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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THURSTON PAUL BELL, individually and
doing business as the NATIONAL
INSTITUTE FOR TAXPAYER
EDUCATION,

Defendants.

1: CV 01-2159

CIVIL NO.

FILED
HARRISBURG

NOV 15 2001

MARY E. D'ANDREA, CLERK
Per *[Signature]* DEPUTY CLERK

**Complaint for Permanent
Injunction and Other Relief**

Plaintiff, United States of America, for its complaint against defendant
Thurston P. Bell, individually, and doing business as the National Institute for
Taxpayer Education, states as follows:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. Sections 1340 and
1345 and Sections 7401, 7402(a), and 7408 of the Internal Revenue Code of 1986

(26 U.S.C.) (IRC).

2. This complaint is brought by the United States of America pursuant to IRC §§ 7402(a) and 7408 to restrain and enjoin the defendant from:

- a. engaging in activity subject to penalty under IRC § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that he knows or has reason to know is false or fraudulent as to any material matter;
- b. engaging in activity subject to penalty under IRC § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that he knows will result in the understatement of tax liability;
- c. engaging in any other activity subject to penalty under IRC §§ 6700, or 6701; and
- d. engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

3. An injunction is warranted based on Bell's attempts to undermine the federal income tax system by providing erroneous tax advice and promoting an abusive tax plan to his clients and others. Bell also has recruited at least two other tax-scheme promoters—David Bosset of Clearwater, Florida, and Harold E. "Hal" Hearn, an accountant in Atlanta, Georgia—to promote his abusive tax plan. Bell

does business through the National Institute for Taxpayer Education (“NITE”), using the website www.nite.org. Bell uses this website (and its companion website, www.tax-gate.com) to promote his “US Sources” or “§ 861 position” to potential clients, essentially inviting them to pay \$195 for one year (less for subsequent years) to obtain Bell’s strategies and advice in the “Members Hall” section of the website. The website also invites others to become—in essence—§ 861 franchisees; in exchange for \$3,500, Bell offers to train people to become “Senior Fellows,” who then will use this title to attract clients and will “set their own fee Schedule pursuant to the value of their time.”

4. Bell touts “success stories” consisting of a few tax refunds the IRS has erroneously issued to alleged Bell clients. Bell falsely claims that these success stories establish that the IRS accepts the § 861 argument, but Bell fails to disclose that the United States has filed an erroneous refund suit against Bosset Partners Marketing, Inc., which received an erroneous refund that Bell refers to as one of his most celebrated “victories.” Bell also has read and attempted to refute five public statements issued by the IRS during 2001, all of which reject the § 861 position.

5. The United States Tax Court has repeatedly held the § 861 argument to be

frivolous.

6. If Bell is not enjoined, his continuing actions will result in his clients incurring frivolous-return penalties and other possible civil and criminal sanctions, and will require IRS employees to devote countless hours attempting to locate and process the frivolous documents produced by him or at his direction and take steps to prevent or recover erroneous tax refunds and to assess and collect proper tax liabilities.

7. This action has been authorized and 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, pursuant to the provisions of IRC §§ 7401, 7402, and 7408.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

Defendant

9. Defendant Thurston P. Bell resides at 1240 William Street, Hanover, Pennsylvania. Bell is conducting business through or as the National Institute for Taxpayer Education, at 118 Carlisle Street, Suite 201, Hanover, Pennsylvania.

Count I

(Injunction under § 7408 for violations of §§ 6700 and 6701)

10. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC §§ 6700 or 6701 from engaging in further such conduct. In the relevant portion, IRC § 6700 imposes a penalty on any person who organizes (or assists in the organization of) any shelter, plan, or arrangement and makes or furnishes or causes another person to make or furnish (in connection with such organization) a statement regarding the excludibility of any income which the person knows or has reason to know is false or fraudulent as to any material matter. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return, who knows (or has reason to know) the portion will be used to assert a position under the internal revenue laws, and who knows the portion would result in an understatement in tax liability.

11. On his websites Bell describes himself as a high school graduate who is “among the ‘Top 5’ most effective Income Tax Avoidance Consultants/Researchers in the country. . . .” Bell has admitted that he has no formal legal or tax training.

