IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-04-0037-HE
	)	
JOSEPH E. WOLF, ET AL.,	)	
	)	
Defendants.	)	

PRELIMINARY INJUNCTION ORDER

This case is before the Court on plaintiff United States of America's motion for preliminary injunction. A hearing on the motion was conducted on March 31, 2004. All parties were present by counsel. Plaintiff presented several witnesses and extensive documentary evidence. Defendants did not present witnesses or offer other evidence.

Having considered the pleadings, briefs, exhibits and the evidence submitted at the hearing, the Court concludes a preliminary injunction should issue as set out below.

Standard for Preliminary Injunction

Section 7402 of Title 26, United States Code, authorizes the issuance of injunctive relief in favor of the United States where necessary or appropriate for the enforcement of the internal revenue laws. In order to warrant the issuance of a preliminary injunction, the requesting party must ordinarily demonstrate the following: (1) that it has a substantial likelihood of prevailing on the merits; (2) that it will suffer irreparable harm unless a preliminary injunction is issued; (3) that the threatened injury outweighs the harm the injunction might cause the opposing party; and (4) that the issuance of the preliminary injunction will not adversely affect the public interest. Prairie Band of Potawatomi Indians

v. Pierce, 253 F.3d 1234, 1246 (10th Cir. 2001). A preliminary injunction is an extraordinary remedy. The requesting party's right to relief must therefore be clear and unequivocal. SCFC ILC, Inc. v. Visa USA, Inc., 936 F.2d 1096, 1098 (10th Cir. 1991).

Factual Findings

Based on the evidence and argument by the parties, the Court finds as follows:

1. A professional employer organization (PEO) contracts with businesses to handle the businesses' human resource matters. The PEO pays the wages and employment taxes for the businesses' employees out of the PEO's accounts; and reports, collects and deposits employment taxes with federal authorities using the PEO's employer identification number.

2. The individual defendants control, manage, and/or own at least the following professional employer organization corporations (the "PEO Corporations"), including Legion Enterprises, Inc., A to Z Staffing Services, Inc., Benefit Marketing, Inc., Employer's Administrative and Payroll Services, Inc., Global Staffing, Inc., National Staffing, Inc., Nationwide Staffing Services, Inc., Professional Employer's Management, Inc., Select Staffing, Inc., SSI of America, Inc., SSI of Bethany, Inc., SSI of OKC, Inc., SSI Personnel, Inc., SSI Staffing, Inc., Staff Specialties, Inc., Summit Staffing Services, Inc., Support Staffing Services, Inc., Tecumseh Management, Inc., The Corporate Direct, Inc., The T.S.I. Group, Inc., Titan Management, Inc., Total Staffing Services, Inc., TSI Builders, Inc., TSI Installations, Inc., TSI Installers and Erectors, Inc., TSI Medical, Inc., TSI of Peachtree, Inc., TSI Temps, Inc., and Vontres Staffing Services, Inc.

3. Some or all of the PEO Corporations enter into contracts with businesses to manage the businesses' human resource matters.

4. The PEO Corporations have not filed corporate income tax returns or paid corporate income taxes for tax years 2000 through 2002.

5. Of the PEO Corporations listed above, only TSI Installers and Erectors, Inc., appears to be currently active. The others are defunct or otherwise inactive, with their corporate charters suspended and activity in them ceased. The other PEO Corporations have few, if any, assets.

6. The PEO Corporations have not paid federal employment taxes in full, despite the customer businesses of the PEO Corporations having paid all, or substantially all, of the funds due from them to said defendants.

7. For tax years 2000 through 2002, the PEO Corporations owe $5,537,422.30 in assessed but unpaid employment taxes, interest, and penalties, as of November 5, 2003.

8. For tax year 2003, two of the PEO Corporations, TSI Installers and Titan, owe $309,235.92 in assessed employment taxes, interest, and penalties as of November 5, 2003.

9. The individual defendants manage, or in some cases have managed,[1] the PEO Corporations in such a fashion as to ignore their nominal status as separate entities. In dealing with the customers for whom the PEO companies provide services, the defendants have routinely changed the entity nominally providing the employees to the customer and changed the entity billing the customer. The changes were not explainable by any change in the nature of the customer's business.

10. The defendants felt free to shift funds between the various PEO Corporations so as to allow the funds of one PEO to be used to discharge the indebtedness of nominally unrelated PEO Corporations.

