IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 8:04-CV-339-T-17TGW
	)	
DAVID MARVIN SWANSON,	)	
d/b/a DYNAMIC MONETARY STRATEGIES,	)	
a purported trust,	)	
	)	
Defendant.	)	

UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

The United States respectfully moves for a preliminary injunction under Internal Revenue Code (26 U.S.C.) (I.R.C.) §§ 7402 and 7408 against defendant David Marvin Swanson, individually and doing business as Dynamic Monetary Strategies, a purported trust, and any other individuals working in association with him, enjoining them from further promoting his system of sham trusts and limited liability companies (LLC's), which he falsely claims will reduce or eliminate his customers' tax liabilities, and from any other conduct which interferes with the administration of the internal revenue laws. Swanson has caused and is continuing to cause damage to the United States, and his activities expose his customers to potential civil and criminal liability. He must be stopped, and this memorandum of law and the accompanying Declarations of Jeanette Matthews,[1] Barbara Cantrell, and Jason Fisher, as well as the exhibits attached to them, establish that the United States is entitled to this relief.

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[1] Jeanette Matthews is a pseudonym that this IRS revenue agent uses in her official duties. This pseudonym has been registered with the IRS, in accordance with IRS procedures (Internal Revenue Manual 1.2.4), and all IRS procedures governing the use of pseudonyms have been followed.

I. STATEMENT OF FACTS

David Marvin Swanson, doing business through a purported trust called Dynamic Monetary Strategies, sells various "asset protection" products, the real purpose of which is to conceal income and evade taxes.[2] The IRS executed a search warrant on Swanson's business premises on March 7, 2002, seizing many of the records that are now submitted in support of this motion.[3] Even after the IRS executed the search warrant, Swanson has continued to promote his abusive tax schemes; public filings reflect that he created and services LLC's in Nevada during 2003.[4] Swanson has fleeced his customers and the United States for far too long. The United States seeks a preliminary injunction to stop him.

A. Spreading the word: Swanson's manual and website

Swanson markets his abusive tax schemes through his self-published manual and on his website. His $50 manual, *A$$et Protection Strategies for the Next Millennium*, is filled with misleading citations to cases and tax statutes and regulations as well as false statements about the tax benefits of his scheme (these are detailed below).[5] On his website, www.dynamicmonetarystrategies.com, Swanson previews the false theories promoted in his manual, which is offered for sale on the website.[6] The website also offers potential customers the

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[2] Declaration of Jeannette Matthews ("Matthews Decl.") at ¶¶ 6-8.

[3] *See id.* at ¶ 5.

[4] *See id.* at ¶ 21.

[5] *See id.* at ¶ 13 and *A$$et Protection Strategies for the Next Millennium* ("*APS*"), attached to Matthews Decl. as Ex. B.

[6] *See generally* Exhibit A to Declaration of Barbara Cantrell ("Cantrell Decl.").

opportunity to contact him for individual consultations on various subjects, including "business and strategic structuring" and "asset protection.[7] Once hired, Swanson provides individual attention to his customers' affairs, charging thousands of dollars per customer to set up fraudulent trusts and limited liability companies (LLCs), described in the following sections.[8]

B. UBTO's: Promoting worthless trusts with false tax-related statements

1. Overview

Swanson's first scam is the sale of "Unincorporated Business Trust Organizations" (UBTOs).[9] He advises his customers to achieve "isolation of assets" by purchasing multiple UBTOs and arranging them as a "honeycomb."[10] Thus, his customers are urged to buy one "family treasury trust" for the majority of the customer's property, plus "ancillary" trusts for other large assets and a separate "business interest trust" for the customer's business.[11] While he claims that this allows customers more effectively to protect their assets, in fact it simply allows Swanson to sell as many trusts as customers can afford to buy, increasing his profits.[12]

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[7] *Id.*

[8] *See* Declaration of Jason G. "Chase" Fisher ("Fisher Decl.") at ¶¶ 6-25; Matthews Decl. at ¶¶ 14, 21.

