UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 25 2003
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA Plaintiff, v. CHARLES R. CHUNG, d/b/a CHUNG'S TAX PLUS; PARAKLETOS, L.L.C.; PARAKLETOS TRUST; PARAKLETOS PROFESSIONAL SERVICES; PARAKLETOS PROFESSIONAL SERVICES, L.L.C.; and PHIKAR, L.L.C., Defendant.	)	Civil No. 03C V 203K (J)

COMPLAINT FOR PERMANENT INJUNCTION

The United States of America, Plaintiff, alleges against Charles R. Chung, d/b/a; Chung's Tax Plus; Parakletos, L.L.C.; Parakletos Trust; Parakletos Professional Services; Parakletos Professional Services, L.L.C.; and Phikar, L.L.C. as follows:

Nature of the Action

1. This is a civil injunction action brought by the United States under §§ 7402(a), 7407 and 7408 of the Internal Revenue Code (26 U.S.C.) (IRC) to enjoin Defendant and all those in active concert or participation with him from:

(a) acting as a federal income tax return preparer,

(b) preparing or assisting in preparing tax returns that he knows will result in the understatement of any tax liability;

(c) making false or fraudulent statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of participating in tax shelters, plans, or arrangements;

(d) organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to evade the assessment or collection of their correct federal tax;

(e) falsely identifying his social security number, employer identification number, business name, business address, and business phone number on tax returns he prepares;

(f) failing to produce a client list or copies of clients' returns to the IRS on request;

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

(h) engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and by IRC §§ 7402(a), 7407, and 7408.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

4. This action has been 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 IRC §§ 7402, 7407, and 7408.

Defendant

5. Defendant resides at 1201 S. Redbud Ave., Broken Arrow, Oklahoma 74012.

6. Defendant's place of business is located at 2001 South Garnett, Suite C, Tulsa, Oklahoma 74128.

7. Defendant has conducted business through and under the names of Chung's Tax Plus; Parakletos, L.L.C.; Parakletos Trust; Parakletos Professional Services; Parakletos Professional Services, L.L.C.; and Phikar, L.L.C.

8. Defendant represents that he is a graduate of the United States Air Force Academy. He also attended the University of Missouri working towards a Masters in Business Administration, although he did not obtain an M.B.A.

Facts Common to All Counts

9. Defendant has operated a tax return preparation service for at least 25 years.

10. Defendant travels around the United States preparing federal income tax returns for customers in 25 to 30 states. He claims to have between 1,600 and 2000 customers.

11. Defendant prepares federal income tax returns for compensation.

12. For approximately thirty individuals or married couples, Defendant has prepared federal income tax returns based on abusive trust schemes.

13. For these abusive trust schemes, Defendant prepares an individual income tax return for the customers and one or more trust income tax returns.

14. In combination, these individual and trust returns operate to hide taxable income, evade self-employment tax, and claim impermissible deductions for personal expenses. In addition, in certain instances, these returns overstate personal exemptions and claim impermissible deductions for fictitious "charitable" deductions.

15. For tax years 1997, 1998, 1999, 2000, and 2001, Defendant is believed to have prepared, respectively, at least 26, 23, 25, 16, and 7 individual income tax returns (IRS Form 1040)

and at least 53, 51, 54, 31, and 9 trust returns (IRS Form 1041) for customers using abusive trust schemes.

16. On March 13, 2001, the IRS sent written notice to Defendant that it was considering possible action under IRC § 6700 and 7408 relating to penalties and a possible injunction action.

17. After this notice, in an attempt to thwart the IRS from detecting the returns he prepared using abusive trust schemes for tax year 2001, Defendant falsely identified his social security number, employer identification number, business name, business address, and business telephone on several tax returns he prepared for customers. Defendant's false statements regarding this identifying information hinder the IRS's ability to identify tax returns prepared by Defendant.

18. Defendant failed to provide the IRS upon request with lists of clients or copies of client returns, as required by law. He provided the requested information only after the United States filed a summons-enforcement proceeding against him in federal court.

19. In April 1997, the IRS issued a notice warning the public about certain trust arrangements that purport to reduce or eliminate federal taxes. In discussing the purported benefits of abusive trusts, the notice specifically mentioned reduction or elimination of income subject to tax, deductions for personal expenses paid by the trust, and the reduction or elimination of self-employment taxes.

20. For tax years 1997, 1998, 1999, 2000, and 2001 the total estimated tax loss to the United States as a result of Defendant's preparation of tax returns for customers using abusive trust schemes is $6,359,000.

Example 1
The Oklahoma Customers

21. For tax years 1997 and 1998, Defendant prepared individual federal income tax returns for a married couple residing in Oklahoma. He also prepared trust federal income tax returns for their two purported trusts. In combination, these returns understated the tax liability of the Oklahoma couple in the following manner:

- Understated business income on the individual returns for 1997 and 1998 by over $180,000
- Understated self-employment taxes for 1997 and 1998 by over $21,000
- Overstated personal exemptions for 1998 by over $3,000

22. The IRS assessed the following additional taxes against the Oklahoma couple, to correct their tax understatements:

Year	Tax Assessment
1997	$20,273
1998	$27,612

In addition, statutory additions, including interest and failure to pay penalties, continue to accrue.

