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NOV 16 2004 IN THE UNITED STATES DISTRICT COURT FOR THE

MICHAEL W. DAVLIN
CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM J. BENSON, individually and
d/b/a Constitutional Research Associates,

Defendant.

Case No.

040 7403

MAGISTRATE JUDGE KEYS

UNITED STATES' MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, United States of America, pursuant to Fed.R.Civ.P. 65(a) and sections 7408 and 7402(a) of the Internal Revenue Code (26 U.S.C.) ("IRC"), respectfully moves for a preliminary injunction against the defendant, William J. Benson, individually and doing business as Constitutional Research Associates, and all those in active concert or participation with him, enjoining them from:

- (a) promoting, organizing or selling the "Reliance Defense Package" and/or "16th Amendment Reliance Package," which are abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;
- (b) promoting, organizing or selling (or assisting therein) 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;
- (c) making false statements about the excludability of any income, or the securing of any other tax benefit by the reason of participating in such tax shelters, plans, or arrangements;

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- (d) engaging in any other activity subject to penalty under IRC § 6700; and
- (e) engaging in other, similar conduct that substantially interferes with the proper administration of the internal revenue laws.

Further, and in addition to the above prohibition against engaging in conduct subject to penalty under IRC § 6700, the United States requests that any preliminary injunction entered in this civil action order Benson to do the following:

- (f) within 14 days of the entry of the preliminary injunction, mail (by United States mail, and, if an e-mail address is known, by electronic mail) a copy of the preliminary injunction order to every customer who purchased the "Reliance Defense Package" and/or "16th Amendment Reliance Package";
- (g) within 14 days of the entry of the preliminary injunction, serve the United States with a list of customers who purchased a Reliance Defense Package and/or 16th Amendment Reliance Package from him which sets forth the customers' names, mailing addresses, e-mail addresses (if known) and social security numbers,
- (h) within 10 days of the entry of the preliminary injunction, remove from his website www.thelawthatneverwas.com all references to the Reliance Defense Package and/or 16th Amendment Reliance Package;
- (i) post, in not less than 12-point type at the top of the first page of www.thelawthatneverwas.com, while this litigation is pending, a copy of the preliminary injunction order entered in this case; and
- (j) file with the District Court an affidavit detailing his compliance with the requirements set forth above in subparagraphs (f) through (i), above, within 30 days of the entry of the preliminary injunction.

The grounds for this motion are fully set forth in the Memorandum of Law in Support of the United States' Motion for Preliminary Injunction, which is incorporated herein by reference.

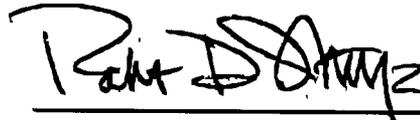
-3-

This motion for a preliminary injunction is based upon the pleadings, the files and records in this civil action, the Declaration of IRS Revenue Agent Paul Ponzio, the Declaration of Barbara Cantrell, the Declaration Judithe K. Howell and the memorandum of law filed herewith.

WHEREFORE, the plaintiff, the United States of America, respectfully requests that a preliminary injunction issue pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enjoining the defendant, William J. Benson, and all those in concert or participation with them, from engaging in the conduct described above.

Dated this 12th day of November, 2004.

PATRICK FITZGERALD
United States Attorney



ROBERT D. METCALFE
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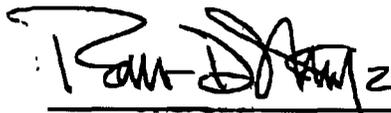
Attorneys for Plaintiff,
United States of America

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **UNITED STATES'**
MOTION FOR PRELIMINARY INJUNCTION was made on the 16th day of November,
2004, by mailing a true and correct copy thereof by first class mail, postage prepaid, to the
following:

Mr. William J. Benson
1128 East 160th Place
South Holland, Illinois 60473-1718



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NOV 18 2004

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM J. BENSON, individually and)
 d/b/a Constitutional Research Associates,)
)
 Defendant.)

04C 7403

Case No. _____

JUDGE FLIP

MAGISTRATE JUDGE KEYS

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

The United States has moved for a preliminary injunction barring the defendant, William J. Benson, from promoting or selling his "Reliance Defense Package" and "16th Amendment Reliance Package," which promote the bogus argument that taxpayers are not required to file income tax returns or pay federal taxes because the Sixteenth Amendment was not properly ratified.

Benson falsely claims that the "Reliance Defense Package" gives his customers "the education and choice toward not filing an income tax return," and that "the IRS has steadfastly refused to prosecute any person standing on [the defense that the Sixteenth Amendment was not properly ratified]." Because the United States has met all the statutory requirements imposed by IRC §§ 7408 and 7402, we respectfully request that a preliminary injunction issue under Rule 65(a) of the Federal Rules of Civil Procedure pending a trial on the merits.

