

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED JAN 26 2004 CLERK, U.S. DISTRICT COURT By _____ Deputy
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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DANIEL FISHER,)
BRENDA MEYERS-FISHER,)
EOTL SYSTEMS, INC.,)
and TAX DYNAMIX, LLC,)
)
Defendants.)

Civil No. 3:03-CV-2108G
Judge Fish

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND ORDER OF PERMANENT INJUNCTION

THIS CAUSE is before the Court on the request of the United States of America, for a permanent injunction. The Court, having considered the United States' motion for default judgment concludes that Daniel Fisher and Brenda Meyers-Fisher, individually and through EOTL, Systems Inc. (EOTL) and Tax Dynamix LLC (Tax Dynamix), defraud taxpayers and the United States government with their abusive tax scheme and the preparation of false income tax returns. Thus, the Court makes the following findings of fact and conclusions of law and issues the following order of permanent injunction:

FINDINGS OF FACT

1. Defendants Daniel Fisher and Brenda Meyers-Fisher, individually and through EOTL Systems, Inc. (EOTL) and Tax Dynamix, LLC (Tax Dynamix) organize and sell abusive tax schemes and prepare federal tax returns and other documents that enable their customers to conceal income and assets from the IRS and to unlawfully seek refunds of previously paid federal

income and employment taxes.¹

2. Daniel Fisher is a financial planner and income-tax-return preparer who holds himself out as an expert in tax law and “tax structuring.”²

3. Brenda Meyers-Fisher’s involvement in the scheme includes signing some of the customers’ federal income-tax returns and amended returns as the preparer, and preparing the employment agreements, partnership agreements and lease agreements related to the scheme.³

4. The defendants’ abusive tax scheme is primarily promoted to wealthy married couples. It involves establishing a sham partnership (or in some instances an S-corporation) for the couple, which is made retroactive to prior years, and assigning individual income and assets to the partnership. Defendants prepare partnership (or S-corporation) information returns, falsely claiming personal expenses as business expenses. The defendants then prepare amended individual income-tax returns falsely claiming refunds of taxes previously paid. The scheme also involved creating some fraudulent Forms W-2 and 1099.⁴

5. The Fishers, and others acting in concert with them through EOTL and Tax Dynamix, advise their customers to conceal income and assets from the IRS, improperly reduce or eliminate federal income taxes by taking improper deductions, and stop paying federal employment taxes. Specifically, defendants falsely advise customers that they can:

- establish a shell partnership with the husband and wife as the only partners;

¹ *Complaint* ¶ 8.

² *Complaint* ¶ 9.

³ *Complaint* ¶ 10.

⁴ *Complaint* ¶ 11.

- assign personal income, assets and expenses to the partnership, thereby reducing or eliminating income-tax liability (because they will allegedly no longer have income) and making personal expenses deductible (because these expenses will allegedly now be partnership expenses);
- transfer to the partnership a purported intangible asset based on their “work experience,” and amortize the purported asset, thereby ensuring a loss to the partnership which is then claimed on their personal income-tax returns;
- continue to use their personal assets and income just as they did before, yet avoid paying federal income taxes;
- defer or eliminate federal employment taxes by instructing their employers to pay wages directly to a sham “wealth management” entity and stop the withholding of employment taxes from wages; and
- obtain refunds of federal income and employment taxes already paid by filing amended federal income-tax returns claiming refunds based on participation in the scheme.⁵

6. The Fishers, individually and through EOTL and Tax Dynamix, handle all of the paperwork required by the scheme on behalf of their customers. This includes preparing federal individual and partnership income-tax returns, and creating sham partnership agreements, employment agreements, and lease agreements. Defendants even choose the names for their customers’ partnerships.⁶

7. Brenda Meyers-Fisher and other agents of EOTL and Tax Dynamix are the primary tax-return preparers for the scheme. Daniel Fisher reviews all returns prepared in furtherance of the scheme, makes all final changes to these returns, and has signed some of them as the return-preparer.⁷

⁵ *Complaint* ¶ 12.

