

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Walker D. Miller

Civil Action No. 03-WM-1310 (CBS)

UNITED STATES OF AMERICA,

Plaintiff,

v.

COLORADO MUFFLERS UNLIMITED, INC., et al.,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

AUG 10 2004

GREGORY C. LANGHEIM

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ORDER

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Miller, J.

This matter is before me on plaintiff United States' motion for a preliminary injunction, filed September 26, 2003. The United States seeks an order compelling defendant Colorado Mufflers, Inc., and its agents to resume withholding and paying payroll taxes and filing accurate employment tax returns and wage and tax statements.

Background

The United States filed this action against Colorado Mufflers Unlimited, Inc. ("Colorado Mufflers") and its officers and shareholders, seeking to permanently enjoin the defendants from failing to comply with federal tax withholding, reporting, and payment obligations under the Internal Revenue Code ("Code"). Colorado Mufflers is a Colorado corporation owned by Richard Rudd, Sr., President and 70 percent shareholder, Rudd's daughter Sherilyn Gallegos, secretary, treasurer, and 10 percent shareholder, Rudd's son-in-law George Gallegos, employee and 10 percent shareholder, and Rudd's son, Richard Rudd, Jr., employee and 10 percent shareholder.

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(Tr. Hrg. Prelim. Inj., at 31-32). Rudd's wife, Dolores Rudd, is Colorado Muffler's vice president. (Tr. Hrg. Prelim. Inj., at 32). The United States named all of these individuals ("the individual defendants") as defendants in this action.

Colorado Mufflers was incorporated in 1987, by Richard Rudd, Sr., to incorporate an existing exhaust, brakes, and shocks service operation ("the muffler business"). (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 39, at 5, 10). Colorado Mufflers operated the muffler business under the trade name of Exhaust Pros, Ltd. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Exs. 36 & 37). In 2000, Colorado Mufflers ceased withholding and paying payroll taxes and filing accurate employment tax returns and wage and tax statements for the muffler business. (Nichols Decl., ¶¶ 12-14). The individual defendants assert that Colorado Mufflers repudiated any ownership interest it had in the muffler business at this time. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 39, at 24).

Despite warnings from the Internal Revenue Service ("IRS"), Colorado Mufflers has refused to resume compliance with its alleged tax obligations. (Nichols Decl., ¶¶ 19, 24-25). According to IRS estimates, the muffler business has already accrued payroll tax liabilities of over \$210,000, and accrues additional liabilities of over \$25,000 per quarter. (Nichols Decl., ¶¶ 26-28).

On July 21, 2003, the United States filed a complaint against Colorado Mufflers and the individual defendants seeking permanent injunctive relief under 26 U.S.C. § 7402(a). The United States seeks an injunction requiring the defendants, as well as anyone acting in concert with them, to resume: 1) withholding federal employment taxes from employees' wages; 2) filing timely and accurate federal employment and

unemployment tax returns; 3) filing timely and accurate wage and tax statements; and 4) making timely and full payroll tax deposits and payments. On July 23, 2003, the United States filed a motion seeking a preliminary injunction.

On October 15, 2003, a default judgment was entered against Colorado Mufflers for failure to answer the complaint.

On November 13, 2003, I held an evidentiary hearing on the United States' motion for a preliminary injunction. Because ownership of the muffler business was disputed, I allowed the parties to address whether I could enjoin the individual defendants. (Tr. Hrg. Prelim. Inj., at 90).

1. Appropriateness of Enjoining the Individual Defendants

An injunction against Colorado Mufflers would bind Colorado Muffler's "officers, agents, servants, employees, and attorneys, and...those persons in active concert or participation with [it]." Fed. R. Civ. P. 65(d). See also *Sec. & Exch. Comm'n v. Barraco*, 438 F.2d 97, 98 (10th Cir. 1971) ("traditionally in equity, where there is a right to issue a general injunction in a situation, the court has the power inherently to impose upon any persons, who have contributingly played a part in the doing or committing of the enjoined action involved (where they are made party to the suit) such reasonable and relevant individual restraint as may be necessary to enable the decree to accomplish its preventative purpose"). However, evidence adduced at the November 13, 2003 hearing suggested that Colorado Mufflers may no longer own the muffler business. If true, then an injunction against Colorado Mufflers could not itself compel the individual defendants, to comply with federal tax obligations in their operation of the muffler

business.<sup>1</sup> Consequently, I allowed the parties to brief the issue.

