

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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RONALD WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICH.

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UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT L. MOSHER, CAROL L. MOSHER,)
 and KIMBERLY SANDERS, all d/b/a)
 MOSHER ENTERPRISES TRUST,)
 a purported trust)
)
 Defendants.)

Civil No. 1 : 03 CV 0208

Robert Holmes Bell
Chief, U.S. District Judge

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

Plaintiff, the United States of America, states as follows for its complaint against defendants Robert L. Mosher, Carol L. Mosher, and Kimberly Sanders, all d/b/a Mosher Enterprises Trust, a purported trust:

Nature of Action

1. The United States brings this complaint to enjoin Robert L. Mosher, Carol L. Mosher, and Kimberly Sanders, individually and doing business as or through Mosher Enterprises, a purported trust, or any other entity, and any other person in active concert or participation with them, from directly or indirectly:

- (a) Organizing, promoting, marketing, 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; and
- (b) Engaging in conduct subject to penalty under 26 U.S.C. ("IRC") § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement that they know or have reason to know to be false or fraudulent as to any material federal tax matter.

2. The United States further brings this complaint to enjoin Robert L. Mosher, individually and doing business as or through Mosher Enterprises Trust, a purported trust, or any other entity, and any other person in active concert or participation with him, from directly or indirectly:

- (a) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, by preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;
- (b) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, including but not limited to representing customers before the IRS and giving tax advice or providing tax services for compensation;
- (c) Engaging in any conduct that violates I.R.C. § 6694, *i.e.*, by preparing or assisting in the preparation of any return that results in the understatement of tax liability based on an unrealistic position, or I.R.C. § 6695, *i.e.*, by failing to furnish his identifying number on all returns he prepares and by failing to retain and provide to the Internal Revenue Service a copy and list of all returns prepared; and
- (d) Acting as an income-tax-return preparer.

3. An injunction is warranted based on all defendants' continuing conduct as promoters of abusive tax plans and Robert L. Mosher's continuing conduct as a preparer of false and abusive tax returns. If not enjoined, defendants' actions will result in their customers incurring penalties and other civil or criminal sanctions and cause further revenue loss to the United States.

Jurisdiction and Venue

4. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407 and 7408.

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

Authorization

6. This action has been requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.

Defendants

7. Robert L. Mosher resides at 12 Grant St., Cedar Springs, MI 49319.
8. Carol L. Mosher resides at 12 Grant St., Cedar Springs, MI 49319.
9. Kimberly Sanders resides at 14 S. First St., Cedar Springs, MI 49319.
10. Mosher Enterprises Trust is a purported trust controlled wholly or in part by defendants. It does business at 12 Grant St., Cedar Springs, MI 49319.

Defendants' Activities

11. Defendants market and sell trust packages which they falsely claim allow customers to reduce or eliminate their personal income tax.
12. On information and belief, defendants sell a model trust package they have acquired from an as-yet-unidentified third party, which they modify as necessary for each customer.
13. Defendants charge up to \$3,000 for each trust.
14. Defendants refer to the trusts they market and sell as "unincorporated business organizations" ("UBO's"), "pure trusts," "business trust organizations," "common law trusts," "common law companies," "Massachusetts trusts," and/or "constitutional trusts."
15. Robert L. Mosher serves as the trustee of the trusts he creates for his customers.
16. At defendants' direction, their customers transfer some or all of their assets into the trusts and all or a portion of their income into the trusts' bank accounts.

17. Though Robert L. Mosher is nominally the trustee of his customers' trusts, the customers in fact continue to control the assets and income placed in the trusts.

18. Defendants' customers pay their personal expenses out of their trusts' bank accounts.

19. Robert L. Mosher also prepares and files income tax returns on behalf of his customers and some of his customers' trusts.

20. Robert L. Mosher charges his customers several hundred dollars each year to prepare individual and/or trust returns.

21. The personal income tax returns Robert L. Mosher prepares for his customers understate tax liability because the returns do not report the income diverted into the trust accounts and used for the customers' benefit.

22. The returns Robert L. Mosher files for some of his customers' trusts include improper deductions for his customers' personal expenses, which the trusts have paid, resulting in an understatement of his customers' income.

23. For other customers' trusts, Robert L. Mosher does not file any tax returns. In such cases, the income placed into the trusts goes unreported on any federal tax return.

