MICHAEL W. MOSMAN
United States Attorney
DONALD N. DOWIE
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-1714
Fax: (202) 514-6770
Attorneys for United States

FILED 03 OCT 08 09:18USDC-ORE

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON

UNITED STATES

Civil No. 03-6298-AA

Plaintiff,

v.

JUDY HARKINS

Defendant.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF
(26 U.S.C. §§ 7402, 7408)

The plaintiff, the United States of America, alleges as follows:

Parties

1. The plaintiff is the United States of America. Counsel for the United States is located at the U.S. Department of Justice, Tax Division, 555 - 4th Street, NW, Washington, D.C.

2. The defendant Judy Harkins resides at 7941 Pudding Creek Drive, Southeast, Salem, Oregon 97301. She is within this Court's jurisdiction.

COMPLAINT

Jurisdiction and Venue

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7408 (the Internal Revenue Code of 1986).

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.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

6. The United States brings this complaint pursuant to IRC §§ 7402(a) and 7408 to restrain and enjoin the defendant from:

a. engaging in any activity subject to penalty under IRC § 6700, including organizing or selling a plan or arrangement and, in connection with that activity, making a statement regarding the excludability of income that she knows or has reason to know is false or fraudulent as to any material matter;

b. engaging in any other activity subject to penalty under IRC § 6700; and

c. engaging in other, similar conduct that unlawfully interferes with the proper administration and enforcement of the internal revenue laws.

Count I

(Injunction under IRC § 7408 for violations of § 6700)

7. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC § 6700.

COMPLAINT

8. In relevant part, IRC § 6700 imposes a penalty on any person who organizes (or assists in the organization of) any shelter, plan, or arrangement, or participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement; and makes or furnishes or causes another person to make or furnish (in connection with such organization or sale) a statement regarding any deduction, credit, or the excludability of income; which the person knows or has reason to know is false or fraudulent as to any material matter.

9. Harkins promotes an abusive tax-avoidance arrangement through an entity known as American Tax Consultants ("ATC").

10. The head of ATC is Lee Scott Roberts.

11. Roberts has been indicted and faces criminal fraud charges in the United States District Court for the Middle District of Florida. *See United States v. Roberts*, No. 03-CR-144 (M.D. Fla.). On information and belief, however, he is still the head of ATC.

12. Working with Roberts and ATC, Harkins markets an arrangement where a purported entity known as a "corporation sole" is used to evade the reporting and payment of federal taxes. Specifically, Harkins and ATC claim that a "corporation sole" is tax exempt, does not need to file tax returns of any kind, and does not need to keep records, so long as it is based on "spiritual principles." Harkins' and ATC's definition of "spiritual principles" and "religion" is broad enough to encompass nearly any activity, including most business and other revenue-generating activities.

13. Harkins and ATC assist customers in setting up corporations sole. With Harkins' and ATC's advice and assistance, the customers use their corporations sole to shield otherwise

taxable income by transferring assets and income into the corporations sole. The customers then falsely claim that the corporations sole cannot be taxed and based on that fail to report income, make improper claims for refund of taxes paid, or both.

14. Harkins and ATC also offer the corporation sole as a means to conceal wealth and evade estate and inheritance taxes. They further falsely advise customers that the customers can make "charitable donations" to their corporations sole (which the customers control and can use for their own benefit) and then deduct the donations on the customers' federal income tax returns.

15. Harkins receives commissions for her sales of ATC's corporation sole arrangements.

16. The corporations sole that Harkins promotes are shams and are devoid of economic substance. Moreover, the corporations sole are merely the alter egos or nominees of the customers who establish and use them.

17. Harkins' statements about the excludability of income and the deductions set forth above are false and fraudulent.

18. Harkins knows and has reason to know that her statements about the excludability of income and the deductions set forth above are false and fraudulent.

19. Harkins' false and fraudulent statements concern material matters under the internal revenue laws.

20. Injunctive relief is appropriate to prevent Harkins' illegal conduct from continuing.

COMPLAINT

Count II

(Injunction under IRC § 7402)

21. The United States incorporates herein as if fully restated, the allegations in paragraphs 1 through 20.

22. Unless the Court enjoins Harkins, she is likely to continue to engage in the improper conduct described in paragraphs 9 through 20 of this complaint.

23. Harkins' conduct described in paragraphs 9 through 20 has resulted and continues to result in irreparable harm to the United States.