In its brief, the United States argues that Colorado Mufflers remains the owner of the business, and that the other entities were shams and/or had never had any ownership interest in the business. In response, the individual defendants do not address these arguments, but raise meritless arguments, similar to those I rejected in my June 23, 2004 and August 2, 2004 orders, regarding the authority of the IRS to tax them and the muffler business.<sup>2</sup>

At the November hearing, evidence was adduced that several entities other than Colorado Mufflers might possess ownership interests in the muffler business. The first was Design Creations, Inc. (Design Creations), which was incorporated in the state of Washington on January 10, 2000. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 38). Although Delores Rudd was Design Creations' president and secretary, she does not know who formed the corporation, nor whether it has any shareholders. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 39, at 36-37). Design Creations does no business, and was set up to open a bank account into which proceeds from the muffler business were deposited and from which bills were paid. *Id.* at 35, 38-39. However, it does not own the funds in the account. *Id.* at 35. The persons authorized to sign checks on the bank account are George Gallegos, Richard Rudd, Sr., Richard Rudd, Jr., and Sherilyn

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<sup>1</sup>Additionally, if Colorado Mufflers no longer owns the muffler business, an injunction against it would be futile, since Colorado Mufflers no longer has any control over the tax filings of the muffler business.

<sup>2</sup>Defendant Delores Rudd also alleges various wrongdoings on the part of Revenue Agent Beth Nichol. (Dec. 15, 2003 Decl. Dolores Rudd, at 2) (attached to the individual defendants' response brief). However, she does not indicate how this is relevant to the motion for a preliminary injunction.

Gallegos. *Id.* at 37-39.

On March 31, 2000, Colorado Mufflers filed Articles of Amendment with the Colorado Secretary of State, in which it purported to assign all of its shares to Design Creations. (Hrg. Prelim. Inj., Gov't Ex. 24). However, on August 26, 2002, in a pleading before this Court in a different case, 02-M-1231 (CBS), George Gallegos, III, Richard Rudd, Sr., Richard Rudd, Jr., and Sherilyn Gallegos, represented that they owned all of Colorado Mufflers' shares. (Hrg. Prelim. Inj., Gov't Ex. 8, at 5,8). Furthermore, Design Creations was administratively dissolved on April 22, 2002. (Hrg. Prelim Inj., Gov't Ex. 30). Under these circumstances, I find that Design Creations does not have any ownership interest in the muffler business.

Next, the individual defendants created two purported trusts, Spring Flower and Stallion. (See Hrg. Prelim Inj., Govt Exs. 33 & 34). Spring Flower was purportedly created as a "federal business trust organization" on August 31, 1999. (Hrg. Prelim Inj., Govt Ex. 33). According to Delores Rudd, who is the "executive trustee," Spring Flower has no beneficiaries. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 39, at 43). It "manages" the funds in the bank account set up in Design Creations' name; however it does not own those funds or any other property. *Id.* at 45-46. Further, not all of the funds in Spring Flower's "trust account" are associated with the muffler business. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 40, at 45).