[9] *See* Matthews Decl. at ¶ 13-19.

[10] *APS* at 152-53, 156-65*;* Matthews Decl. at ¶ 15.

[11] Fisher Decl. at ¶ 11; *APS* at 152-53, 156-65.

[12] Fisher Decl. at ¶ 11; *APS* at 152-53, 156-65.

While Swanson's customers appoint nominal trustees, they in fact retain control over all assets and income they put in trust.[13] Thus, for example, they continue to control and use bank accounts established by the trust, while the trustees have no more than nominal influence over the trusts' affairs.[14] In short, his system of UBTOs is designed to allow a taxpayer to maintain control of assets and income without paying any tax on the assets and income. Whether these trusts are at all effective as asset protection devices under local law is highly questionable, but this is a secondary concern, both for the United States and Swanson. This is because the real purpose of these trusts is not asset protection but illegal tax avoidance.

2. False statements

The manual and website are replete with false statements about the tax benefits of using Swanson's services. Swanson takes care to speak elliptically, and his materials emphasize "asset protection" and "business structuring" as prominently as his tax advice.[15] Indeed, a casual glance through the manual might lead the reader to believe that taxes are only a minor focus. But a closer review makes clear that, in fact, the main focus of Swanson's presentation concerns taxes, and much of the manual is excess verbiage. Thus, his manual starts with an "Affirmation of Common Law Rights," which begins: "The legal and tax communities, along with some agencies or purported agencies of government, may have a vested interest in the collective ignorance of the population at large regarding certain asset protection and estate and tax information."[16] This

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[13] Fisher Decl. at ¶ 18.

[14] *Id.*

[15] *See, e.g., APS* at 15.

[16] *Id.* at 3.

theme—that Swanson has discovered a secret solution to the mystery of taxes that no one else can offer and that the government fears—runs throughout the manual. This claim, of course, is wrong, and the many specific statements he makes in furtherance of it are false and misleading.

The central false claim Swanson makes is that his UBTOs are exempt from taxation or are entirely non-taxable. In support of his theory, his manual and trust documents quote part of Treas. Reg. § 301.7701-4(b), which concerns the tax status of various kinds of trusts.[17] He quotes the first portion of this regulation, which provides:

> There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, *but which are not classified as trusts for purposes of the Internal Revenue Code* because they are not simply arrangements to protect or conserve the property for the beneficiaries. [Emphasis supplied by defendant][18]

He intentionally omits, however, the balance of the paragraph, which provides:

> These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business which normally would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code. However, the fact that the corpus of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association or partnership. *The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701-2.* [Emphasis supplied]

He thus intentionally and falsely mischaracterizes the law in an effort to convince his customers that his trusts are something other than a simple tax scam.[19] His claim that a UBTO is

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[17] *Id.* at 248; *see also* "MacGregan Heritage Trust," attached to Fisher Decl. as Ex. A.

[18] *APS* at 248.

[19] *Id*.

"not a taxable entity," when in fact it is *disregarded* for purposes of taxation, is false.[20] And given that he has chosen to cite only what is for him the useful half of the Treasury Regulation while ignoring the balance, Swanson is presumably aware that it is false.

Unfortunately, the false statements do not end there. Instead, he makes other false, fraudulent, and misleading representations promoting his UBTOs. For example, generally false statements about the trusts include his claim that "[o]ne can use the Business Trust to control, reduce or eliminate one's federal income, capital gains, and state income tax liabilities."[21] He also wrongly assures his customers that, "Throughout history, the Business Trust has proved to be the best defense against the tax collector."[22]

His misrepresentations include a claim that the IRS has no jurisdiction over the UBTOs at all: "Income . . . that would normally be regarded as subject to individual taxation would not be subject to income tax or capital gains taxes if owned by entities outside the taxing jurisdiction of the Internal Revenue Service."[23] He also asserts that, because of this, the trusts need never file tax returns: "The Business Trust has no periodic reports or accounting to make to the federal government, any state government, or any federal or state government agency (including the IRS)."[24] As explained above, however, this is untrue; while a business trust need not—indeed cannot—file a Form 1041 trust return, the owner of the trusts still has a duty to report the income

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[20] *Id.* at 118

[21] *Id.* at 115.

