

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case no.
)	
DYKEMAN FAMILY CORPORATION)	
a/k/a DYKEMAN FAMILY HEATING, AIR)	
CONDITIONING & BOILER CORPORATION;)	
and MICHAEL K. DYKEMAN,)	
)	
Defendants.)	

**COMPLAINT FOR PERMANENT INJUNCTION
AND FOR OTHER RELIEF**

The plaintiff, United States of America, brings this complaint to (A) seek injunctive relief against defendants Dykeman Family Corporation (the “Corporation”), which is also known as Dykeman Family Heating, Air Conditioning & Boiler Corporation, and Michael K. Dykeman (“Dykeman”), (B) reduce to judgment certain assessments made against the Corporation for unpaid federal employment and unemployment tax liabilities, and (C) reduce to judgment certain assessments made against Dykeman for the unpaid trust fund portion of the Corporation’s employment tax liabilities. In support of this complaint, the United States alleges as follows:

1. This action is commenced at the request and with the authorization of a delegate of the Secretary of the Treasury and at the direction of the Attorney General pursuant to 26 U.S.C. §§ 7401 and 7402.

2. Jurisdiction is conferred on this Court by 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340

and 1345.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1396 in that the defendants reside or are located in this district and because a substantial part of the events or omissions giving rise to this action occurred within this district.

4. Defendant Dykeman Family Corporation, a Wisconsin corporation, which is also known as Dykeman Family Heating, Air Conditioning & Boiler Corporation, is headquartered in Milwaukee, Wisconsin, and conducts business in that area. The Corporation provides heating and cooling contracting services for its customers.

5. Defendant Michael K. Dykeman resides in the Milwaukee area. Dykeman is the owner, president and resident agent of the Corporation.

COUNT I: Claim for Injunction

6. Section 7402(a) of the Internal Revenue Code, 26 U.S.C., authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under that statute “are in addition to and not exclusive of any and all other remedies.” 26 U.S.C. § 7402(a).

7. Since at least 2002 the Corporation has failed to comply with its federal tax obligations by failing to file employment and unemployment tax returns, failing to file returns timely, and failing to pay federal employment and unemployment taxes.

8. Though crediting its employees for withholding federal tax payments, the Corporation has since the beginning of 2002 continually failed to pay such credited withholdings to the United States.

9. In addition to failing to pay employees’ credited withholdings, the Corporation

continually fails to pay its employer's share of Form 941 employment taxes (FICA) and Form 940 unemployment taxes (FUTA).

10. A summary of the payroll tax liabilities the Corporation has accumulated is set forth as follows:

<u>Tax Period</u> <u>Ending</u>	<u>Tax</u> <u>Form</u>	<u>Amount Due</u> <u>as of 7/31/09</u>
03/31/02	941	\$ 3,931.30
06/30/02	941	7,368.47
09/30/02	941	48,612.36
12/31/02	941	47,524.63
03/31/03	941	67,862.67
06/30/03	941	50,853.90
09/30/03	941	60,974.51
12/31/03	941	51,362.95
03/31/04	941	67,397.43
06/30/04	941	20,757.42
09/30/04	941	23,695.24
12/31/04	941	6,026.44
03/31/05	941	20,861.87
06/30/05	941	13,302.49
09/30/05	941	20,053.05
12/31/05	941	16,493.95
03/31/06	941	37,494.01
06/30/06	941	6,781.90
09/30/06	941	36,428.60
12/31/06	941	26,082.03

<u>Tax Period</u> <u>Ending</u>	<u>Tax</u> <u>Form</u>	<u>Amount Due</u> <u>as of 7/31/09</u>
03/31/07	941	33,384.19
06/30/07	941	11,429.53
09/30/07	941	5,437.32
12/31/07	941	36,941.74
03/31/08	941	66,267.20
06/30/08	941	20,895.65
09/30/08	941	19,769.91
12/31/06	940	30,444.58
12/31/07	940	<u>14,866.95</u>
	Total:	<u>\$ 873,302.35</u>

