IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,) Civil No.

v.

LINDA BORDEN a/k/a CHRISTY BENSON; NEW INNOVATIONS OF CENTRAL FLORIDA, INC.; NEX, INC.; NEXCLICK LLC; and B & B CONSULTING SERVICES, INC.

Defendants.

UNITED STATES' BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
Expedited Hearing Requested

INTRODUCTION

Linda Borden, also known as Christy Benson; New Innovations of Central Florida, Inc.; Nex, Inc.; NexClick, LLC; and B & B Consulting Services, Inc, are abusive tax scheme promoters and return preparers, and have defrauded the United States of over $15,000,000 in lost tax revenue. Defendants promote an abusive tax scheme whereby they advise their customers to deduct non-deductible personal living expenses as business expenses through the use of purported home-based businesses. Defendants then prepare false income-tax returns for customers claiming bogus business expenses. They "zero-out" customers' returns so income such as wages and capital gains are offset by fictitious losses from the home-based business, thereby eliminating reported tax liability. Defendants have refused to stop marketing and preparing returns based upon their illegal scheme. Consequently, the United States has filed this

suit and is seeking immediate relief to prevent defendants from further promoting their illegal scheme and preparing additional federal tax returns claiming unauthorized deductions.

The United States is entitled to injunctive relief to halt defendants' further marketing of their illegal scheme and to stop defendants from preparing federal tax returns. We explain below that the statutory requirements for injunctions under 26 U.S.C. ("I.R.C.") §§ 7402, 7404 and 7408 are satisfied. We also show that the traditional equitable factors applicable to non-statutory injunctions are also established here. Because the 2004 tax season is rapidly approaching, we request an expedited hearing on this motion.

STATEMENT OF FACTS

Defendants' scheme: fabricating home-based business deductions

Defendants promote an abusive tax scheme whereby they advise their customers to deduct non-deductible personal living expenses as business expenses through the use of a purported home-based business.[1] Defendants then prepare false income-tax returns for customers claiming bogus business expenses. They "zero-out" customers' returns so income such as wages and capital gains are offset by fictitious losses from the home-based business thereby eliminating reported tax liability.[2]

---

[1] Declaration of Revenue Agent Carol Kromer ¶ 4. "Carol Kromer" is a registered pseudonym authorized by the Internal Revenue Service for use in the course of official duties. *See* Use of Pseudonyms by Internal Revenue Service Employees, Pub. L. 105-206, Title III, § 3706, July 22, 1998, 112 Stat. 778; *see also In re Dept. Treasury, Internal Revenue Service and National Treasury Employees Union*, No. 91 Federal Service Impasses Panel 229 at 4 (March 10, 1992); *Sanders v. United States*, 53 F.3d 343, 1995 WL 257812 (10th Cir. 1995)(unpublished); *Ricks v. Whitney*, 79 F.3d 1154 (Table), 1996 WL 115179 (9th Cir. 1996).

[2] Kromer Decl. ¶ 4.

Borden promotes and markets her abusive scheme through NexClick, LLC, and its affiliated entities:[3]

> NexClick, LLC- Organized in 2000; a membership organization promoting Borden's fraudulent home-based business scheme, steering customers to her tax-return-preparation businesses;
>
> New Innovations of Central Florida, Inc.- Borden's original tax-return-preparation business;
>
> Nex, Inc.- The tax return-preparation-business Borden established when the IRS started auditing customers of New Innovations of Central Florida, Inc.; and
>
> B & B Consulting Services, Inc.- Borden's current tax-return-preparation business. She abandoned Nex, Inc. and started this business when she was told by the IRS that she was under investigation.

Borden generally requires that customers join NexClick before she will agree to prepare any tax returns.[4] Borden charges an exorbitant fee to join NexClick, usually $2,899.[5] She touts NexClick membership as a complete package that allows customers to attend seminars on a variety of topics including tax planning, trust and estates, and financial planning. In fact NexClick is simply a marketing organization for Borden's fraudulent tax-preparation services.[6] NexClick membership buys the customer fraudulent tax-preparation services for the current year and the ability to attend seminars promoting her tax evasion scheme.[7]

---

[3] Kromer Decl. ¶ 5.

