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DISTRICT OF NEVADA
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. CV-S-
	)	
JEFFREY DEAN HUBACEK	)	
	)	
Defendant.	)	

~~Proposed~~ Order

Upon motion by the plaintiff, the United States of America, the Court makes the following findings of fact and conclusions of law and enters this preliminary injunction. This order will remain in effect until further order of the Court.

Standards for Preliminary Injunction

To obtain a preliminary injunction under 26 U.S.C. (I.R.C.) §§ 7407 and 7408 the United States must show that (1) Jeffrey Dean Hubacek either engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; or (2) Hubacek engaged in conduct subject to penalty under I.R.C. § 6701; and (3) injunctive relief is

appropriate to prevent the recurrence of such conduct.

In order to obtain a preliminary injunction under I.R.C. § 7402 the United States must show that a preliminary injunction is necessary or appropriate for the enforcement of the internal revenue laws and that the United States has a high likelihood of success on the merits.

Findings of Fact

1. Hubacek has been preparing returns for customers since the 1990s with at least 40-50 fraudulent zero-income Forms 1040X and at least that many fraudulent zero-income Forms 1040 to his credit. Hubacek charges his customers for his tax-preparation services.

2. Hubacek's scheme to help his customers evade taxes uses the same frivolous theory that Irwin Schiff, a Las Vegas-based tax-scam promoter, created—the "corporate profit" theory. Schiff's theory rests on the premise that no section of the Internal Revenue Code establishes an income-tax liability on wages.

3. Hubacek prepares returns that list all zeros, falsely reporting that customers have no taxable income and no tax due.

4. This Court has held that the "corporate profit" theory and its resulting zero-income returns are fraudulent and frivolous.

5. Hubacek is aware that the "corporate profit" theory is baseless. Hubacek is acquainted with Schiff and knows that Schiff has been enjoined from promoting this scheme. Knowing this, Hubacek has said he may continue his illegal activities. Hubacek claims he is not subject to any court ruling.

6. A cursory examination by the IRS of 28 amended and original Hubacek-prepared returns reveals that he is responsible for at least $393,000 in customer tax understatements.

7. The full scope of the understated tax liabilities that Hubacek's tax-return preparation has caused the Treasury may never be determined because:

a. Hubacek does not sign or place his tax identification number on all returns he prepares; and

b. The IRS's computer system does not track Form 1040X amended returns by preparer, so there is no reliable way to discover how many amended returns Hubacek has prepared.

8. In addition to the harm to the Treasury, if Hubacek is not enjoined he will continue to harm the public. He already has prepared fraudulent and frivolous tax returns for at least 31 customers. His present and future customers are at risk of incurring substantial liabilities for penalties, fines, and interest, in addition to their tax liabilities.

9. Enjoining Hubacek will serve the public interest.

10. IRS agent Berta Papp interviewed Hubacek on August 19, 2003. After the interview Hubacek was given a summons that required him to appear before Papp, on September 2, 2003.

11. The IRS summons properly required Hubacek to provide the names and taxpayer identification numbers of all taxpayers for whom he prepared returns for the years 2000, 2001, and 2002, and to provide copies of these returns.

12. Hubacek failed to produce the summoned documents on September 2, and he has not provided them thereafter.

Conclusions of Law

Based on the evidence presented by the United States and Hubacek, the Court finds that Jeffrey Dean Hubacek is engaging in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701. Accordingly, the Court finds that Hubacek should be preliminarily enjoined under I.R.C. §§ 7407, and 7408.

The Court finds that the United States has presented persuasive evidence that the Treasury and the public will suffer irreparable harm in the absence of this preliminary injunction and that Hubacek will suffer little, if any harm if the preliminary injunction is granted. The United States also has presented evidence and argument sufficient to convince the Court that the United States has a high likelihood of success on the merits. Further, the United States has presented credible evidence and argument that shows the public interest will be served through granting this preliminary injunction. Finally, the evidence presented shows that absent this preliminary injunction, Hubacek will continue to violate I.R.C. §§ 6694, 6695, and 6701. Accordingly, the Court finds that a preliminary injunction under I.R.C. § 7402 is necessary and appropriate for the enforcement of the internal revenue laws.

Order

Based on the foregoing factual findings and for good cause shown, the Court ORDERS that Defendant Jeffrey Dean Hubacek is preliminarily enjoined from:

A. 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 or used in connection with a tax matter ~~that Hubacek knows, if so used, will result in the understatement of income-tax liability~~.

B. Further engaging in any conduct subject to penalty under 26 U.S.C. § 6694, *i.e.*, preparing any part of a return or claim for refund ~~that includes an unrealistic position;~~

C. Assisting or aiding others to evade the payment of taxes or to prepare false or fraudulent federal-income-tax returns through any means;

D. Preparing or assisting in the preparation of any federal-income-tax returns for any

other person;

~~E. Engaging in~~ conduct subject to penalty under I.R.C. § 6695, including ~~failing to sign~~, and ~~furnish the correct tax identification number on tax returns he prepares, and failing to keep a customer list and/or customer returns and to provide them to the IRS upon request,~~

~~E~~Engaging in conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

~~Further, pursuant to 26 U.S.C. §§ 7402 and 7407, the Court~~ ORDERS that Hubacek provide a complete list of persons for whom he has prepared federal-income-tax returns, from January 1, 2000 through the present, including names, addresses, phone numbers, e-mail addresses, and social security numbers or employer identification numbers, to counsel for the United States within ten days of the date of this Order. Hubacek must file a sworn certificate of compliance stating that he has complied with this portion of the Order within ten days of the date ~~of this Order~~.

~~Further, pursuant to I.R.C. § 7402, the Court~~ ORDERS that Hubacek, ~~at his own expense~~, contact all persons for whom he prepared federal-income-tax returns or any other federal tax forms from January 1, 2000 through the present and inform those persons of the entry of the Court's findings concerning the falsity of his representations, the falsity of the tax returns

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~~prepared on their behalf, the possibility 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 preliminary injunction against ~~him.~~

SO ORDERED this 23rd day of Dec, 2003.

United States District Judge

Prepared by:

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