⁶ *Complaint* ¶ 13.

⁷ *Complaint* ¶ 14.

8. Brenda Meyers-Fisher sends letters to customers' employers directing them to pay all income "directly to [the customers'] management companies," and to stop withholding payroll taxes. These letters state that defendant The Structured Advantage, Inc. (TSA) (former name of defendant EOTL) is "handling the financial restructuring" of the person in question, that they "should not have payroll tax taken out of their checks any longer," and that all questions should be directed to Daniel Fisher.⁸

9. Defendants typically charge their customers who participate in this scheme a \$3500 initial fee and a 15-20% commission on all tax refunds generated. Customers also continue to pay a 15-20% commission on any future "tax savings" realized from the use of the scheme. To ensure that they receive their commission, defendants have had some of the erroneous tax refunds made to their customers deposited directly into bank accounts opened in the names of both the customer and TSA. Defendants take their fee from the account, and remit the remaining refund to the customer.⁹

10. Defendants have sold their scheme to hundreds of customers and have filed hundreds of returns in conjunction with it. The IRS estimates the current tax loss to the Treasury as a result of this scheme at over \$5,000,000.¹⁰

11. The Fishers continue to promote this abusive tax scheme and act as income-tax preparers.¹¹

⁸ *Complaint* ¶ 15.

⁹ *Complaint* ¶ 16.

¹⁰ *Complaint* ¶ 17.

¹¹ *Complaint* ¶ 18.

CONCLUSIONS OF LAW

12. Section 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 from engaging in further such conduct if the injunctive relief is appropriate to prevent recurrence.

13. I.R.C. § 6700 requires that the United States show:

- a. defendants organized or assisted in the organization of a plan or arrangement; or
- b. participated, directly or indirectly, in the sale of a plan or arrangement, and
- c. defendants made or furnished or caused another person to make or furnish (in connection with such sale or organization)—a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by participating in the plan or arrangement which the
- d. defendants knew or had reason to know is false or fraudulent as to any material matter.

14. I.R.C. § 6701 requires the United States to show:

- a. defendants aided or assisted in, procured, or advised with respect to the preparation or presentation of any portion of a return, affidavit, claim, or other document; and
- b. knew (or had reason to believe) that such portion would be used in connection with any material matter arising under the internal revenue laws; and
- c. knew that such portion (if so used) would result in an understatement of the liability for tax of another person.

15. Defendants have violated § 6700 by organizing and participating in the sale of an abusive tax scheme. The facts establish every one of the § 6700 elements. Daniel Fisher and Brenda Meyers-Fisher, working through EOTL and Tax Dynamix, sell and organize on behalf of

their customers an arrangement that involves the formation of sham partnerships and “wealth management” companies designed to enable their customers to conceal income and assets from the IRS, unlawfully cease payment of federal income and employment taxes, and request unlawful refunds of taxes paid.¹² Defendants create the sham partnerships, employment agreements and lease agreements¹³ and send letters to customers’ employers instructing them to stop withholding payroll taxes.¹⁴ This arrangement is an abusive tax scheme.¹⁵

The Fishers and others acting in concert with them through EOTL and Tax Dynamix make numerous statements to their customers regarding the tax benefits of their scheme.¹⁶

Specifically, customers are falsely advised that they can:

- establish a shell partnership with the husband and wife as the only partners;
- assign personal income and assets to the partnership thereby reducing or eliminating income tax liability;
- make personal expenses deductible by deeming them partnership business expenses;
- transfer to the partnership a purported intangible asset based on their “work experience,” and amortize the purported asset, thereby ensuring a loss to the partnership which is then claimed on their personal income-tax returns;
- continue to use their personal assets and income just as they did before, yet avoid paying federal income taxes;
- defer or eliminate federal employment taxes by instructing their employers to pay wages

¹² *Complaint* ¶ 8, 11.

¹³ *Complaint* ¶ 13.

¹⁴ *Complaint* ¶ 15.

