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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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

5:04CV1419
JUDGE ADAMS

UNITED STATES OF AMERICA, Plaintiff, v. JAMES L. BINGE, individually and d/b/a Accounting & Financial Services; and TERRENCE A. BENTIVEGNA, individually and d/b/a T.J. Enterprises, Defendants.	)	Case No. _____ MAG. JUDGE LIMBERT

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, makes the following allegations against the defendants, James L. Binge, individually and doing business as Accounting & Financial Services, and Terrence A. Bentivegna, individually and doing business as T.J. Enterprises:

1. This is a civil action brought by the United States pursuant to Sections 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) ("IRC") to restrain and enjoin the defendants and all those in active concert or participation with them from:

(a) acting as federal tax return preparers;

(b) promoting, organizing or selling abusive tax shelters, plans, or arrangements that advise or encourage customers to attempt to evade the assessment or collection of their correct federal tax;

(c) preparing or assisting in the preparation of tax returns that defendants know will result in the understatement of any tax liability;

(d) understating customers' liabilities as prohibited by IRC § 6694;

(e) engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, or 6701; and

(f) engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws, including (but not limited to) the filing of groundless administrative complaints against IRS employees who have (i) examined tax returns prepared by defendants or (ii) collected or attempted to collect the unpaid federal taxes assessed against defendants' customers; and presenting false letters of credit or other fraudulent documents to the IRS in payment of the federal taxes assessed against their clients.

Jurisdiction

2. This action has been authorized and requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of IRC §§ 7401 and 7408.

3. Jurisdiction is conferred upon this Court by Sections 1340 and 1345 of Title 28, United States Code, and IRC §§ 7402(a), 7407, and 7408.

Defendants

6. Defendant James L. Binge ("Binge") resides at 5758 Fulton Drive NW in Canton, Ohio, within the jurisdiction of this Court.

7. Defendant Terrence A. Bentivegna ("Bentivegna") resides at 2121 39th Street NW in Canton, Ohio, within the jurisdiction of this Court.

Defendants' Activities

8. Binge has prepared federal tax returns for more than 20 years, and currently represents customers before the Internal Revenue Service ("IRS") as an unenrolled tax preparer. Binge is a former Certified Public Accountant whose license was revoked.

9. Since at least 1997, Binge has organized and sold trusts that he markets to the public as "Common Law Business Organizations."

Sales of Trusts

10. Binge and his associate, defendant Bentivegna, promote these trust arrangements through word of mouth, and through written materials. Defendants falsely claim that customers who purchase defendants' trusts "will be free from government restraints and will escape probate, gift taxes, inheritance taxes, estate taxes, and capital gain taxes, " and will lower or eliminate their federal income taxes.

11. Binge advises his customers to transfer all of their personal and business assets to an "Asset Management Company" in exchange for "Certificates of Beneficial Interest" (CBI). The CBI allegedly permit his customers to retain the right to use and control all "distributions" from the assets transferred to the Asset Management Company.

12. The customer's relationship to the property transferred to the Asset Management Company does not change after the purported transfer, and defendants' customers, *i.e.*, the individual customers and former business owners, continue to use all of the transferred property as their own. For example, after transferring their business property to the Asset Management

Company, the customers and former business owners continue to exercise sole signature authority over the bank accounts and other property of their businesses.

13. Defendants' customers use the Common Law Business Organization to create multiple nominees or alter egos which claim numerous improper tax deductions, resulting in the loss of millions of dollars of federal tax revenue.

14. "Management fees" paid to the Asset Management Company are used to pay the personal, nondeductible living expenses of its "directors," *i.e.*, the individual customers who purchased the Common Law Business Organization from defendants. Binge then prepares federal income tax returns which claim tax deductions for these "management fees" as well as the customers' living expenses. In several cases, funds remaining in the Asset Management Company after the payment of the directors' personal expenses were "donated" to a Charitable Trust controlled by the same directors, thereby (according to Binge's promotional materials) "leaving no income to be taxed." The funds "donated" or transferred to the customer's purported Charitable Trust are actually controlled by, and used for the benefit of, the customer.

15. Consistent with the facts, advice and statements set forth in paragraphs 9 through 14, above, defendants prepared U.S. Individual Income Tax Returns (IRS Forms 1040) for customers who purchased defendants' Common Law Business Organization, and U.S. Income Tax Returns for Estates and Trusts (Forms 1041) for their customers' Asset Management Companies. The income tax returns which defendants prepared improperly and illegally reduced or eliminated their customers' federal income, self-employment and social security tax liabilities.