[22] *Id.* at 122.

[23] *Id.* at 106.

[24] *Id.* at 115.

and pay the corresponding taxes in some other fashion.[25]

He also goes to great length to explain the relationship between the individual taxpayer and the trust. While he seems to recognize that individuals who receive income might need to file returns, even if they get the income from a UBTO, he assures customers that this unhappy circumstance can be avoided: "[W]hen money is distributed, income reporting may fall on the recipient. (But what recipient of such a trust would not already have had a trust created for himself, thus perpetuating the tax immunity of the assets?)"[26] Thus, Swanson suggests that so long as customers shuttle money between UBTOs, they can avoid taxes indefinitely. They can even immunize their outside income by giving it to the trust: "The Pure, Private, Common law, Non-associated, Unincorporated Business Trust Organization (UBTO) May Receive Income from its Trustees' or Agents' Contracted Work without Taxable Consequences to the Worker under Contract."[27] He thus falsely claims that their income, if properly pledged to the UBTO, will never be taxable.

Swanson also provides a justification for telling his customers not to file any tax forms whatsoever: "Congress never gave the IRS any authority to COMPEL citizens to submit tax returns, produce records, or pay federal income taxes."[28] Perhaps recognizing that many customers ("those who still wish to cling to the mistaken notion that individuals have no choice but to file") would be understandably nervous about this, he proceeds to hedge somewhat, by

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[25] *See* Treas. Reg. § 301.7701-4(b).

[26] *APS* at 118.

[27] *Id.* at 183.

[28] *Id.* at 191.

assuring them that if they eliminate their income by pledging it to the UBTO, they will not need to file.[29] After all, as he says, "[E]ven the IRS would have to admit that an individual with no personal income has no requirement to file individual tax returns."[30] Of course, a customer who simply pledges his income to a UBTO does in fact have income and is in fact required to file individual tax returns, notwithstanding Swanson's claims.[31]

This false claim, like those described above, reveal the true reason for Swanson's services: illegal tax avoidance. His customers are promised asset protection; this can be achieved legally, and more easily, in other ways. They are also promised "business structuring," which can also be accomplished more easily and legally in other ways. The one promise Swanson makes that no one else can is that he will eliminate his customers' taxes. No one else can make this statement because it is false. Since the falsity of what he says clearly does not deter Swanson, this Court must stop him.

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[29] *Id.*

[30] *Id.*

[31] *See generally Blohm v. Commissioner*, 994 F.2d 1542, 1549 (11th Cir. 1993) ("Income is taxed to the party who earns it . . . . A taxpayer is not relieved of the obligation to pay taxes on earned income merely by a transfer of that income to another party.") (citations omitted).

C. Nevada LLCs: Using an otherwise legitimate entity to interfere with the administration of the internal revenue laws

Swanson's UBTOs and the false statements he makes about them do great damage to the government and his customers. But he does not stop there; rather, he creates additional layers of deception by forming Nevada LLCs, which his customers can use to confound the IRS further.[32] He uses Nevada because local law allows LLCs to be registered by designating non-registered trusts as members or managers, since the state statutes do not require that an LLC's members be natural person.[33] Swanson can then obtain an Employer Identification Number ("EIN") using the anonymous Nevada LLC.[34] These EINs, and the bank account they can be used to open, are virtually untraceable to the ultimate income recipients—his customers.[35]

Setting up LLCs is not illegal in and of itself, but using them to evade taxes—or teaching others to do so—is. The LLCs here fit into Swanson's overall scheme in several ways. First, they are useful because a customer can use the EIN of the LLC to open a bank account, which can sometimes be difficult with a UBTO. They can then use the LLC to receive payments which should be reportable to the IRS, such as salaries. Should the IRS attempt to trace the reported income, however, it would quickly hit a dead end, since there are no individual taxpayers directly

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[32] Matthews Decl. at ¶¶ 20-27; Fisher Decl. at ¶ 23.