¹⁵ *See Complaint* at ¶ 8.

¹⁶ *Complaint* ¶ 12.

directly to a sham “wealth management” entity and stop the withholding of employment taxes from wages; and

- obtain refunds of federal income and employment taxes already paid by filing amended federal income-tax returns claiming refunds based on participation in the scheme.¹⁷

The defendants knew or had reason to know that their statements regarding the use of a partnership to eliminate income tax liability are false and fraudulent.¹⁸ When the promoter of an abusive tax scheme assures customers that the purported tax benefits are available despite consistent rejection of similar schemes by the courts, the promoter knows or has reason to know that his statements are false and fraudulent.¹⁹

The Fifth Circuit found an arrangement virtually identical to the defendants’ abusive tax scheme to be subject to penalty under I.R.C. § 6700 and thus enjoined under I.R.C. § 7408 in *United States v. Buttorff*.²⁰ Gordon Buttorff advised his customers to transfer to a trust all of their property, including real property, personal property and the “right to receive income” from “lifetime services,” and to name themselves as both beneficiary and trustee of the trust.²¹ Buttorff’s taxpayers “still had almost unlimited discretionary powers to deal with the trust assets, distribute income, and terminate the trust.”²² In short, the taxpayer’s relationship with their income and assets did not change. This kind of arrangement is used to create false tax benefits

¹⁷ *Complaint* ¶ 12.

¹⁸ *Complaint* ¶ 23.

¹⁹ *United States v. Buttorff*, 761 F.2d 1056, 1062 (5th Cir. 1985).

²⁰ *United States v. Buttorff*, 761 F.2d 1056 (5th Cir. 1985).

²¹ *Id.* at 1058.

²² *Id.*

in two ways:

(1) No income is transferred to the trust while a variety of bogus deductions are claimed on the trust return. As a result, a substantial “loss” to the trust appears, and that “loss” is transferred to the taxpayers personal tax return as a “distributable net loss” of the trust. This “loss” is then used to fraudulently reduce personal taxable income to zero or near zero.

Alternatively,

(2) the taxpayer fraudulently transfers all or most of his income to the trust, along with all income-producing assets and the trust on its return claims the same bogus deductions, which offset the income, leaving little or no net income to be reported. The taxpayer then reports little or no income on his personal tax return apart from any nominal amount distributed to him by the trust as a salary or “consultation fee” or in the form of the trust’s distributable net income.²³

This type of abusive tax scheme has been consistently rejected by the courts.²⁴ The Fifth Circuit found the *Buttorff* tax scheme to be abusive because the trusts set up for customers were invalid for federal-income-tax purposes under the doctrine prohibiting the assignment of income, under the grantor trust provisions of the Internal Revenue Code, because the trusts were “shams,” and because the trusts in question were set up for the fraudulent deduction of personal expenses.²⁵

²³ *Id.* at 1058.

²⁴ *United States v. Buttorff*, 761 F.2d 1056, 1060 (5th Cir. 1985) (citing *Zmuda v. Commissioner*, 731 F.2d 1417, 1421 (9th Cir. 1984) (trusts similar to the *Buttorff* trust were “shams”); *Holman v. United States*, 728 F.2d 462, 465 (10th Cir. 1984) (similar trust “is a mere sham”); *O’Donnell v. Commissioner*, 726 F.2d 679 (11th Cir. 1984); *Schulz v. Commissioner*, 686 F.2d 490 (7th Cir. 1982); *Vnuk v. Commissioner*, 621 F.2d 1318 (8th Cir. 1980).

²⁵ See *United States v. Buttorff*, 761 F.2d 1056, 1060-62 (5th Cir. 1985).

The abusive partnerships promoted by the Fishers, like the abusive trusts promoted by the defendants in *Buttorff*, are designed to fraudulently eliminate their customers' federal income taxes.²⁶ The Fishers' abusive tax scheme merely substitutes partnerships for trusts.²⁷

Because schemes similar to the defendants partnership arrangement have been consistently rejected by the courts, defendants knew or should have known that their statements regarding the tax benefits of the scheme were false and fraudulent.