12. During 1998 or 1999, Bell formed the National Institute for Taxpayer

Education (NITE), ostensibly an educational organization dedicated to “reveal[ing] IRS violations of statutory law and now Due Process of Law.” Bell promotes his abusive tax scheme through his websites, www.nite.org and www.tax-gate.com. NITE is not registered as a tax-exempt organization with the IRS and has not requested or been assigned an IRS Employer Identification Number.

13. During his tenure at Taxgate, Bell borrowed and then modified what has been called the “§861 argument” or the “US sources argument.” The § 861 argument falsely posits that a Treasury regulation promulgated under IRC § 861 (301 CFR § 1.861-8(f)) provides the exclusive list of sources of income subject to federal income tax. Since that list is narrow, and focuses on foreign income of US citizens and similar international tax issues, § 861-argument proponents assert that US-sourced income earned by US citizens is not subject to income taxation.

14. The § 861 argument has been rejected out of hand by every judge that has considered it, beginning as early as 1993 in *Solomon v. Commissioner*, 66 T.C.M. (CCH) 1201, 1993 WL 444615 (1993). The Tax Court reiterated its rejection of the § 861 argument in 1995 in *Aiello v. Commissioner*, TC Memo 1995-40, 69 T.C.M. (CCH) 1765, 1995 WL 33283 (1995), and as recently as this year in *Furniss v. Commissioner*, TC Memo 2001-137, 81 T.C.M. (CCH) 1741, 2001 WL

649000 (2001). The Tax Court has sanctioned at least three taxpayers for asserting the position, imposing \$5,000 penalties against taxpayers in *Solomon and Williams v. Commissioner*, 114 T.C. 136 (2000), and a \$25,000 penalty against another taxpayer in *Darlow T. Madge v. Commissioner*, Tax Court Docket No. 01-1531.

15. Bell has recruited § 861-argument clients by advertising his claimed expertise as a “tax researcher.” Bell’s clients include: (1) employers who use the argument to claim falsely that they have paid no wages subject to the income tax and therefore are not required to withhold federal income tax from wages, and (2) individual taxpayers who use the § 861 argument to claim improper refunds of taxes paid and file tax returns improperly reporting no income.

16. Bell’s www.nite.org website has a public section and a “Members Section” that is open only to those who pay a fee. The public section includes an explanation of the frivolous § 861 argument. In this public section, Bell offers some of his advice and analysis for free, but recruits paying members by offering them “silver bullet” strategies to put Bell’s advice into practice. Throughout the public section of the website, Bell claims not to be providing legal advice, but he makes his commercial purpose clear when he describes the benefits of becoming a paying member:

- a. Consultation with Thurston Bell (first 20 minutes free, with an hourly rate thereafter);
- b. Strategies for business owners 'who want to lawfully give their employees 100% of their pay';
- c. Helping people and businesses to use existing, or to start their own, '3rd party 'Contract Co.' that pays them 100% of their pay. . .';
- d. '[A]ccess to the tools needed to allow, and demand if necessary, your employer to stop withholding'; and
- e. '[A] continuous flow of the latest information for all areas of tax law, and effective tax avoidance procedures.'

17. Bell's "Benefits of Membership" section further states:

[L]ike all legal subjects, including the legal strategies being exposed in the Members Hall, Asset Protection cannot be discussed with complete freedom without the threat of charges of Unlicensed Practice of Law being levied against those dispensing information, especially here at this site. For the protection of the privacy of those who desire to know more, and take actions to protect themselves from any lawlessness which will consume all of our economy if unchecked, we are presenting the opportunity to join together in an association with others, and under the creators of this site.

18. Bell also offers to—and does—prepare forms and letters on behalf of members to send to the IRS, employers, and others to assist clients in using the frivolous § 861 argument to evade tax withholding, tax reporting, and tax collection.

The "Benefits of Membership" section states that:

Nearly all of the forms and letters are available for free to the members, but if you do not have the time nor the inclination, for a nominal fee, we will prepare and personalize the correspondence for NITE

Members and send it Priority Mail to your door or PO Box. With this service and minimal consulting with Thurston, you are assured of the proper procedure and response in all circumstances.

