IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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CLERK, U.S. DISTRICT COURT
SEP 2 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES OF AMERICA,
Plaintiff,

Case No. CV04-02100 FMC (JWJx)

PRELIMINARY INJUNCTION ORDER AGAINST JOSEPH O. SALADINO

JOSEPH O. SALADINO, individually and dba FREEDOM & PRIVACY COMMITTEE, and JASON A. WHITNEY, individually and dba BB&C OF AMERICA,

Defendants.

CLERK US DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

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Upon motion by the plaintiff, United States of America, and based on the evidence presented in that motion and at the hearing held on this matter, a preliminary injunction is hereby entered against defendant Joseph O. Saladino. The Court finds and orders as follows.

Standards for Preliminary Injunction

In order to obtain a preliminary injunction pursuant to 26 U.S.C. (Internal Revenue Code, "IRC") § 7408, the United States must show that (1) defendant either engaged in conduct subject to penalty under IRC §§ 6700 or 6701; and (2) injunctive relief is appropriate to prevent the recurrence of such conduct. The Court may issue a preliminary injunction under IRC § 7402 "as may be necessary or appropriate for the enforcement of the internal revenue laws." IRC § 7402(a).

Findings of Fact

1. This Court has jurisdiction over the parties and subject matter of this case.

2. Joseph O. Saladino, a self-professed tax expert, promotes abusive tax shelters, referred to herein as the "corporation sole" program and the "claim of

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right" program. He conducts his business through Freedom & Privacy Committee ("FPC").

3. According to its promotional material, FPC "is an educational organization dedicated to helping you reclaim 100% of your FREEDOM and PRIVACY. You may think you are free, but anyone who has been hoodwinked by the legal system (i.e., traffic tickets, IRS confiscations, etc.) knows in their heart that something is seriously wrong with the system and the government." Further, FPC markets its products to those persons "convinced that you are NOT required to pay Federal Income Tax and [] need help getting free from the IRS. We fully support legal taxes but not direct taxes which are prohibited by the Constitution of the United States."

4. Saladino's tax promotion involves a multi-level marketing organization that relies on management and subpromoters. Wholesale packages of the tax programs are purchased by subpromoters directly through Saladino and FPC. The subpromoters (or salesmen) then sell the packages to the participants. Saladino and FPC are involved in each transaction and have complete participant information, although the actual sale transactions may occur between the participant and the FPC subpromoter. Participants or purchasers are encouraged to become FPC subpromoters and further market the scheme.

5. Saladino markets the abusive FPC tax program nationwide through internet websites, including the FPC website www.freedomcommittee.com, conference calls, and seminars. Subpromoters receive their own internet web page, which is linked directly to the FPC main website. Membership in the FPC organization costs $200, with a $100 annual renewal fee. FPC advertises that membership "can eliminate your personal income taxes" and permits participants to "operate a business tax free and still enjoy limited liabilities."

6. There are hundreds of participants located nationwide in Saladino's promotion.

The Corporation Sole Package

7. Saladino markets the FPC "corporation sole" arrangement as a means to evade the reporting and payment of federal income taxes, as well as a means to conceal assets and thereby evade estate and inheritance taxes and IRS collection efforts. Saladino markets the corporation sole package for $2,295. After receiving a customer's application and payment, Saladino instructs participants how to form a corporation sole, including how to conceal assets and taxable income by transferring assets and income to their corporations sole.

8. Saladino falsely or fraudulently advises participants that they can treat their corporations sole as a "church" with no tax return filing requirement, and yet can control and use the assets and income of the corporation sole for their own personal benefit. FPC promotional material states that "this product will position you to have full-time ministry which is tax free." Saladino advises participants that corporations sole that are used for the participants' personal benefit are tax exempt, do not need to file tax returns of any kind, and do not need to keep records. Saladino also falsely states that a corporation sole's church status cannot be challenged by the Government.

9. Saladino further falsely states that participants can make donations to their corporations sole and then deduct the donations on the participants' federal income tax returns (in the event returns are filed), even though the entities are owned and controlled by the participants.

10. Saladino falsely or fraudulently advises that a participant who becomes the "minister" or "overseer" of the corporation sole and takes a vow of poverty, can assign his income to the corporation sole and thereby transform taxable

individual income into nontaxable income of the corporation sole. According to Saladino, "Once you declare your pauper status, your income is tax-free to you and your assets cannot be encumbered with a property tax."

11. Saladino falsely or fraudulently states that a corporation sole can be engaged in any occupation, business or profession, and that all earnings therefrom are tax exempt, and that no tax return need be filed. Saladino also advises that if the participant's residence or real estate is titled in the name of the corporation sole, then the individual can use and maintain it as a tax-exempt parsonage, and that the corporation sole can provide the participant housing or a housing allowance that is tax exempt.

12. Saladino falsely or fraudulently touts participating in the corporation sole program as a mechanism that enables participants to drop out of the federal tax system entirely. The effect of Saladino's scheme is that the participant lives in the same residence and operates the same business activity as he did prior to joining the program. All living expenses of the participant and his family are paid from compensation earned from the business activity, just as before the creation of the corporation sole. The participant receives the full benefit of, and has full control over, all corporation sole funds. The only substantive change in the participants' regular business and lifestyle activities is the alleged benefit of no taxation.

The Claim of Right Package

13. The claim of right promotion involves filing erroneous income tax returns or claims for refund. The cost of the claim of right package to participants is $1,095 for the first year and $250 for additional years, plus 25% of each refund above the first $1,000 received.