11. The Internal Revenue Service has exhausted its administrative remedies and collection methods with respect to the subject liabilities as described below:

- a. The IRS has filed Notices of Federal Tax Lien with the Register of Deeds, Milwaukee County, Wisconsin, and with the State Department of Financial Institutions, Madison, Wisconsin. The Corporation leases its business space and most of its significant assets. It has no significant assets from which the IRS may attempt to collect the unpaid taxes by foreclosure, and the Corporation has a multitude of judgment creditors.
- b. The IRS delivered numerous Notices of Intent to Levy to the Corporation, and served over thirty levies upon the Corporation's various bank accounts. The IRS served additional levies on the Corporation's credit card provider and some of the Corporation's vendors. The IRS was able to collect approximately \$65,000

through these levies since 2004; however, during this same time period, the Corporation accrued more than \$400,000 in additional unpaid federal payroll taxes, not including penalties and interest.

- c. The IRS also levied upon the wages of Dykeman's wife pursuant to Wisconsin community property laws. These levies are no longer effective.
- d. The IRS has had many contacts with Dykeman or other representatives of the Corporation since 2002, which have not resulted in the payment of the federal tax liabilities. The Corporation continues to accrue unpaid tax liabilities.

12. An injunction by this Court ordering the Corporation and Dykeman, the Corporation's sole owner and officer, to comply with the federal payroll tax requirements is necessary and appropriate for the following reasons:

- a. The IRS has no adequate remedy at law other than an injunction because the above facts demonstrate that traditional collection methods have not and will not convince the Corporation and Dykeman to stop pyramiding federal tax liabilities.
- b. The Corporation's payroll tax liabilities continue to accrue. Absent an injunction, based on the Corporation's past tax history, it is estimated that the Corporation is likely to accrue in excess of \$25,000 in unpaid employment and unemployment taxes each quarter that the United States will not be able to collect.
- c. If the defendants are not enjoined the United States will suffer irreparable injury. Defendants' conduct results in the loss of both the employer's FICA and FUTA tax contributions and the employees' FICA and federal income taxes. Absent an injunction, the IRS will have to devote substantial time and resources to attempt

to collect the taxes owed and required to be paid over by the defendants.

- d. An injunction will compel the defendants to conduct business like every other tax-paying business in the country. This will not result in an injury to defendants, but instead will compel them to comply with the nation's tax laws by filing the appropriate returns and paying taxes just as every other business must do.
- e. Defendants' failure to pay employment and unemployment taxes gives the Corporation an unfair advantage over competitors and other businesses because the Corporation effectively obtains the same amount of labor for less total payroll cost. An injunction will protect the public's interest in fair competition by halting the defendants' unfair practices and thereby more effectively leveling the playing field.

13. The defendants, through their neglect of the federal tax laws, have engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

14. The Court should order injunctive relief under 26 U.S.C. § 7402(a) against both the Corporation and Dykeman, the Corporation's chief agent.

COUNT II: Claim to Reduce Tax Assessments of the Corporation to Judgment

15. A delegate of the Secretary of the Treasury of the United States made assessments against the Corporation for its failure to pay the federal employment and federal unemployment taxes set forth above in paragraph 10.

16. Notices of the assessments and demands for payment thereof were sent to the Corporation by the Internal Revenue Service in accordance with law.

17. The Corporation has failed, neglected or refused to pay the amount of each assessment in full and, after the application of all abatements, payments and credits, remains indebted to the United States for unpaid internal revenue taxes and interest in the amount of \$873,302.35, plus statutory interest and additions accruing after July 31, 2009.

COUNT III: Claim to Reduce Tax Assessments against Individual Defendant to Judgment

18. Dykeman was a person responsible for collecting, accounting for and paying over to the United States the federal employment taxes that were required to be withheld from the wages of the employees of the Corporation for each of the quarters during the period January 1, 2002, through September 30, 2008.

