT JUDGMENT
	) OF PERMANENT INJUNCTION
	) AGAINST LOU ANN PALERMINI
	) MOSER
LOU ANN PALERMINI MOSER,	)
and CARLA NEWMAN,	)
	)
d/b/a ACCOUNTING SERVICES	)
TRUST.	)
	)
Defendants.	)
	)

FINDINGS AND RECOMMENDATION TO GRANT PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT OF PERMANENT INJUNCTION AGAINST LOU ANN PALERMINI MOSER

THIS CAUSE is before the Court on the request of the United States of America, for a permanent injunction. The Court, having considered the United States' motion for default judgment, Finds that Lou Ann Moser, individually and through Accounting Services Trust (AST), defrauds taxpayers and the United States government with her tax-fraud schemes and the preparation of false income tax returns. Thus, the Court makes the following findings of fact and conclusions of law and Recommends that the following order of permanent injunction be

granted:

FINDINGS OF FACT

1. Moser, individually and through AST, organizes and sells tax-fraud schemes and prepares federal income tax returns claiming inflated or fabricated deductions in order to generate unlawful tax refunds for her customers.

2. Moser holds herself out as a certified public accountant and a tax attorney. Moser is neither licensed to practice law in Hawaii, nor licensed as a certified public accountant in Hawaii.

3. Moser prepares individual and S-Corporation federal- income-tax returns for her customers that falsely claim non-deductible personal expenses as deductible business expenses.

4. Moser prepares these returns based on one of two tax fraud schemes: (1) Fabrication of deductions for military expenses, or (2)the use of S-Corporations as a means to improperly claim tax deductions for non-deductible personal expenses.

5. Moser often does not sign returns she prepares. She uses TurboTax software for individuals to prepare the returns and has her assistant electronically file the returns falsely indicating that they are "self-prepared" returns.

6. Moser provides customers with "copies" of their returns. But, the "copies" provided to the customers are different from the returns she electronically

files on their behalf. The electronically filed returns reflect larger refunds than the "copies" Moser provides to the customers.

7. Moser's customers pay approximately $150 dollars for each return filed, plus a $40 electronic filing fee.

The Military Deductions Scheme

8. Moser claims that she is an expert in deductions for military expenses and actively markets her return-preparation business to military personnel. In her sales pitches to enlisted personnel she mentions the names of customers who are officers.

9. Moser promotes a tax-fraud scheme specifically targeted at her military customers. This scheme involves falsely advising military customers that they are entitled to federal-income-tax deductions not available to others, and preparing tax returns that unlawfully claim the improper deductions.

10. Moser falsely advises customers that because they are in the military they are entitled to take the following (amongst other) "standard" deductions for personal expenses:

- $416 for haircuts
- The cost of a "basic plan" for a cell phone
- $80 for Battle Dress Uniforms
- $80 for running shoes
- $600 for Roadrunner internet service; $340 for AOL internet service
- $32 for each day spent "in the field"

- $88 dollars per day for each day spent in schools such as ranger school
- $100 for CamelBak hydration gear
- $100 for Gerber/Leatherman knives
- $25 for canteens
- $120 for Kiwi boot and shoe polish
- $100 for sleeping bags
- $15 and up for sunglasses

11. Moser further advises her military customers that they do not need receipts to claim these purported deductions because of the supposed availability of the "standard" deduction amounts, as listed above.

12. Moser gives each military customer a worksheet that inquires about items the customer has purchased or used over the past year, which specifically includes, *inter alia*, the items listed in paragraph 11 above. This worksheet also lists the supposed "standard deduction" amounts for those items, as listed above.

13. Moser uses the customer's responses to the worksheet to prepare a federal-income-tax return on their behalf.

14. The federal-income-tax returns Moser prepares for military customers include improper deductions for items checked off on the worksheet.

15. Moser's customers are not entitled to tax deductions for these items because they are non-deductible personal expenses, or because the military has provided the item(s) to the soldier or officer, and thus no actual expense was incurred.

The S-Corporation Scheme

16. Moser falsely tells non-military customers they can use S-Corporations to claim non-deductible personal expenses as deductible business expenses. She tells these customers that they can use an S-Corporation to deduct their home mortgage payments, homeowner's insurance, and residential utilities as business expenses.

17. Moser told one customer that he "could give money to each of his four sons and take it as a business deduction" by using Moser's S-Corporation scheme. She told this customer that the "loss" for these payments to his sons would flow through to his income tax return.