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14. Saladino asserts that taxpayers have an alleged common-law and constitutional right to exclude from taxation all compensation for personal services or labor rendered. According to Saladino, the claim of right package "is used to claim that 'compensation for personal labor' may be excluded from taxation." Saladino falsely states that the program "allows most people who work for wages and do not have profits from sources that are not directly attributable to their labor to reduce their taxable income to zero, which results in no taxes due in most cases." He falsely asserts that either IRC § 183, 212 or 1341 or codifies this so-called common-law or constitutional right and entitles participants to take a deduction in the amount of compensation earned, which in most cases eliminates a participant's tax liability. According to Saladino, this can be done by claiming an itemized deduction to offset wages reported on W-2 forms, or by taking a Schedule C deduction to offset any net income from self-employment.

15. Saladino falsely states that participants in the FPC claim of right scheme are able to recover all of their withheld income and social security taxes, and also to eliminate any self-employment tax. Also, "[t]his program allows one to get a refund of all taxes (including Social Security, Medicare, etc.) withheld from paychecks. This is the only lawful approach to eliminating the IRS from your life." According to promotional materials, FPC "will assist clients correct their 1040 (1040X) returns for new and existing members in such a way that they may receive back all federal withholding taxes and social security/medicare overpayments." Saladino has signed numerous federal income tax returns as a return preparer for persons taking fraudulent claim of right deductions.

16. FPC promotional material further falsely asserts that "[t]his program is in strict adherence to IRC Code," and "this program is in compliance with IRC rules and regulations." Saladino makes these claims even though the IRS has

disallowed the claim of right deductions on his own income tax returns for the years 1998 through 2001. The IRS has assessed frivolous return penalties against Saladino for each of those returns. In addition, as Saladino is aware, the Government is vigorously opposing his customers' claim of right deductions in Court of Federal Claims litigation.

17. Saladino requests that participants in the claim of right program furnish him with their personal tax information, including tax returns, so that he can modify the returns to conform to his tax program. In order to join the claim of right program, participants are required to give Saladino power of attorney to represent them before the Internal Revenue Service for the tax years in which they take part in the program. Saladino is supporting his claim of right program in litigation in the United States Court of Federal Claims, either by supervising his customers' cases or by having the customers assign their alleged refund rights to him. Saladino has not been successful in that forum.

18. Both the corporation sole and the claim of right programs are identified in the IRS's annual consumer alert of tax scams.

19. Saladino has substantially interfered with the administration and enforcement of the nation's tax laws. Participation in Saladino's abusive program results in customers failing to file federal income tax returns, failing to file proper and accurate returns, and/or failing to pay their federal tax liabilities. This results in irreparable harm to the United States.

20. Saladino's corporation sole and claim of right programs are frivolous and without merit. Saladino knew or should have known that his representations regarding the tax benefits of the programs are false or fraudulent. Furthermore, Saladino aids in or assists in the preparation of federal tax returns or claims for refund that he knows, if used, would result in an understatement of tax liability.

Conclusions of Law

1. Based upon the factual findings and evidence presented by the parties, the Court finds that Saladino is engaging in conduct in violation of IRC §§ 6700 and 6701, and that injunctive relief is appropriate to prevent the recurrence of that conduct.

2. Accordingly, the Court finds that Saladino, and any business or entity through which he operates, and anyone acting in concert with him, should be preliminarily enjoined under IRC § 7408.

3. The Court also finds that Saladino is engaging in conduct that interferes with the enforcement of the internal revenue laws, and that the United States and the public will suffer irreparable harm in the absence of a preliminary injunction. Based on the evidence and argument presented, the United States has a high likelihood of success on the merits and Saladino's position is frivolous. The public interest will be served by granting a preliminary injunction.

4. Also, it is evident that Saladino will continue to violate the Internal Revenue Code absent an injunction.

5. Accordingly, the Court finds that Saladino, and any business or entity through which he operates, and anyone acting in concert with him, should be preliminarily enjoined under IRC § 7402(a).

Order

Based on the foregoing factual findings and for good cause shown, entry of a preliminary injunction is appropriate. Therefore, it is hereby

ORDERED that Defendant Joseph O. Saladino, individually and doing business as Freedom & Privacy Committee, or as any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active

concert or participation with him, including his distributors, is preliminarily enjoined from directly or indirectly:

(1) 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, including the corporation sole and claim of right programs;

(2) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in such tax shelters, plans or arrangements;

(3) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;

(4) Engaging in conduct subject to penalty under IRC § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter;

(5) Engaging in conduct subject to penalty under IRC § 6701, *i.e.*, 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;

(6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service; and

(7) Representing any persons or entities before the Internal Revenue Service in any manner, directly or indirectly.

~~Further, IT IS HEREBY ORDERED that Saladino produce to the United States any records in his possession or control, or to which he has access, identifying the persons who have purchased his abusive tax plans, arrangements or programs, including the corporation sole and claim of right programs, and to file with the Court, within 15 days of the date of this Order, a certification that he has done so;~~

Further, IT IS HEREBY ORDERED that Saladino, at his own expense, contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased his abusive tax shelters, plans, arrangements or programs, including the corporation sole program and the claim of right program, and inform those individuals of the Court's findings concerning the falsity of the defendant's prior representations and provide a copy of this Preliminary Injunction Order to those persons, and to file with the Court, within 15 days of the date of this Order, a certification that he has done so;

Further, IT IS HEREBY ORDERED that Saladino and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, including his distributors, remove from their websites, including www.freedomcommittee.com, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on

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the first page of those websites a complete copy of this Order, and to maintain the websites, at their own expense, for one year with a complete copy of the Court's preliminary injunction so displayed throughout that time; and to file with the Court, within 15 days of the date of this Order, a certification that he has done so.

Dated: Oct. 18, 2004

FLORENCE-MARIE COOPER
United States District Judge

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