19. Dykeman willfully failed to collect, account for, and pay over to the United States the federal employment taxes that the Corporation was required to pay to the United States for the time periods listed in paragraph 20, below.

20. As a result, on the dates set forth below and for the time periods shown, the Internal Revenue Service made assessments against Dykeman for trust fund recovery penalties pursuant to 26 U.S.C. § 6672.

<u>Tax Period</u> <u>Ending</u>	<u>Assessment</u> <u>Date</u>	<u>Amount Due</u> <u>as of 7/31/09</u>
03/31/02	10/27/03	\$ 308.32
06/30/02	10/27/03	3,141.33
09/30/02	10/27/03	31,402.32
12/31/02	04/11/05	27,457.36
03/31/03	04/11/05	34,034.83
06/30/03	04/11/05	25,665.37

<u>Tax Period</u> <u>Ending</u>	<u>Assessment</u> <u>Date</u>	<u>Amount Due</u> <u>as of 7/31/09</u>
09/30/03	04/11/05	31,036.01
12/31/03	04/11/05	26,193.82
03/31/04	04/11/05	34,523.92
06/30/04	07/23/07	11,132.95
12/31/05	07/23/07	864.57
03/31/06	04/27/09	19,854.32
06/30/06	04/27/09	2,889.16
09/30/06	04/27/09	13,763.62
12/31/06	04/27/09	9,983.62
03/31/07	04/27/09	20,757.15
06/30/07	04/27/09	6,161.67
09/30/07	04/27/09	2,488.04
12/31/07	07/06/09	18,372.71
03/31/08	07/06/09	33,986.86
06/30/08	07/06/09	12,869.64
09/30/08	07/06/09	12,813.84
	Total:	<u>\$ 379,701.43</u>

21. Notices of the above assessments and demands for payment thereof were sent to Dykeman by the IRS in accordance with law.

22. Despite notices and demands for payment of the above assessments, Dykeman has neglected or refused to pay over the amounts assessed against him. There remains due and owing to the United States the sum of \$379,701.43, plus statutory interest and additions accruing after July 31, 2009.

WHEREFORE, the United States requests that the Court:

A. Enter an injunction against Dykeman Family Corporation and Michael K. Dykeman requiring that the defendants (individually and doing business under any other name or entity):

- (1) Deposit withheld FICA and income taxes, as well as the employer's share of FICA taxes of the Corporation, in an appropriate federal depository bank in accordance with federal deposit regulations;
- (2) Deposit the Corporation's FUTA taxes in an appropriate federal depository bank in accordance with federal deposit regulations;
- (3) Sign and deliver to a designated IRS officer on the first day of each month an affidavit stating that the requisite withheld income, FICA and FUTA tax deposits were timely made;
- (4) Timely file all federal employment and unemployment returns (including Forms 940 and 941) of the Corporation with the IRS;
- (5) Timely pay all required outstanding liabilities due with each tax return at the time the return is filed;
- (6) Be prohibited from making any disbursement or assigning any property from the date of payment of any wages until the amounts which are required to be withheld from the payment of those wages and the employer's share of FICA taxes related to those wages are paid to the IRS; and
- (7) Notify the IRS of any new company, entity or business that either defendant may come to own, manage or be employed by in the next five years;

B. Enter judgment in favor of the United States and against Dykeman Family

Corporation for unpaid federal tax liabilities in the amount of \$873,302.35, plus statutory additions accruing according to law after July 31, 2009;

C. Enter judgment in favor of the United States against Michael K. Dykeman in the amount of \$379,701.43, plus statutory additions accruing according to law after July 31, 2009;

D. Grant the United States its costs incurred in the commencement and prosecution of this action; and

E. Grant the United States such other and further relief as the Court deems proper and just.

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