[4] Kromer Decl. ¶ 6.

[5] Kromer Decl. ¶¶ 6, 14.

[6] Kromer Decl. ¶ 6.

[7] Kromer Decl. ¶ 6.

Defendants recruit new customers by falsely claiming that they can legally eliminate virtually all of a customer's federal income tax liability.[8] Borden tells potential customers that she knows a secret loophole in the Internal Revenue Code and that if a person joins NexClick, she will share her knowledge.[9]

NexClick members are "entitled" to have one of Borden's affiliated entities prepare their current income-tax return and, for an additional fee of $1,550, prepare amended returns for prior years—all reporting bogus business deductions.[10] The defendants prepare current returns with an attached Schedule C or a Form 1120-S.[11] Either method results in the customer claiming inflated or fictitious losses from the operation of the home-based business to offset income.[12] The losses are created by deducting non-deductible personal expenses as business expenses, or by fabricating false business expenses.[13]

Borden's promotion of her abusive tax scheme

Borden has promoted her scheme through word of mouth, radio advertisements, the Internet, and through recruiting seminars held in Florida, New Jersey, and Georgia.[14] Borden

---

[8] Kromer Decl. ¶¶ 7, 14.

[9] Kromer Decl. ¶¶ 7, 14.

[10] Kromer Decl. ¶ 8.

[11] Kromer Decl. ¶ 10.

[12] Kromer Decl. ¶10.

[13] Declaration of Judith Moss ¶ 4; Kromer Decl. ¶ 10.

[14] Kromer Decl. ¶ 30.

falsely tells prospective customers that they can use a valid business, or simply create a fictitious business, to deduct personal expenses as business expenses.[15]

Borden has made the following false or fraudulent statements in the course of promoting her promotion regarding the tax advantages available to purchasers of her abusive home-based business scheme:[16]

a. Personal living expenses are deductible.[17]

b. Thinking about starting a business is the same as starting a business.

c. Helping friends and relatives with their computer problems free of charge is a computer-consulting business.

d. Customers can deduct $1,000 per month in rent they pay to themselves for their personal residence.

e. There is an additional deduction on the Schedule C and/or Form 1120-S for dependents. Customers can deduct up to $5,100 per dependent and the dependent does not have to report that amount as income.

f. A customer can rent his house out to his "company" for a "business party" once a month. The "business" can take a deduction for an amount equal to what rent for a place with a similar setup would cost (*e.g.*, a 3000 square foot facility with parking, restrooms, etc.).

g. Customers can use holidays such as Thanksgiving Day or Christmas Day as business "functions" so that when the customer buys food and other things for dinner parties, his "business" can deduct the expenses.

h. Deductible expenses include payments for personal services, including haircuts, manicures, cosmetics, and dry-cleaning. Such items are deductible because they are needed for the customer to look his or her best as a business person.

These claims are translated into action in the returns Borden prepares for her customers.

---

[15] Kromer Decl. ¶ 31.

[16] Kromer Decl. ¶ 31.

[17] Moss Decl. ¶ 4.

Borden's return preparation: her promotion in action

Borden provides tax return preparation for her NexClick customers for a fee through her return-preparation businesses.[18] The returns are prepared based on Borden's erroneous and imaginative interpretations of the tax code. Borden asks the customer for his W-2 forms and a list of personal assets that states the assets' value.[19] Borden states that personal assets for this purpose include things such as living room and dining room furniture and home entertainment equipment.[20] If the customer does not know an asset's value the defendants simply create a fictitious value.

After acquiring the W-2s and the asset lists, the defendants categorize the "assets" as "office expenses" on the schedule C or 1120-S.[21] If the expense generated from the assets does not sufficiently offset the customer's income, the defendants make up other expenses such as "advertising costs" to further reduce the customer's reported income.[22] They continue accumulating such fictitious expenses until the business "losses" roughly equal the customer's income, so that the customer reports little or no tax liability.[23]

---

[18] Moss Decl. ¶ 5; Kromer Decl. ¶¶ 5, 8, 9.