The Fishers also know or should have know that their statements regarding the deferment or elimination federal-employment-tax liabilities were false and fraudulent. The Internal Revenue Code requires employers to withhold federal income and FICA taxes from their employees' wages and to pay over those amounts, in addition to their own FICA and FUTA contributions, to the IRS.²⁸ By requiring that federal income and FICA taxes be collected at the source, Congress has made employers critical to tax collection.²⁹ The law requires, and the IRS relies on, employers to accurately report wages, withhold federal taxes from the wages, and pay

²⁶ *See Complaint.*

²⁷ *Id.*

²⁸ I.R.C. §§ 3102 (requiring employers to withhold Social Security and Medicare taxes, which together constitute FICA taxes, from their employees' wages), 3402 (requiring employers to withhold income taxes from their employees' wages), 3111 (imposing FICA taxes on employers), and 3301 (imposing FUTA taxes on employers). *See United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 546 (1990) ("The Internal Revenue Code requires employers to withhold from their employees' paychecks money representing employees' personal income taxes and Social Security taxes.").

²⁹ *See* I.R.C. §§ 3102, 3402. *See generally Baral v. United States*, 528 U.S. 431, 436 (2000) (explaining that payroll withholding is not a separate tax but is a method of tax collection).

over the withheld taxes to the IRS along with the employer's own FICA and FUTA taxes.³⁰

While the law places on the employer the responsibility to make employment tax payments, the Fishers have devised an arrangement designed to subvert this requirement.³¹ The Fishers organize a shell entity deemed a "wealth management" company, and send a letter to the customers' employer instructing the employers to pay all wages to this company instead of to the employee, and to stop withholding employment taxes.³² This effectively—but illegally—allows the Fishers' customers to stop paying employment taxes.

It is well settled law that employers are required to withhold and pay employment taxes on behalf of their employees. Thus, the defendants know or have reason to know that their statements regarding the tax benefits of their tax scheme are false and fraudulent.

As to the final element of a § 6700 violation, 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."³³ The primary, if not sole, purpose of the Fishers' scheme is to reduce or eliminate customers' taxes. The Fishers' representations regarding the purported tax benefits of their scheme would certainly impact their customers' decision on whether to participate, thus their statements were false and fraudulent as to a material matter.

16. Defendants have violated I.R.C. § 6701 by preparing tax returns knowing that they

³⁰ See I.R.C. §§ 3102, 3111, 3301, and 3402.

³¹ *Complaint* ¶¶ 12, 15.

³² See *complaint* at ¶ 15.

³³ *Buttorff*, 761 F.2d at 1062; and S. Rep. No. 97-494, 97th Cong. 2d Sess. 267 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1015.

would be used to claim tax refunds and knowing that they would result in understatements of tax liability. The facts establish every one of the Section 6701 elements. Daniel Fisher and Brenda Meyers-Fisher and other agents of EOTL and Tax Dynamix prepared, aided or assisted in the preparation of federal individual and partnership income-tax returns, sham partnership, employment and lease agreements, and other tax related documents.³⁴ Brenda Meyers-Fisher and other agents of EOTL and Tax Dynamix were the primary return preparers for the scheme.³⁵ Daniel Fisher reviewed all of these returns, making all final changes.³⁶

The defendants know that the tax returns they prepare are used in connection with determining a taxpayer's tax liability—a material matter.

Defendants also know or have reason to know that the returns they prepare will result in the understatement of their customers' tax liabilities. As discussed above, defendants know or have reason to know that their statements regarding the tax benefits of their abusive scheme are false and fraudulent. Quite simply, the Fishers and their companies are in the business of preparing returns that fraudulently understate tax liabilities and seek money from the Government to which their customers are not entitled under the law. The facts show that defendants knew that there was no legal basis for the scheme. Consequently, defendants knew that their scheme yielded tax understatements.