Spring Flower appears to be a legal nullity, since it fails to meet all of the legal requirements of a valid trust under either Colorado or Washington law. See *Baum v. Baum*, 22 F.3d 1014, 1018 (10th Cir. 1994) (quoting *In re Estate of Grandberry*, 498 P.2d 960, 963 (Colo. App. 1972)) (valid express trust requires, inter alia, identifiable

trust res and identifiable beneficiaries); *In re Phillips*, No. 16947-2-III, 1998 WL 855506, at \*2 (Wash. App. Div. 3, Dec. 10, 1998) (citing *Laughlin v. March*, 145 P.2d 549 (Wash. 1949)) (deed creating trust must indicate with reasonable certainty required elements, including subject matter and beneficiary of trust). Regardless, there is no indication that the muffler business or any of its property was transferred to Spring Flower. Consequently, I find that Spring Flower has no ownership interest in the muffler business.

Stallion was likewise purportedly created as a "federal business trust organization" on August 31, 1999. (See Hrg. Prelim Inj., Govt Ex. 33). Stallion, like Spring Flower, has no beneficiaries. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 39, at 47). Stallion was apparently set up for estate-planning purposes, and to avoid FICA and FUTA taxes, under the notion that Colorado Mufflers' employees and officers could now be deemed trustees instead of employees. *Id.* at 48. Accordingly, individual defendants, as well as two of Colorado Mufflers' employees, signed contracts to become trustees of Stallion. *Id.* at 47. However, these contracts were not continued after 6 months, because Delores Rudd discovered a new argument as to why the muffler business did not need to collect and pay FICA and FUTA taxes. *Id.* at 48, 51-52.<sup>3</sup>

On February 9, 2000, Colorado Mufflers purportedly transferred its inventory to Stallion, for the sum of \$21.00. *Id.* at 49; (Hrg. Prelim. Inj., Gov't Ex. 35). Colorado

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<sup>3</sup>This argument appears to be that asserted in the defendants' motions to dismiss—that the IRS does not have authority to tax businesses and employees such as the mufflers business and the individual defendants under the Code.

Mufflers received its bargained-for-consideration when Delores Rudd handed her husband \$21.00 of her own money, as Stallion had no money of its own. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 39, at 50-51). Despite this purported transfer of inventory, there is no indication in the record that any ownership interest in the muffler business itself was transferred to Stallion.

As with Spring Flower, Stallion appears to lack essential elements of a valid trust. See *Baum*, 22 F.3d at 1018 (beneficiary is essential element); *In re Phillips*, 1998 WL 855506, at \*2 (instrument containing trust must indicate with reasonable certainty essential elements, including subject matter and beneficiary of trust). Furthermore, the transfer of Colorado Mufflers' inventory appears to be a sham. See *True v. United States*, 190 F.3d 1165, 1174 (10th Cir. 1999) (internal quotations omitted) (courts should apply the fundamental tax principle of substance over form to "prevent the true nature of a transaction from being disguised by mere formalisms which exist solely to alter tax liabilities"). See also *Muhich v. Comm'r Internal Rev.*, 238 F.3d 860, 864 (7th Cir. 1997) (Commissioner may disregard sham trusts for tax purposes). In any case, the individual defendants have not asserted, and there is no indication in the record, that Stallion was the owner of the muffler business itself. (See Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 40, at 16).

Instead, Colorado Mufflers appears to remain the owner of the muffler business. The muffler business was the only business Colorado Mufflers ever engaged in, and the individual defendants have maintained its existence to the present, despite its purported inactivity. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Exs. 36 & 39, at 30). The officers and shareholders remain the same as they were prior to 2000, (Pl.'s Suppl.

Br. Support Mot. Prelim. Inj., Ex. 39, at 7-8). Further, Sherilyn Gallegos testified in her deposition that the muffler business is currently owned by herself, Richard Rudd, Sr., Richard Rudd, Jr., and George Gallegos, III, the four shareholders of Colorado Mufflers. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 40, at 16).