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QUESTIONS PRESENTED

1. William J. Benson sells "Reliance Defense Packages" and "16th Amendment Reliance Packages," which are based on the false argument that taxpayers are not required to file tax returns or pay federal taxes because the Sixteenth Amendment to the Constitution was never properly ratified. Benson fraudulently claims that customers who purchase his products are shielded from criminal prosecution for violating the internal revenue laws. These "Reliance" packages are abusive tax shelters under IRC § 6700. Since Benson has engaged in conduct subject to penalty under IRC § 6700, and is likely to continue to do so in the future in the absence of an injunction, should he be preliminarily enjoined from promoting his scheme under IRC § 7408?

2. By promoting abusive tax schemes (the "Reliance Defense Packages" and "16th Amendment Reliance Package"), Benson has engaged in fraudulent conduct that substantially interferes with the proper administration of the internal revenue laws. Benson's conduct has caused substantial revenue loss to the United States, and will require the IRS to expend considerable resources to audit the tax returns of his customers. Is the Government entitled to preliminary injunctive relief under IRC § 7402?

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STATEMENT OF THE CASE

1. Benson conducts a business known as "Constitutional Research and Associates" at 1128 East 160th Place in South Holland, Illinois, where he also resides. Declaration of IRS Revenue Agent Paul Ponzo ("Ponzo Decl."), ¶5.

Benson's abusive tax promotion

2. The underlying premise of Benson's abusive tax promotion is his claim that the Sixteenth Amendment to the Constitution was not properly ratified by the states in 1913. As a result, Benson claims, U.S. citizens are required to file income tax returns with the IRS or pay federal taxes. Ponzo Decl., ¶12; Cantrell Decl., ¶¶3 and 4, and Exhibit A thereto.¹

3. Next to his picture (and underneath his name), Benson's website states that:

After serving time in federal prison for not paying his United States income taxes, Bill Benson still does not pay income taxes and yet our federal government chooses not to arrest him. Why? Because now he can use this book, which he has written: 'THE LAW THAT NEVER WAS' in his defense. To this day, Bill Benson proclaims, just as loudly, that he will not pay an unjust and corrupt federal income tax.

Cantrell Decl., ¶¶3 and 4, and Exhibit A thereto.

¹ As stated on Benson's internet website www.thelawthatneverwas.com (under the heading "The Premise"):

The authority of the federal government to collect its income tax depends upon the 16th Amendment to the U.S. Constitution, the federal income tax amendment, which was allegedly ratified in 1913. After a year of extensive research, Bill Benson discovered that 16th Amendment was not ratified by the required 3/4 of the states, but nevertheless Secretary of State Philander Knox fraudulently announced ratification.

Cantrell Decl., ¶¶3 and 4, and Exhibit A thereto.

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4. Benson sells his "Reliance Defense Package" for \$3,500 on his website, where he also offers for sale items which include videotapes, CDs and written materials that falsely describe the constitutionality and/or validity of the internal revenue laws. Ponzo Decl., ¶13; Cantrell Decl., ¶¶3 and 4, and Exhibit A thereto.

5. The Reliance Defense Package is described on Benson's website www.thelawthatneverwas.com as "a compendium of information giving you the education and choice toward not filing an income tax return." Elsewhere on his website, Benson claims that the Reliance Defense Package "will give you the education to say 'Based on my state-of-mind, frame-of-mind, reliance and belief, I am obeying the dictates of Constitutional Law.'" Ponzo Decl., ¶14; Cantrell Decl., ¶¶3 and 4, and Exhibit A thereto.

**Benson is convicted of failing to file returns and tax evasion
despite his fraudulent argument about the Sixteenth Amendment**

6. Benson has not filed a federal income tax return since 1976. Ponzo Decl., ¶6.

7. On December 7, 1989, Benson was convicted by the U.S. District Court for the Northern District of Illinois of willfully failing to file his 1980 and 1981 income tax returns in violation of IRC § 7203, and of attempting to evade or defeat his income taxes for the 1980 taxable year. These convictions were reversed by the U.S. Court of Appeals for the Seventh Circuit on August 27, 1991 in *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991). Ponzo Decl., ¶7.

8. Although his first conviction was reversed, the Court of Appeals rejected Benson's argument that the Sixteenth Amendment was not properly ratified. The Seventh Circuit in *United States v. Benson*, *supra*, stated that (941 F.2d at 607):

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Benson is wrong. In [*United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986)], we specifically examined the arguments made in *The Law That Never Was*, and concluded that "Benson . . . did not discover anything." We concluded that Secretary Knox's declaration that sufficient states had ratified the Sixteenth Amendment was conclusive, and that "Secretary Knox's decision is now beyond review." See 788 F.2d at 1254. It necessarily follows that the district court correctly refused to hold an evidentiary hearing; no hearing is necessary to consider an issue that is "beyond review."

