IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

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UNITED STATES OF AMERICA, Plaintiff, v. CAREL A. PRATER, a/k/a CHAD PRATER, d/b/a AERO INVESTMENTS, a purported trust, d/b/a GOLDCOAST ENTERPRISES, a/k/a GOLDENCOAST ENTERPRISES, a purported trust, d/b/a BARTHOLOMEW ENTERPRISES, a purported trust, d/b/a C.A.P. ENTERPRISES, a purported trust, d/b/a TAX INFORMER ENTERPRISES, d/b/a FAMILY VALUES INTERNATIONAL; TAX ESCAPE SERVICE, a purported trust or purported limited liability corporation; NEW FOUND FREEDOM, a purported trust or purported limited liability corporation; and RICHARD W. CANTWELL, Defendants.	)	Civil No. 8:02-CV-2052-T-23MSS

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, states as follows for its complaint against defendants Carel A. Prater, a/k/a Chad Prater, d/b/a Aero Investments, a purported trust, d/b/a Goldcoast Enterprises, a/k/a Goldencoast Enterprises, a purported trust, d/b/a Bartholomew Enterprises, a purported trust, d/b/a C.A.P. Enterprises, a purported trust, d/b/a Tax Informer Enterprises, d/b/a Family Values International; Tax Escape Service, a purported trust or purported limited liability corporation; New Found Freedom, a purported trust or purported limited liability corporation; and Richard W. Cantwell:

ORIGINAL

Nature of Action

1. The United States of America is bringing this complaint to restrain and enjoin defendants, their organizations, and any other person in active concert or participation with them from directly or indirectly:

a. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter;

b. Engaging in activity subject to penalty under I.R.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 they know will result in an understatement of tax liability;

c. Advocating, through seminars, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that U.S.-source income is nontaxable (the § 861 argument);

d. Selling or organizing any type of trust, limited liability company, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the receipt of income;

e. Preparing or assisting in the preparation of federal tax returns for any other person or entity;

f. Engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; and

g. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. An injunction is warranted based on defendants' continuing conduct as promoters of abusive tax plans. Defendants have solicited clients from across the United States for their abusive tax plans, promising "freedom" from federal income tax in exchange for fees ranging from $500 to $20,000. If defendants are not enjoined, their continuing actions will result in their

clients incurring frivolous return penalties and other possible civil and criminal sanctions, and will require the Internal Revenue Service (IRS) to devote countless hours to attempt to locate and process the frivolous tax returns, letters, and "affidavits" that defendants have produced. If the IRS does not identify the frivolous tax returns, then the IRS may issue erroneous refunds to the defendants' clients. Further, the IRS must process and respond to the defendants' frivolous letters, written on behalf of their clients.

Jurisdiction and Venue

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and §§ 7401, 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (I.R.C.).

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

Authorization

5. This action has been authorized and requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. §§ 7401, 7402, 7407, and 7408.

Defendants

6. Carel A. Prater, also known as Chad Prater, resides at 324 Pavonia Road, Nokomis, Florida 34275, and is doing business at 2828 Clark Road, Sarasota, Florida 34231, as Aero Investments, Goldcoast Enterprises (also known as Goldencoast Enterprises), Bartholomew Enterprises, C.A.P. Enterprises, Tax Informer Enterprises, and Family Values International.

7. Aero Investments, Goldcoast Enterprises (also known as Goldencoast Enterprises), Bartholomew Enterprises, and C.A.P. Enterprises are purported trusts belonging to Prater and doing business at 2828 Clark Road, Sarasota, Florida 34231.

8. Tax Escape Service and New Found Freedom are either purported trusts or purported limited liability corporations belonging to Prater and doing business at 2828 Clark Road, Sarasota, Florida 34231.

9. Richard W. Cantwell resides at 6316 16th Avenue, Drive West, Sarasota, Florida 34209, and is an associate of Prater.

Defendants' Activities

10. Defendants prepare, promote, and market tax-avoidance schemes purporting to exempt their clients from federal income taxation and advising them how to hide their assets and income from the IRS.

11. Defendants promote and sell Prater's book, "The Tax Informer," for approximately $40. In this 270-page book, Prater advises taxpayers "how to get the IRS off your back" and "how to legally say 'no' to federal income tax."

12. "The Tax Informer" includes several frivolous arguments concluding that Americans are not liable for federal income tax. In the first section of "The Tax Informer," entitled "Why Federal Income Tax is Not Required," defendants promote the frivolous "U.S. sources" or "§ 861 argument." The § 861 argument posits that a regulation promulgated under I.R.C. § 861, namely C.F.R. § 1.861-8(f), provides the exclusive list of income sources subject to federal income tax. Because that narrow list focuses on foreign income, § 861 proponents argue that U.S.-source income is not subject to federal income taxation. This Court has labeled the § 861 argument as "frivolous and without merit,"[1] and has enjoined two individuals, David

[1] *United States v. Bosset*, No. 8:01-CV-2154-T-17TBM, 2002 WL 1058105, at *3 (M.D. Fla. Mar. 26, 2002).