Colorado Muffler's actions after 2000 have been inconsistent with the assertion that it no longer owns the muffler business. Although the individual defendants claim that Richard Rudd is the registered owner of the trade name "Exhaust Pros", and he merely had allowed Colorado Mufflers to use the name in the past, according to the Secretary of State's records, Colorado Mufflers remains the registered owner of the trade name, (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 37) and the muffler business continues to operate under that name. (Tr. Hrg. Prelim. Inj., at 68). On August 30, 2000, Colorado Mufflers, through its president, Richard Rudd, Sr., wrote a letter to "W-2 Recipients", informing employees that Colorado Mufflers would no longer be issuing W-2s, not because it no longer owned the muffler business, but because it believed that it is not subject to tax withholding obligations under the Code. (Hrg. Prelim. Inj., Gov't Ex. 21, at 3). Furthermore, on April 5, 2002, Dolores Rudd, acting as Vice President of Colorado Mufflers, sent the IRS a letter asking that Colorado Mufflers' status as a "withholding agent" be changed because Colorado Mufflers "presently only hires domestic citizens." (Hrg. Prelim. Inj., Gov't. Ex. 12). Finally, at least one of the muffler business' non-family member employees continues to believe that he is employed by Colorado Mufflers. (Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 43, at 6).

Having chosen to do business in the corporate form, the individual defendants may not now pretend to own the muffler business under a different form to avoid

obligations under the tax code. See *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946). See also *Colo. Finance Co. v. B.F. Bennet Oil Co.*, 129 P.2d 299, 302 (Colo. 1942) ("The cloak of corporate protection of liability may not be shed or donned to suit the personal whim or caprice of its officers nor to perpetrate a fraud").

Furthermore, even were I to conclude that Colorado Mufflers no longer owned the business, it is virtually undisputed that the business is owned by George Gallegos, III, Sherilyn Gallegos, Richard Rudd, Sr., and Richard Rudd, jr, either directly or as shareholders of Colorado Mufflers. (See Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Exs. 39, at 11 & 40, at 16). If these defendants own the business directly, they may be enjoined regarding the tax obligations of the business. See 26 U.S.C. § 7402(a). Further, given my broad equitable power under such circumstances and Delores Rudd's significant involvement in the business' tax decisions, I would have the authority to enjoin her as well. See *Barraco*, 438 F.2d at 98.<sup>4</sup>

Based on the discussion above, I find and conclude, for purposes of this motion, that Colorado Mufflers continues to own the muffler business. As a consequence, the individual defendants are bound by any injunction I issue in this case as "officers, agents, servants, employees, and attorneys, and...those persons in active concert or participation with" Colorado Mufflers. Fed. R. Civ. P. 65(d).

## 2. Preliminary Injunction

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<sup>4</sup>The same analysis would apply, even if, as Sherilyn Gallegos now seems to assert, the muffler business is owned solely by Richard Rudd, Sr. (Dec. 18, 2003 Decl. Sherilyn Gallegos, ¶ 11) (attached to the individual defendants' response brief). Regardless, this contention is in conflict with Gallegos' deposition testimony. (See Pl.'s Suppl. Br. Support Mot. Prelim. Inj., Ex. 40, at 16).

### Standard of Review

"[T]he decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the district court's use of the equitable remedy." *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir. 1984). In this Circuit, "a movant is entitled to a preliminary injunction if he can establish the following: (1) a substantial likelihood of success on the merits of the case; (2) irreparable injury to the movant if the preliminary injunction is denied; (3) the threatened injury to the movant outweighs the injury to the other party under the preliminary injunction; and (4) the injunction is not adverse to the public interest." *Kikumura v. Hurley* 242 F.3d 950, 955 (10th Cir. 2001).

The following types of preliminary injunctive relief are disfavored and require that the movant satisfy an even heavier burden of showing that the four factors listed above weigh heavily and compellingly in movant's favor before the injunction may be issued: (1) a preliminary injunction that disturbs the status quo; (2) a preliminary injunction that is mandatory as opposed to prohibitory; and (3) a preliminary injunction that affords the movant substantially all the relief he may recover at the conclusion of a full trial on the merits. *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d at 1098-99.

### Discussion

Because the United States seeks a preliminary injunction that would be mandatory, not prohibitory, and that would afford it substantially all the relief that it may recover after full trial on the merits, the United State must show that the factors weigh heavily and compellingly in its favor. *See id.* at 1098.