16. In concert with Binge, who prepared the Form 1041 tax returns for his customers' Asset Management Companies, Bentivegna has signed a number of those returns as a trustee of

the Asset Management Company in order to disguise the customers' identities and impede IRS efforts to collect federal taxes once defendants' trusts have been determined to be invalid.

The Section 861 Argument

17. Binge and Bentivegna have also prepared Form 1040 income tax returns which falsely claim that (1) "no section of the United States Code (U.S.C.) establishes an individual or personal 'income tax' liability" that applies to their customers; (2) that there is no legal requirement in the Internal Revenue Code or the Treasury Regulations for their customers to file income tax returns with the IRS; and (3) utilize the frivolous "Section 861" or "U.S. Sources" argument that defendants' customers received no wages, compensation for services or gross income in a particular calendar year because only income from foreign sources, *i.e.,* from outside of the United States, is taxable.

Delaying Tactics

18. In representing their customers before the IRS, Binge and Bentivegna have deliberately attempted to delay the assessment and collection of delinquent federal taxes from their customers by (1) refusing to provide the financial records and information of customers for whom they prepared tax returns; (2) raising frivolous constitutional challenges to the authority of the IRS to examine federal tax returns; (3) routinely delaying, deferring and ignoring scheduled and rescheduled appointments with IRS personnel; and (4) attempting to bill the IRS for the additional taxes, penalties and interest assessed against defendants' clients as a result of their participation in the abusive tax avoidance schemes outlined above.

Threatening Retaliation Against IRS Employees

19. In order to intimidate IRS employees from examining or auditing the federal tax returns which he has prepared for his customers based upon the false IRC § 861 Argument described above, Bentivegna attaches statements to those returns which threaten to file administrative complaints against Internal Revenue Agents under Section 1203 of the IRS Restructuring and Reform Act of 1998. These statements, which are frequently notarized by Binge, contain the following language: "Do not notify us that the I.R.S. is 'changing' my return, since there is no statute, code or implementing regulation that would authorize the I.R.S., or any other government employee, to do that. That would constitute 'Theft by Conversion' a felony. Section 1203 will be filed immediately."

Failure to Furnish Lists or Copies of Returns

20. In violation of IRC §§ 6695 and 6107(b), Bentivegna refused to comply with the November 28, 2003 IRS request for copies of the federal tax returns which he prepared for his customers.

Harm to the Public

21. Defendants' customers have been harmed by defendants' organization, promotion and sales of: (1) the abusive trust scheme described in paragraphs 9 through 14, above; and (2) the "Section 861" or "U.S. Sources" argument that the income received by U.S. citizens from domestic sources, *i.e.*, those sources inside the United States, is not subject to taxation under the Internal Revenue Code (26 U.S.C.) or Treasury Regulations (26 C.F.R.).

22. Defendants' customers have also been harmed because they paid defendants significant sums to prepare false and fraudulent tax returns (based on defendants' sales of the

Common Law Business Organization and/or Section 861 argument) that improperly understate their federal income tax liabilities.

23. The United States is harmed because defendants' customers are not paying their fair share of taxes to the United States Treasury. Based on examination results to date, the Internal Revenue Service estimates that the tax revenue loss attributable to Binge, who prepared more than 400 trust income tax returns between 1998 and 2003, is $18,900,000.00. The tax loss resulting from Bentivegna's preparation of only 12 tax returns exceeds $222,000.00. Moreover, some of the tax deficiencies for which defendants are responsible may never be collected, resulting in a permanent loss to the Treasury.

24. The United States is also harmed because the IRS is forced to devote some of its limited resources to identifying and collecting this lost revenue from defendants' customers, thereby reducing the level of service that the IRS can give to honest taxpayers. Furthermore, given the limited resources of the IRS, identifying and collecting all tax revenues lost from defendants' schemes may be impossible.

25. In addition to the harm caused by their advice, statements and services, defendants' activities undermine public confidence in the fairness of the federal tax system and incite non-compliance with the internal revenue laws.