[33] *See* Nev. Rev. Stat. § 86.151 (2003) (allowing "one or more persons" to form an LLC by filing articles of incorporation and designating a resident agent, and requiring that the LLC have, at all times, "one or more members"); Nev. Rev. Stat. § 86.161 (2003) (requiring the articles of incorporation to designate whether the LLC will be managed by an appointed manager or by the members themselves); Nev. Rev. Stat. § 86.081 (2002) (defining "member" as "the owner of a member's interest in a limited-liability company or a noneconomic member").

[34] Matthews Decl. at ¶ 23.

[35] *Id.* at ¶ 23.

associated with the LLCs.[36] Of course, he fails to explain that the customer is still liable for tax on his income, even if assigned to an LLC.[37]

Further evidence of the sham nature and fraudulent purpose behind these can be gleaned from the filing history of the LLCs. Only 12 of a sample of 54 LLCs formed by Swanson have filed any income tax returns for years during which returns were required, and only two have filed all required returns.[38] Moreover, several of these returns appear to contain frivolous positions.[39] Additionally, only one of the 73 entities listed as managers and/or members of these LLCs has filed a return.[40] Obviously, given the nature of the scheme, the IRS cannot be certain that it has identified all, or even a significant percentage, of the LLCs Swanson has formed for customers.[41] It is instructive, however, that of the over fifty it has clearly identified, such a small number have filed required returns.[42] When viewed alongside Swanson's UBTO scheme, and the method by which he forms LLCs, this demonstrates that his use is improper and is designed to interfere with the administration of the internal revenue laws.

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[36] *Id.*

[37] *See Schulz*, 686 F.2d at 493.

[38] Matthews Decl. at ¶¶ 24-25.

[39] *Id.* at ¶ 26.

[40] *Id.* at ¶ 27.

[41] *Id.* at ¶ 23.

[42] *Id.* at ¶¶ 24-25.6

D. Other abusive activity

Swanson has also engaged in other abusive tax-related activity. On at least one occasion, he has assisted a customer to file a frivolous "not liable" return.[43] There is also evidence that he assisted former associate Carel "Chad" Prater and his various organizations to file these frivolous returns.[44] He has also attempted to impede this investigation by crafting frivolous responses for his customers to send in response to IRS inquiries.[45] These activities work hand-in-hand with his schemes to confound the IRS and interfere with the administration of the internal revenue laws, which the Court can and should stop.

E. Harm caused by Swanson

Swanson is causing and will continue to cause substantial revenue losses to the United States. At this point, the actual and potential damage caused by Swanson is impossible to estimate because of the very nature of his scam, which pulls people out of the tax system altogether while hiding their identities.[46] The IRS would have to devote substantial time and resources simply to determining which of the tens of thousands of non-filing taxpayers are Swanson customers, a prohibitively difficult task, so the IRS may be unable to detect and recover all the revenue loss attributable to Swanson. His bold defiance of the IRS causes additional damage by encouraging people other than his customers to dodge taxes. He shows no intention of relenting. Swift and decisive action is required to stop Swanson.

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[43] Fisher Decl. at ¶¶ 26-27.

[44] Matthews Decl. at ¶ 12.

[45] *Id.* at. ¶¶ 37-42.

[46] *Id.* at ¶ 29.