17. A permanent injunction under I.R.C. § 7408 is necessary to prevent defendants from continuing to engage in conduct subject to penalty under I.R.C. §§ 6700 and 6701. When

³⁴ See *Complaint* at ¶¶ 13-14, 31

³⁵ *Complaint* ¶ 13-14.

³⁶ *Complaint* ¶ 14.

addressing likelihood of recurrence, courts have looked to the following factors: 1) the gravity of the 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.³⁷

These factors weigh entirely in favor of granting a permanent injunction. First, defendants' activities have caused the Government substantial harm.³⁸ The current tax loss to the Treasury as a result of this scheme is estimated at over \$5,000,000.³⁹ IRS employees have had to devote substantial resources attempting to locate and process the fraudulent returns and other documents that defendants prepare, to take steps to prevent erroneous tax refunds, to recover erroneous refunds that are made, and to assess and collect proper tax liabilities and penalties.⁴⁰

Second, defendants are in the business of organizing and selling abusive tax schemes and preparing tax returns and other documents that enable their customers to conceal income and assets from the IRS and unlawfully seek refunds of taxes previously paid.⁴¹ Daniel Fisher is a

³⁷ *United States v. Raymond*, 228 F.3d 804, 813 (7th Cir. 2000), *cert. denied*, 533 U.S. 902 (2001); *United States v. Kaun*, 827 F.2d 1144, 1149-50 (7th Cir. 1987). *See also SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982) (action by SEC to enjoin alleged violations of securities laws).

³⁸ *Complaint* ¶ 17.

³⁹ *Complaint* 17.

⁴⁰ *See id.*

⁴¹ *Complaint* ¶ 8.

financial planner and income tax return preparer who holds himself out as an expert in tax law and “tax structuring,”⁴² thus his customary business activities would undoubtedly lead him toward such transactions in the future.

Third, defendants’ conduct is recurring; the Fishers continue to promote this abusive tax scheme and act as income tax preparers.⁴³ Finally, defendants have made no assurances that they will stop their activities.⁴⁴

18. Section 7407 of the Internal Revenue Code authorizes the Court to enjoin an individual from acting a paid income-tax-return preparer if that person:

- a. is a paid income-tax-return preparer; and
- b.
 - i. continually or repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 (which penalizes a paid tax-return preparer who prepares or submits a return containing an unrealistic position) or § 6695 (which penalizes a preparer who fails to include his identification number on prepared returns and penalizes an income tax return preparer who fails to turn over a client list or copies of clients’ returns to the IRS on request); or
 - ii. continually or repeatedly engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; and
- c. an injunction is appropriate to prevent the recurrence of such conduct; and
- d. a more limited injunction prohibiting such behavior would be insufficient to stop interference with the proper administration of the tax laws.

19. Section 6694 of the Internal Revenue Code imposes penalties on tax-return preparers

⁴² *Complaint* ¶ 9.

⁴³ *Complaint* ¶ 18.

⁴⁴ *See id.*

who prepare income-tax-returns on which there is an understatement of liability where:

- a. the understatement is due to a position for which there was not a realistic possibility of being sustained on the merits;
- b. the preparer knew or should have known this position was unrealistic; and
- c. either the position was not disclosed as provided in IRC § 6662(d)(2)(B)(ii) (requiring disclosure of relevant facts) or it was frivolous.

20. A permanent injunction under I.R.C. § 7407 is necessary because defendants are paid tax-return preparers who have engaged in activity subject to penalty under I.R.C. §§ 6694.

21. Defendants have violated I.R.C. § 6694 by preparing tax returns for compensation based on their abusive tax scheme.

The facts show that defendants are paid return preparers.⁴⁵ Customers were charged a \$3500 initial fee and a 15-20% commission on all tax refunds generated by the scheme.⁴⁶ To ensure that they receive their commission, the Fishers had some of the erroneous refunds deposited directly into bank accounts opened in the names of both the customer and The Structured Advantage, Inc. (TSA) (the former name of defendant EOTL), taking their fee from the account and remitting the remaining funds to the customer.⁴⁷

Section 6694's requirements are clearly met by the facts in this case. The Fishers and the agents and employees of EOTL and Tax Dynamix violated § 6694 by preparing numerous income tax returns on behalf of their customers that understate or falsely eliminate the

⁴⁵ *Complaint* ¶ 16, 30.