Ponzo Decl., ¶17 and Exhibit thereto (at page 132).

9. Benson was retried and convicted of the same offenses on February 2, 1994, in *United States v. William J. Benson*, Case No. 87-CR-278 (N.D. Illinois). Those convictions were later upheld in *United States v. Benson*, 67 F.3d 641 (7th Cir. 1995). Ponzo Decl., ¶7 and Exhibit B thereto.

10. As a condition of his probation, Benson was ordered to file timely federal income tax returns and furnish to the probation office financial statements outlining his gross income and any tax-deductible expenses claimed. Maintaining that the Sixteenth Amendment is invalid, Benson has refused to comply with Court orders to file his tax returns. Ponzo Decl., ¶9.

Benson's customers use his "Reliance Defense Package" and "16th Amendment Reliance Package" to justify their failure to file income tax returns and pay federal taxes

11. On or about December 22, 2003, a Benson customer named Ronald K. Doyle met with IRS Taxpayer Resolution Representative Judithe K. Howell and her supervisor, Lewis Kubiet, to discuss the IRS notice that Doyle had received because he failed to file his 2001 Form 1040 income tax return. Declaration of Judithe K. Howell ("Howell Decl."), ¶¶1, 4 and 6, and Exhibit A-2 thereto.

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12. During the December 22, 2003, meeting, which lasted approximately one to one and a half hours, Doyle informed the IRS employees present that he was not required to file tax returns or pay federal income taxes because the Sixteenth Amendment to the Constitution had not been properly ratified. Howell Decl., ¶7.

13. At the conclusion of the meeting, Doyle turned over to the IRS personnel present a large box filled with written materials in binders, CDs, and videotapes. The materials that Doyle turned over included a copy of the "16th Amendment Reliance Package," a condensed version of Benson's Reliance Defense Package that is marketed for \$250 by a Fresno, California entity known as "The Free Enterprise Society" on the website www.thefreeenterprisesociety.com. A true and correct copy of the 16th Amendment Reliance Package is attached to the Declaration of IRS Revenue Agent Paul Ponzo as Exhibit K. Ponzo Decl., ¶15 and Exhibit K thereto.

14. Included in the documents turned over by Doyle was a copy of a letter dated October 8, 1999 from Bill Benson. The first page of Benson's October 8th letter states, in pertinent part, that "... I want to thank you for your request for my Reliance Letter regarding the 16th Amendment to the United States Constitution." Exhibit A to the Declaration of Judith K. Howell.

15. The last page of Benson's letter to Doyle states, in relevant part, that "[i]t is insanely unrealistic for someone like **Ronald K. Doyle Sr.** to believe that he would be required to file any forms with any state taxing agency or the Federal Government, when the 16th Amendment to the U.S. Constitution is an absolute complete total fraud as proven by **The Law That Never Was** Volume I and in excess of 17,000 documents, etc. that **Ronald K. Doyle Sr. relies on as his STATE OF MIND, FRAME OF MIND RELIANCE, AND BELIEF**" (emphasis in original).

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This language is virtually identical to that found in Benson's advertisement of his "Reliance Defense Package." Howell Decl., ¶12 and Exhibit A thereto.

16. Doyle sent a December 22, 2003 letter to the IRS repeating the language Benson used in describing the benefits of his Reliance Defense Package. Page 1 of Doyle's letter states, in pertinent part, that:

With this letter and corresponding Exhibits, I am responding to the CP515 Notice from the IRS' Atlanta Office. I am providing you with a compendium of information concerning my choice toward not filing an Income Tax Return, based on my state-of-mind, frame of mind, reliance and belief that I am obeying the dictates of Constitutional Law. All items included in this compendium shall become a permanent part of my permanent Internal Revenue Service file under my account number [redacted].

Howell Decl., ¶10 and Exhibit A-1 thereto.

17. The second page of the 16th Amendment Reliance Package attached to the Declaration of IRS Revenue Agent Ponzo as Exhibit K indicates that it was copyrighted in 1992 by "William J. Benson of Constitutional Research Associates," and published by the Free Enterprise Society. Ponzo Decl., ¶16.

18. Benson knows or has reason to know that his statements about the validity of the Sixteenth Amendment and the internal revenue laws are false or fraudulent. The 16th Amendment Reliance Package (Exhibit K to the Declaration of Paul Ponzo at pp.131-133) includes the opinion of the U.S. Court of Appeals for the Seventh Circuit in the case of *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991), which held that Benson was not entitled to an evidentiary hearing on the issue of the validity of the Sixteenth Amendment because the issue was "beyond review." Exhibit K to the Declaration of IRS Revenue Agent Paul Ponzo.