The IRS has received documents attached to taxpayers' income-tax returns that appear to have been customized by Bell for the taxpayers. Some of the taxpayers who submitted the customized documents have identified themselves as NITE members, including Raymond Berglund of Montello, Wisconsin. Berglund paid Bell \$65 per hour to prepare letters and other documents to be filed with the IRS. Bell charged Berglund nearly \$1,000 for preparation of one letter.

19. One of Bell's past clients was David Bosset and his company—Bosset Partners Marketing, Inc. ("BPM")—both of Clearwater, Florida. Bosset, a long-time advocate of frivolous tax-protest arguments, discovered Bell's § 861 argument, joined NITE, and asserted the argument on behalf of BPM in an attempt to get a refund of taxes that had been withheld from BPM employees' wages and paid to the IRS.

20. In June 1999, BPM filed a refund claim for all employment taxes paid for the last quarter of 1996, and attached § 861-argument materials that Bell had supplied to Bosset and BPM. BPM phrased its claim for refund vaguely, causing an IRS employee to believe that BPM was claiming that it had had no employees

during that quarter (although BPM in fact employed nearly 70 people). That IRS employee then caused the IRS to refund BPM's employment taxes for that quarter, based on that erroneous assumption. After discovering this error, the IRS requested the Justice Department to sue BPM to recover the erroneous refund. That suit is now pending in the United States District for the Middle District of Florida (Case No. 8:01-CV-633-T).

21. Bosset attempted to capitalize on the IRS's erroneous refund to BPM by preparing frivolous tax returns for Bosset's clients and selling promotional materials based on the frivolous § 861 position. It is not currently known whether Bosset paid Bell the \$3,500 fee to become a "Senior Fellow." On information and belief, Bell trained Bosset about how to promote and assert the § 861 position to others. Bosset is now charging his own clients more than \$100 per hour for advice on asserting the § 861 position.

22. Bell publicized the IRS's erroneous refund to BPM in an attempt to show that the IRS had accepted the § 861 argument and that "our strategies have proven success, as the Internal Revenue Service (IRS) itself (as well as US Attorneys and Federal Judges) has accepted NITE's arguments as valid. . . ." Bell has used this and other false statements to attract additional clients.

For example, Raymond Berglund became one of NITE's first members in 1999 after hearing about Bell's supposed "success stories" such as the BPM refund. Based on Bell's advice, Berglund filed amended federal and state income tax returns with Bell's materials attached, reducing Berglund's reported income to \$0 and improperly claiming a refund of all taxes paid for previous years. Berglund also filed "zero returns" for 1999 and 2000 based on the § 861 argument. The IRS recognized that Berglund's refund claims were frivolous and did not refund any taxes to Berglund.

23. Berglund now recognizes that Bell's advice was erroneous and Berglund is now paying the taxes that he should have reported on (and paid with) his 1999 and 2000 returns. Berglund is also paying interest and penalties attributable to the late payment caused by his following Bell's advice.

24. On information and belief, Bell has at least dozens of clients (and likely more than 100) nationwide who, like Berglund, paid to join NITE, and filed refund claims and "zero returns" based on the frivolous § 861 argument.

25. In addition to providing individualized advice and form letters and filings to NITE's members, Bell offers video and digital recordings of various seminars he has presented between 1998 and 2001. Bell charges from \$50 to \$150 for CDs or

tapes of the eleven listed seminars. Seminar subjects include “providing employers a reasonable cause defense for not honoring levies” and “what laws reveal your right to keep 100% of your pay.”

26. Bell claims to have used the § 861 argument to obtain tax refunds for these seven employers:

• Bosset Partners Marketing, Inc.	\$21,916.45
• Michael Myers	36,458.62
• No Time Delay Electronics	215,454.16
• “A Southern Podiatrist ”	1,282.19
• Atlantic Payroll Corp.	10,505.55
• Exhaust Pros.	88,377.23
• Affordable Accounting Tax Service	14,253.65

for a total of \$388,247.85 in erroneous federal-employment-tax refunds.