18. Moser tells these customers that she will set up an S-Corporation for them. Moser does set up the corporations and file S-Corporation tax returns for some of these customers. But some customers found that Moser had not set up corporations, or filed S-Corporation returns, as she had said she would.

19. Moser also assisted at least one customer who owned a business in evading payment of federal employment taxes. This customer and Moser together informed the customer's managers that they would now be S-Corporations instead of employees. Moser set up S-Corporations for them, and the customer stopped withholding and paying over federal employment taxes.

Additional interference with federal-tax-law enforcement

20. Moser advises her customers to obstruct and delay IRS audits. Moser told a customer to delay an already scheduled audit to a date after her husband's military deployment, and then falsely tell the IRS that she had receipts to substantiate her deductions, but that the receipts were with her husband in Afghanistan. Moser told another customer to schedule an IRS audit as far in the future as possible, and then, on the day of the appointment, call the revenue agent, falsely claim that the customer's children were sick, and reschedule again as far in the future as possible.

21. Moser has taken steps to hide her activities from the Government. In an attempt to stop the IRS from identifying and auditing her customers, she has illegally stopped signing the returns she prepares for others as the return preparer. Moser uses TurboTax for individuals to prepare the returns, and has her assistant electronically file them, falsely indicating they were "self-prepared" by the customer.

22. Moser has sold her schemes to hundreds of customers, and has filed hundreds of returns in conjunction with the schemes. The IRS estimates the current tax loss to the Treasury as a result of these tax fraud schemes at over $4 million for the tax year 2003 alone.

30. Moser continues to promote these tax-fraud schemes.

Conclusions of Law

31. Congress views injunctions as the most effective way to enforce the law against promoters of such abusive tax schemes.[1] By obtaining an injunction against the promoter or return preparer, the Government can avoid a drain on IRS resources, a multiplicity of suits on the same issue against individual taxpayers, and piecemeal litigation.[2] Otherwise, the Government would be unable to effectively combat the abusive position and taxpayers would be encouraged to violate the tax laws because of "the doubtless accurate belief that the IRS would be unable to detect and pursue every taxpayer in violation[.]"[3]

32. Where an injunction is expressly authorized by statute, the Court should look to whether the Government has satisfied the requirements for a statutory injunction.[4] The United States need not show irreparable harm for a statutory injunction to issue because such harm is presumed by the "very fact that the statute

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[1] S.Rep. No. 97-494(I), at 268 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1016.

[2] *United States v. Buttorff,* 761 F.2d 1056, 1064 (5th Cir. 1985).

[3] *Id.*

[4] *See, e.g., United States v. Estate Preservation Servs.,* 202 F.3d 1093, 1098 (9th Cir. 2000). *See also United States v. Buttorff,* 761 F.2d 1056, 1063 (5th Cir. 1985); *Kemp v. Peterson,* 940 F.2d 110, 112-13 (4th Cir. 1991); *United States v. Kaun,* 827 F.2d 1144, 1148 (7th Cir. 1987).

has been violated."[5] In enacting Internal Revenue Code §§ 7407 and 7408, Congress has already determined that existing legal remedies are insufficient.[6]

33. In addition, the Government represents the public interest. Consequently, the Court's equitable powers "*assume an even broader and more flexible character* than when only a private controversy is at stake."[7]

34. The United States is entitled to a permanent injunction under I.R.C. §§ 7407, 7408, and 7402(a). A permanent injunction is appropriate under I.R.C. §§ 7407, 7408, and 7402(a) to prevent Moser and anyone acting in concert with her from engaging in this illegal conduct. Each of these statutes provides an independent basis for entering the requested injunction.

35. A permanent injunction against Moser is appropriate under I.R.C. § 7407 because she is a paid tax-return preparer who has engaged in activity subject to penalty under I.R.C. §§ 6694 and 6695.

36. A permanent injunction is appropriate under I.R.C. § 7408 because Moser has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701.

37. Finally, a permanent injunction is also appropriate under I.R.C. §

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[5] *United States v. Hayes Int'l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969).

[6] *See Id.* at 1063-64.

[7] *FSLIC v. Dixon,* 835 F.2d 554, 562 (5th Cir. 1987) (*quoting Porter v. Warner Holding Co.,* 328 U.S. 395, 398 (1946)) (emphasis in original)).

7402(a), because an injunction prohibiting Moser from filing false tax returns, prohibiting her from promoting the availability of nonexistent tax deductions, and prohibiting her from instructing people to delay the IRS examination process through deceit and trickery is necessary and appropriate for the enforcement of the internal revenue laws.