24. The United States has no adequate remedy at law to halt this irreparable harm. The United States is entitled to an injunction under IRC § 7402. Specifically:

a. Harkins' conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless she is enjoined the IRS will have to expend substantial time and resources to detect future returns based on bogus claims, and may be unable to detect all of them. If erroneous refunds are made and later detected, the Government will either lose those funds or have to expend substantial funds and resources to recover them. Based on past experience, the Government cannot expect to recover 100% of the unpaid taxes and/or erroneous refunds issued, and therefore the Government can expect a revenue loss if Harkins is allowed to continue promoting abusive plans and arrangements;

COMPLAINT

b. The detection and audit of taxpayers who have used Harkins' scheme will place a serious burden on the IRS's resources and—to the extent erroneous-refund suits must be brought against taxpayers—on the resources of the federal judicial system; and

c. If Harkins is not enjoined, she likely will continue to engage in unlawful conduct that interferes with the enforcement of the internal revenue laws, thereby undermining the federal tax system.

WHEREFORE, the plaintiff United States prays for the following:

A. That the Court find that the defendant has engaged in conduct subject to penalty under IRC § 6700, and that injunctive relief is appropriate under IRC § 7408 to prevent her and anyone acting in concert with her from engaging in any further such conduct;

B. 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 her and anyone acting in concert with her is appropriate to prevent the recurrence of that conduct, pursuant to the Court's inherent equity powers and IRC § 7402(a);

C. That the Court, pursuant to IRC §§ 7402 and 7408, enter a permanent injunction prohibiting defendant and her representatives, agents, servants, employees, attorneys, and those persons in concert or participation with them, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

(1) Organizing, promoting, marketing, or selling (or assisting therein) any abusive tax shelter, plan or arrangement that incites taxpayers to attempt to

violate the internal revenue laws, unlawfully evade the assessment or collection of their federal tax liabilities, or unlawfully claim improper tax refunds;

(2) Further engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement they know or have reason to know is false or fraudulent as to any material matter;

(3) Further engaging in any conduct that unlawfully interferes with the administration and enforcement of the internal revenue laws.

D. That this Court, pursuant to IRC §§ 7402 and 7408, enter an injunction requiring defendant to contact, in writing, by first class mail:

(1) all persons who purchased any shelter, plan, or arrangement from defendant, or from their representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with her, at any time since January 1, 1999;

(2) all persons who purchased any shelter, plan, or arrangement at any time since January 1, 1999 from any entity (including without limitation any corporation, partnership, limited partnership, limited liability company, proprietorship or other organization or association) in which or with whom defendant has had (a) any ownership interest, (b) any employment relationship, (c) any contractual arrangement, (d) or any other commercial or business affiliation;

COMPLAINT

(3) all persons on whose behalf defendant, or her representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with them, prepared and/or assisted in the preparation of any federal income tax returns or tax-related documents at any time since January 1, 1999; and

(2) all persons who contacted the defendant, her representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with her, regarding the purchase of any shelter, plan or arrangement at any time since January 1, 1999;

and to provide each of those persons with a true, correct and complete copy of the Court's findings and order of permanent injunction, and further, to inform those persons using a memorandum drafted by the Government and approved by the Court concerning the falsity of the representations made by defendant, the possibility of the imposition of frivolous-return penalties against them, the possibility that the United States may seek to recover any erroneous refund they may have received, and the fact that a permanent injunction has been entered against the defendant.

E. That this Court, pursuant to IRC §§ 7402 and 7408, enter an injunction requiring the defendant to produce to the United States all records in her possession, custody, or control that identify (1) the persons to whom she gave or sold or otherwise provided, directly or indirectly, any documents or other information related to corporations sole that the defendant has sold or promoted since January 1, 1999; (2) the persons who assisted in the preparation or marketing of materials used by the defendant or by her representatives, agents, servants, employees, attorneys,

COMPLAINT

or other persons acting in concert or participation with her since January 1, 1999, (3) all individuals or entities for whom the defendant, or her representatives, agents, servants, employees, attorneys, or other persons acting in concert or participation with them, have prepared or have assisted in the preparation of any tax-related documents, including claims for refund or tax returns since January 1, 1999, and (4) all individuals or entities who purchased or used any other tax shelter, plan, or arrangement in which the defendant has been involved since January 1, 1999.

F. That the Court grant the United States its costs in bringing this action.

G. That the Court grant such other relief as the Court deems appropriate.

MICHAEL W. MOSMAN
United States Attorney

DONALD N. DOWIE
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-1714
Fax: (202) 514-6770
donald.dowie@usdoj.gov