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CLERK US DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

DANIEL G. BOGDEN
United States Attorney

EVAN J. DAVIS
Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 514-0079
Fax: (202) 514-6770
Attorneys for Plaintiff United States

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES,)
)
Plaintiff, CV-S-03-1523-JCM-RJJ

v.

JEFFREY DEAN HUBACEK
)
Defendant.)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff United States of America, in its complaint against defendant Jeffrey Dean Hubacek states as follows:

Nature of Complaint

1. This is a civil action brought by the United States of America pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402, 7407, and 7408 to enjoin defendant Jeffrey Dean Hubacek from:

a. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the

internal revenue laws that includes a position that he knows will result in an understatement of tax liability;

b. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position;

c. Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to sign returns prepared by him, failing to furnish his tax identification number as required by 26 U.S.C. § 6109(a)(4), and failing to provide his customer list;

d. Misrepresenting his qualifications and eligibility to practice before the IRS;

e. Instructing or advising taxpayers to understate their federal income tax liabilities;

f. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns;

g. Preparing or assisting in the preparation of any federal-income-tax return for any other person or entity;

h. Providing any tax advice or services for compensation, including providing consultative services or purported representation of customers.

Jurisdiction

2. 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 the Attorney General of the United States, pursuant to the provisions of 26 U.S.C. §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in the United States District Court for District of Nevada pursuant to 28 U.S.C. § 1391.

Defendant

5. Defendant Jeffrey Hubacek resides at 2265 Raymond Lane, Las Vegas, Nevada 89156.

Hubacek's Scheme: Zero-Income Returns

6. Hubacek advises his customers that they are not required to pay income taxes based on the frivolous theory that a person's income is not subject to federal taxation. Hubacek's advice is based on the frivolous position promoted by Irwin Schiff that the Constitution limits Congress's taxing power exclusively to taxes on "corporate profit." Hubacek falsely advises his customers that for income-tax purposes they can legally report zero income and pay no income taxes regardless of how much they have earned.

7. Hubacek prepares customers' returns to reflect this frivolous "corporate profit" theory of taxation. Hubacek has prepared at least 40-50 amended federal-income-tax returns (IRS Forms 1040X) that use this frivolous position to claim tax refunds, and the IRS has discovered a similar number of Hubacek-prepared original tax returns (IRS Forms 1040) that use the same frivolous position to report zero income.

8. Hubacek fails to sign or provide his taxpayer identification number on all returns he prepares, and the IRS is still receiving returns Hubacek has fraudulently prepared, thus the number of Hubacek-prepared income-tax returns is expected to increase.

Other Deceptive and Fraudulent Illegal Activity

9. Hubacek illegally fails to sign income-tax returns he prepares.

10. Hubacek illegally fails to place his tax identification number on income-tax returns he prepares.

11. Hubacek has failed to keep and turn over to the IRS upon request his customer lists or copies of prepared returns.

12. Hubacek has misrepresented to his customers his education and his qualifications to represent customers before the IRS. Hubacek has falsely represented to his customers that he is an attorney.

Hubacek's Knowledge of the Illegality of his Scheme

13. Hubacek claims to have read the Internal Revenue Code and holds himself out as an expert in tax law.

14. Hubacek received a copy of the preliminary injunction issued by this Court against Irwin Schiff, the original promoter of the "corporate profit" zero-income theory. That injunction specifically rejected Schiff's theory. Hubacek justifies his continued assertion of the "corporate profit" theory by claiming that he is not subject to court rulings.

Harm to the United States

15. Hubacek has been preparing fraudulent tax returns for customers since the late 1990s. His tax-return-preparation activities have resulted in his customers understating tax liabilities by at least $393,000. Some of these understatements may never be recovered by the IRS.

16. Hubacek will not cease this illegal activity unless enjoined from doing so.

Count I: Injunction Under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701

17. The United States incorporates by reference the allegations contained in paragraphs 1 through 16 above.

18. Section 7408 authorizes this Court to enjoin persons who have engaged in conduct

subject to penalty under 26 U.S.C. § 6701 from engaging in further such conduct if the Court finds that injunctive relief is appropriate to prevent recurrence of the conduct. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return or other document, having reason to know that the portion will be used to assert a position under the internal revenue laws, and knowing the portion will result in an understatement of another person's tax liability.

19. Hubacek has prepared federal-income-tax returns that he knows will result in the understatement of another person's federal-income-tax liabilities. Unless enjoined by this Court, Hubacek is likely to continue to engage in this conduct. Injunctive relief is appropriate under 26 U.S.C. § 7408.

Count II: Injunction under § 7407

20. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 19 above.

21. 26 U.S.C. § 7407 authorizes a district court to enjoin an income-tax-return preparer from:

a. engaging in conduct subject to penalty under 26 U.S.C. § 6694 (which penalizes a return preparer who knowingly prepares or submits a return that contains an unrealistic position);

b. engaging in conduct subject to penalty under 26 U.S.C. § 6695 (which penalizes a return preparer who wilfully fails to sign a return when required, who fails to furnish an identifying number as required, or who fails to keep a customer list as required by 26 U.S.C. § 6107(b));

c. misrepresenting his experience or education as an income-tax preparer; or

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

if the Court finds that injunctive relief is appropriate to prevent recurrence of such conduct. Additionally, if the Court finds that the preparer has continually or repeatedly engaged in such misconduct and if the Court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of federal tax laws, the Court may enjoin the person from further acting as a federal-income-tax-return preparer.