[19] Moss Decl. ¶ 6; Kromer Decl. ¶ 9.

[20] Moss Decl. ¶ 6.

[21] Moss Decl. ¶ 6; Kromer Decl. ¶ 10.

[22] Kromer Decl. ¶ 10.

[23] Kromer Decl. ¶¶ 10, 12.

Over 100 Borden-prepared returns were examined by the IRS.[24] All of these returns had audit adjustments.[25] These returns claimed deductions for fabricated legal and professional services, office, and rental expenses, among other false claims.[26] For a large number of these returns, the customers were unable to reconstruct any of the purported business expenses claimed on the returns.[27] The total tax loss on these returns alone exceeds $3,000.000.[28]

An example of the types and magnitude of deductions taken on one Borden-prepared return filed by a married couple illustrates the abusive nature of her scheme:[29]

Deduction Type and Amount	**Reason Disallowed**
$27,734 Charitable Contribution	No substantiation that payments were to an eligible charitable contribution
$ 4,678 Legal and Professional Services $13,449 Office Expense $12,045 Rental Expense $17,063 Supplies $10,123 Travel Expense $ 754 Meals and Entertainment	Customer had no idea what these amounts represented and was therefore unable to substantiate the expenses.
$138,070 Other Expenses	Customer admitted that expenses were not valid business expenses

[24] Kromer Decl. ¶ 20.

[25] Kromer Decl. ¶ 20.

[26] Kromer Decl. ¶ 20.

[27] Kromer Decl. ¶ 20.

[28] Kromer Decl. ¶ 20

[29] Kromer Decl. ¶ 12.

Additionally, Borden's customers often did not have businesses, and could not substantiate the purported business expenses claimed on their tax returns.[30] Some customers owed more thn $450,000 in additional tax, interest and penalties based on multiple years of filing false returns based on Borden's scheme.[31]

Borden has failed to sign some of the returns that she prepared, failed to provide her identifying number as the preparer, and failed to provide her firm's identifying number.[32]

Other fraudulent and deceptive conduct

Borden has lied to IRS investigators. While representing Judith Moss of Tampa during an IRS examination, Borden made multiple false statements to the examining agent. Borden had prepared Moss's federal tax returns from 1995 until the spring of 2003.[33] Despite knowing that Moss stopped operating her business in 1999, Borden told the agent that Moss continued to operate a business.[34] During the examination, the agent requested corporate documents related to the business. Moss did not have the requested documents. Borden told Moss to fabricate corporate minutes and a corporate calendar for submission to the IRS.[35] Borden provided Moss with sample documents to copy.[36]

---

[30] Kromer Decl. ¶¶ 12, 16, 19.

[31] Kromer Decl. ¶ 19; Kromer Decl. Exh. 7, 8.

[32] Kromer Decl. ¶¶ 22-25.

[33] Moss Decl. ¶ 3.

[34] Moss Decl. ¶ 9.

[35] Moss Decl. ¶ 10.

[36] Moss Decl. ¶ 10; Moss Decl. Ex. 1.

Borden has taken affirmative steps to frustrate IRS efforts to investigate her fraudulent scheme. Borden originally prepared customer returns using her own name and social security number.[37] After several of her customers were audited, she started using the name Nex, Inc.[38] When she was informed that she was under criminal investigation, and that a § 6700 promoter investigation was being developed against her, she stopped preparing returns under Nex, Inc., and began preparing returns under B & B Consulting Services, Inc.[39] Under B & B Consulting Services she prepares federal income tax returns for customers claiming fictitious and overinflated business expense deductions.[40] But, instead of signing her name as the preparer Borden illegally leaves the tax preparer signature block empty, leaving the false impression that the customer prepared the return.[41]

Borden's purported tax expertise

Borden describes herself as a Certified Public Accountant (CPA) and an expert in income tax law.[42] She claims that she has been in practice since 1985 and has built a very large tax practice helping the "very rich do exactly what the government allows them to do."[43] Borden has at different times stated that she holds a bachelors degree in accounting and finance from either

---

[37] Kromer Decl. ¶ 32.

