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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

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DATE 2/24/05

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Case No. 04-cv-2432

RICHARD A. FUSELIER and)

Judge Melancon

RICHARD J. ORTT, each)

Mag. Judge Hill

individually and d/b/a COMPENSATION)

CONSULTANTS,)

Defendants.)

PRELIMINARY INJUNCTION ORDER

Upon motion by the plaintiff, United States of America, and based on the evidence presented in that motion and at the hearing held on this matter, a preliminary injunction is hereby entered against defendants Richard A. Fuselier and Richard J. Ortt, individually and doing business as Compensation Consultants. The Court finds and orders as follows.

Standards for Preliminary Injunction

To obtain relief in a statutory injunction action such as this, the plaintiff must demonstrate that the defendants have violated a statute and that a reasonable likelihood of future violations exists. In order to obtain a preliminary injunction pursuant to 26 U.S.C. (Internal Revenue Code, "IRC") § 7408, the United States must show that defendants engaged in conduct subject to penalty under IRC §§ 6700 or 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct.

To obtain an injunction under IRC § 7407, the United States must show, among other things, that the defendants engaged in conduct subject to penalty under IRC §§ 6694 or 6695 and that injunctive relief is necessary to prevent the recurrence of that conduct.

The Court may issue a preliminary injunction under IRC § 7402 "as may be necessary or appropriate for the enforcement of the internal revenue laws." IRC § 7402(a).

Findings of Fact

1. This Court has jurisdiction over the parties and subject matter of this case.
2. The defendants, Richard A. Fuselier and Richard J. Ort, conduct business as Compensation Consultants, and are based in Lafayette, Louisiana. They are involved in several tax evasion schemes, including the so-called "claim of right" program, and, more recently, a "not for profit" scheme under which all compensation or earnings are falsely deemed nontaxable. The defendants promote a grossly inaccurate interpretation of tax law and prepare returns and pursue litigation in accordance with their fraudulent programs.
3. The defendants' fraudulent tax promotion purports to give participants "100% tax freedom." To participate in the program, the defendants urge customers to sign a contract with Compensation Consultants.
4. As part of the contract, the defendants prepare and file income tax returns or amended returns on behalf of the participants claiming a deduction in the amount of the participants' income, thus purportedly entitling the participants to a refund. The defendants falsely state that the deduction is based on either IRC §§ 183, 212 or 1341.
5. The defendants make numerous false or fraudulent statements in support of their abusive program, including the following:

- Compensation earned is immune from taxation.
- Money earned in exchange for personal labor or services does not constitute taxable income and may be deducted.
- Income earned for labor is a not for profit activity and thus deductible on tax returns.
- Their "claim of right" or "not for profit" claim is authorized by the IRC and is a "mandatory deduction allowed by United States law."

6. As part of their marketing spiel, the defendants tell customers that the "United States will be billed for cost when the refund is received," and if a refund is not issued, the determination "will be litigated in a court proceeding."

7. The defendants admit that their program involves "an extreme tax position that will require litigation to resolve."

8. Participants in the program are required to give the defendants a power of attorney to represent them against the Government, and "to consent to litigate any determination issuing in which the taxpayer does not substantially prevail." The power of attorney is for a minimum three-year term. Furthermore, the participants are required to let Compensation Consultants act as "counsel, personal representative and attorney in fact." Neither Fuselier nor Ortz are attorneys, although they describe themselves as "attorneys in fact."

9. The IRS has identified over 500 frivolous federal tax returns signed by Fuselier or Ortz (or other representative or agents of Compensation Consultants) as return preparers. The customers' claims total almost \$5.7 million in either claimed refunds or frivolous deductions. The number of returns continues to grow.

10. So far the IRS has been able to process and examine 50 (out of more than 500) of the

defendants' returns. These examined returns have resulted in additional tax assessments of \$2.2 million. Additional penalties and interest are also charged to the defendants' customers.

11. The frivolous filings generated by the defendants create an untold administrative burden on the IRS. Each return or claim asserting a claim of right position must be reviewed by an IRS employee. It takes around four hours for an IRS employee to process and examine (and otherwise disallow) each of these returns or claims. The administrative cost of working the Compensation Consultant returns totals over \$32,000. There are more costs incurred in attempting to collect the assessments.

12. The IRS has requested from the defendants a list of those persons for whom the defendants have prepared income tax returns. The defendants have refused to provide such list.

13. Also as part of their abusive program, and based on their theory that wages are not subject to taxation, the defendants have filed numerous frivolous actions in the Court of Federal Claims ostensibly on behalf of their customers.

14. In addition to the false tax returns and the frivolous Court of Federal Claims litigation, the defendants instruct and assist their customers in submitting bogus \$250,000 administrative tort claims against the Federal Government for "insufficiency of due process." The tort claims are filed if the IRS disallows the participants' sham deductions or denies their tax refund claims. The tort claims are intended to hinder tax administration and collection. The defendants further instruct their customers to file complaints for an "automatic stay" of IRS collection activities while their claims are litigated.

