

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

United States of America,)	
)	
Plaintiff,)	Civil No. 4:11-cv-00364 HDV - CFB
)	
v.)	
)	
William David Ward, II, and)	
and Advanced Underground)	
Construction, LLC,)	
)	
Defendants.)	

ORDER OF PRELIMINARY INJUNCTION

The United States has filed a complaint seeking, among other things, a permanent injunction requiring Defendants William David Ward, II and Advanced Underground Construction, LLC (“Advanced”) to timely file employment tax returns and to pay employment taxes when due. On August 31, 2011, Plaintiff filed a Motion for Preliminary Injunction (Docket No. 4). On October 21, 2011 (after entry of two consecutive orders for extension of time), the Defendants filed a Response to the Motion indicating that they did not object to the injunctive relief sought in the United States’ Motion. Thus, the Court will herein address Plaintiff’s unopposed Motion for Preliminary Injunction.

In its brief in support of its motion, as well as in the declaration of Internal Revenue Service (“IRS”) Officer Rebecca Denning, the United States presents argument and evidence alleging that the Defendants have repeatedly failed to pay to the IRS: 1) its employees’

withheld income taxes; and 2) its employer's share of Form 941 employment taxes ("FICA"). (Brief in Support of Motion for Preliminary Injunction at 1-3; Declaration of Rebecca Denning in support of Motion at ¶¶ 6-9). Plaintiff now seeks a preliminary injunction, pursuant to 26 U.S.C. § 7402, which authorizes district courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws[,] and which states that such remedy is "in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws." 26 U.S.C. § 7402(a). The motion essentially seeks to require Defendants to comply with their pre-existing obligations imposed by the Internal Revenue Code ("IRC").

Typically, in order to secure a preliminary injunction, a movant must satisfy four traditional equitable standards: 1) the probability that the movant will succeed on the merits; 2) the threat of irreparable harm to the movant; 3) the balance between the harm to the Plaintiff should an injunction be denied and the injury to Defendant should an injunction be granted; and 4) that the injunction would not harm the public interest. *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (*en banc*). In the instant case, the United States has satisfied each of these elements, but doing so is not necessary because an injunction issued pursuant to § 7402 derives from the court's statutory authority, not its equitable powers. *United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985), *citing United States v. Buttorff*, 761 F.2d 1056, 1059 (5th Cir. 1985) (where injunctive relief is explicitly authorized by statute, "proper discretion" should require issuance of injunction if the prerequisites for the remedy have been demonstrated and injunctive relief fulfills the statute's

legislative purpose); *see also United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) (finding, with regard to I.R.C. § 7408, that the “traditional requirements for equitable relief need not be satisfied since [the statute] expressly authorizes the issuance of an injunction.”) Pursuant to Section 7402, it is sufficient that Plaintiff demonstrate that an injunction is “necessary or appropriate for the enforcement of the internal revenue laws.” 26 U.S.C. § 7402(a). *United States v. Hart*, 701 F.2d 749, 750 (8th Cir. 1983).

Upon consideration of the evidence presented in the declaration of Revenue Officer Denning and the exhibits attached thereto as well as to the memorandum of law, and the fact of the Defendants’ non-opposition to the Motion, the Court finds that the United States has sufficiently shown, for purposes of the instant motion, that Defendants have violated various sections of the IRC, and that a preliminary injunction is necessary to prevent further similar violations.

Accordingly,

IT IS ORDERED that Plaintiff’s Motion for Preliminary Injunction be and the same is hereby GRANTED; and

IT IS ORDERED that, during the pendency of this Preliminary Injunction Order,

1. Advanced and Ward, and their representatives, agents, servants, employees, and anyone in active concert or participation with them, are prohibited from failing to withhold and pay over to the IRS all employment taxes, including federal income, FICA, and unemployment taxes required by law; and
2. Advanced and Ward shall deposit withheld FICA taxes, as well as

Advanced's share of FICA taxes, in an appropriate federal depository bank in accordance with the federal deposit regulations; and

3. Those individuals at Advanced responsible for carrying out the duties established under Paragraph 2 shall sign and deliver affidavits to the Revenue Officer responsible for this matter, or to such other location as the IRS may deem appropriate, on the 1st day of each month, stating that the requisite withheld income and FICA tax deposits were timely made; and
4. Advanced and Ward shall timely file all employment tax returns with the IRS, or at such other location as the IRS may deem appropriate; and
5. Advanced and Ward are prohibited from assigning any property or making any disbursements after the date of this injunction, whether to Advanced's creditors or other third parties, until amounts required to be withheld from wages after the date of this injunction are, in fact, paid to the IRS; and
6. Advanced and Ward shall deliver to all of Advanced's current employees, and any former employees employed at any time since January 1, 2004, a copy of this Order, and shall certify to the Court in 20 days that they have done so.

SO ORDERED this 31st day of October, 2011.



HAROLD D. VIETOR
Senior United States District Judge