[38] Kromer Decl. ¶ 32.

[39] Kromer Decl. ¶ 33.

[40] Kromer Decl. ¶ 34.

[41] Kromer Decl. ¶¶ 22-25, 33.

[42] Kromer Decl. ¶¶ 17, 26; Kromer Decl. Exh. 1, p. 3.

[43] Kromer Decl. ¶ 26; Kromer Decl. Exh. 1, p. 3.

the University of Florida, Gainesville, or Stetson University.[44] Borden has told customers that she sat on an IRS "ethics committee."[45]

In fact, Borden is not a licensed CPA in Florida, and is likely not licensed in any other state.[46] Borden does not hold a degree from either the University of Florida or Stetson University.[47] The IRS has no information that Borden was ever an employee or a member of any IRS ethics committee.[48]

Harm to the United States

Borden's conduct is causing and will continue to cause substantial revenue losses to the United States Treasury—estimated to be more than $15 million in tax losses.[49] The IRS will have to devote substantial time and resources simply to *detect* future customers' returns, and may be unable to detect all of them. The IRS will also have to devote resources to audit these federal tax returns. In light of Borden's large number of customers, and in light of other abusive promotions the IRS must deal with, the IRS may not be able to audit all of the erroneous federal tax returns prepared by Borden.[50]

---

[44] Kromer Decl. ¶ 28.

[45] Kromer Decl. ¶ 29.

[46] Kromer Decl. ¶ 27.

[47] Kromer Decl. ¶ 28.

[48] Kromer Decl. ¶ 29.

[49] Kromer Decl. ¶ 21.

[50] Kromer Decl. ¶ 21.

Continued promotion despite IRS civil and criminal investigations

The IRS has notified Borden that her conduct may be subject to penalties under I.R.C. § 6700, and to injunction under I.R.C. § 7408.[51] On June 13, 2002,the Criminal Investigation Division of the IRS executed two search warrants, one on Borden's residence, and the other on her business office.[52] Numerous customers' returns have been examined by the IRS. Despite these notices, Borden continues to promote her abusive tax scheme, and continues to prepare tax returns based on that scheme.[53]

ARGUMENT

A. Standards for Granting a Preliminary Injunction.

Due to the urgent need to halt irreparable harm, "a preliminary injunction is customarily granted on . . . procedures that are less formal and on evidence that is less complete than a trial on the merits. A party thus is not required to prove his case in full" at the preliminary injunction stage.[54] In a statutory-injunction action such as this, the moving party must demonstrate that the

---

[51] Kromer Decl. ¶ 33.

[52] Kromer Decl. ¶ 33.

[53] Kromer Decl. ¶ 34.

[54] *University of Tex. v. Camenisch,* 451 U.S. 390, 395 (1981). *See Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986) ("Affidavits and other hearsay materials are often received in preliminary injunction proceedings."). "[I]nasmuch as the grant of preliminary injunction is discretionary, the trial court should be allowed to give even inadmissible evidence some weight when it is thought advisable to do so in order to serve the primary purpose of preventing irreparable harm before a trial can be held." 11 C. Wright & A. Miller, *Federal Practice & Procedure* § 2949 at 471. *See also, Asseo v. Pan American Grain Co., Inc.,* 805 F.2d 23, 26 (1st Cir. 1986) ("Affidavits and other hearsay materials are often received in preliminary injunction proceedings. The dispositive question is not their classification as hearsay but whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given the character and objectives of the injunctive proceeding.").

statute has been violated and that "there is a reasonable likelihood of future violations."[55] Because I.R.C. §§ 7407 and 7408 set forth the criteria for injunctive relief, the United States need only meet those criteria, without reference to the traditional equitable factors, for a court to issue a preliminary injunction under these sections.[56] For a preliminary injunction under § 7402, the Eleventh Circuit requires a showing that: (1) it is likely that the United States will suffer irreparable injury if the defendant's conduct continues; (2) it is unlikely that the defendant will be harmed by the injunction; (3) the United States is likely to prevail on the merits; and (4) an injunction will serve the public interest.[57]

B. The government will likely prevail on the merits.

1. The evidence shows that an injunction should issue under I.R.C. § 7408.

An injunction under I.R.C. § 7408 is warranted to enjoin a person from further engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701. The record submitted with this motion establishes that Borden has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 in connection with the organization and promotion of her abusive tax scheme described above, and preparation of tax returns based on her scheme. The record also establishes that Borden will continue to violate I.R.C. §§ 6700 and 6701 absent injunctive relief.