15. The defendants market their program through word-of-mouth and on the Internet, including on their website www.commonlawcollege.com. The defendants have an affiliation

with the website www.civil-liberties.com, on which they also promote their program. The defendants charge participants \$500 per year for the program, plus participants are required to assign to them 25% of all tort damages collectable by the customer. The defendants' customers are located in at least 22 states.

16. The IRS has notified the defendants that their program is under investigation, and that their conduct is subject to penalties and subject to an injunction. The defendants' claim of right program is identified in the IRS's annual consumer alert of tax scams that taxpayers are urged to avoid. Despite this notice, the defendants continue to market their abusive scheme.

Conclusions of Law

1. Based upon the factual findings and evidence presented by the parties, the Court finds that the defendants are engaging in conduct in violation of IRC §§ 6700 and 6701, and that injunctive relief is appropriate to prevent the recurrence of that conduct.

2. Accordingly, the Court finds that the defendants, and any business or entity through which they operate, and anyone acting in concert with either of them, should be preliminarily enjoined under IRC § 7408.

3. The Court also finds that the defendants are engaging in conduct in violation of IRC §§ 6694 and 6695, and that injunctive relief is appropriate to prevent the recurrence of that conduct.

4. The Court therefore finds that the defendants, and any business or entity through which they operate, and anyone acting in concert with either of them, should be preliminarily enjoined under IRC § 7407.

5. The Court also finds that the defendants are engaging in conduct that interferes with

the enforcement of the internal revenue laws, and that the United States and the public will suffer irreparable harm in the absence of a preliminary injunction. Based on the evidence and argument presented, the United States has a high likelihood of success on the merits and the defendants' position is frivolous. The public interest will be served by granting a preliminary injunction.

6. Furthermore, it is evident that the defendants will continue to violate the Internal Revenue Code absent an injunction.

7. Accordingly, the Court finds that the defendants, and any business or entity through which they operate, and anyone acting in concert with either of them, should be preliminarily enjoined under IRC § 7402(a).

Order

Based on the foregoing factual findings and for good cause shown, entry of a preliminary injunction is appropriate. Therefore, it is hereby

ORDERED that defendant Richard A. Fuselier and Richard J. Ortt, individually and doing business as Compensation Consultants, or as any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, are preliminarily enjoined from directly or indirectly:

- (1) Organizing, promoting, marketing, or selling any tax shelter, plan or arrangement that advises or encourages customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (2) Making false or fraudulent statements about the securing of any tax benefit by the reason of participating in any tax plan or arrangement, including the false statements that individuals can obtain tax freedom by participating in their program and that wages or compensation for labor constitutes nontaxable income;

- (3) Encouraging, instructing, advising and assisting others to violate the tax laws, including to evade the payment of taxes;
- (4) Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position;
- (5) Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to furnish their customer list upon request of the Internal Revenue Service;
- (6) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of a shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (7) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;
- (8) Providing any tax advice or services for compensation, including preparing or assisting in the preparation of tax returns for any other person or entity, providing consultative services, or representing any persons or entities before the Internal Revenue Service in any manner, either directly or indirectly;
- (9) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, including filing frivolous administrative tort claims against the Federal Government or its employees; and
- (10) Representing any persons before the Internal Revenue Service for any reason, and abetting or encouraging noncompliance with the IRS during the examination of those persons' tax returns.

Further, IT IS HEREBY ORDERED that the defendants provide to counsel for the United States a list identifying (with names, mailing and e-mail addresses, phone numbers and social security or taxpayer-identification numbers) all persons for whom they have prepared federal income tax returns, amended returns, or refund claims since December 31, 1999, and all individuals or entities who have entered into their Compensation Consultants contract, or any

other tax-related shelter, plan or arrangement, and to file with the Court, within 15 days of the date of this Order, a certification that they have done so.

Further, IT IS HEREBY ORDERED that the defendants turn over to counsel for the United States copies of all federal tax returns, amended returns, or refund claims prepared by them since December 31, 1999, and to file with the Court, within 15 days of the date of this Order, a certification that they have done so.

Further, IT IS HEREBY ORDERED that the defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, remove from their websites, including www.commonlawcollege.com and www.civil-liberties.com, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on the first page of those websites a complete copy of this Preliminary Injunction Order, and to maintain the web sites for one year with a complete copy of the Order so displayed throughout that time; and to file with the Court, within 15 days of the date of this Order, a certification that they have done so.

Further, IT IS HEREBY ORDERED that the defendants, at their own expense, contact by mail (or by e-mail, if an address is unknown) all individuals who have purchased their abusive tax shelters, plans, arrangements or programs, or who have had their tax returns or refund claims prepared by the defendants, and inform those individuals of the Court's findings concerning the falsity of the defendant's prior representations and provide a copy of this Preliminary Injunction

Order to those persons, and to file with the Court, within 15 days of the date of this Order, a

certification that they have done so
Lafayette, Louisiana - this 27th day
of February at 12:15 p.m.

Judith
U.S. Judge

DATE *2/27/05*
BY *[Signature]*
TO *116*
COPY SENT

certification that they have done so.

Dated: _____

TUCKER L. MELANCON
United States District Judge