27. Bell claims to have obtained seven refunds for individual clients:

• Ken Ingram	\$402.55
• Allan Chadwick	199.69
• Heidi Merritt	14,237.40
• Keith and Lori Langdon	6,155.89

- “HFS” in Murphy, NC 17,283.77
- “A Florida Law Enforcement Officer” 10,399.00
- Lawrence and Barbara Buckner 937.00

for a total of \$49,615.30 in erroneous federal-income-tax refunds.

28. In addition, Bell claims to have secured abatements of previously-assessed or previously-paid taxes totaling millions of dollars.

29. Bell admits that he has read the Tax Court cases that have held the § 861 argument to be frivolous.

30. The public area of Bell’s website contains numerous false or fraudulent statements about federal income tax laws, such as “there is no statutory justification for the custom of withholding taxes from wages/compensation,” “our legal position has been found to be not lacking in legal and statutory merit,” and “there is sufficient proof that the Government accepts our legal position as true and valid.” Bell’s description of the contents of the Members Hall suggests that it also contains many false or fraudulent statements about federal-income-tax laws.

31. In addition to training Bosset, Bell also enlisted the support of an accountant in Atlanta, Georgia—Harold E. “Hal” Hearn—who works as a federal-income-tax-return preparer. Hearn learned of the NITE website and contacted Bell

to discuss the § 861 position. The two then began working together in 2000 to promote the § 861 scheme. Bell referred NITE members to Hearn, who prepared amended federal-income-tax returns (IRS Form 1040X) and current-year federal-income-tax returns (Form 1040) for these NITE clients and for Hearn's existing clients.

32. Using the § 861 position, Hearn listed his clients' income as \$0 on both current-year and amended income-tax returns. The amended returns constituted refund claims for all taxes paid. Hearn attached copies of NITE-produced materials to these "zero-income" tax. Hearn paid at least \$1,000 to Bell or NITE in exchange for the documents that Hearn attached to his clients' returns.

33. During 2000 and 2001, Hearn prepared at least 88 original and amended federal-income-tax returns for at least 35 clients, improperly requesting refunds totaling \$2,567,538. The IRS estimates that the total potential revenue loss (refund claims plus unreported tax liabilities) stemming from Hearn's abusive advice and return-preparation activities could approach \$5 million. To date, the IRS has uncovered five erroneous refunds issued to five of Hearn's clients, all of which relate to 2000 tax returns. The five erroneous refunds total \$168,782.00, including \$139,602 issued to Samuel W. and Doyce B. Evans of Woodstock, Georgia.

34. Bell has engaged in conduct subject to penalty under IRC § 6700. Specifically, Bell organized a plan or arrangement—the § 861 promotion and ancillary schemes—that he sells along with related advice, documents, and other services to his clients. The plan or arrangement is designed to help his clients illegally to evade reporting and paying their income taxes and to claim tax refunds to which they are not entitled. In connection with the organization and sale of his plan or arrangement Bell has made and has caused others to make statements with respect to the excludibility of income which Bell knows or has reason to know are false or fraudulent as to a material matter. This conduct subjects Bell to penalty under IRC § 6700, and therefore to injunction under IRC § 7408.

35. Bell has also engaged in conduct subject to penalty under IRC § 6701. Specifically, Bell has prepared documents that he knew or should have known would be filed with the IRS and has assisted in the preparation of tax returns or other documents for other people that were intended to be used (and were in fact used) in connection with material matters arising under the internal revenue laws. These documents include attachments to various tax returns filed by NITE members. Bell also knew that these returns and other documents (if so used) would result in understatements of tax liabilities of these other persons. The United

States is entitled to an injunction under IRC § 7408 to prevent Bell from engaging in further conduct subject to penalty under IRC § 6701.

Count II

(Unlawful Interference with the Enforcement of the Internal Revenue Laws)

36. The United States incorporates herein the allegations in paragraphs 1 through 35.

37. Bell, through the conduct described above, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court, Bell is likely to continue to engage in such conduct. Bell's conduct is causing irreparable injury to the United States, and the United States has no adequate remedy at law.

38. The United States is entitled to injunctive relief under IRC § 7402(a).

Appropriateness of Injunctive Relief

39. Unless enjoined by the Court, Bell is likely to continue to engage in the conduct described in paragraphs 1 through 35.