---

[55] *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982).

[56] *See United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) ("The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction."); *Rosile*, No. 8-02-CV-466-T-24-MSS, 2002 WL 1760861, *1 (issuing a preliminary injunction based on a showing of the statutory requirements under §§ 7407 and 7408).

[57] *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir. 1984) ("the decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the . . . use of the equitable remedy."); *American Red Cross v. Palm Beach Blood Bank, Inc.*, 143 F.3d 1407, 1410 (11th Cir. 1998) (listing the equitable factors for a preliminary injunction).

a. Borden engaged in conduct subject to penalty under § 6700.

Section 6700 imposes a penalty on a person who organizes or participates in the sale of any plan or arrangement and, in connection therewith, makes or furnishes a statement with respect to the excludability of any income that the person knows or has reason to know is false or fraudulent as to any material matter. The evidence submitted with the Government's motion establishes that Borden organizes and promotes an abusive tax scheme that advises customers to claim fictitious business deductions on their tax returns. In promoting her scheme, she has made false statements concerning the deductibility of personal expenses. She advises customers that, among other things, a variety of personal living expenses are deductible, and that "rental" costs for use of their personal residences are deductible as business expenses. Borden prepares and files returns for her customers based upon these falsehoods, and these returns result in substantial understatements. Consequently, her customers are subject to large deficiency assessments, penalties and interest when examined by the IRS.

Borden knew or had reason to know that her promotional statements concerning the tax benefits obtainable using her scheme were frivolous. Courts consider three factors in determining whether the Government has established the "knew or had reason to know" standard of § 6700: (1) the extent of the defendant's reliance on knowledgeable professionals; (2) the defendant's level of sophistication and education; and (3) the defendant's familiarity with tax matters.[58] All three factors point to Borden's knowledge of the falsehoods contained in her promotional material. Borden describes herself as an expert in income tax. She says that she has been in practice since 1985 and "has built a huge tax practice around helping the very rich do

---

[58] *United States v. Estate Preservation Services,* 202 F.3d 1093, 1103 (9th Cir. 2000).

exactly what the government allowed them to do." Because she has been engaged in accounting and tax services for many years, she is undoubtedly aware that her positions are frivolous and have been repeatedly rejected by the federal courts. The positions Borden takes are the same as the examples described in IRS public notices and consumer alerts, and in published court decisions. At a minimum she had reason to know that statements she made in promoting her scheme were false.

Furthermore, Borden's false statements made in the course of her promotion were material. A matter is material if it would have a substantial impact on the decision-making process of a reasonably prudent investor.[59] Borden has been very successful in marketing her abusive scheme. Clearly her false claims about the tax benefits obtainable through participation in her scheme have a substantial impact on whether customers participate. Accordingly, because Borden made false statements during the course of promoting her abusive tax scheme, she and her enterprise have engaged in conduct subject to penalty under I.R.C. § 6700.

b. Borden engaged in conduct subject to penalty under § 6701.

I.R.C. § 6701 penalizes a promoter who aids, assists, or advises with respect to the preparation or presentation of any portion of a return, knowing or having reason to believe that such advice will be used in connection with any material matter, and who knows that such portion, if used, would result in an understatement of tax. Borden prepared numerous returns claiming unallowable deductions. Because of Borden's substantial experience and "expertise" in tax, she knew that positions taken on these returns were without merit and would be disallowed.

---

[59] S.Rep. No. 97-494, Vol. 1 at 267 (1982).