22. Hubacek has engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns and claims for refund (Forms 1040X) based on the zero-income "corporate profit" theory. There is no realistic possibility of that theory being sustained on its merits. Hubacek knows the position he asserts on income-tax returns is frivolous.

23. Hubacek has engaged in conduct subject to penalty under 26 U.S.C. § 6695 by repeatedly failing to sign returns he prepares for others as required by law.

24. Hubacek has engaged in conduct subject to penalty under 26 U.S.C. § 6695 by repeatedly failing to place his tax identification number on tax returns he prepares for others.

25. Hubacek has engaged in conduct subject to penalty under 26 U.S.C. § 6695 by failing to keep (and turn over to the IRS upon request) a customer list or copies of customer returns as required by 26 U.S.C. § 6107(b).

26. Hubacek has misrepresented his education and experience as an income-tax preparer by claiming to be an attorney.

27. Hubacek has engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

28. Hubacek's actions described above fall within 26 U.S.C. §§ 7407(b)(1)(A), (B), and (D), and are thus subject to injunction under § 7407.

29. Because of Hubacek's continual and repeated conduct subject to injunction under 26 U.S.C. § 7407, combined with his other conduct described in this complaint, he should be permanently enjoined from acting as an income-tax-return preparer.

Count III: Injunction Under 26 U.S.C. § 7402

30. The United States incorporates herein by reference the allegations in paragraphs 1 through 29 above.

31. Hubacek, through the conduct described above, has engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court he is likely to continue to engage in such conduct. His conduct causes irreparable injury to the United States for which the United States has no adequate remedy at law. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a) to prevent such conduct.

Appropriateness of Injunctive Relief

32. Unless enjoined by the Court, Hubacek is likely to continue to engage in the conduct described in paragraphs 1 through 31 above.

33. Hubacek's conduct, as described in paragraphs 1-31 above, causes irreparable harm to the United States and the United States has no adequate remedy at law. Specifically, Hubacek's

conduct is causing and will continue to cause substantial revenue losses to the United States Treasury. Unless Hubacek is enjoined, the IRS will have to devote substantial time and resources simply to detect future zero-income returns. The IRS will also have to devote even more resources to then audit the federal tax returns of Hubacek's customers.

34. If Hubacek is not enjoined, he likely will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6701, 6694, and 6695.

35. If Hubacek is not enjoined, he likely will continue to engage in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

WHEREFORE, plaintiff United States of America prays for the following relief:

A. That the Court find that defendant Jeffrey Dean Hubacek engaged in conduct subject to penalty under 26 U.S.C. § 6701 and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent Hubacek from engaging in any further such conduct;

B. That the Court find that defendant Jeffery Dean Hubacek engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent Hubacek from acting as an income-tax-return preparer;

C. That the Court find that defendant Jeffrey Dean Hubacek misrepresented his eligibility and qualifications to practice before the IRS and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent Hubacek from engaging in further such conduct;

D. That the Court find that defendant Jeffrey Dean Hubacek engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against Hubacek is appropriate pursuant to 26 U.S.C. § 7402(a) and 26 U.S.C. § 7407 to prevent

recurrence of that conduct;

E. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting defendant Jeffrey Dean Hubacek from acting as an income-tax-return preparer;

F. That the Court, pursuant to 26 U.S.C. § 7408 enter a permanent injunction prohibiting defendant Jeffrey Dean Hubacek from directly or indirectly:

1. inciting other individuals to understate their federal tax liabilities; and

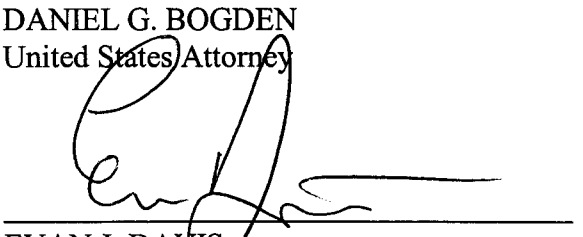
2. further engaging in any conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, assisting others in the preparation of any tax forms or other documents to be filed with the IRS that Hubacek knows, if so filed, will result in the understatement of income tax liability.

G. That this Court, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 enter an injunction requiring Hubacek to contact all persons for whom he prepared federal-income-tax returns or any other federal tax forms after January 1, 2000 and inform those persons of the entry of the Court's findings concerning the falsity of his representations, the falsity of the tax returns prepared on their behalf, the possibility of the imposition of a frivolous filing penalty against them, the possibility that the United States may seek to collect any additional federal income taxes, penalties, and interest which they may owe, and the entry of the permanent injunction against Hubacek;

H. That this Court, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 enter an injunction requiring Hubacek to turn over to the United States any records in his possession, or to which he has access, that identify all persons or entities for whom he has prepared income tax returns for since January 1, 2000; and

I. That the Court grant the United States such other and further relief as the Court deems appropriate.

DANIEL G. BOGDEN
United States Attorney



EVAN J. DAVIS
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0079