23. The Oklahoma couple acknowledged the correctness of these assessments and paid a portion of them in June 2002.

Example 2
The Pennsylvania Customers

24. For tax years 1997 and 1998, Defendant prepared individual federal income tax returns for a married couple residing in Pennsylvania. He also prepared trust federal income tax returns for

their purported trusts. In combination, these returns understated the tax liability of the Pennsylvania couple in following manner:

- Understated business income on the individual returns for 1997 and 1998 by nearly $89,000
- Understated self-employment taxes for 1997 and 1998 by over $13,000
- Claimed impermissible deductions for personal expenses for 1997, including payments relating to their personal residence (which had been transferred to an abusive trust), identified as "Trust headquarter payments" ($4,099), "Headquarter furniture" ($512), and "Headquarter improvements" ($401)

25. The IRS assessed the following additional taxes and penalties against the Pennsylvania couple:

Year	Tax Assessment	Accuracy-Related Penalty	Total Tax Assessment and Penalty
1997	$17,188.00	$3,437.60	$20,625.60
1998	$12,947.00	$2,589.40	$15,536.40

In addition, statutory additions, including interest and failure-to-pay penalties, continue to accrue.

Count I
(Preparer Injunction under IRC § 7407)

26. The United States incorporates the allegations in paragraphs 1 though 25.

27. Section 7407 of the Internal Revenue Code authorizes the Court to enjoin an individual from acting a paid income tax return preparer if that person:

a. is a paid income tax return preparer; and

b. continually or repeatedly

i. engaged in conduct subject to penalty under IRC § 6694 (which penalizes a paid tax return preparer who prepares or submits a return containing an unrealistic position) or § 6695 (which penalizes a preparer who fails to include his identification number on prepared returns and penalizes an income tax return preparer who fails to turn over a client list or copies of clients' returns to the IRS on request); or

ii. engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; and

c. an injunction is appropriate to prevent the recurrence of such conduct; and

d. a more limited injunction prohibiting such behavior would be insufficient to stop interference with the proper administration of the tax laws.

34. Section 6694 of the Internal Revenue Code imposes penalties on tax return preparers who prepare income tax returns on which there is an understatement of liability where:

a. the understatement is due to a position for which there was not a realistic possibility of being sustained on the merits;

b. the preparer knew or should have known this position was unrealistic; and

c. either the position was not disclosed as provided in IRC § 6662(d)(2)(B)(ii) (requiring disclosure of relevant facts) or it was frivolous.

35. IRC § 6695 imposes penalties on a return preparer who fails to include his identifying number on a prepared return or fails to turn over a client list or copies of clients' returns to the IRS on request.

36. Defendant is an income tax return preparer as defined by IRC § 7701(a)(36) because he prepares other people's tax returns for compensation.

37. Defendant engaged in conduct subject to the IRC § 6694 penalty by preparing tax returns using abusive trust schemes to understate personal income, understate or disregard self-employment

taxes, claim impermissible deductions for personal expenses, overstate personal exemptions, and claim impermissible deductions for fictitious "charitable" contributions. Defendant knew or should have known that his positions were unrealistic and frivolous.

38. Defendant engaged in conduct subject to penalty under IRC § 6695 by falsely reporting his identification number on several trust returns he prepared for tax year 2001 and by failing to produce a list of clients or copies of customers' tax returns on demand by the IRS.

39. Defendant engaged in fraudulent or deceptive conduct by preparing individual and trust tax returns which, in combination, understate personal income, understate or disregard self-employment tax, claim impermissible deductions for personal expenses, overstate personal exemptions, and claim impermissible deductions for fictitious "charitable" contributions.

40. Defendant further engaged in fraudulent or deceptive conduct by preparing returns with false preparer-identification information. Specifically, after the IRS notified him that it was considering penalties and a possible injunction against him, Defendant attempted to thwart detection by preparing returns with false identification information.

41. Injunctive relief is appropriate to prevent this conduct because, absent an injunction, Defendant is likely to continue to prepare returns understating income based on abusive trust schemes.

42. Defendant continually and repeatedly prepared returns with substantial understatements of income and tax despite the fact that he knew or should have known that his arguments in favor of such understatements have no basis in the law.

43. Defendant will likely continue to interfere with the proper administration of the tax laws even if the particular behavior described in this Complaint is enjoined. Accordingly, Defendant should be permanently enjoined from acting as an income tax preparer.

