

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

UNITED STATES OF AMERICA,

Plaintiff,

v.

SUSAN ANN SPERL

aka SUSAN ANN BOYER

aka SUSAN ANN MATTHEWS

aka SUSAN ANN WHITE

aka SUSAN ANN HECK

aka SUSAN MATTHEWS SPERL;

RANDALL E. THOMPSON; and

SUSANSTAX, INC.,

Defendants.

) Case No. 3 06 - 01754

) Judge

) Magistrate Judge

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The plaintiff, the United States of America, complains and alleges against defendants

Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., as follows:

1. This is a civil action brought by the United States under sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("I.R.C.") to restrain and enjoin defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., and all those in active concert or participation with them, from directly or indirectly acting as federal tax return preparers, representing any person before the Internal Revenue Service, organizing or selling the SusanTax Membership Program, or engaging in any conduct subject to any penalty under the Internal Revenue Code or any other conduct that interferes with the administration and enforcement of the internal revenue laws.

Jurisdiction

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, under the provisions of I.R.C. §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and I.R.C. §§ 7402(a), 7407, and 7408.

Defendants

4. Defendant Susan Ann Sperl resides in Kingston Springs, Tennessee, within this judicial district.

5. Sperl has at times called herself Susan Ann Boyer, Susan Ann Matthews, Susan Ann White, Susan Ann Heck, and Susan Matthews Sperl.

6. Defendant Randall E. Thompson resides in Dickson, Tennessee, within this judicial district.

7. On information and belief, Thompson is Sperl's son.

8. Sperl incorporated defendant Susanstax, Inc., in Chatham County, Tennessee, within this judicial district. Sperl registered it with the Tennessee Secretary of State in 2003 and serves as its registered agent.

Defendants' Preparation of Federal Income Tax Returns

9. Sperl and Thompson, individually and/or through defendant Susanstax, Inc., prepare federal income tax returns for others for compensation.

10. Sperl began her tax-preparation business around 1998.

11. Defendants hold themselves out as experts on federal-income-tax law with a focus on tax benefits associated with home-based businesses.

12. Defendants prepare tax returns for customers that falsely or fraudulently claim deductions for business expenses related to customers' purported home-based businesses.

13. Defendants know or should know that many of their customers do not operate a home-based business with the required profit motive or that the claimed deductions relate to non-deductible personal expenses and not to any income-producing activity. Defendants know or should know this because they treat customers' hobbies as business activities or enroll customers into direct-marketing businesses that the customers do not pursue.

14. In filing returns with the IRS, Sperl has improperly used an electronic filing identification number issued by the IRS to another person.

15. Defendants and subordinates under their direction prepared a total of more than 1,000 federal income tax returns for tax years 2002, 2003, and 2004 for customers in at least 22 states. This total included at least 300 returns for 2004, 464 returns for 2003, and 327 returns for 2002.

16. For tax years 2002 and 2003, 648 of the returns defendants and their subordinates prepared included business income or expenses on a Schedule C.

17. The IRS has thus far examined 68 of these 648 returns. All 68 returns contained understatements of tax, primarily due to falsely or fraudulently claimed home-based business expenses and depreciation deductions. The IRS also determined that these 68 returns contained numerous other false statements, including incorrect filing statuses, false or fraudulent exemptions, and false or fraudulent claims for child tax credits and earned income tax credits.

18. Defendants have a large number of customers who reside in or near Temecula, California, home to the Pechanga Band of Luiseño Indians, the Pechanga Reservation, and the Pechanga Resort and Casino.

19. Every year, defendants travel to California and rent hotel rooms or private residences on or near the Pechanga Reservation to prepare returns for members of the Pechanga Band and other California customers.

20. Defendants target the Pechanga Band for their scam because tribal members have large amounts of miscellaneous income derived from the reservation's casino.

21. Defendants exploit the inexperience of the members of the Pechanga Band in tax matters by charging large fees to provide members false and fraudulent tax advice and return preparation.

SusanTax Membership Program

22. In addition to their return preparation, defendants created and sell the SusanTax Membership Program ("the Program"), which they describe as a "simplified one book tax accounting system" to support owners of purported home-based business.

23. For an initial Program fee of \$125 paid to the defendants, customers receive a daily record-keeping book, audio cassette, and computer software. Customers also pay monthly fees of \$24 to remain in the Program and receive a monthly newsletter that contains tax tips and advertises defendants' return-preparation business. Defendants published the newsletter as early as September of 2000.

24. Defendants' marketing materials for the Program solicit customers by falsely claiming that they can "convert [their] non deductible to deductibles" and create a large "paper

loss” that will reduce customers’ overall tax liability. Examples of expenses that the defendants falsely tell customers are deductible include the initial Program membership fee, monthly Program dues, mileage based on driving a car 30,000 miles, furniture, equipment, and telephones.