II. ARGUMENT

A. Standards for a preliminary injunction

Due to the urgent need to halt irreparable harm, "a preliminary injunction is customarily granted on . . . procedures that are less formal and on evidence that is less complete than a trial on the merits. A party thus is not required to prove his case in full" at the preliminary injunction stage.[47] In a statutory-injunction action such as this, the moving party must demonstrate that the statute has been violated and that "there is a reasonable likelihood of future violations."[48] Because I.R.C. § 7408 sets forth the criteria for injunctive relief, the United States need only meet those criteria, without reference to the traditional equitable factors, for a court to issue a preliminary injunction under these sections.[49] For a preliminary injunction under § 7402, the Eleventh Circuit requires a showing that: (1) it is likely that the United States will suffer irreparable injury if the defendant's conduct continues; (2) it is unlikely that the defendant will be harmed by the injunction; (3) the United States is likely to prevail on the merits; and (4) an injunction will serve the public interest.[50] The United States has met these standards.

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[47] *University of Tex. v. Camenisch,* 451 U.S. 390, 395 (1981); *see also Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986) ("Affidavits and other hearsay materials are often received in preliminary injunction proceedings.").

[48] *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982).

[49] *See United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) ("The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction."); *United States v. Rosile*, No. 8-02-CV-466-T-24-MSS, 2002 WL 1760861, *1 (issuing a preliminary injunction based on a showing of the statutory requirements under §§ 7407 and 7408).

[50] *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir. 1984) ("the decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the . . . use of the equitable remedy."); *American Red Cross v. Palm Beach Blood Bank, Inc.*, 143 F.3d 1407, 1410 (11th Cir. 1998) (listing the equitable factors for a preliminary injunction).

B. Injunctive relief is warranted under I.R.C. § 7408 because Swanson's promotion of abusive tax schemes violates I.R.C. § 6700

Section 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under § 6700 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. Section 6700 generally penalizes those who make false statements in connection with the organization or sale of a fraudulent tax shelter. To establish a violation of § 6700 warranting an injunction under § 7408, the United States must show that:

> (1) defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement; (2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) they knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct.[51]

The evidence that Swanson is violating § 6700 and will continue unless enjoined is clear.

1. Swanson organizes and sells an entity, plan, or arrangement.

First, Swanson organizes and sells an entity, plan, or arrangement, namely his system of sham trusts, which he sells for thousands of dollars.[52] Under § 6700, any plan or arrangement "having some connection to taxes can serve as a 'tax shelter.'"[53] As explained above, Swanson's UBTOs and related LLCs have some connection to taxes. Tax avoidance is an express part of how he promotes them to customers, and the discussion above demonstrates that tax avoidance is in fact the key feature of that promotion.[54] The first element is therefore satisfied.

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[51] *Estate Pres. Servs.*, 202 F.3d at 1098 (citing §§ 6700(a), 7408(b)).

[52] *See* Fisher Decl. at ¶ 14.

[53] *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000).

[54] *See supra* § I.B.2.

2. Swanson makes false and fraudulent statements about the tax benefits of this plan.

The gist of Swanson's false and fraudulent statements, laid out in more detail above, is that these trusts are non-taxable entities, so that otherwise reportable and taxable income is wondrously rendered unreportable and tax free when placed in a Swanson-formed UBTO.[55] This is patently false, as are all the rest of his statements about the tax benefits of his scheme. He claims that the IRS has no jurisdiction over the affairs of a UBTO—false.[56] He claims that no individual need file an income tax return—false.[57] He claims customers can pledge their income to the non-taxable UBTO, rendering it non-taxable to the customer—false.[58] In short, Swanson's descriptions of his UBTOs' benefits are false, satisfying the second element.

3. Swanson knows or should know that these statements are false and fraudulent.

Swanson knows or should know that his statements are false and fraudulent. First, the circumstances of this and related cases should tell him that. His home has been searched by federal agents in connection with his tax activities. His former associate Chad Prater has been enjoined from promoting a similar if not identical scam. These two facts give Swanson reason to know that his statements are false and fraudulent.

