

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FARAI MUSHANINGA, individually and)
 doing business as FW HAWK SERVICES)
 and FW HAWK TAXES,)
)
 Defendant.)
 _____)

Case Number: 3:07-0724-N

DEFAULT JUDGMENT OF PERMANENT INJUNCTION

Before the Court is the United States’ Motion for Default Judgment of Permanent Injunction and Memorandum in support thereof. The Court makes the following findings of fact and conclusions of law and enters this permanent injunction against defendant Farai Mushaninga, individually and doing business as FW Hawk Services, and FW Hawk Taxes.

Standards for Default Judgment of Permanent Injunction

The entry of default judgment is committed to the sound discretion of this Court. *See e.g., Mason v. Lister*, 562 F.2d 343, 344 (5th Cir. 1977). “If the court determines that defendant is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 2688 (3d ed. 1998).

In this action, the United States is seeking injunctive relief under 26 U.S.C. (I.R.C.) §§ 7402, 7407, and 7408. Because I.R.C. §§ 7407 and 7408 set forth specific criteria for injunctive relief, the United States need only meet those statutory criteria, without reference to traditional

equitable factors, for this Court to issue an injunction under those sections. *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

To obtain an injunction under I.R.C. § 7407, the United States may show, among other things, that the defendant (1) engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct. To obtain an injunction under I.R.C. § 7407 preventing defendant from acting as an income-tax-return preparer, the United States must additionally show that defendant engaged in this conduct continually or repeatedly and that a narrower injunction would be insufficient to prevent defendant from interfering with the proper administration of the internal revenue laws. *United States v. Bailey*, 789 F. Supp. 788, 816 (N.D. Tex. 1992). To obtain an injunction under I.R.C. § 7408, the United States may show, among other things, that the defendant engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct. Finally, to obtain an injunction under I.R.C. § 7402(a), the United States must show that an injunction is necessary or appropriate to enforce the internal revenue laws.

Findings of Fact

Defendant failed to timely answer or otherwise respond to the complaint and the Clerk entered default on June 19, 2007. Taking the allegations in the complaint as true, the Court additionally finds as follows:

1. Farai Mushaniga was served with a summons and a copy of the complaint, by leaving a copy of the complaint with, his wife Lynn Mushaniga, a person of suitable age and discretion then residing in his usual place of abode on May 25, 2007.
2. He did not file his answer or otherwise move within twenty days and the United States requested that the Clerk enter default.
3. The Clerk of the Court entered a default pursuant to Fed. R. Civ. P. 55(a) against Mushaniga on June 18, 2007.
4. Mushaniga prepares fraudulent federal tax returns for customers.
5. Farai Mushaniga is a paid unenrolled federal tax preparer operating in Dallas, Collin and Denton counties in Texas.
6. Mushaniga is a federal income tax return preparer engaged in the unlawful promotion of a tax scheme in which he gives customers false and fraudulent tax advice regarding the Fuel Tax Credit and prepares fraudulent tax returns for customers to implement the scheme.
7. Mushaniga prepares customers' federal income tax returns consistent with his scheme by improperly claiming fraudulent IRC § 6421 Fuel Tax Credits.
8. The IRS has identified at least 461 federal tax returns prepared by Mushaniga for customers in 2006.
9. In addition, the IRS has identified 746 returns that Mushaniga has electronically filed since January 1, 2007.
10. The IRS has identified more than \$900,000 in fraudulent Fuel Tax Credits claimed on returns Mushaniga prepared.

12. Mushaniga has prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels."

13. The IRS has determined that 89% of the 461 federal tax returns Mushaniga prepared for customers in 2006 claimed false Fuel Tax Credits.

14. Mushaniga prepares Forms 4136 for his customers falsely stating that the customer has used gasoline for off-highway business purposes.

15. Mushaniga's fraudulent federal tax return preparation is not limited to preparing returns with bogus Fuel Tax Credits.

16. Mushaniga falsely claims head-of-household filing status, the Lifetime Learning Credit, and the Hope Credit on customers' returns.

17. Mushaniga also prepares federal income tax returns that claim false earned income credits, child tax credits, and schedule A and C deductions.

Conclusions of Law

Based on the above findings of fact, the Court finds that Defendant has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695, and 6701 and in fraudulent and deceptive conduct that interfered with the administration of the internal revenue laws. Moreover, the Court finds that injunctive relief is appropriate to prevent the recurrence of such conduct and that a narrow injunction only prohibiting Defendant from engaging in such conduct would be insufficient to prevent his further interference with the administration of the internal revenue laws. The Court further finds that a permanent injunction is necessary and appropriate in this instance to enforce the internal revenue laws.

Order

Based on the above findings of fact and conclusions of law, the Court ORDERS that:

A. Pursuant to I.R.C. §§ 7402(a) and 7407, Mushaniga is permanently enjoined from preparing or assisting in the preparation of federal income tax returns on behalf of any person other than himself;

B. Pursuant to I.R.C. §§ 7402(a) and 7408, Mushaniga, individually and doing business as FW Hawk Services, and FW Hawk Taxes or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, are permanently enjoined from directly or indirectly:

- A. acting as a federal income tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- B. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other tax related documents or tax forms for any person or entity other than himself;
- C. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
- D. understating customers' liabilities as subject to penalty under IRC § 6694;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, 6701, or any other penalty provision of the IRC; and
- F. engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

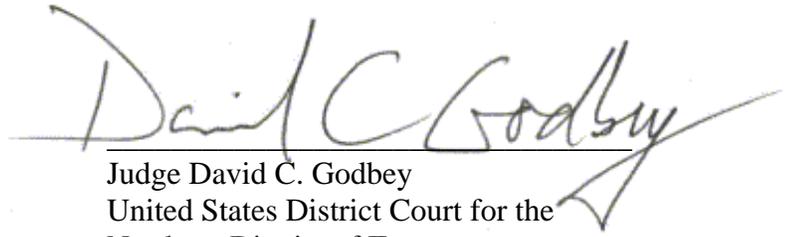
C. Pursuant to I.R.C. § 7402, that defendant, at his own expense and as a corrective measure, be required to provide a copy of the complaint and default judgment of permanent injunction order to persons or entities for whom he has prepared a federal tax return or form since January 1, 2004, within eleven days of entry of the injunction;

D. Pursuant to I.R.C. § 7402, that defendant be required within eleven days of entry of the injunction, to file with the Court and serve upon plaintiff's counsel a complete list of persons or entities (including names, addresses, phone numbers, e-mail addresses, and social security numbers or employer identification numbers) who have had returns prepared by, or sought or received any tax advice from defendant since January 1, 2004;

E. That Mushaniga shall complete the requirements listed *supra* in paragraphs C and D within eleven days of this Default Judgment of Permanent Injunction and file with the Court a certificate of compliance with those requirements, along with evidence of compliance, within twelve days of this Permanent Injunction; and

F. That the United States be permitted to engage in post-injunction discovery to monitor defendant's compliance with this and any other order entered by this Court.

Signed July 3, 2007.


Judge David C. Godbey
United States District Court for the
Northern District of Texas