Count II
(Conduct Injunction Under IRC § 7407)

44. The United States incorporates the allegations in paragraphs 1 though 43.

45. IRC § 7407 authorizes the Court to enjoin a preparer from specified conduct if that person:

a. is a paid tax-return preparer; and

b. engaged in

i. conduct subject to penalty under IRC § 6694 (which penalizes a paid tax return preparer who prepares or submits a return containing an unrealistic position) or § 6695 (which penalizes a preparer who fails to include his identification number on prepared returns and penalizes an income tax return preparer who fails to turn over a client list or copies of customers' returns to the IRS on request); or

ii. any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; and

c. an injunction is appropriate to prevent the recurrence of such conduct.

46. As reflected in paragraphs 1 through 42 above, these criteria are satisfied.

47. The United States is entitled to an injunction under IRC § 7407 to prevent Defendant from engaging in conduct subject to penalty under IRC §§ 6694 and 6695.

Count III
(Injunction under IRC § 7408)

48. The United States incorporates the allegations in paragraphs 1 though 47.

49. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC § 6701 from engaging in further such conduct if injunctive relief is appropriate to prevent recurrence of such conduct.

50. IRC § 6701 imposes a penalty on any person:

a. who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document;

b. who knows (or has reason to believe) that such a portion will be used in connection with any material matter arising under the internal revenue laws; and

c. who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

51. Defendant engaged in conduct subject to penalty under IRC § 6701. Specifically, Defendant prepared federal tax returns for other people which contained understatements of income, understatements of self-employment tax, overstatements of personal exemptions, impermissible deductions for personal expenses, and impermissible deductions for large fictitious "charitable" deductions. Defendant knew or had reason to believe that these returns were intended to be used (and were in fact used) in connection with material matters arising under the internal revenue laws. Defendant also knew that these returns would result in understatements of tax liabilities.

52. Injunctive relief is appropriate to prevent the recurrence of such conduct because absent an injunction, Defendant is likely to continue to prepare returns understating tax liability based on abusive trust schemes.

53. The United States is entitled to an injunction under IRC § 7408 to prevent Defendant from engaging in conduct subject to penalty under IRC § 6701.

Count IV

(Injunction under IRC § 7402 Prohibiting Unlawful Interference with Federal Tax Laws)

54. The United States incorporates the allegations in paragraphs 1 through 53.

55. IRC § 7402(a) authorizes courts to issue injunctions as may be necessary or appropriate to enforce the internal revenue laws.

56. Defendant has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless enjoined by this Court. Defendant's conduct is causing irreparable injury to the United States and an injunction under IRC § 7402(a) is necessary and appropriate.

57. The United States is entitled to injunctive relief under IRC § 7402(a).

WHEREFORE, the United States of America requests the following relief:

A. That the Court find that Defendant has continually or repeatedly engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and that injunctive relief limited to such prohibited conduct would not be sufficient to prevent Defendant's interference with the proper administration of the Internal Revenue Code.

B. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting Defendant from preparing federal income tax returns or other related documents and forms for others.

C. That the Court find that Defendant has engaged in conduct subject to penalty under IRC §§ 6694 and 6695 and that injunctive relief is appropriate under IRC § 7407 to prevent him and anyone acting in concert with him from engaging in such conduct.

D. That the Court find that Defendant has engaged in conduct subject to penalty under IRC § 6701 and that injunctive relief is appropriate under IRC § 7408 to prevent him and anyone acting in concert with him from engaging in such conduct.

E. That the Court find that Defendant 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 pursuant to the Court's inherent equity powers and IRC § 7402(a).

F. That the Court, pursuant to IRC §§ 7402, 7407, and 7408, enter a permanent injunction prohibiting Defendant and his representatives, agents, servants, employees, attorneys, and any persons in active concert or participation with him, from directly or indirectly;

1. Engaging in any conduct subject to penalty under IRC § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;

2. Engaging in any conduct subject to penalty under IRS § 6695, *i.e.*, failing to include his identifying number on a prepared return or failing to provide complete client lists or copies of prepared returns on demand by the IRS;

3. Engaging in any 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 he knows will (if so used) result in the understatement of income tax liability; and

4. Advising or representing customers regarding any federal tax matters; and

5. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws.

G. That this Court, pursuant to IRC § 7402, enter an injunction requiring Defendant to contact:

1. all persons to whom he gave, sold, or distributed any materials promoting or related to abusive trust schemes;

2. all persons for whom he prepared or assisted in preparing any federal income tax returns or tax-related documents; and

3. all persons who contacted him regarding abusive trust schemes (in correspondence, by personal or telephone conversations, or through electronic means).

and inform those persons of the entry of this Court's findings concerning the falsity of tax returns prepared by Defendant, the possibility that the United States may seek to recover any deficiencies, the possibility that penalties may be assessed against them, and the fact that a permanent injunction has been entered against Defendant.

H. That this Court, pursuant to IRC §§ 7402, 7207, and 7408, enter an injunction requiring Defendant to turn over to counsel for the United States all records in his possession or to which he has access, that identify the persons or entities, including the taxpayer identification number, for whom Defendant or his associates prepared or assisted in preparing any tax return or other tax-related document since January 1, 1997.

J. That the Court grant such other relief as it deems appropriate.

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