24. Robert L. Mosher refused to provide a list of his customers and tax returns he had prepared upon IRS request.

25. Robert L. Mosher signs but does not furnish his preparer identification number on the tax returns he prepares and files on behalf of his customers.

26. The IRS has identified 132 trusts formed by defendants and have matched those trusts to Employee Identification Numbers (EIN's) obtained by Robert L. Mosher as trustee. The

IRS has also identified an additional 124 trusts believed to have been established by defendants but not yet fully confirmed.

27. Because not all of defendants' customers file trust tax returns, the number of identified returns is likely lower than the total number of customers currently using defendants' tax scheme.

28. Ten of defendants' customers have been or are being audited by the IRS.

29. Five of these audits have been completed, and each resulted in an increase of tax due. The average tax due after audit was \$13,246.33 per year per customer. Projecting this figure across the number of identified trusts, defendants' tax schemes have resulted in an estimated total loss to the Treasury in excess of five (5) million dollars.

30. Robert L. Mosher is currently representing one of defendants' customers in connection with an IRS audit.

31. His representation has consisted of abusive tactics designed to frustrate or stop the audit, including urging his customer not to cooperate with the IRS, directing his customer not to answer IRS questions, and refusing to respond to IRS summonses seeking documents and testimony.

32. Robert L. Mosher has threatened former customers who have cooperated with the IRS and has attempted to prevent current customers from cooperating with the IRS by threatening and otherwise intimidating them.

33. Through defendants' promotion of abusive tax schemes, and Robert L. Mosher's preparation of frivolous tax returns and representation of customers at audits, defendants have

cost the United States substantial lost tax revenue, drained IRS resources, and subjected their customers to potential civil and criminal sanctions.

Count I
(Injunction Against Robert L. Mosher under I.R.C. § 7407)

34. The United States incorporates by reference the allegations made in paragraphs 1 through 33.

35. I.R.C. § 7407 authorizes a court to enjoin an income-tax-return preparer who:

- a. engages in conduct subject to penalty under I.R.C. § 6694 (which penalizes a return preparer who prepares or submits a return that contains an unrealistic position) or I.R.C. § 6695 (which penalizes a return preparer who (1) fails to keep a list of customers or turn over the client list to the IRS upon request or (2) fails to furnish his social security number on each return he prepares); . . . or
- d. engages in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

If the Court finds that a preparer's misconduct is continual or repeated, and that a narrow injunction (*i.e.*, prohibiting only specific proscribed conduct) is insufficient to prevent a person's interference with the proper administration of federal tax laws, the Court may enjoin the preparer from preparing *any* federal income tax returns.

36. Robert L. Mosher has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing and submitting returns based on the tax scam described above.

37. Robert L. Mosher has engaged in conduct subject to penalty under I.R.C. § 6695 by refusing to keep a list of customers and returns or provide a list to the IRS on request and by failing to furnish his social security number on each return he prepares.

38. Robert L. Mosher is also subject to injunction under I.R.C. § 7407 because his filing of abusive tax returns constitutes fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

39. Robert L. Mosher should be enjoined from preparing any federal income tax returns because of his continual and repeated pattern of abusive and fraudulent conduct, as described above.

Count II

(Injunction Against all Defendants under I.R.C. § 7408 for Violations of § 6700 and Against Robert L. Mosher for Violation of § 6701)

40. The United States incorporates by reference the allegations made in paragraphs 1 through 33.

41. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701 from engaging in further such conduct.

42. I.R.C. § 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.

43. I.R.C. § 6701 imposes a penalty on any person who aids in the preparation of any portion of a return, who knows 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.

44. Defendants have engaged in conduct subject to penalty under I.R.C. § 6700 by promoting sham trusts to hide assets and income and by making statements regarding the tax

benefits of these trusts which defendants know or have reason to know are false and fraudulent as to a material matter.

45. Robert L. Mosher has engaged in conduct subject to penalty under I.R.C. § 6701 by preparing tax returns based on defendants' sham trust scheme that he knew would result in understatements of tax liability.

46. Defendants should be enjoined from promoting and selling their tax scheme of sham trusts and Robert L. Mosher should be enjoined from preparing tax returns and other documents based on this scheme.

