

~~FILED~~

Og

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEB 27 AM 8:17

MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASE NO. 8: 01-CV-2154-T-17TBM

DAVID T. BOSSET,

Defendant.

_____ /

PERMANENT INJUNCTION

This cause is before the Court sua sponte. The Court has stricken Defendant's Answer, enters judgment in favor of the United States of America, and enters this permanent injunction.

I. Facts

The following facts are taken from the Complaint and Preliminary Injunction Motion:

1. David Bosset has used the frivolous Sec. 861 argument to prepare and file frivolous federal income tax returns that understate his clients' tax liabilities. The Sec. 861 argument falsely posits that a regulation promulgated under 26 U.S.C. (IRC) Sec. 861 (26 CFR Sec. 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 U.S. citizens and similar international tax issues, Sec. 861-argument proponents assert that domestic income earned by U.S. citizens is not subject to income taxation. Using the Sec. 861 proposition, Bosset listed his clients' domestic income as \$0 on amended

86

Case No. 8:01-CV-2154-T-17TBM

income tax returns. The amended returns constituted claims for refund of all or most taxes paid for the year at issue. There was no realistic possibility that the Sec. 861 position taken by Bosset would be sustained on the merits. Bosset knew or should have known that the Sec. 861 position was unrealistic, and although the Sec. 861 position advanced by Bosset was disclosed on the tax returns, the position was frivolous.

2. Bosset also has sold documents to others, claiming that the documents provided a "roadmap" to using the frivolous Sec. 861 position to file claims for refund of previously-paid income taxes. Bosset used these materials, among other things, to solicit clients for his tax-advice and return-preparation business.

3. Bosset assisted in preparing returns for at least one client and did not identify himself as a paid return preparer on the tax returns. Bosset also failed to supply an identifying number on those returns.

4. Bosset also appeared on behalf of clients before the IRS, even though he did not qualify as a representative under IRS Circular 230. At the meetings, Bosset tried to advance frivolous arguments on behalf of his clients, including the Sec. 861 argument, the position that the IRS lacks jurisdiction to assess taxes, and the position that IRS revenue agents lack authority to perform their jobs.

5. The documents, advice and other services provided by Bosset in advancing the Sec. 861 argument constitute assisting in the organization or organizing a plan or arrangement for avoidance of

Case No. 8:01-CV-2154-T-17TBM

taxation. In connection with organizing and promoting this plan or arrangement, Bosset made false or fraudulent statements regarding the excludibility of wages and other items from income. Bosset knew or had reason to know his statements were false or fraudulent.

6. Bosset has prepared tax returns and/or 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 letters and tax returns prepared by Bosset for at least two clients. Bosset also knew that these returns and other documents (if so used) would result in understatements of tax liabilities of these other persons.

7. Bosset failed to turn over to the IRS a list of his clients for the preceding three years, despite requests to do so. Bosset eventually provided the list of clients to the Department of Justice, after being ordered to do so by the Court.

II. Legal Conclusions

Based on the above facts, the Court finds that an injunction is appropriate under IRC Sec. 7402 for the enforcement of the internal revenue laws. Further, the Court finds that David T. Bosset violated IRC Secs. 6700, 6701, 6694, and 6695. Bosset violated IRC Sec. 6700 by: 1) organizing and selling an interest in a plan or arrangement; 2) making false statements-which Bosset knew or had reason to know were false-about the excludibility of income from taxation by reason of participating in the plan or arrangement. Bosset violated IRC Sec. 6701 by: 1) preparing or

Case No. 8:01-CV-2154-T-17TBM

assisting in the preparation of returns and other documents; 2) knowing or having reason to believe that the return or document would be used in connection with a material matter arising under the internal revenue laws; and 3) knowing that the return or document, if so used, would result in an understatement of tax liability for another person. Bosset violated IRC Sec. 6694 by: 1) being a return preparer as defined in IRC Sec. 7701(a)(36); 2) asserting an unrealistic position on a tax return that he prepared; 3) knowing (or having reason to know) that the return contained the unreasonable position; and 4) the unrealistic position was frivolous. Bosset violated IRC Sec. 6695 by failing to sign returns prepared by him, failing to furnish an identifying number on returns prepared by him, and failing to turn over a copy of the returns or a list of clients to the IRS upon request.

Since the Court finds that David Bosset's conduct is subject to penalty under IRC Secs. 6700, 6701, 6694 and 6695, the Court has authority to enjoin Bosset under IRC Secs. 7407 and 7408 if an injunction is appropriate to prevent the recurrence of the penalty conduct. The Court finds that an injunction is appropriate, after weighing the following factors: 1) "the gravity of harm caused by the offense;" 2) "the extent of the defendant's participation and his degree of scienter;" 3) "the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions;" 4) "the defendant's recognition of his own culpability;" and 5) the sincerity of his assurances against future violations. United States v. Raymond, 228 F.3d 804, 813 (7th Cir. 2000) (citing Kaun 827 F.2d 1144, 1149-50 (7th Cir. 1987)), cert. denied, 553 U.S. 902 (2001).

Case No. 8:01-CV-2154-T-17TBM

Further, Bosset's repeated violations of Sections 6694 and 6695 show that a limited injunction, i.e. banning him only from preparing abusive tax returns, would not be sufficient to prevent the recurrence of penalty conduct.

III. Order

A. The Court **ORDERS** that, pursuant to IRC Secs. 7402, 7407 and 7408, David Bosset and his agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order are enjoined from:

1. preparing federal income tax returns, amended returns, and other related documents and forms for others;
2. failing to sign federal tax returns that he prepares;
3. failing to furnish his social security number on tax returns he prepares;
4. failing to retain and produce to the Internal Revenue Service upon request, a list of all clients for whom he has performed return-preparation services;
5. engaging in activity subject to penalty under IRC Sec. 6700, including organizing 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;
6. engaging in activity subject to penalty under IRC Sec. 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

Case No. 8:01-CV-2154-T-17TBM

understatement of tax liability;

7. engaging in any other activity subject to penalty under IRC Secs. 6694, 6695, 6700 or 6701; and

8. engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

B. Pursuant to IRC Sec. 7402, Defendant is ordered to contact the people for whom Defendant has phone numbers and/or addresses. Defendant must contact:

1. All persons to whom Defendant gave, sold or distributed any materials espousing the "Section 861" or "U.S. Sources" argument, as well as any other false or frivolous exclusion from income tax;

2. All persons for whom Defendant prepared or assisted in preparing any federal income tax returns or tax-related documents; and

3. All persons who contacted Defendant regarding the "Section 861" or "U.S. Sources" argument, as well as any other false or frivolous exclusion from income tax (in correspondence, by personal or telephone conversations or through electronic means);

and inform those persons that domestically-earned income of U.S. citizens is not tax-free based on the Section 861 argument or any other false or frivolous position; the falsity of the tax returns prepared on those 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 payment they may have received; and the fact that a permanent injunction has been entered against Defendant. The

Case No. 8:01-CV-2154-T-17TBM

Defendant must mail a copy of this permanent injunction to every identified person described in subsections 1, 2 and 3.

C. The Defendant David T. Bosset is also required to file certification, made under oath, that he has fully complied with all of the requirements contained in Paragraph B, within 30 days of entry of this order.

D. The Court shall retain jurisdiction over this case to compel compliance with this injunction.

E. The Government may engage in discovery, pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, after the entry of the injunction to monitor compliance with the injunction.

~~DONE~~ and ORDERED in Chambers, in Tampa, Florida on this 27th day of February, 2003.


ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record