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[55] *Id*.

[56] *See* Treas. Reg. § 301.7701-4(b) (explaining that the IRS disregards the trust form of business trusts and treats them as other business entities).

[57] *See generally Stubbs v. Commissioner*, 797 F.2d 936, 938 (11th Cir. 1986) (describing claim by taxpayer that he was not required to file a return as "patently frivolous.").

[58] *See generally Blohm*, 994 F.2d at 1549 ("Income is taxed to the party who earns it. . . . A taxpayer is not relieved of the obligation to pay taxes on earned income merely by a transfer of that income to another party.") (citations omitted).

Moreover, the law clearly shows that his theories are wrong. His customers transfer assets and income to the UBTO but continue to control and enjoy them as if there had been no transfer. Such trusts have been routinely rejected by courts as shams, and thus not entitled to trust treatment.[59] Indeed, courts have recently issued numerous injunctions barring the promotion of trusts schemes such as Swanson's and the preparation of returns based on these schemes, including several in the Middle District of Florida.[60] Swanson's former business partners were the defendants in one such action.[61] Finally, there is simply no authority or basis for Swanson's claim that these trusts render income and assets exempt from taxation. Given that he holds himself out as understanding the law better than those in the "legal and tax communities," he should be charged with knowledge of the actual law, which entirely undercuts his theories.

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[59] *See, e.g., O'Donnell v. Commissioner*, 726 F.2d 679, 681 (11th Cir. 1984) (rejecting a trust where the taxpayer transferred his income to the trust and claimed business deductions for living expenses); *Zmuda v. Commissioner*, 731 F.2d 1417, 1421 (9th Cir. 1984) (rejecting a trust where the taxpayer retained control over the trust assets); *Schulz v. Commissioner*, 686 F.2d 490, 493 (7th Cir. 1982) (rejecting a trust because "income is taxed to the person who earns it, regardless of what arrangements he makes to divert the payment of it elsewhere"); *United States v. Buttorff*, 761 F.2d 1056 (5th Cir. 1985) (discussing abusive trusts).

[60] *See, e.g., United States v. Sweet*, No. 8:01-CV-331-R-23TGW, 2002 WL 963398 (M.D. Fla. Feb. 20, 2002); *United States v. Prater*, No. 8:02-CV-2052-T-23MSS, 2002 WL 32107640 (M.D. Fla. Dec. 19. 2002); *see also United States v. Mosher*, No. 1:03-CV-208 (W.D. Mich. Oct. 27, 2003) (order granting preliminary injunction); *United States v. Welti*, No. C-1-02-243, 2003 WL 1549169 (S.D. Ohio Sep. 24, 2003) (order granting permanent injunction)*; United States v. Ratfield*, No. 01-8816-CIV-FERGUSON, 2002 WL 31556427 (S.D. Fla. Sep. 29, 2002) (order granting preliminary injunction); *United States v. Mahoney*, No. 02-10673-NG (D. Mass. July 12, 2002) (order granting preliminary injunction).

[61] *United States v. Prater*, No. 8:02-CV-2052-T-23MSS, 2002 WL 32107640 (M.D. Fla. Dec. 19, 2002).

Finally, his materials demonstrate that he knows his positions are false and fraudulent. As explained above, he repeatedly cites part of Treas. Reg. § 301.7701-4(b), which concerns the tax status of trusts. He quotes only the first portion of this regulation, which provides:

> There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, *but which are not classified as trusts for purposes of the Internal Revenue Code* because they are not simply arrangements to protect or conserve the property for the beneficiaries. [Emphasis supplied by defendant.][62]

He intentionally omits, however, the balance of the paragraph, which goes on to explain that not classifying business trusts as trusts does not mean they're not taxable; it means they're classified, and taxed, as something else:

> The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701-2.