⁴⁶ *Id.*

⁴⁷ *See Complaint* ¶¶ 16, 6.

customer's federal income tax liability and request improper refunds based on the defendant's abusive scheme.⁴⁸

As explained above in the discussion of the defendants' abusive scheme, there is no realistic possibility of their positions being sustained on the merits.

As explained above in the discussion of defendants' violations of I.R.C. §§ 6701, defendants knew or should have known that the tax returns they were preparing would result in fraudulent understatements of tax and false claims for refund that would not be sustained on the merits.

Attempts by taxpayers to use an entity to conceal assets and income are routinely rejected by the courts, and the law requiring the withholding of employment taxes is well settled. Thus, defendants position that their customers could use partnerships and "wealth management" companies to eliminate federal tax liabilities is frivolous, and any returns based on the scheme are therefore frivolous.

22. A permanent injunction under I.R.C. § 7407 is necessary to prevent defendants from continuing to engage in conduct subject to penalty under I.R.C. §§ 6694. Injunctive relief is appropriate to prohibit defendants from continuing their activities as discussed above.

23. The Fishers and those working in concert with them through EOTL an Tax Dynamix should be permanently enjoined from preparing federal income tax returns because they have continually and repeatedly violated § 6694. The defendants have sold their scheme to hundreds of customers and have filed hundreds of tax returns in conjunction with it.⁴⁹ Defendants are in

⁴⁸ *Complaint* ¶ 31.

⁴⁹ *Complaint* ¶ 17.

the business of promoting an abusive scheme and preparing fraudulent tax returns in furtherance of it—clearly this is no isolated incident and should be considered repeated conduct that requires an injunction permanently prohibiting defendants from preparing tax returns.

24. Section 7402(a) of the Internal Revenue Code authorizes courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws. While the Court need not consider the traditional equity factors when issuing a statutory injunction, it is worth noting that those factors are met here. The traditional equity factors in consideration of an injunction are: 1) a substantial likelihood that the plaintiff will prevail on the merits, 2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is not granted, 3) the threatened injury to the plaintiff outweighs the threatened harm the injunction may do to the defendant, and 4) the public interest will not be jeopardized by the injunction. *See Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974); *United States v. Buttorff*, 761 F.2d 1056, 1059 n.3 (5th Cir. 1985).

25. Defendants are clearly interfering with the enforcement of the internal revenue laws and, thus, should be enjoined under Section 7402(a).

26. Consideration of the traditional equity factors supports an injunction under 7402(a). The defendant's conduct, as shown above, clearly violates I.R.C. §§ 6700, 6701 and 6694. The United States thus has a strong likelihood of success on the merits. The possibility of irreparable injury is also strong. The Fishers' actions, individually and through their entities, undermine the internal revenue laws and promote non-compliance. This creates a clear hardship for the United States. Significant administrative (not to mention judicial) resources have to be expended in an effort to uncover and correct the problems created by the Fishers' scheme. Conversely, there is

no legitimate hardship on defendants in being required to comply with the tax laws. Finally, the public interest is advanced by shutting down an illegal scheme that promotes the understatement of taxable income.