#### A. Substantial Likelihood of Prevailing on the Merits

26 U.S.C. § 7402(a) authorizes the district courts of the United States to “make and issue in civil actions, writs and orders of injunction...such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.” In its complaint, the United States alleged that Colorado Mufflers ceased filing tax forms and making tax payments with regards to the operation of the muffler business, and that an injunction is necessary to ensure compliance with its obligations under the Code. (Compl., ¶¶20-25). Default has entered against Colorado Mufflers, and therefore these allegations are deemed admitted by it. See *Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1125 (10th Cir. 2003) (quoting *Jackson v. FIE Corp.*, 302 F.3d 515, 525 (5th Cir.2002) (“Defendant by his default, admits the plaintiff’s well-pleaded allegations of fact”).

I find that the United States has demonstrated that Colorado Mufflers has not complied with its obligations under the Code and the applicable regulations, and will continue to do so absent injunction. See, e.g., *United States v. Energy Resources Co.*, 495 U.S. 545, 546-47 (1990) (“The Internal Revenue Code requires employers to withhold from their employees’ paychecks money representing employees’ personal income taxes and Social Security taxes”); 26 U.S.C. §§ 3102(a), 3111, 3301, 3402(a), 6011, 6041; 26 C.F.R. §§ 31.6011(a)-1, (a)-3,(a)-4, & 1.6041-2. Although the individual defendants have raised a variety of arguments as to the applicability of the Code to themselves and their business, I have rejected these arguments as meritless. (See June 23, 2004 order on defendants’ motion to dismiss; August 2, 2004 order on defendants’ motion to dismiss and defendant Dolores Rudd’s motion for clarification). Furthermore, the fact that the defendants continue to assert patently meritless “tax

protestor" arguments, as well as their significant efforts, through the use of sham trusts and transactions (see discussion *infra*), to avoid their tax obligations, demonstrates that an injunction is necessary to enforce compliance with the Code. As a consequence, the United States has made a compelling showing that it will succeed on the merits.

**B. Irreparable Harm**

"A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain." *Kikumura*, 242 F.3d at 963. See also *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001) (internal quotations omitted) ("irreparable harm is often suffered when the injury cannot be adequately attoned for in money or when the district court cannot remedy the injury following a final determination on the merits"). Furthermore, the threatened injury "must be both certain and great;...it must not be merely serious or substantial." *Prairie Band*, 253 F.3d at 1250 (internal quotations omitted).

The United States argues that it need not show irreparable harm, because 26 U.S.C. § 7402 explicitly authorizes injunctions. See *United States v. Moore*, No. 93-C-649-B, 1993 WL 534303, at \*3 n. 1 (N.D. Okla. Sept. 7, 1993) (quoting *Duke v. Uniroyal, Inc.*, 777 F. Supp. 428, 433 (E.D.N.C. 1991)) ("[i]t has been held that were 'an injunction is expressly authorized by statute and the statutory conditions are satisfied, the movant is not required to establish irreparable injury before obtaining injunctive relief'"); *United States v. Frauenkron*, No. 99-1777 (PAM/JGL), 2000 WL 637353, at \*3 (D. Minn. 2000) (given Congressional grant of authority under 26 U.S.C. § 7402, the

Government need not prove irreparable injury). However, because the United States has demonstrated irreparable harm, I need not address whether it was required to.