Nonetheless, she then used an electronic filing service to file these returns with the IRS. Borden's conduct is therefore subject to I.R.C. § 6701 penalties.

c. Injunctive relief is appropriate to prevent the recurrence of such conduct.

Borden knows that her home-based business scheme is an abusive tax scheme, and yet she continues to promote her scheme and prepare customer tax returns claiming unallowable deductions. Borden is aware that many of her customers have been audited by the IRS and have received substantial deficiency assessments. Borden was informed that she was under criminal investigation for promoting her scheme, and two search warrants were executed on her premises. Borden was also informed that she was under civil promoter investigation. Despite all of these indications of the abusive nature of her scheme, Borden continues to promote her abusive scheme and to prepare federal tax returns based upon it. Consequently, an injunction is the only means to stop Borden from promoting her abusive tax scheme.

2. The evidence shows that an injunction should issue under I.R.C. § 7407.

Section 7407 authorizes a court to enjoin a person from acting as a return-preparer if that person has continually or repeatedly: (1) violated § 6694, which prohibits the preparation or submission of a return containing an unrealistic position, or § 6695, which mandates that a return preparer sign returns and include his identifying number; (2) misrepresented his eligibility to practice before the IRS, or otherwise misrepresented his experience or education as a return preparer; or (3) engaged in any other fraudulent or deceptive conduct substantially interfering with the proper administration of the tax laws. In addition, the Court should find that a narrower injunction prohibiting only the specific misconduct would be insufficient to prevent further

interference.[60] The evidence shows that Borden continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695 in connection with returns she prepared, and engaged in other fraudulent conduct substantially interfering with the proper administration of the internal revenue laws. The evidence also shows that a narrower injunction would be insufficient to prevent further violations of I.R.C. §§ 6694 and 6695.

a. Borden engaged in conduct subject to penalty under I.R.C. § 6694(a).

I.R.C. § 6694(a) imposes a penalty on an income tax return preparer who knows or reasonably should know that a return she prepared understated liability due to a frivolous position for which there was not a realistic possibility of being sustained on the merits. A return preparer is anyone who, for compensation, prepares federal income tax returns, employs someone who prepares federal income tax returns, or "render[s] advice directly relevant to the determination of the existence, characterization, or amount of an entry [on a federal tax return]."[61]

Borden prepared and filed hundreds of tax returns claiming unallowable business expense deductions for her customers. Borden knew or should have known that the deductions she was claiming on her customers' returns were frivolous. Borden's marketing materials and presentations show too much familiarity with the tax code for anyone to believe she really thought these deductions to be valid. Furthermore, following audits of her customers, and learning of the IRS's criminal and civil investigations into her promotional scheme, Borden reasonably should have known that her positions lacked merit. Despite these indications, Borden

---

[60] I.R.C. § 7407.

[61] *United States v. Savoie*, 594 F.Supp. 678, 683-84 (W.D. La. 1984)(citing 26 C.F.R. § 301.7701-15(b)(1). *See also* 26 U.S.C. § 7701(a)(36); *Goulding v. United States*, 957 F.2d 1420, 1424-25 (7th Cir. 1992).

continued to prepare federal income tax returns for her customers. Injunctive relief is therefore necessary to prevent Borden from filing frivolous returns. Consequently, Borden is subject to I.R.C. § 6694 penalties and injunction under I.R.C. § 7407.

b. Borden engaged in conduct subject to penalty under I.R.C. § 6695(b) and (c).

The Internal Revenue Code imposes a penalty on an income tax return preparer who fails to sign returns that they have prepared or fails to furnish their identifying number in conjunction with any return they have prepared. Borden violated I.R.C. § 6695(b) by filing at least 86 federal tax returns in 2002 that did not contain her signature as the paid preparer. She violated I.R.C. § 6695(c) by failing to list her social security number on those returns. Additionally, in violation of I.R.C. § 6695(c), a number of those returns failed to include the EIN for the firm through which Borden was preparing these returns. This conduct subjects Borden to I.R.C. §§ 6694 and 6695 penalties and injunction under I.R.C. § 7407.

c. Injunctive relief is appropriate to prevent the recurrence of such conduct.