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Irreparable injury caused by Benson's Reliance Defense Package

19. Based upon information provided by the Frivolous Return unit at the Internal Revenue Service Center in Ogden, Utah, the IRS has identified other persons who have purchased and attempted to use Benson's Reliance Defense Package and/or 16th Amendment Reliance Package. Those Benson customers were identified from the names affixed to the Reliance Defense Packages and/or 16th Amendment Reliance Packages (or portions thereof) that were sent to various IRS offices and subsequently forwarded to the Frivolous Return unit. Ponzo Decl., ¶20.

20. After Agent Ponzo obtained the names and/or taxpayer identification numbers associated with the Reliance Defense Packages and/or 16th Amendment Reliance Packages described above, he conducted an investigation into that persons' history of filing federal income tax returns (Forms 1040 or equivalent, such as Form 1040A). The results of his investigation are set forth below:

	<u>Taxpayer</u>	<u>Tax Returns Filed</u>	<u>Tax Returns Not Filed</u>
a.	Ronald K. Doyle 1120 Scotland Avenue Chambersburg, PA	1988 - 2000	2001 - 2003
b.	Rolan R. Becker 3175 Canal Road Ronan, MT	1988 - 1999	2000 - 2003
c.	Phyllis A. Jacobsen 327S Hackett Road Waterloo, IA		2000 - 2003
d.	Brett Curle 1480 Hawk Crest Pl. Santa Rosa, CA		2000 - 2003

	<u>Taxpayer</u>	<u>Tax Returns Filed</u>	<u>Tax Returns Not Filed</u>
e.	Dale A. Heinz 2503 N. Bethlehem Rd. Plant City, FL	2000 - 2001	2002 - 2003
f.	Michael Hamilton 310 Buena Vista Dr. #180A Battle Mountain, NV		2000 - 2003
g.	Floyd Sheperd 8119 S. Artesian Avenue Chicago, IL	2000	2001 - 2003

Ponzo Decl., ¶¶19 and 21.

21. Several of the persons identified in paragraph 20, above, are indebted to the United States for unpaid federal income taxes and statutory additions to tax for some of the tax years in which they failed to file federal income tax returns with the IRS. The total amounts of the unpaid federal income taxes and statutory additions range from \$242.53 (one tax year for one taxpayer) to \$234,532.47 (two tax years for one taxpayer). Ponzo Decl., ¶22.

ARGUMENT

I. DEFENDANT’S “RELIANCE DEFENSE PACKAGE” IS AN ABUSIVE TAX SCHEME THAT SHOULD BE ENJOINED

A. Introduction

Section 7408(a) provides that the United States may commence an action in a district court to enjoin any person from engaging in conduct subject to penalty under IRC §§ 6700 and 6701. A district court has authority to grant such relief, if it finds (IRC § 7408(b)) --

(1) that the person has engaged in any conduct subject to penalty under section 6700 . . . or section 6701 . . . , and

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(2) that injunctive relief is appropriate to prevent recurrence of such conduct[.]

Section 6700 provides a penalty against any person who, in connection with organizing or selling "a partnership or other entity," "an investment plan or arrangement," or "any other plan or arrangement," makes or furnishes a statement about the tax consequences of participating which he knows, or has reason to know, is false or fraudulent as to any material matter, *See, e.g. United States v. White*, 769 F.2d 511, 514-15 (8th Cir. 1985); *United States v. Buttorff*, 761 F.2d 1056, 1059-63 (5th Cir. 1985); *United States v. Savoie*, 594 F. Supp. 678, 680-82 (W.D. La. 1984).

Although the legislative history shows that IRC §§ 6700 and 7408 were enacted to give the Internal Revenue Service more effective tools to deal with "the growing phenomenon of abusive tax shelters," S. Rep. No. 97-494, 97th Cong., 2d Sess. at 266 (1982 U.S. Code Cong. & Ad. News 781, 1014), these statutes do not apply only to typical "investment" tax shelters. Rather, Congress intended those sections to apply to "abusive tax shelters and *other abusive tax avoidance schemes*." S. Rep. No. 97-494, *supra* at 266 (emphasis added). *See United States v. White*, 769 F.2d at 515; *United States v. Buttorff*, 761 F.2d at 1063; *United States v. Savoie*, 594 F. Supp. at 680.

In this case, with respect to the Government's motion for a preliminary injunction, the inquiries indicated by IRC § 7408(a) are: (1) whether Benson engaged in conduct subject to penalty under IRC § 6700 by making false or fraudulent statements about the federal tax laws which he knew or had reason to know were false or fraudulent; and (2) whether injunctive relief is warranted to protect such conduct from continuing. Since IRC § 7408 expressly provides for an injunction, the traditional guidelines for equitable relief do not have to be established. *United*

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States v. White, 769 F.2d at 515; *United States v. Buttorff*, 761 F.2d at 1059 (“When an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose”); *United States v. Schiff*, 269 F. Supp.2d 1262, 1265 (D. Nev. 2003), *aff’d*, 379 F.3d 621 (9th Cir. 2004).