11. The individual defendants have repeatedly established new PEO corporations where the business purpose for use of separate, multiple entities is, at the very least, less than obvious. The multiple entities appear to have been used as part of a scheme to generate economic activity in a corporation by billing customers for the full amount of their payroll, applicable taxes, and a management fee, then paying less than all of that corporation's employment tax liability to the government, diverting some of the shortfall (i.e. withheld or similar funds which should have been paid to the Internal Revenue Service) to themselves or their interests,[2] then shifting the remaining income stream and assets to other

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[1]*Defendants Joseph Wolf and Cecil Fisher assert they resigned from involvement in Legion Enterprises in 2001. See responses of J. Wolf and Fisher, filed March 22, 2004, to plaintiff's application for preliminary injunction. However, the evidence at the hearing established both of them continued to act on behalf of certain of the PEO companies into at least 2002.*

[2]*Plaintiff suggests the defendants have siphoned off substantial funds to themselves. The hearing evidence did not establish what funds may have been transferred to the defendants*

corporations while leaving an empty shell for the taxing authorities to pursue tax claims against.

12. As to the employment tax liability of at least some of the PEO Corporations, the individual defendants' approach appears to have been to underpay the employment taxes owed, then, when the Internal Revenue Service initiates collection proceedings, to pay any portion of the unpaid taxes which are attributable to the "trust fund" portion, while leaving the balance unpaid. The effect is to pay those taxes for which the individual defendants might be personally liable, while leaving unpaid those which are the obligation of only the defunct corporate entity.

13. The defendants' use of the PEO Corporations has been designed to frustrate and hinder the ability of the Internal Revenue Service to collect the taxes that are legitimately due from the PEO Corporations. Without an injunction, it is likely that some or all of the defendants will continue avoiding their legitimate tax obligations through use of the scheme and that substantial losses to the government will continue.

Conclusions of Law

The Court concludes the plaintiff has presented the Court with evidence sufficient to warrant the issuance of a preliminary injunction under the standards set out above. The government has a substantial likelihood of prevailing on the merits as the nature of the scheme described above appears clearly designed to avoid the legitimate tax obligations of the defendants and to divert money to themselves wrongfully. Such circumstances, if ultimately established at trial, will warrant the awarding of equitable relief. Further, there appears to be no dispute that substantial employment taxes are owed to the government by the various entities and that the government will be entitled to judgment for those amounts.

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individually or to their interests. However, the substantial shortfall in amounts paid to the government, compared to the amounts owed, strongly suggests wrongful diversion of some sort.

The government has established that it will be irreparably harmed if the present scheme is allowed to continue. The nature of defendants' use of the PEO Corporations results in the particular entities being defunct by the time the taxing authorities are able to arrive with an assessment or to reduce its claim to judgment. See Tri-State Generation and Transmission 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.").

The threatened injury — the continued loss of millions of dollars to the federal "fisc" through the abusive scheme described above — plainly outweighs the harm caused to the defendants by issuance of the injunction. Further, stopping such a scheme is obviously not contrary to the public interest.

While concluding that a preliminary injunction should issue here, the Court declines to grant the full range of relief sought by the government. Among other things, the government has asked that the Court order the immediate dissolution of the various PEO Corporations. The Court concludes such relief goes beyond what is warranted at this juncture. The purpose of a preliminary injunction is ordinarily to preserve the status quo pending a final resolution on the merits. The use of a preliminary injunction to disturb the status quo and give the plaintiff all the relief it might get after a full trial on the merits is disfavored. Prairie Band of Potawatomi Indians, 253 F.3d at 1247 n.4.[3] Further, plaintiff's request to, in effect, bar the

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[3]*Certain of the relief granted below is mandatory rather than prohibitory in nature. However, given the absence of any dispute as to whether corporate income tax returns are owed, and in light of all the circumstances present here, the Court concludes the indicated relief is appropriate.*

individual defendants from all activity in the PEO field appears to unnecessarily limit them from conducting what may be altogether legitimate activities. The Court concludes more narrowly focused relief is appropriate.

Injunction Order

Based on the foregoing findings and conclusions, the Court orders as follows:

1. All defendants and their heirs, successors, assigns, agents and employees, are hereby restrained and enjoined from operating, conducting activities in, and transferring funds or other property from, each of the following defendant corporations: Legion Enterprises, Inc.; A to Z Staffing Services, Inc.; Benefit Marketing, Inc.; Employer's Administrative and Payroll Services, Inc.; Global Staffing, Inc.; National Staffing, Inc.; Nationwide Staffing Services, Inc.; Professional Employer's Management, Inc.; Select Staffing, Inc.; SSI of America, Inc.; SSI of Bethany, Inc.; SSI of OKC, Inc.; SSI Personnel, Inc.; SSI Staffing, Inc.; Staff Specialties, Inc.; Summit Staffing Services, Inc.; Support Staffing Services, Inc.; Tecumseh Management, Inc.; The Corporate Direct, Inc.; The T.S.I. Group, Inc.; Titan Management, Inc.; Total Staffing Services, Inc.; TSI Builders, Inc.; TSI Installations, Inc.; TSI Medical Inc.; TSI of Peachtree, Inc.; TSI Temps, Inc.; and Vontres Staffing Services, Inc.;

2. Defendants Joseph Wolf, Eric Wolf, Louise Qualls, and Cecil Fisher are restrained and enjoined from organizing or establishing any new corporation or other entity which is, in substance, a professional employer organization or an employee leasing company. The prohibition includes, but is not limited to, serving as an organizer, owner, incorporator,

officer, or director.