The United States argues that Colorado Mufflers' tax liability for years 2000-2001 amounts to \$210,968.43, excluding interest. (Nichols Decl., at ¶ 28). As a result of the ongoing noncompliance, Colorado Mufflers accrues an additional \$4,339.18 in Form 940 tax liabilities and \$25,443.01 in Form 941 tax liabilities per quarter. (Nichols Decl., ¶¶ 26-27).<sup>5</sup> Colorado Mufflers' tax debt greatly exceeds the value of its assets and its ability to pay the debt. (Nichols Decl., ¶¶ 29-30). See *TriState Generation & Trans. Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986) ("Difficulty in collecting a damage judgment may support a claim of irreparable injury"). Furthermore, the defendants continued non-compliance will create continued enforcement expenditures for the United States. See *United States v. Thompson*, No. CIV 03-1532 FCD GGH, 2003 WL 23309468, at \*1 (E.D. Cal. Sept. 12, 2003) (finding on similar facts that defendant "is interfering with the administration of the internal revenue laws").

This is compounded by the fact that Colorado Mufflers' non-compliance impacts the tax obligations of all of its employees as well. (See Tr. Hrg. Prelim. Inj., at 66-67). An employee is ultimately responsible for the FICA and income taxes that his or her

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<sup>5</sup>Sherilyn Gallegos takes issue with these calculations, arguing that they were incorrectly formulated on the basis of past filings. (See Dec. 18, 2003 Decl. Sherilyn Gallegos, ¶ 11). However, because Colorado Mufflers refused to file the requisite forms, which would have allowed the IRS to make accurate calculations, Gallegos must provide more than a conclusory statement that Colorado Mufflers had fewer employees in 2000 and 2001 to rebut Nichol's declaration. Furthermore, the general thrust of Nichol's declaration, that Colorado Mufflers has accrued significant employment tax liabilities, remains undisputed.

employer is supposed to withhold. See *Edwards v. Commissioner*, 323 F.2d 751, 752 (9th Cir. 1963); *Navarro v. United States*, 72 AFTR 2d 93-5424, 1993 WL 291381, at \*5 (W.D.Tex.1993); *Lucas v. C.I.R.*, T.C. Memo 2000-14, 2000 WL 19870 (U.S. Tax. Ct. 2000). The United States notes that any employees who do not calculate and pay their taxes may be subject to criminal and civil sanctions, as well as ineligibility for Social Security benefits.

Under these circumstances, I conclude that the United States has established the existence of irreparable harm, and has established that this factor weighs heavily and compellingly in its favor.

C. Balance of Injuries

Issuance of the proposed injunction would impose no hardship on the defendants because it would "only require them to do what the [Code] requires any way—to comply with the law." *Metzler v. IBP, Inc.*, 127 F.3d 959, 963 (10th Cir. 1997) (internal quotations omitted) (upholding injunction under Fair Labor Standards Act). Consequently, I find that the United States has established that this factor weighs heavily and compellingly in its favor.

D. Public Interest

The Supreme Court has found that the "broad public interest in maintaining a sound tax system is of...a high order." *United States v. Lee*, 455 U.S. 252, 253 (1982). Further, as noted above, Colorado Mufflers' noncompliance makes it more difficult for its employees to comply with their own obligations under the Code, potentially subjecting them to risk of civil and criminal sanctions. Consequently, I find that the United States has established that this factor weighs heavily and compellingly in its

favor.

Having found that the United States has demonstrated that the four factors weigh heavily and compellingly in its favor, I conclude that the United State' motion for a preliminary injunction should be granted. Furthermore, I find that most of the terms proposed by the United States are necessary and appropriate for the enforcement of the internal revenue laws. 26 U.S.C. § 7402. However, to the extent the United States asks me to order Colorado Mufflers to pay past taxes that are due, I question the use of an injunction to recover dollars due given the availability of legal remedies which the United States does not plead.