Moser Should Be Enjoined under I.R.C. § 7407

38. A permanent injunction against Moser is appropriate under I.R.C. § 7407 because she is a paid tax-return preparer who has engaged in activity subject to penalty under I.R.C. §§ 6694 and 6695. Moser violates I.R.C. § 6694 by preparing tax returns for compensation based on the unrealistic and frivolous position that taxpayers are entitled to tax deductions for personal and nonexistent expenses. Moser violates I.R.C. § 6695 by failing to furnish customers with copies of the filed returns, by failing to sign the returns they prepare and file, and by failing to provide an identifying number as required by law.

39. Finally, an injunction under § 7407 is necessary to prevent recurrence of Moser's illegal conduct. When addressing likelihood of recurrence, courts, including the Ninth Circuit Court of Appeals, have looked to the following factors: 1) the gravity of the harm caused by the offense; 2) the extent of the defendant's participation and his degree of scienter; 3) the isolated or recurrent nature of the

infraction; 4) the defendant's recognition or non-recognition of her own culpability; and 5) the likelihood that the defendant's customary business activities might again involve her in such transactions.[8]

40. These factors weigh entirely in favor of granting an injunction. First, Moser's activities have caused the Government substantial harm. The IRS estimates the current tax loss to the Treasury as a result of Moser's schemes at over $4 million for tax year 2003 alone. IRS employees have had to devote substantial resources attempting to locate and process the fraudulent returns that Moser prepares, to take steps to prevent erroneous tax refunds, to recover erroneous refunds that are made, and to assess and collect proper tax liabilities and penalties. Moreover, Moser's activities expose her customers to IRS examinations and potential penalties and interest. Second, Moser knowingly prepared or assisted in preparing the returns containing fictitious and inflated tax deductions; knowingly filed returns she had not signed and that did not include an identifying number; and knowingly gave supposed "copies" of returns to their customers that did not match the returns actually filed on their behalf. Third, Moser's conduct is not isolated, Moser herself claims to have prepared over 600 returns. Fourth, Moser is culpable.

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[8] *United States v. Schiff,* 379 F.3d 621, 625 (9th Cir. 2004); *United States v. Raymond,* 228 F.3d 804, 813 (7th Cir. 2000), *cert. denied,* 533 U.S. 902 (2001); *Kaun,* 827 F.2d at 1149-50. *See also SEC v. Carriba Air, Inc.,* 681 F.2d 1318, 1322 (11th Cir. 1982) (action by SEC to enjoin alleged violations of securities laws).

Finally, it is highly likely that Moser's customary business activities will involve her in the illegal conduct—her customary business is tax return preparation.

Moser Should Be Enjoined Under I.R.C. § 7408.

40. A permanent injunction against Moser is appropriate under I.R.C. § 7408 because she has engaged in activity subject to penalty under I.R.C. §§ 6700 and 6701. Moser violates I.R.C. § 6700 by promoting the military deductions scheme and by promoting the S-corporation scheme. Moser violates I.R.C. § 6701 by preparing and filing fraudulent returns based on the schemes.

41. The facts establish that Moser violates § 6700. Moser promotes her two tax-fraud schemes. In the promotion and furtherance of those schemes, she makes false statements to her customers regarding the availability of "standard deductions" for expenses incurred in connection with military duty, and false statements regarding the availability of deductions for personal expenses through the use of S-corporations. Moser knew that her customers were not entitled to claim deductions for these expenses.

42. The facts establish that Moser violates § 6701. Moser is in the business of preparing income-tax-returns with improper and often fabricated deductions. These tax returns are used in connection with determining a taxpayer's tax liability–a material matter.

43. Knowledge of a potential understatement is required for imposition of a Section 6701 penalty.[9] That knowledge may be proved by inferences.[10] Moser attempts to evade detection by the IRS by failing to sign or provide identifying numbers on the returns they prepare. Additionally, when confronted by customers under IRS audit, Moser tells them to lie to IRS personnel in order to delay and hopefully fully evade the audit and eventual collection. This evidence shows that she knew that there was no legal basis for the amounts claimed as refunds on customers' tax returns.

44. Finally, as noted above in the discussion of Section 7407, an injunction is appropriate relief in this case.

The United States Is Entitled to an Injunction under I.R.C. § 7402(a).

45. Section 7402(a) of the Internal Revenue Code authorizes injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws."

46. This provision, in and of itself, authorizes the United States to seek an injunction against those who interfere with the enforcement of tax laws.[11] Section

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[9] *Mattingly v. United States,* 924 F.2d 785, 791 (8th Cir. 1991).