Count I

Injunction under IRC § 7407

26. The United States incorporates by reference the allegations in paragraphs 1 - 25.

27. IRC § 7407 authorizes a district court to enjoin an income tax return preparer from:

> (a) engaging in conduct subject to penalty under IRC § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position),
>
> (b) engaging in conduct subject to penalty under IRC § 6695 (which penalizes a return preparer who fails to keep a list of clients or copies of tax returns and turn them over to the IRS upon request),
>
> (c) misrepresenting his experience or education as a tax return preparer, or
>
> (d) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct and that a narrower injunction (*i.e.,* prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax return preparer.

28. Binge and Bentivegna have prepared federal income tax returns for individual customers (Forms 1040) and trusts (Forms 1041) that understate their tax liability based on (1) the false and fraudulent position that customers can eliminate their tax liability through using sham trusts; (2) that individual customers are not required to file income tax returns or pay income taxes; and (3) the legally frivolous argument that only income earned from foreign sources, *i.e.,* from outside of the United States, is taxable under the Internal Revenue Code (26 U.S.C.) and Treasury Regulations.

29. Binge is a former Certified Public Accountant, and Bentivegna holds a Bachelor of Science from the University of Akron, Ohio, where he took college courses in accounting and taxation. Because of their experience and sophistication in tax matters, Binge and Bentivegna knew or should have known that the positions that they asserted on their customers' tax returns were not only unrealistic within the meaning of IRC § 6694, but were also frivolous as a matter of law.

30. Bentivegna has engaged in other fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, including improperly attempting to delay and obstruct the IRS from completing its investigation into his abusive trust scheme and its examinations of his customers' tax returns.

31. Bentivegna has engaged in conduct subject to penalty under IRC § 6695 by failing to turn over copies of the tax returns which he prepared for clients after the IRS requested, pursuant to IRC § 6107(b), that he do so in November of 2003.

32. Defendants' actions, as described above, fall within IRC §§ 7407(b)(1)(A) and (D), and are thus subject to injunction under IRC § 7407.

33. Defendants should be permanently enjoined from acting as federal income tax return preparers because they are likely to continue to engage in this unlawful conduct unless enjoined.

Count II

Injunction under IRC § 7408

34. Plaintiff incorporates by reference the allegations in paragraphs 1 - 33.

35. IRC § 7408(a) authorizes a district court to enjoin any person from engaging in

conduct subject to penalty under IRC §§ 6700 and 6701, if injunctive relief is appropriate to prevent recurrence of that conduct.

36. IRC § 6700 imposes a penalty on any person who, in connection with organizing, promoting, or selling a plan or arrangement, makes or furnishes a statement about the tax consequences of participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter.

37. IRC § 6701 imposes a penalty on any person who, among other conduct, knowingly aids or assists in the understatement of the tax liability of another person on a tax return, claim for refund, or other document.

38. The "trusts" that Binge has organized for and promoted to his customers are shams that are devoid of economic substance, or alternatively are grantor trusts that may be disregarded for federal income tax purposes.

39. The trusts used by Binge's customers are similar to the abusive trusts described in IRS Public Notice 97-24. That Notice describes trust arrangements that falsely promise that customers can claim tax benefits from trusts with no meaningful change in the customers' control over or benefit from their income or assets.

40. The "IRC § 861" or "U.S. Sources" argument used by Binge and Bentivegna to prepare Form 1040 tax returns for their customers that report no or zero taxable income is legally frivolous, and has been rejected by every court that has considered it, beginning as early as 1993 in *Solomon v. Commissioner,* 66 T.C.M. (CCH) 1201, 1993 WL 444615 (1993).

41. Defendants, because of their education, experience and sophistication as federal income tax return preparers, knew or had reason to know that they made false or fraudulent

statements (within the meaning of IRC § 6700) in connection with: (1) the trust arrangements or packages that they organized, promoted and/or sold, or assisted in organizing, promoting and selling; (2) defendants' advice to their customers that they were not required to file tax returns or pay federal income taxes; and (3) defendants' organization and promotion of the "Section 861" argument as a means of evading the internal revenue laws and the payment of taxes lawfully due on their wages and other gross income;

42. By preparing income tax returns for their customers and their trusts that improperly claimed deductions and failed to report income based on defendants' abusive trust schemes and Section 861 argument, defendants have engaged in preparing or presenting a portion of a tax return or other document, knowing that such portion will be used in connection with a material matter arising under the internal revenue laws, and knowing that such portion (if so used), would result in understating the tax liability of another person. Defendants' conduct is thus subject to penalty under IRC § 6701.