25. Defendants falsely tell customers they will “[l]earn how to legally deduct the money you are *already* spending in your home and for your children.” Defendants falsely advise customers that they can claim deductions for amounts purportedly paid to their children, and recommend that customers claim a deduction for such a purported payment to each child in an amount equal to what the child can receive without incurring income-tax liability. Such payments, even if made, are non-deductible.

26. Defendants advertised the Program and its purported benefits on the Internet at susantax.com as early as May 2000. On information and belief, defendants discontinued operation of the website after they learned of the IRS investigation of their activities.

27. Defendants also promote the Program at “tax seminars” around the country. They advertised such seminars in Tulsa, Oklahoma (March 2004, March 2003); Temecula, California (Spring 2004, February 2003, June 2002); Greensboro, North Carolina (August 2003); Greenville, Tennessee (January 2001); and Orlando, Florida (October 2000).

28. Defendants’ promotional materials fail to state that a home-based business must have a business purpose and the intent to make a profit, and that business expenses must be necessary and related to the business purpose.

29. Defendants also use the Program to solicit customers for their return-preparation business and offer Program members a discounted rate for return preparation.

Sperl's Refusal to Meet with the IRS

30. In 2004, The IRS contacted Sperl to notify her that the IRS had begun an investigation to determine whether she should be enjoined and/or penalized for her activities, and requested to meet with her on December 14, 2004.

31. The purpose of the meeting was to allow Sperl an opportunity to present facts and legal argument as to why penalties should not be assessed against her pursuant to I.R.C. §§ 6694, 6695, 6700, and 6701 and why an injunction should not be sought against her pursuant to I.R.C. §§ 7402, 7407, and 7408.

32. Sperl refused to meet with the IRS at that time and has not provided the IRS with anything supporting defendants' position.

Harm Caused by Defendants

33. As a result of the false and fraudulent returns that defendants prepared, the IRS has erroneously issued refunds. The IRS estimates that the returns defendants prepared in 2002 and 2003 understated customers' tax liability by \$4 million.

34. In addition to harm caused by erroneous refunds made and by the improper reporting and payment of customers' taxes, the United States is also harmed because the IRS must devote significant resources to investigate the defendants' fraud and to determine, assess, and collect additional taxes, penalties, and interest from defendants' customers.

35. The United States is also harmed by lost tax revenue from returns filed by members of the SusanTax Membership Program who rely on defendants' misleading and fraudulent statements.

36. The United States may never be able to identify and recover all of the lost tax revenue caused by defendants' misconduct.

37. Defendants' customers are also harmed because they must repay the erroneous refunds received, pay additional taxes, interest, and penalties, and may be subject to criminal prosecution.

Count I
Injunction under I.R.C. § 7407 for violation of I.R.C. § 6694

38. The United States incorporates by reference the allegations in paragraphs 1 through 37.

39. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin an income tax preparer from engaging in conduct subject to penalty under I.R.C. § 6694 (penalizing tax return preparers who submit a return that contains an understatement of liability based upon a position for which there was not a realistic possibility of being sustained) or engaging in any other 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 the recurrence of such conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a federal-income-tax-return preparer.

40. Defendants have continually and repeatedly asserted positions that they knew or reasonably should have known were unrealistic and frivolous under I.R.C. § 6694.

41. Sperl has engaged in additional fraudulent and deceptive conduct by using an electronic filing number issued by the IRS to another person.

42. Defendants' actions, as described above, constitute conduct subject to penalty under I.R.C. § 7407(b)(1)(A) and (D), for which defendants may be enjoined under I.R.C. § 7407.

43. If not enjoined, defendants are likely to continue to prepare tax returns that include false or fraudulent statements regarding the allowability of deductions.

Count II
Injunction under I.R.C. § 7408 for violation of I.R.C. §§ 6700 and 6701

44. The United States incorporates by reference the allegations in paragraphs 1 through 43.

45. I.R.C. § 7408 authorizes a court to enjoin persons engaging in any conduct subject to penalty under I.R.C. §§ 6700 or 6701 from engaging in such conduct or any conduct subject to penalty under the Internal Revenue Code, if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

46. I.R.C. § 6700 imposes a penalty on any person who participates in the organization or sale of any plan or arrangement and, in connection therewith, makes a statement with respect to the allowability of any deduction or credit or to the securing of any other tax benefit that the person knows or has reason to know is false or fraudulent with respect to any material matter.

47. Defendants participate in the organization and sale of the SusanTax Membership Program. The Program consists of a book, audio cassette, computer software, and newsletter.