[10] *See Nielsen v. United States,* 976 F.2d 951, 956 (5th Cir. 1992).

[11] *United States v. Ernst & Whinney,* 735 F.2d 1296, 1300-01 (11th Cir. 1984), *cert. denied,* 470 U.S. 1050 (1985); *United States v. Franchi,* 756 F.Supp. 889, 890 (W.D. Pa. 1991) (citing legislative history).

7402(a), however, goes beyond merely codifying a district court's general equity power to grant injunctions. This provision gives the district courts a full range of powerful tools to ensure the enforcement of both the spirit and the letter of the internal revenue laws. As the First Circuit has noted, "[i]t would be difficult to find language more clearly manifesting a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws."[12]

47. Moser, through the conduct described above, has engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws, thereby making a permanent injunction pursuant to section 7402 appropriate. Moser has prepared fraudulent tax returns, attempted to elude detection by failing to sign and failing to provide identifying numbers on the fraudulent tax returns she prepares, misrepresented herself to be an attorney and a certified public accountant, and has encouraged her customers to unnecessarily delay their audits by lying to IRS personnel.

48. Unless enjoined by this Court Moser is likely to continue to engage in such conduct.

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[12] *Brody v. United States,* 243 F.2d 378, 384 (1st Cir.), *cert. denied,* 354 U.S. 923 (1957). *Accord Ernst & Whinney,* 735 F.2d at 1300.

49. Moser's conduct causes irreparable injury to the United States for which the United States has no adequate remedy at law. Moser's activities have in 2003 alone caused more than $4 million in losses to the Treasury, and losses will continue to accrue until they are enjoined. Additionally, Moser's unlawful activities create a substantial administrative burden on the IRS.

PERMANENT INJUNCTION

As final judgment in this case, the Court Finds and Recommends as follows:

A. Moser, individually, and doing business as or through any entity, and anyone acting in concert with her, is hereby enjoined from, directly or indirectly:

(a) Organizing, promoting or selling any shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(b) Engaging in activity subject to penalty under I.R.C. § 6700, including making false statements to her customers regarding the availability of "standard deductions" for expenses incurred in connection with military duty, and false statements regarding the availability of deductions for personal expenses through the use of S-corporations;

(c) Engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a document related to a material matter under the internal revenue laws that includes a position she knows will result in an understatement of tax liability;

(d) Engaging in activity subject to penalty under I.R.C. § 6694, including preparing federal tax returns that willfully or

recklessly understate federal-income-tax liability;

(e) Engaging in activity subject to penalty under I.R.C. § 6695, including preparing tax returns for others and failing to sign them as the return preparer;

(f) Engaging in any activity subject to penalty under any provision of the Internal Revenue Code;

(g) Making false representations that:

(1) persons may use S-Corporations to convert personal expenses to business expenses, thereby reducing or eliminating their income tax liability;

(2) Military personnel are entitled to deductions for personal expenses incurred as a result of being employed by the military;

(3) Military personnel are entitled to deductions for expenses incurred as a result of being employed by the military that were reimbursed by the military.

(h) Selling or organizing the set up of any type of corporation, trust, limited liability company, or arrangement of business entities which advocates or facilitates non-compliance with the federal tax laws;

(i) Preparing or assisting in the preparation of federal tax returns for any other person or entity;

(j) Advising or assisting others to delay and/or obstruct IRS investigations and examinations; and

(k) Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

B. Moser shall, within 15 days of the entry of this order, provide to the United States the names, addresses, e-mail addresses, social security numbers or tax identification numbers, and telephone numbers of all persons for whom she has prepared federal-income-tax returns since January 2000;

C. Moser shall contact, by means of a letter to be approved by the United States, all persons for whom she prepared federal- income-tax returns, and inform them of the Court's findings concerning the falsity of her representations, attaching a copy of this injunction. Moser shall file with the Court, within 15 days of the entry of this injunction, a certification that she has done so;

D. Moser is prohibited from representing herself to be an attorney or an accountant;

E. The United States may engage in post-judgment discovery to ensure compliance with the permanent injunction;

F. This Court shall retain jurisdiction over this action for purpose of implementing and enforcing this permanent injunction and all additional decrees and orders necessary and appropriate to the public interest.

IT IS SO FOUND AND RECOMMENDED.

Dated: Honolulu, Hawaii, October 17, 2005.

Barry M. Kurren
United States Magistrate Judge