B. Benson should be enjoined from engaging in conduct which is subject to penalty under § 6700

To obtain an injunction preventing Benson from promoting an abusive tax shelter such as the “Reliance Defense Package” and the “16th Amendment Reliance Package,” the Government must establish by a preponderance of the evidence that: (1) the defendant organized or sold, or assisted in the organization or sale of, an entity, plan or arrangement; (2) he made or caused to be made false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) he knew or had reason to know the statements were false or fraudulent; (4) the false or fraudulent statements were material; and (5) an injunction is necessary to prevent recurrence of this conduct. IRC §§ 6700(a), 6703 and 7408(b); *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000), *cert. den.*, 533 U.S. 902 (2001); *United States v. Estate Preservation Services*, 202 F.3d 1093, 1098 (9th Cir. 2000). Defendant’s “Reliance Defense Package” and “16th Amendment Reliance Package” are, to put it mildly, abusive tax avoidance schemes.

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1. **Benson organized and sold
a plan or arrangement**

Section 6700 applies to “(ii) any investment plan or arrangement, or (iii) any other plan or arrangement.” IRC § 6700(a)(1)(A). As the advertisements on the websites www.thelawthatneverwas.com and www.thefreeenterprisesociety.com make plain, Benson sells a plan or arrangement within the meaning of IRC § 6700(a). The sale of materials that falsely tells customers that they are not required to file income tax returns and pay federal taxes, and that falsely tells them they are receiving a legal defense to not filing returns or paying tax, is a “plan or arrangement” under IRC § 6700(a)(1)(A).

Benson’s materials apparently focus on the Supreme Court’s holding in *Cheek v. United States*, 498 U.S. 192, 202-03 (1991). In that criminal tax-evasion case, the Court held that a defendant’s good-faith belief that he is not violating the tax laws negates the statutory willfulness requirement, whether or not that good-faith belief is objectively reasonable. Courts have recognized that a “good faith reliance” defense is essentially a claim that the defendant did not act willfully. *United States v. Chavin*, 316 F.3d 666, 670 (7th Cir. 2002). The language in Benson’s letters to purchasers of the Reliance Defense Package and 16th Amendment Reliance Package crudely mimics the opinion in *Cheek*, as seen in the following excerpt:

It is insanely unrealistic for someone like **Ronald K. Doyle Sr.** to believe that he would be required to file any forms with any state taxing agency or the Federal Government, when the 16th Amendment to the U.S. Constitution is an absolute complete total fraud as proven by **The Law That Never Was Volume I** and in excess of 17,000 documents, etc. that **Ronald K. Doyle Sr.** relies on as his **STATE OF MIND, FRAME OF MIND RELIANCE, AND BELIEF.**”

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The rationale behind the subjective standard in *Cheek, supra*, is to avoid criminalizing unwitting violations of the complicated and extensive tax laws. *United States v. Bishop*, 291 F.3d 1100, 1106 (9th Cir. 2002). Benson is, in essence, marketing and selling a criminal defense. He is peddling his package of materials for exorbitant fees, falsely promising, in effect, that it is a Get-Out-of-Jail-Free card.

2. In selling his reliance defense plan, Benson makes false or fraudulent statements regarding tax benefits

In *United States v. Buttorff*, 761 F.2d at 1059, the court held that “[s]ection 6700 penalizes any person who makes statements regarding the tax benefits of an arrangement organized or sold by him which he knows or has reason to know are false or fraudulent as to any material matter.” Benson’s Reliance Defense Package and 16th Amendment Reliance Package each make false or fraudulent statements about the validity of the Sixteenth Amendment and the legal requirements imposed on taxpayers to file income tax returns and pay federal taxes. Benson’s deliberate misrepresentations concerning the Sixteenth Amendment also induce customers to purchase his products by promising them, in effect, that they are legally privileged to ignore the filing requirements of the internal revenue laws because they have supposedly relied on his argument that the Sixteenth Amendment was not properly ratified in failing to file their returns or pay their taxes.

Prohibiting Benson’s sales of Reliance Defense Packages and 16th Amendment Reliance Packages is consistent with the First Amendment. The First Amendment does not protect false commercial speech (including illegal tax advice), speech inciting others to break the law, or speech used as part of an illegal transaction. The preliminary injunction requested in this case

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prohibits only unprotected speech. See *United States v. Schiff*, 379 F.3d 621, 626-628 (9th Cir. 2004); *United States v. Raymond*, 228 F.3d at 815-16; *United States v. Kaun*, 827 F.2d 1144, 1152-53 (7th Cir. 1987).