40. Bell's conduct, as described in paragraphs 1 through 35, results in irreparable harm to the United States and the United States has no adequate remedy at law. Specifically:

- a. Bell's conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. The IRS will have to expend substantial time and resources to detect future returns with bogus claims, and may be unable to detect all of them. If erroneous refunds are made and later detected, the Government will either lose those funds or have to expend substantial funds and resources to recover them. Based on past experience, the Government cannot expect to recover 100% of the erroneous refunds issued, and therefore the Government can expect a revenue loss if Bell is allowed to continue selling a promotion that results in his clients filing income-tax returns with bogus claims;
- b. Detecting and auditing taxpayers who have used Bell's scheme will place a serious burden on the IRS's resources and—to the extent erroneous-refund suits must be brought against taxpayers—on the resources of the federal judicial system; and
- c. If Bell is not enjoined, he likely will continue to engage in conduct subject to penalty under IRC §§ 6700 and 6701 that interferes with the enforcement of the internal revenue laws, thereby undermining the federal tax system.

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

A. That the Court find that defendant Thurston Bell (individually and doing business as the National Institute for Taxpayer Education) has engaged in conduct subject to penalty under IRC §§ 6700 and 6701, and that injunctive relief is appropriate under IRC § 7408 to prevent Bell and anyone acting in concert with him from engaging in any further

such conduct;

B. That the Court find that defendant Thurston Bell (individually and doing business as the National Institute for Taxpayer Education) engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief under the Court's inherent equity powers and IRC § 7402(a) is appropriate against Bell and anyone acting in concert with him to prevent the recurrence of that conduct;

C. That the Court, pursuant to IRC §§ 7402 and 7408, enter a permanent injunction prohibiting Thurston Bell and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

- (1) Organizing, promoting, marketing, or selling (or assisting therein) the tax shelter, plan, or arrangement known as "the § 861 argument" or any other abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;
- (2) Further engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement they know or have reason to know is false or fraudulent as to any material matter;

- (3) Further engaging in any conduct subject to penalty under IRC § 6701, *i.e.*, 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 they know will (if so used) result in the understatement of income tax liability; and
- (4) Further engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;

D. That this Court, pursuant to IRC §§ 7402 and 7408, enter an injunction requiring Bell to send a letter to:

(1) all persons to whom he gave, sold, or distributed any materials espousing or related to the “§ 861 argument”;

(2) all persons for whom Bell prepared or assisted in the preparation of any federal or state income-tax returns or tax-related documents; and

(3) all persons who contacted Bell regarding the “§ 861 argument” (in paper form, via telephone, or through electronic means);

and inform those persons of the entry of the Court’s findings concerning the falsity of Bell’s representations, the falsity of the tax returns prepared on these persons’ behalf, the possibility of the imposition of frivolous-return penalties against them, the possibility that the United States may seek to recover any erroneous refund they may have received, and the fact that a permanent injunction has been entered against Bell (and attach a copy of the permanent injunction to the letter);

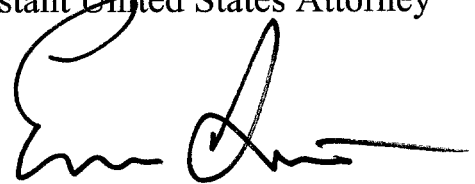
E. That this Court, pursuant to IRC §§ 7402 and 7408, enter an injunction requiring Bell to turn over to the United States any records in his possession or to which he has access, that identify (1) the persons to whom Bell gave or sold, directly or indirectly, any materials related to the § 861 argument, (2) the persons who assisted Bell in marketing or preparing materials sent to potential clients, (3) any individuals or entities for whom Bell or his associates prepared or assisted in the preparation of any tax-related documents, including claims for refund or tax returns, and (4) any individuals or entities who purchased or used any other tax shelter, plan, or arrangement in which Bell has been involved;

F. That this Court, pursuant to IRC §§ 7402 and 7408, enter an injunction requiring Bell to maintain for one year his websites, www.nite.org and www.tax-gate.com, to remove from these websites all abusive-tax-shelter-promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including tax laws), and to display prominently on the first page of those websites a copy of the Court's permanent injunction; and

G. That the Court grant the United States such other and further relief as the Court deems just and appropriate, including costs.

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