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FEB 18 2004 AT SEATTLE CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON BY MR DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil No. CV04-0332
JACK COHEN, Defendant.	)	**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The plaintiff, the United States of America, alleges as follows:

Parties

1. The plaintiff is the United States of America. Counsel for the United States is located at the U.S. Department of Justice, Tax Division, 555 - 4th Street, NW, Washington, D.C.

2. The defendant, Jack Cohen, resides at 6470 - 19th Street West, Apt. F, Tacoma, Washington 98466, within this judicial district.

Jurisdiction and Venue

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1340 and 1345 and §§ 7402(a) and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (IRC).

4. This action has been requested by the Acting 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, under the provisions of IRC §§ 7402 and 7408.

5. Venue is proper in this Court under 28 U.S.C. § 1391.

6. The United States brings this complaint under IRC §§ 7402(a) and 7408 to restrain and enjoin the defendant from:

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a. engaging in any activity subject to penalty under IRC § 6700, including organizing or selling a plan or arrangement and, in connection with that activity, making a statement regarding the excludability of income or other tax benefit that he knows or has reason to know is false or fraudulent as to any material matter;

b. engaging in any activity subject to penalty under IRC § 6701, including advising others with respect to the preparation of documents related to a matter material under the internal revenue laws, that includes a position that the defendant knows will result in the understatement of tax liability;

c. engaging in any other activity subject to penalty under IRC §§ 6700 or 6701; and

d. engaging in other, similar conduct that unlawfully interferes with the proper administration and enforcement of the internal revenue laws.

Count I

(Injunction under IRC § 7408 for violations of § 6700 and 6701)

7. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC §§ 6700 and 6701.

8. In relevant part, IRC § 6700 imposes a penalty on any person who organizes (or assists in the organization of) any shelter, plan, or arrangement, or participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement; and makes or furnishes or causes another person to make or furnish (in connection with such organization or sale) a statement regarding any deduction, credit, the excludability of income or the securing of any other tax benefit; which the person knows or has reason to know is false or fraudulent as to any material matter.

9. IRC Section 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a return, affidavit, claim, or other document, who knows (or has reason to know) that the portion will be used in connection with any material

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matter arising under the internal revenue laws, and who knows the portion would (if so used) result in an understatement of tax liability.

10. Cohen markets a "Tax Ax" scheme over his website, www.taxax.org.

11. Specifically, Cohen, using a permutation of what has come to be known as the "Section 861" or "U.S. Sources" argument, falsely claims that payment of federal taxes is voluntary. This frivolous position has been rejected repeatedly by the federal courts.

12. As part of this illegal tax scam, Cohen sells "packages" selling for as much as $200 each, which, among other things, purport to explain "how the instruction for Form 1040 require [sic] citizens to report only their foreign income," and state "the inapplicability of Title 26 [the Internal Revenue Code] to the average American."

13. Other packages include, for example, Cohen's "W-4 Killer" ($50) for "employees who wish to stop the withholding process," and his "Custom Letter Pack" ($100) which purports to "reverse the government's presumption that we are 'taxpayers' pursuant to the Code. . . ."

14. Cohen's newest package is targeted at employers. Specifically, Cohen sells a package which includes, among other things, form letters which his customers can use to threaten lawsuits against their employers, in the hope that employers will be intimidated and stop withholding taxes.

15. Cohen's Tax Ax scheme is a "plan or arrangement" within the meaning of IRC § 6700.

16. Cohen organized his Tax Ax scheme, and markets interests in the scheme.

17. Cohen's statements that American citizens are not required to pay federal taxes – *i.e.*, that income is excluded from federal taxation – and similar statements are false and fraudulent.

18. Cohen knows and has reason to know that his statements about the excludability of American citizens' income which from federal taxation (a material matter under § 6700) are false and fraudulent.

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19. Cohen is therefore in violation of IRC § 6700, and is subject to injunction under IRC § 7408.

20. Similarly, Cohen's aiding and advising with respect to the preparation and presentation of Forms W-4 and similar tax-related documents to the IRS violates IRC § 6701. Cohen provides these documents to his customers with false instructions, knowing that his customers will submit the false forms to the IRS, and knowing that submission of the false forms will lead to understatements of his customers' tax liabilities.

21. The understatement of tax liabilities is a material matter under the internal revenue laws and IRC § 6701.

22. Cohen is therefore in violation of IRC § 6701, and is subject to injunction under IRC § 7408.

Count II

(Injunction under IRC § 7402)

23. The United States restates the allegations in paragraphs 1-22, above, as though fully set forth herein.

24. Unless the Court enjoins Cohen, he is likely to continue to engage in the conduct described in paragraphs 1 through 22 of this complaint.

25. Cohen's conduct described in paragraphs 1 through 22 has resulted and continues to result in irreparable harm to the United States.