He thus leaves off the part of the regulation which he finds inconvenient, thereby duping customers into believing his partial statement is both complete and accurate. His willingness to excise the inconvenient parts of the law—without any indication that he has done so—shows that he knows or has reason to know that his statements are false and fraudulent. The United States has therefore satisfied this element.

[62] *APS* at 248.

4. These statements pertain to a material matter.

The fourth element of a § 6700 violation requires the false or fraudulent statements to pertain to a "material matter."[63] Generally, matters are considered material to an arrangement if they "would have a substantial impact on the decision making process of a reasonably prudent investor."[64] Defendant's representations regarding the tax benefits of his program surely affected customers' decisions to participate,[65] and other courts have found such statements material for purposes of § 6700.[66] The United States has therefore satisfied this element.

5. An injunction is necessary to stop this conduct

There is no reason to believe Swanson will stop unless expressly ordered to do so. Indeed, it is evident that he has continued his activities even after a criminal search warrant was executed. If he won't stop under these circumstances, then only a direct order to stop, in the form of an injunction from this Court, will prevent further misconduct and the attendant harm to the United States and defendant's customers. The United States has thus satisfied this and all the other elements, and the Court should therefore enter an injunction under § 7408 barring Swanson from further misconduct.

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[63] *See United States v. Estate Preservation Services*, 38 F. Supp. 2d 246, 855 (E.D. Cal. 1998).

[64] *Id*. (citations omitted).

[65] Fisher Decl. at ¶¶ 4-13.

[66] *See generally Estate Preservation Services*, 38 F. Supp. 2d at 855.

C. Injunctive relief is warranted under I.R.C. § 7402 because Swanson's activities interfere with the administration of the internal revenue laws

Manifesting "a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,"[67] IRC § 7402 "has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute."[68] Here, in addition to the conduct specifically subject to injunction under § 7408, Swanson activities—impeding this investigation with frivolous letters, assisting customers to file frivolous returns—interferes with administration of the internal revenue laws.

Injunctive relief under § 7402 is appropriate to prevent Swanson's continued interference with tax enforcement because all four equitable criteria for an injunction are present: (1) the United States will suffer irreparable harm from Swanson's scheme, (2) an injunction will not harm Swanson, (3) the United States is likely to prevail on the merits, and (4) an injunction will serve the public interest.[69]

The United States has suffered and will continue to suffer irreparable injury if Swanson is not enjoined. The IRS cannot estimate with precision how much Swanson has already cost the United States Treasury, but there can be no doubt that extracting scores of taxpayers from the tax

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[67] *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). *See United States v. First Nat'l City Bank*, 568 F.2d 853 (2d Cir. 1977).

[68] *Ernst & Whinney*, 735 F.2d at 1300; s*ee also United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) ("federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax avoidance schemes"), *aff'd* ,827 F.2d 1144 (7th Cir. 1987).

[69] *See American Red Cross*, 143 F.3d at 1410.

system entirely does large-scale damage to the United States.[70] Since he shows no sign of ending his activities, the United States will continue to lose money as long as Swanson is in operation. Given the breadth of his scam, involving numerous customers nationwide, and the IRS's limited resources, identifying and recouping lost revenue may be impossible. In addition to the harm caused by the advice and services he renders to his customers, Swanson's schemes undermine public confidence in the IRS and incite non-compliance with the internal revenue laws. If Swanson is not enjoined now, he will cause even greater damage to the United States. Swanson, on the other hand, would not be harmed by a court order enjoining him from breaking the law.[71] Because he is in violation of § 6700 and has made every effort to impede the administration of the internal revenue laws, the United States has a strong likelihood of prevailing on the merits. Finally, the public interest is clearly served by shutting down an illegal tax evasion scheme.

Respectfully submitted,

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[70] Matthews Decl. ¶¶ 29-33.

[71] *See Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (finding that injunctions requiring compliance with the law do not cause hardship).