Count III

(Injunction Against All Defendants under I.R.C. § 7402(a) for Unlawful Interference with the Enforcement of the Internal Revenue Laws)

47. The United States incorporates by reference the allegations made in paragraphs 1 through 33.

48. I.R.C. § 7402 authorizes an injunction against anyone who has engaged in conduct that substantially interferes with the administration of the internal revenue laws.

49. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

50. If defendants are not enjoined, they likely will continue to engage in conduct that interferes with the enforcement of the internal revenue laws. Defendants should be enjoined under I.R.C. § 7402(a) from interfering with the enforcement of the internal revenue laws. The injunction should include provisions barring defendants from giving tax advice or providing tax services for compensation, representing or appearing with taxpayers before the IRS, contacting former customers who have cooperated with the IRS, threatening current or former clients in an

attempt to prevent them from cooperating with the IRS, or otherwise inciting violations of the internal revenue laws.

Appropriateness of Injunctive Relief

51. Unless enjoined by the Court, defendants are likely to continue to engage in the conduct described in paragraphs 1 through 33.

52. Defendants' conduct, as described in paragraphs 1 through 33 of this complaint, results in irreparable harm to the United States for which the United States has no adequate remedy at law.

- a. Defendants' conduct, unless enjoined, is likely to cause a substantial loss of revenue to the Treasury. Unless defendants are enjoined, the IRS will have to spend substantial time and resources to detect their customers, and may be unable to detect all of them;
- b. Detecting and auditing taxpayers who have used defendants' schemes will place a serious burden on the IRS's limited resources; and
- c. If defendants are not enjoined, they likely will continue to engage in conduct subject to penalty under I.R.C. § 6700 and other conduct that interferes with the enforcement of the internal revenue laws, and Robert L. Mosher likely will continue to engage in conduct subject to penalty under I.R.C. §§ 6701, 6694, and 6695, thereby undermining the federal tax system.

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

A. That the Court find that Robert L. Mosher has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent Robert L. Mosher and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him from acting as income-tax-return preparers;

B. That the Court find that defendants have engaged in conduct subject to penalty under § 6700, and that Robert L. Mosher has engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent defendants and anyone acting in concert with them from engaging in any further such conduct;

C. That the Court find that defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against them and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them is appropriate to prevent the recurrence of that conduct under the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, under I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting defendants, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

- (1) Organizing, promoting, marketing, or selling (or assisting therein) any tax shelter, plan, or arrangement, including but not limited to the abusive trust scheme described above, and 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) Engaging in any conduct subject to penalty under I.R.C. § 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) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service, including but not limited to representing customers before the Internal Revenue Service, giving tax advice or providing tax services for compensation, and inciting others to violate the internal revenue laws;

E. That the Court, under I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Robert L. Mosher, and his representatives, agents, servants, employees, attorneys,

and those persons in active concert or participation with him, from directly or indirectly engaging in any conduct subject to penalty under I.R.C. § 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;

F. That this Court, under I.R.C. § 7402, enter an injunction requiring Robert L. Mosher to contact in writing all persons for whom he and/or Mosher Enterprises prepared and/or assisted in the preparation of any federal income tax returns or tax-related documents and inform those persons of the entry of the Court's findings concerning the falsity of the tax returns Robert L. Mosher and/or Mosher Enterprises prepared on these persons' behalf, the possibility of the imposition of penalties against them, the fact that an injunction has been entered against Robert L. Mosher, and provide each person with a copy of the court's injunction.

G. That this Court, under I.R.C. §§ 7402 and 7408, enter an injunction requiring defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, to turn over to the United States within ten days of the entry of the Court's order any records in their possession or to which they have access, that identify (1) the persons to whom they gave or sold, directly or indirectly, any materials related to the tax schemes described above; (2) the persons who assisted in marketing or preparation of materials used by defendants or written materials sent to potential customers; (3) any individuals or entities for whom defendants or their 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 defendants have been involved;

H. That this Court, under I.R.C. § 7402, enter a permanent injunction barring Robert L. Mosher from giving tax advice or providing tax services for compensation, representing or appearing with taxpayers before the IRS, contacting former customers who have cooperated with the IRS, threatening current or former clients in an attempt to prevent them from cooperating with the IRS, or otherwise inciting violations of the internal revenue laws.

I. That this Court allow the government full post-judgment discovery to monitor compliance with the injunction;

J. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

K. That the Court grant the United States such other and further relief as the Court deems appropriate.

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