Borden continued to prepare frivolous returns despite numerous indications that her positions were without merit. Following audits of her customers, and learning of the IRS's criminal and civil investigations into her promotional scheme, Borden reasonably should have known that her positions lacked merit. Despite these signals, Borden continued to prepare federal income tax returns for her customers. Injunctive relief is therefore necessary to prevent Borden from filing frivolous returns.

3. An injunction should issue based upon 26 U.S.C. § 7402.

I.R.C. § 7402 authorizes this Court to issue an injunction "as may be necessary or appropriate for the enforcement of the internal revenue laws." The defendants engaged in conduct that interferes with the administration and enforcement of the internal revenue laws. Borden has lied to IRS investigators and advised customers to submit fabricated documents during examinations. She has also taken affirmative steps to frustrate IRS efforts to investigate her fraudulent scheme. She has persisted in her actions despite notice of both civil and criminal investigations into her abusive scheme. Injunctive relief is appropriate to prevent the recurrence of such conduct under the Court's inherent equity powers and under I.R.C. § 7402(a).

B. Balancing the harm weighs in favor of the government.

The record shows that the Government has no adequate remedy and law, that without a preliminary injunction irreparable harm will result, and that the need to prevent such harm outweighs any harm defendants may suffer if a preliminary injunction is granted.

The Government has no adequate remedy at law to combat the defendants' promotion of their abusive tax scheme and continued return preparation based upon that scheme. Although the IRS has examined individual customers, Borden has shown no sign of acquiescence. Instead, she has changed the entities through which she conducts her business in an effort to evade detection by the IRS. Furthermore, despite both civil and criminal investigations into Borden's promotion, she nonetheless continues to prepare returns based upon her frivolous interpretations of the tax code. Injunctive relief is the only way to stop this illegal scheme.

The defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury—estimated to be more than $15 million in tax losses. The IRS will

have to devote substantial time and resources simply to detect future customers' returns, and may be unable to detect all of them. The IRS will also have to expend resources to audit these federal tax returns. In light of defendants' large number of customers, and in light of other abusive promotions the IRS must deal with, the IRS may not be able to audit all of the fraudulent federal tax returns prepared by defendants.

The need to remedy the injury suffered by the United States outweighs any harm the defendants may suffer if an injunction is issued. The requested injunction is tailored to prevent the defendants from causing further irreparable injury. Specifically, the United States simply requests that this Court enjoin Borden from continuing to violate the law. Preliminary injunctions such as this are typically granted.[62]

C. Granting this Injunction is in the Public Interest.

If a preliminary injunction is granted, it will help to stem the spread of defendants' abusive scheme, and the preparation of tax returns based on their scheme. A preliminary injunction will help protect people from paying significant sums for worthless tax advice and from tax penalties resulting from filing frivolous returns—by halting their promotion at its source. And, the "collection of taxes certainly serves the public interest."[63]

CONCLUSION

Defendants' activities have caused and are causing substantial harm—to their customers, to the Government, and to law-abiding taxpayers who pay their proper tax liabilities. Based upon

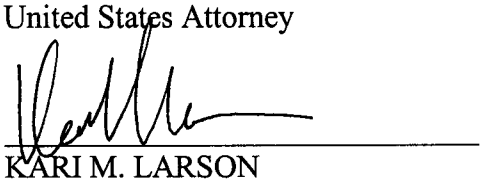
---

[62] *Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (Injunctions requiring people to follow the law do not cause hardship).

[63] *United States v. Mathewson*, 71 A.F.T.R.2d 93-1453, 1993 WL 113434 (S.D. Fla. 1993).

the evidence before the Court, the United States is entitled to the relief it seeks—a preliminary inunction banning Borden from preparing federal tax returns, among other requests for relief, to prevent any further preparation of frivolous returns in the upcoming tax season. Because of the serious nature of the harm caused, and the impending tax season, the government requests an expedited hearing on this motion to prevent further harm while this case is litigated.

PAUL PEREZ
United States Attorney



KARI M. LARSON
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Tel: (202) 514-0564
Fax: (202) 514-6770