IT IS ACCORDINGLY ORDERED THAT:

ORDER OF PERMANENT INJUNCTION

27. Defendants Daniel Fisher, Brenda Meyers-Fisher, EOTL, Tax Dynamix, and anyone acting in concert with any of them, are enjoined and prohibited, individually, together, and through any entity, from directly or indirectly:

- (a) Organizing, promoting or selling any abusive tax shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (b) Engaging in activity subject to penalty under I.R.C. § 6700, including selling, organizing or assisting in the organization of a partnership, other entity, any investment plan or arrangement, or other plan or arrangement about which the defendant has made a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the defendant knows or has reason to know is false or fraudulent as to a material matter;
- (c) Engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a document related to a material matter under the internal revenue laws that includes a position they know will result in an understatement of tax liability;
- (d) Engaging in activity subject to penalty under I.R.C. § 6694, including preparing federal tax returns that willfully or recklessly understate federal income-tax liability;
- (e) Creating and/or filing fraudulent Forms W-2 and 1099, or fraudulently altering such documents with the intention that they be filed with the IRS;

- (f) Making false representations that:
- (1) persons may transfer or assign their personal income and assets (*e.g.*, personal residence) to a partnership, converting the income to business income and the personal expenses to business expenses, thereby reducing or eliminating their income tax liability;
 - (2) personal expenses can be paid by a partnership in order to obtain tax benefits unavailable to others;
 - (3) persons may transfer an intangible asset based on their work experience to a sham partnership, amortize the asset to cause a loss to the partnership, and claim that loss on their individual income-tax returns;
 - (4) employment taxes can be eliminated or deferred by having wages paid to a sham entity;
- (g) Selling or organizing any type of partnership, “wealth management company,” corporation, trust, limited liability company, or any arrangement of business entities which advocates non-compliance with the income tax laws or tax evasion, misrepresents tax savings realized by using the arrangement, encourages the fraudulent characterization of personal expenses as business expenses, or conceals the receipt of income;
- (h) Preparing or assisting in the preparation of federal-income-tax returns for any other person or entity;
- (i) Engaging in any other activity subject to penalty under I.R.C. §§ 6700, 6701 or 6694; and
- (j) Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

28. Defendants Daniel Fisher, Brenda Meyers-Fisher, EOTL, and Tax Dynamix must contact in writing all persons to whom they, acting separately or together, or through any entity⁵⁰ have given or sold, directly or indirectly, the tax shelter arrangement described here or in the

⁵⁰Specifically including but not limited to EOTL Systems, Inc., Tax Dyamix, LLC, The Structured Advantage, Inc., The Structured Advantage Group, Inc., The Structured Advantage of Texas, Inc., International Structured Water Technologies, Inc., Tidal Wave, Inc., and Go Worldnet, Inc.)

Complaint, and inform those persons of the possibility that the United States may seek to recover any erroneous payment such persons may have received and attach a copy of the permanent injunction. Defendants will certify to the Court that this has been done within 30 days of the entry of this order.

29. Defendants will serve the Court and the plaintiff United States of America with copies of the writing described in paragraph 5 above 7 days before the writings are scheduled to be mailed.

30. Defendants must turn over to the United States, within 30 days of the entry of this Order, all records in their possession or to which they have access, that identify the names, addresses, and taxpayer identification numbers of all persons or entities to whom they have given or sold, directly or indirectly, the tax shelter arrangement described here or in the Complaint.

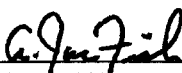
31. Daniel Fisher is permanently enjoined from representing before the Internal Revenue Service any persons to whom he has given or sold, directly or indirectly, the tax shelter arrangement described herein or in the Complaint. However, this prohibition will not enjoin or restrain Daniel Fisher from cooperating freely as a fact witness with any authorized representative of those taxpayers, including, without limitation, providing testimony, affidavits, explanations or other information regarding advice, preparation of documents and information furnished by Fisher, and testifying truthfully at any administrative or judicial hearing or conference relating to the audit, examination or adjustment of those person's tax returns or liabilities.

32. The United States may engage in post-judgment discovery to ensure compliance with the permanent injunction.

33. This Court shall retain jurisdiction of this action for the purpose of implementing and enforcing this Final Judgment and all additional decrees and orders necessary and appropriate to the public interest.

There being no just reason for delay, the Clerk is directed to enter this Final Judgment.

SO ORDERED this 26 day of January, 2004.



A. JOE FISH
United States District Judge