48. The statements in defendants' Program materials that the Program can "convert" personal expenses to business expenses, and that the Program legally permits customers to

deduct the money they are already spending in their home and for their children, are false or fraudulent statements concerning the securing of a tax benefit and have a substantial impact on the decision-making process of a reasonably prudent person.

49. Defendants know or have reason to know that business expenses may only be deducted by taxpayers who operate a business with the required profit motive and when the deductions relate to income-producing activities. They therefore know or have reason to know that the Program materials contain false or fraudulent statements about material matters under the internal revenue laws.

50. I.R.C. § 6701 imposes a penalty on any person who prepares or assists in the preparation of a return, affidavit, or other document that the person knows or has reason to believe will be used in connection with any material matter arising under the internal revenue laws, and that the person knows would result in an understatement of tax liability.

51. Defendants prepare federal income tax returns and other documents for their customers that are filed with the IRS. They therefore know or have reason to believe that the returns they prepared would be used in connection with material matters arising under the internal revenue laws.

52. Defendants know that the returns and other documents they prepare will result in understatements of their customers' tax liabilities, because defendants prepare returns for their customers that contain deductions for business expenses that defendants know do not meet the requirements for classification as properly-deductible business expenses.

53. If they are not enjoined, defendants are likely to continue to sell their Program and prepare returns understating their customers' tax liabilities.

Count III
Injunction under I.R.C. § 7402(a) for unlawful
interference with the enforcement of the internal revenue laws

54. The United States incorporates by reference the allegations of paragraphs 1 through 53.

55. Section 7402 of the Internal Revenue Code authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

56. Defendants, through their actions as described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

57. The federal income tax returns that defendants prepare for their customers improperly and illegally deduct non-deductible expenses and, thus, understate their customers' federal income tax liabilities.

58. If defendants are not enjoined from engaging in fraudulent and deceptive conduct, such as preparing false or fraudulent tax returns, the United States will suffer irreparable injury from revenue losses caused by defendants.

59. The United States will suffer irreparable injury if defendants are not enjoined. While defendants may suffer harm from being barred from preparing tax returns, such a bar is fully warranted in light of the strong evidence of defendants continual and repeated misconduct.

60. The public interest would be advanced by enjoining defendants because an injunction, backed by the Court's contempt powers if needed, will stop their illegal conduct and the harm their conduct is causing to the their customers and to the United States Treasury.

61. If defendants are not enjoined, they are likely to continue to interfere with the enforcement of the internal revenue laws.

WHEREFORE, the United States of America, respectfully prays for the following relief:

A. That the Court find that defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and have continually and repeatedly engaged in other fraudulent or deceptive conduct substantially interfering with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient, such that they should be enjoined under I.R.C. § 7407 from acting as federal-income-tax preparers;

B. That the Court find that defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., have engaged in conduct that interferes with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct under the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court enter a permanent injunction under I.R.C. §§ 7402(a), 7407, and 7408 prohibiting defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., and all those in active concert or participation with them from directly or indirectly acting as federal tax return preparers, representing any person before the Internal Revenue Service, organizing or selling the SusanTax Membership Program, and engaging in any conduct subject to any penalty under the Internal Revenue Code or any other conduct that interferes with the administration and enforcement of the internal revenue laws.

E. That the Court issue an order requiring defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., to contact within fifteen days by United States Mail and, if an e-mail address is known, by e-mail, all persons who have been members of the SusanTax Membership Program at any time since January 1, 2003, and all persons or entities for whom they prepared a federal tax return or claim for refund since January 1, 2003, to inform them of the Court's findings concerning the falsity of the defendants' prior representations and to enclose a copy of the permanent injunction against them;

F. That the Court issue an order requiring defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., to produce to counsel for the United States within fifteen days a list that identifies by name, social security number, address, e-mail address, and telephone number all persons who have been members of the SusanTax Membership Program at any time since January 1, 2003, and, along with the relevant tax period(s), all persons or entities for whom they prepared a federal tax return or claim for refund since January 1, 2003, and to file with the Court, within twenty days of the date of the order, a certification that they have done so;

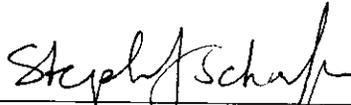
G. That the Court retain jurisdiction over defendants Susan Ann Sperl, Randall E. Thompson, and Susanstax, Inc., and over this action for the purpose of enforcing any permanent injunction entered against defendants;

H. That the United States be entitled to conduct discovery for the purpose of monitoring defendants' compliance with the terms of any permanent injunction entered against them; and

I. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

DATED this 27th day of February 2006.

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