26. The United States has no adequate remedy at law to halt this irreparable harm, the United States is entitled to an injunction under IRC § 7402. Specifically:

a. Cohen's conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless he is enjoined the IRS will have to expend substantial time and resources to detect future returns based on bogus claims, and may be unable to detect all of them. If erroneous refunds are made and later detected, the Government will either lose those funds or have to expend substantial funds and resources to recover them. Based on past experience, the Government cannot expect to recover 100% of the erroneous refunds issued, and therefore the Government can expect a revenue loss if Cohen is allowed to continue promoting abusive plans and arrangements;

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b. The detection and audit of taxpayers who have used Cohen's scheme will place a serious burden on the IRS's resources and — to the extent erroneous-refund suits must be brought against taxpayers — on the resources of the federal judicial system; and

c. If Cohen is not enjoined, he likely will continue to engage in unlawful conduct that interferes with the enforcement of the internal revenue laws, thereby undermining the federal tax system.

27. Cohen, therefore, should be permanently enjoined under IRC § 7402.

WHEREFORE, the plaintiff United States prays for the following:

A. That the Court find that Cohen has engaged in conduct subject to penalty under IRC §§ 6700 and 6701, and that injunctive relief is appropriate under IRC § 7408 to prevent him and anyone acting in concert with him from engaging in any further such conduct;

B. That the Court find that Cohen has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against him and anyone acting in concert with him is appropriate to prevent the recurrence of that conduct, under the Court's inherent equity powers and IRC § 7402(a);

C. That the Court, under IRC §§ 7402 and 7408, enter a permanent injunction prohibiting Cohen and his representatives, agents, servants, employees, attorneys, and those persons in concert or participation with him, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

(1) Organizing, promoting, marketing, or selling (or assisting therein) any abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws, unlawfully evade the assessment or collection of their federal tax liabilities, or unlawfully claim improper tax refunds;

(2) Further engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an

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abusive shelter, plan, or arrangement, a statement they know or have reason to know is false or fraudulent as to any material matter;

(3) Further engaging in any conduct that unlawfully interferes with the administration and enforcement of the internal revenue laws.

D. That this Court, under IRC §§ 7402 and 7408, enter an injunction requiring Cohen to contact, in writing, by first class mail:

(1) all persons who purchased any shelter, plan, or arrangement from Cohen, or from his representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with him;

(2) all persons who purchased any shelter, plan, or arrangement from any entity (including without limitation any corporation, partnership, limited partnership, limited liability company, proprietorship or other organization or association) in which or with whom Cohen has had (a) any ownership interest, (b) any employment relationship, (c) any contractual arrangement, (d) or any other commercial or business affiliation;

(3) all persons on whose behalf Cohen, or his representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with him, prepared and/or assisted in the preparation of any federal or state income tax returns or tax-related documents; and

(4) all persons who contacted Cohen, his representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with him, regarding the purchase of any shelter, plan or arrangement;

and to provide each of those persons with a true, correct and complete copy of the Court's findings and order of permanent injunction, and further, to inform those persons, using a memorandum approved by the Court, of the falsity of the representations made by Cohen,

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the falsity of any tax returns prepared on these persons' behalf, the possibility of the imposition of frivolous-return penalties against them, the possibility that the United States may seek to recover any erroneous refund they may have received, and the fact that a permanent injunction has been entered against Cohen.

F. That this Court order, as part of a permanent injunction, that Cohen post the Court's order of permanent injunction on his website (www.taxax.org) in 12-point type or larger, accessible from the website's home page under a heading or link prominently displayed and which clearly identifies the order in 18-point boldfaced type or larger, for a period of not less than one year, and that Cohen shall bear all costs associated with posting and maintaining the injunction order on the website during that period.

G. That this Court, under IRC §§ 7402 and 7408, enter an injunction requiring Cohen to produce to the United States all records in his possession, custody, or control or to which he has access that identify (1) the names, addresses, phone numbers, and social security numbers of persons to whom he gave or sold or otherwise provided, directly or indirectly, any documents or other information related to the excludability of income from taxation, deductions, exemptions or any other tax benefit; (2) the names, addresses, phone numbers, and social security numbers of persons who assisted in the preparation or marketing of materials used by Cohen or by his representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with him; (3) the names, addresses, phone numbers, and social security numbers (or employer identification numbers) of all individuals or entities for whom Cohen, or his representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with him, have prepared or have assisted in the preparation of any tax-related documents,

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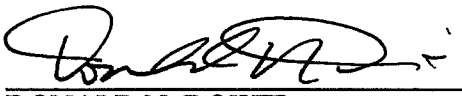
including without limitation tax forms, claims for refund and tax returns; and (4) the names, addresses, phone numbers, and social security numbers (or employer identification numbers) of all individuals or entities who purchased or used any other tax shelter, plan, or arrangement in which Cohen has been involved as an organizer, promoter, or seller, whether directly or indirectly.

H. That the Court grant the United States its costs in bringing this action.

I. That the Court grant such other relief as the Court deems appropriate.

JOHN L. McKAY
United States Attorney



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