43. Unless enjoined by this court, Binge and Bentivegna are likely to continue to engage in such conduct. Injunctive relief is therefore appropriate under IRC § 7408.

Count III

Injunction under I.R.C. § 7402 for Unlawful Interference with Enforcement of the Internal Revenue Laws and Appropriateness of Injunctive Relief

44. The United States incorporates by reference the allegations in paragraphs 1 - 43 of the complaint.

45. IRC § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

46. Binge and Bentivegna, through the actions described above, have engaged in conduct that interferes substantially with the enforcement of the internal revenue laws.

47. If Binge and Bentivegna are not enjoined, the United States will suffer irreparable harm because the losses caused by defendants' actions will continue to increase.

48. While the United States will suffer irreparable injury if Binge and Bentivegna are not enjoined, defendants will not be harmed by being compelled to obey the law.

49. The public interest would be advanced by enjoining defendants because an injunction will stop his illegal conduct and the harm that conduct is causing to the United States Treasury and the public.

50. If Binge and Bentivegna are not enjoined, they are likely to continue to interfere with the enforcement of the internal revenue laws.

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

A. That the Court find that Binge and Bentivegna have engaged in conduct subject to penalty under IRC §§ 6700, 6701 and 6694, and that injunctive relief under IRC §§ 7407 and 7408 is necessary and appropriate to prevent a recurrence of that conduct;

B. That the Court find that Binge and Bentivegna have engaged in conduct interfering with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and IRC § 7402(a);

C. That this Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting Binge and Bentivegna from acting as federal income tax return preparers;

D. That this Court, pursuant to IRC §§ 7402(a) and 7408, enter a permanent injunction prohibiting Binge, individually and doing business as Accounting and Financial Services (or using any other name or entity), and Bentivegna, individually and doing business as T.J. Enterprises (or using any other name or entity), and their respective representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with defendants, from directly or indirectly:

(1) Engaging in activity subject to penalty under IRC § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that defendants know or have reason to know is false or fraudulent as to any material matter;

(2) Engaging in activity subject to penalty under IRC § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that defendants know will result in an understatement of tax liability;

(3) Organizing, promoting, marketing, or selling any type of abusive tax shelter, plan, or arrangement, including any asset protection device such as trusts, the exclusion of income under IRC § 861, or similar arrangements, advocating noncompliance with the income tax laws or tax evasion, misrepresenting the tax savings realized by using such an arrangement or concealing the receipt of income or location of assets from the IRS;

(4) Engaging in any other activity subject to penalty under IRC §§ 6700 or 6701;

(5) Representing or appearing with or on behalf of any other persons or entities in connection with any matter before the Internal Revenue Service;

(6) Preparing false or frivolous letters or other documents for others for submission to the Internal Revenue Service; and

(7) Engaging in other conduct interfering with the enforcement of the internal revenue laws, including (but not limited to) the filing of groundless administrative complaints against IRS employees who have (i) examined tax returns prepared by defendants or (ii) collected or attempted to collect the unpaid federal taxes assessed against defendants' customers; and presenting false letters of credit or other fraudulent documents to the IRS in purported payment of their clients' tax liabilities.

E. That this Court, pursuant to I.R.C. §§ 7402(a), enter an injunction requiring Binge and Bentivegna to contact by mail all individuals and entities who have purchased their abusive tax shelters, plans, arrangements, or programs, or any other abusive shelter, plan, or program in which Binge and Bentivegna have been involved, to inform those persons of the Court's findings concerning the falsity of defendants' representations and attach a copy of the permanent injunction against Binge and Bentivegna, and to file with the Court, within 30 days of the date the permanent injunction is entered, a certification that they each have done so;

F. That this Court, pursuant to I.R.C. §§ 7402(a), enter an injunction requiring Binge and Bentivegna to produce to the United States, within 30 days of the date the permanent injunction is entered, any records in his possession or to which they have access, identifying by name, Social Security Number, address, and telephone number all individuals who have purchased

defendants' abusive tax plans, arrangements, or programs, or any other shelter, plan, or program in which Binge and Bentivegna have been involved;

G. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and

H. That this Court grant the United States such other relief, including the costs of this action, as is just and equitable.

Dated this 21st day of July, 2004.

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