The Supreme Court has held that “the State may ban commercial expression that is fraudulent or deceptive without further justification.” *Edenfield v. Fane*, 507 U.S. 761, 768 (1993). Commercial speech includes selling tax advice. *Estate Preservation Services*, 202 F.3d at 1096 n.3, 1106. Consequently, Benson’s advertisements and sales of his Reliance Defense Package and 16th Amendment Reliance Packages for \$3,500 and \$250, respectively, represent commercial speech that, because they are false, may be banned altogether. See, e.g., *Schiff* (enjoining book under IRC § 7408); *United States v. Raymond*, 228 F.3d at 815 (enjoining as “false or misleading commercial speech” advertisements and a three-volume book); *White*, 769 F.2d at 512, 516-17 (enjoining, as false “commercial speech” and speech used to promote “an illegal activity,” “a cassette tape and written materials,” including “detailed instructions” about “fraudulent means to evade to evade federal income taxes”). See also *NCBA/NCE v. United States*, 843 F. Supp. 655, 666 (D. Colo. 1993) (holding that materials containing false statements and advice about the federal tax laws was false commercial speech not protected by the First Amendment), *aff’d*, 42 F.3d 1406 (10th Cir. 1994).

**3. Benson Knew or Had Reason to Know That
His Statements were False or Fraudulent**

The next step under IRC § 6700(a)(2)(A) is to determine whether Benson “knew or had reason to know” that his statements concerning the validity of the Sixteenth Amendment were false or fraudulent. The United States is not required to establish that Benson acted with

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subjective bad faith, *i.e.*, to show that he actually knew, at the time he organized and sold the Reliance Defense Package and 16th Amendment Reliance Package, that his "Reliance" letters and related materials contained false and fraudulent statement concerning the availability of tax benefits or the requirements of the internal revenue laws.²

Rather, it is sufficient (for the purpose of establishing defendant's violation of IRC § 6700) for the Government to show that Benson had reason to know, as a result of the uniform rejection by the federal courts of his and other arguments concerning the validity of the Sixteenth Amendment, that those representations were false or fraudulent. *United States v. White*, 769 F.2d at 515 ("appellant knew or had reason to know were false or fraudulent because such representations had been consistently rejected by the courts"); *accord United States v. Buttorff*, 761 F.2d at 1062. *See United States v. Kaun*, 827 F.2d at 1149 (employing "knew or should have known to be false" standard to find violation of IRC § 6700); *United States v. Campbell*, 897 F.2d 1317, 1322 (5th Cir. 1990) (same).

Benson had every reason to know his statements about the Sixteenth Amendment and the requirements of the internal revenue laws were false. It is well-settled law that the Sixteenth Amendment was properly ratified (*E.g., United States v. Foster*, 789 F.2d 457, 462-63 (7th Cir. 1986); *United States v. Thomas*, 788 F.2d 1250, 1253-54 (7th Cir. 1987)). Moreover, every court that has considered Benson's particular arguments against the validity of the Sixteenth

² In enacting IRC § 6700, Congress recognized that its provisions would be unworkable if liability was premised solely on a showing that the promoter or seller of a tax shelter knew that the statements made or furnished by him were false or fraudulent. Thus, Congress expressly provided in IRC § 6700(a)(2)(A) that a promoter or seller is subject to penalty under IRC § 6700 if he "knows or has reason to know" that the statements made or furnished by him are false or fraudulent.

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Amendment has rejected them outright. *Miller v. United States*, 868 F.2d 236, 240-41 (7th Cir. 1988); *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); *Foster, supra*; *Thomas, supra*; *Knoblauch v. Commissioner*, 749 F.2d 200 (5th Cir. 1984); *United States v. Wojtas*, 611 F. Supp. 118 (N.D. Ill. 1985). As stated by the *Miller* Court:

We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed.2d 493 (1916), and those specifically rejecting the argument advanced in [Benson's] *The Law That Never Was*, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure.

Miller v. United States, 868 F.2d at 241. See *United States v. Dunkel*, 927 F.2d 955, 955 (7th Cir. 1991) ("district judges may rebuff defenses based on erroneous constitutional beliefs (such as that the 16th Amendment was not properly ratified)").

Moreover, Benson – as a result of his criminal convictions for failure to file tax returns and tax evasion – has actual knowledge that the representations contained in the "Reliance Defense Package" that he sold were false or fraudulent. In the appeal taken from his first conviction, the Seventh Circuit squarely rejected his argument concerning the validity of the Sixteenth Amendment, holding that the issue was "beyond review." *United States v. Benson*, 941 F.2d 598, 607 (7th Cir. 1991); see *United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (affirming Benson's subsequent convictions for tax crimes). Benson's criminal convictions not only belie his claim that the Sixteenth Amendment was not properly ratified, but also belie his representations that purchasers of his materials can reasonably rely on them to stop filing returns or paying taxes while escaping criminal punishment.