3. Defendants Joseph Wolf, Eric Wolf, Louise A. Qualls and Cecil Fisher are restrained and enjoined from working for, volunteering with, consulting for, being employed by, or otherwise conducting or assisting in the operations of any professional employer organization or employee leasing company, with these exceptions:

a. Cecil Fisher is not prohibited from providing insurance services to third parties unrelated to the defendants in this case.

b. Joseph Wolf is not prohibited from providing legal services as an attorney to third parties unrelated to the defendants in this case.

c. Defendants Louise A. Qualls and Eric Wolf are not prohibited from conducting, in ordinary course, the ongoing operations of TSI Installers and Erectors Inc. Any such excepted operations shall be conducted in full compliance with all applicable tax and other laws.

d. As to all individual defendants, they are not prohibited from being employed by or otherwise associated with a professional employer organization or employee leasing company where not less than ten (10) days notice in writing thereof has been given to plaintiff, by service of a notice on its counsel. The notice shall identify with particularity the defendant and entity with which the relationship is contemplated and shall describe with particularity the activities to be undertaken by the defendant, the compensation to be received, and any other descriptive information necessary to a full understanding of the contemplated activity.

4. The individual defendants and defendant TSI Installers and Erectors, Inc., its officers, owners and directors, are restrained and enjoined (a) from transferring, encumbering, selling, concealing, pledging, assigning or otherwise disposing of any funds or other assets of TSI Installers and Erectors, Inc. to any third party except in the ordinary course of business, and (b) from transferring, encumbering, selling, concealing, pledging, assigning or otherwise disposing of any funds or assets of TSI Installers and Erectors, Inc. to any of the individual

defendants, members of their families, or entities related to them, directly or indirectly, whether in the form of salary, bonus or otherwise, unless TSI Installers and Erectors, Inc. shall have first given not less than **ten (10) days** notice thereof in writing to plaintiff by service on its counsel. The notice shall specify the payment or transfer proposed to be made, the amount thereof, and a complete explanation of the basis for the transfer. Recurring payments of unchanging amounts, such as weekly or monthly salary payments, may be made pursuant to a single notice; a new notice will be required only if the amount or other circumstances change.

5. Defendants Joseph Wolf, Eric Wolf, Louise A. Qualls, and Cecil Fisher are enjoined and directed to file, or cause to be filed, corporate income tax returns for each of the PEO corporations listed in paragraph 1 above and for TSI Installers and Erectors, Inc. for the years 2000 to 2002, inclusive.[4] As to any of such corporations incorporated after 2000, returns shall be filed for each year beginning with the year of incorporation through 2002. Such returns shall be filed with the Internal Revenue Service within **sixty (60) days** from entry of this order. A copy of the returns shall be served on counsel for plaintiff. Not later than **ninety (90) days** from the date of entry of this order, plaintiff is directed to file a report with the Court summarizing the state of compliance with this order as to the corporate tax

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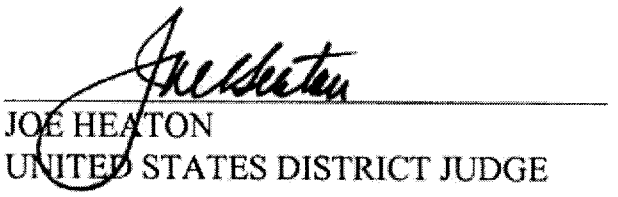
[4]*Given the manner in which all four defendants have conducted the affairs of the various corporations, often treating them in substance as a single entity, the Court concludes it is unnecessary to separately identify particular defendants with particular corporations. The order is directed to all. In the event of non-compliance as to a particular corporation, issues of authority, control and the like can be resolved in contempt or other enforcement proceedings. Hopefully, such proceedings will be unnecessary.*

returns so that further proceedings, if necessary, can be commenced.

The foregoing order shall remain in effect pending a final determination on the merits. As the plaintiff is the United States, no security or bond is required. Fed.R.Civ.P. 65(c).

IT IS SO ORDERED.

Dated this 6th day of April, 2004.



JOE HEATON
UNITED STATES DISTRICT JUDGE