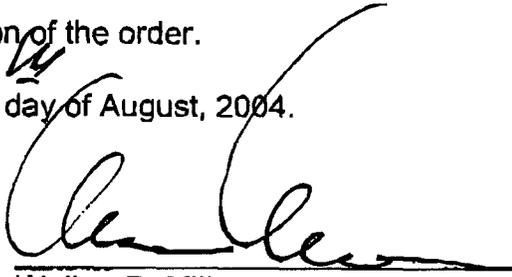
Accordingly, it is ordered:

1. Colorado Mufflers is preliminarily enjoined from violating 26 U.S.C. §§ 3102, 3111, 3301, 3402, 6011, and 6041 until the final adjudication of this action.
2. This preliminary injunction binds Colorado Mufflers as well as its officers, shareholders, agents, servants, employees, attorneys, and persons in active concert or participation with them, including defendants Richard D. Rudd, Sr., Delores Rudd, Sherilyn Gallegos, Richard D. Rudd, Jr., and George Gallegos, III, in whatever form they continue to carry on the muffler business, under name of Colorado Mufflers, Exhaust Pros, or any other.
3. Defendants shall withhold income, Social Security, and Medicare taxes from its employees' wages and when wages are paid and pay these taxes to the Internal Revenue Service as they become due.

4. Defendants shall pay Social Security and Medicare taxes as they become due.
5. Defendants shall file timely and accurate Forms 940, 941, and W-2 with the Internal Revenue Service as they become due. Defendants shall also file the Forms W-2 with the Social Security Administration and issue them to its employees. Defendants shall send copies of all of these forms to counsel for the United States within three days after filing the originals.
6. Effective immediately, within three days of each payroll, Defendants shall make payroll tax deposits with the Defendants' bank and send by fax to IRS Revenue Agent Beth S. Nichols at (303) 231-5265 a receipt for each employment tax deposit and a completed worksheet in the form attached hereto.
7. Within thirty days of the date of this order, Defendants shall file accurate Forms 941, beginning with the first quarter of 2000 and accurate Forms 940, beginning with the year 2000.
8. Within ten days from the date of this order, Defendants shall deliver to all of its current employees, and any former employees employed at any time since January 1, 2000, a copy of this order, with the costs being born by Defendants, and shall post and keep posted in at least one conspicuous place on its business premises where notice to employees are customarily posted, a copy of this order, with costs to be born by Defendants. Within twelve days of entry of this preliminary injunction, an officer of Colorado

Mufflers must file a sworn certificate of compliance, swearing that he or she has complied with this portion of the order.

DATED at Denver, Colorado, this 10<sup>th</sup> day of August, 2004.



Walker D. Miller  
United States District Judge

Via Facsimile to: IRS Revenue Agent Beth S. Nichols  
Fax: (303) 231-5265

**FEDERAL EMPLOYMENT TAX DEPOSIT VERIFICATION**

Colorado Mufflers Unlimited, Inc.  
EIN: 84-1065630

- 1. For payroll period \_\_\_\_\_ to \_\_\_\_\_
- 2. Date wages paid to employees: \_\_\_\_\_
- 3. Total gross wages paid: \$ \_\_\_\_\_
- 4. Total federal income tax withheld: \$ \_\_\_\_\_
- 5. Total Social Security taxes withheld: \$ \_\_\_\_\_ x 2 = \$ \_\_\_\_\_
- 6. Total Medicare taxes withheld: \$ \_\_\_\_\_ x 2 = \$ \_\_\_\_\_
- 7. Total of lines 4, 5, and 6: \$ \_\_\_\_\_
- 8. Deposit dated \_\_\_\_\_ (receipt attached) for: \$ \_\_\_\_\_

I, Sherilyn Gallegos, hereby certify under penalty of perjury that the foregoing information is true and accurate.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Sherilyn Gallegos, Secretary

**ATTACH COPY OF DEPOSIT RECEIPT**

or, if Electronic Funds Transfer used, provide confirmation # \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Walker D. Miller

CERTIFICATE OF MAILING

Civil Action No. 03-WM-1310 (CBS)

Copies of this Order were served by delivery; or depositing the same in the United States mail, postage prepaid, addressed to the persons listed below:

Magistrate Judge Craig B. Shaffer

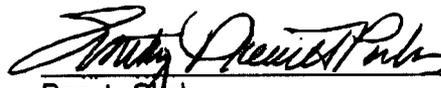
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Dated: 8-10-04

  
Deputy Clerk