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4. Benson's False or Fraudulent Statements Were Material

To prove that a statement is material, it is not necessary to prove actual reliance. "Rather, 'a matter is considered material to the arrangement 'if it would have a substantial impact on the decision making process of a reasonably prudent investor.'" *Smith*, 657 F. Supp. at 655 (citing *Buttorff*, 761 F.2d at 1062, and S. Rep. No. 97-494, 97th Cong. 2d Sess. 267 (1982), reported in 1982 U.S. Code Cong. & Admin. News 781, 1015). Accord *United States v. Estate Preservation Services*, 38 F. Supp. 2d 856, 857 (E.D. Cal. 1998), *aff'd*, 202 F.3d 1093 (9th Cir. 2000). These representations would affect "the decision-making process of any reasonable investor." *United States v. Campbell*, 704 F. Supp. 715, 724 (N.D. Tex. 1988), *aff'd*, 897 F.2d 1317 (5th Cir. 1990).

Benson's false representations in the Reliance Defense Package and the 16th Amendment Reliance Package that the Sixteenth Amendment was a nullity and that individuals would not, accordingly, be required to file tax returns or pay income taxes are obviously "material" under this standard.

5. An Injunction is appropriate and necessary to prevent future violations of IRC § 6700

When a defendant is found to have engaged in conduct subject to penalty under IRC § 6700, injunctive relief is available under IRC § 7408(a) if it "is appropriate to prevent the recurrence of such conduct." In making this determination, the traditional equity requirements need not be met. *United States v. White*, 769 F.2d at 515; *United States v. Buttorff*, 761 F.2d at 1059. In providing a specific injunctive remedy under IRC § 7408 for conduct violating IRC § 6700, Congress has already taken the traditional equity factors into consideration. See *United*

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States v. Buttorff, 563 F. Supp. at 455 (discussing standards for granting injunction under Section 7408).

That injunctive relief is necessary in the present case is amply supported by the evidence presented through the Declarations of Paul Ponzo, Judithe Howell and Barbara Cantrell. In *United States v. Kaun, supra*, the Seventh Circuit looked to the analogous area of securities law to identify a number of factors pertinent to determining whether the granting of an injunction under IRC § 7408 is appropriate. Relevant factors include:

[T]he gravity of the harm caused by the offense; the extent of the defendant's participation and his degree of scienter; the isolated or recurrent nature of his infraction and the likelihood that the defendant's customary business activities might again involve him in such transaction; the defendant's recognition of his own culpability; and the sincerity of his assurances against future violations.

United States v. Kaun, 827 F.2d at 1149 (quoting *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982)).

The United States, as a result of defendant's sales of "Reliance Defense Packages" and "16th Amendment Reliance Packages," has suffered a loss of tax revenues due to the purchasers' failure to file tax returns. Ronald Doyle, who turned over copies of Benson's Reliance Defense Package and 16th Amendment Reliance Package, stopped filing tax returns with the IRS in 2001. The other individuals identified in the Declaration of Paul Ponzo who sent portions of their Reliance Defense Packages to the IRS also stopped filing income tax returns and paying federal taxes. Defendant's promotion of the "Reliance Defense Package" has cost the U.S. Treasury lost tax revenues in amounts ranging from \$242 to \$235,000. Furthermore, the IRS has been obliged to undertake examinations of the federal income tax returns filed by Benson's clients. See *United*

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States v. Savoie, 594 F. Supp. at 682 (denying injunctive relief would cause irreparable harm to Government where tax forms filed by promoter's customers "necessitate examinations and audits which deplete available manpower.").

More disturbing, from the standpoint of whether Benson is likely to continue violating IRC § 6700, is the fact that he is "fundamentally opposed to the existing tax structure and that [his] position [has] not changed over time." *United States v. Buttorff*, 563 F. Supp. at 455. This is easily discerned from Benson's website www.thelawthatneverwas.com, which contains the following language:

After serving time in federal prison for not paying his United States income taxes, Bill Benson still does not pay income taxes and yet our federal government chooses not to arrest him. Why? Because now he can use this book, which he has written: 'THE LAW THAT NEVER WAS' in his defense. To this day, Bill Benson proclaims, just as loudly, that he will not pay an unjust and corrupt federal income tax.

Despite the rejection of his constitutional theories by every court that has had the opportunity to review them, Benson still sells tax-advice materials falsely stating that the Sixteenth Amendment is invalid and that customers are not, accordingly, required to file tax returns or pay federal income taxes. Benson has never acknowledged the wrongfulness of his actions, and there is no indication that he intends to abandon his business of selling Reliance Defense Packages and 16th Amendment Reliance Packages. Finally, Benson's long-standing opposition to the Sixteenth Amendment and the IRS clearly places him in a position where future violations of IRC § 6700 are inevitable. Absent an injunction enforceable by the Court's contempt powers, he represents a true threat to the tax revenues of the United States and

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customers who purchase his materials. Under these circumstances, an injunction under IRC § 7408 is clearly appropriate.

CONCLUSION

The United States has met all of the statutory requirements imposed by IRC §§ 6700 and 7408 for an injunction barring Benson from promoting, organizing or selling his Reliance Defense Packages and 16th Amendment Reliance Packages. Accordingly, the United States respectfully requests that a preliminary injunction be entered against the defendant, William J. Benson, and all those in active concert or participation with him, enjoining them under IRC §§ 7402 and 7408 from:

- (a) promoting, organizing or selling the "Reliance Defense Package" and/or "16th Amendment Reliance Package," which are abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;
- (b) promoting, organizing or selling (or assisting therein) 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;
- (c) making false statements about the excludability of any income, or the securing of any tax benefit by the reason of participating in such tax shelters, plans, or arrangements;
- (d) engaging in any other activity subject to penalty under IRC § 6700; and
- (e) engaging in other, similar conduct that substantially interferes with the proper administration of the internal revenue laws.

Further, and in addition to the above prohibition against engaging in conduct subject to penalty under IRC § 6700, the United States requests that any preliminary injunction entered in this civil action order Benson to do the following:

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- (f) within 14 days of the entry of the preliminary injunction, mail (by United States mail, and, if an e-mail address is known, by electronic mail) at his own expense a copy of the preliminary injunction order to every customer who purchased the "Reliance Defense Package" and/or "16th Amendment Reliance Package";
- (g) within 14 days of the entry of the preliminary injunction, serve the United States with a list of customers who purchased a Reliance Defense Package and/or 16th Amendment Reliance Package from him which sets forth the customers' names, mailing addresses, e-mail addresses and social security numbers,
- (h) within 10 days of the entry of the preliminary injunction, remove from his website www.thelawthatneverwas.com all references to the Reliance Defense Package and/or 16th Amendment Reliance Package;
- (i) post, in not less than 12-point type at the top of the first page of www.thelawthatneverwas.com, while this litigation is pending, a copy of the preliminary injunction order entered in this case; and ³

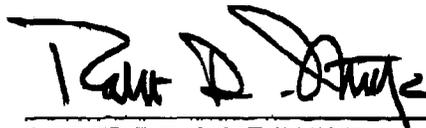
³ Requiring Benson to post a copy of the preliminary injunction on his commercial website and provide the Government with a list of customers who purchased his fraudulent tax products does not violate the First Amendment. *United States v. Schiff*, 379 F.3d 621, 630-31 (9th Cir. 2004) (upholding preliminary injunction requiring abusive tax shelter promoter to disclose his customer list and post a copy of the preliminary injunction on his website).

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- (j) file with the Court an affidavit detailing his compliance with the requirements set forth above in subparagraphs (f) through (j), above, within 30 days of the entry of the preliminary injunction.

Dated this 12th day of November, 2004.

PATRICK FITZGERALD
United States Attorney



ROBERT D. METCALFE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
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Washington, D.C. 20044
Telephone: (202) 307-6525
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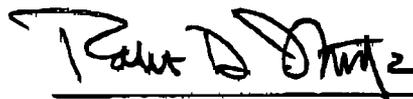
Attorneys for Plaintiff,
United States of America

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **MEMORANDUM OF LAW**
IN SUPPORT OF THE UNITED STATES' MOTION FOR PRELIMINARY
INJUNCTION was made on the 16th day of November, 2004, by mailing a true and correct
copy thereof by first class mail, postage prepaid, to the following:

Mr. William J. Benson
1128 East 160th Place
South Holland, Illinois 60473-1718



ROBERT D. METCALFE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM J. BENSON, individually and)
 d/b/a Constitutional Research Associates,)
)
 Defendant.)
 _____)

Case No. _____

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the following documents:

- 1. **DECLARATION OF IRS REVENUE AGENT PAUL PONZO**
- 2. **DECLARATION OF BARBARA CANTRELL**

and

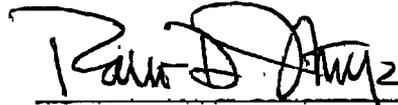
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3. DECLARATION OF JUDITHE K. HOWELL

was made on the 16th day of November, 2004, by mailing true and correct copies thereof by first class mail, postage prepaid, to the following:

Mr. William J. Benson
1128 East 160th Place
South Holland, Illinois 60473-1718

PATRICK FITZGERALD
United States Attorney



ROBERT D. METCALFE
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