Bosset and Douglas Rosile, from promoting it.[2] The United States Tax Court penalized one taxpayer $25,000 for pursuing the § 861 argument.[3]

13. Defendants' website, www.taxinformer.com, is "devoted to one thing: Inform [sic] American citizens that they have no taxable income unless it comes from a foreign source or they reside inside of Washington, DC." The website outlines defendants' abusive tax schemes.

14. Defendants sell a program they call "*nihil dicit* judgments," whereby they purport to obtain judgments against the IRS barring the collection of federal income taxes from their clients. The *nihil dicit* judgments program begins with defendants preparing two affidavits for a client: an "affidavit of no liability" for federal income tax, and an "affidavit of no jurisdiction," claiming that the IRS has no jurisdiction over the client. Defendants sign their clients' names on these affidavits and mail them to the IRS, demanding a response within ten days. When the IRS fails to respond, defendants file in the Sarasota County Circuit Court a "Notice of Default - No Liability" and a "Second Notice of Default - No Jurisdiction," claiming that the IRS has conceded silently that the client is not liable for federal tax and is not within the IRS's jurisdiction. Defendants sign their clients' names on both notices of default, which are notarized.

15. Defendants advise clients to hide their income and assets from the IRS in "Unincorporated Business Trust Organizations" (UBTOs), also known as "Unincorporated Personal Trusts" (UPTs), which are nothing more than sham trusts. According to defendants, an individual can avoid taxation by placing all of his or her assets into various trusts. Because

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[2] *Id.*; *United States v. Rosile*, No. 8-02-CV-466-T-24-MSS, 2002 WL 1760861, *2 (M.D. Fla. June 10, 2002).

[3] *Madge v. Commissioner*, 80 T.C.M. (CCH) 804 (2000), *aff'd* No. 01-1531, 2001 WL 1414315 (8th Cir. Nov. 14, 2001).

defendants sell trusts that are *disregarded* for tax purposes, they falsely claim that the trust's income is untaxable. Defendants structure multiple layers of trusts for clients to obscure the ownership of their assets and to create an appearance that they receive no income. Defendants falsely claim that by using these UBTOs, clients can receive all the benefits of their assets and income yet avoid any federal income tax.

16. Defendants advise clients to hide their income and assets from the IRS in limited liability corporations (LLCs). Defendants create LLCs, registered in Nevada, for clients and obtain from the IRS Employer Identification Numbers (EINs) for the LLCs. Defendants suggest using UBTOs as the LLC's "principals," thereby concealing the ownership of the assets and income. Defendants instruct clients to transfer their assets and income to their newly-created "anonymous" LLCs, and also advise them that if the clients shift all the LLC's assets and income into their UBTOs on December 31 of each year, the LLC will have no taxable income. Because neither the instruments creating the LLCs nor the applications for EINs contain the clients' names, the true ownership of the LLCs' assets and income is concealed.

17. Defendants prepare federal income tax returns (IRS Form 1040) for clients. On these returns, defendants claim that the client earned no income and is not required to file a Form 1040. Defendants sign their clients' names on these returns. Defendants fail to identify themselves, sign as preparers, or furnish their identifying numbers on the returns.

18. Defendants prepare amended federal income tax returns (IRS Form 1040X) for clients. On these amended returns, defendants claim that the clients, who previously reported income on IRS Forms 1040, filed their previous returns "in error," earned nothing, and request a full refund of paid taxes. Defendants sign their clients' names on these amended returns.

Defendants fail to identify themselves, sign as preparers, or furnish their identifying numbers on the amended returns.

19. Defendants sell a program that they claim will force their clients' employers to cease withholding taxes – including federal income tax, social security tax, and state income tax – from their clients' paychecks. Defendants prepare various affidavits for clients advancing the § 861 argument and send these forms to clients' employers, demanding that the employers cease withholding taxes; they submit Employee's Withholding Allowance Certificates (IRS Forms W-4) to their clients' employers, falsely claiming an exemption from withholding tax; and they write letters to their clients' employers, threatening to sue if they do not cease withholding tax from the clients' wages.

20. Prater directs his clients to execute a Power-of-Attorney and Declaration of Representation Form (IRS Form 2848), purportedly granting him authority to represent them before the IRS. IRS Form 2848 lists eight categories of individuals authorized to represent a taxpayer before the IRS: (a) attorneys, (b) certified public accountants, (c) enrolled agents, (d) officers of the taxpayer's organization, (e) full-time employees, (f) family members, (g) enrolled actuaries, and (h) unenrolled return preparers under section 10.7(c)(vii) of Treasury Department Circular No. 230. On these IRS Forms 2848, Prater falsely declares under penalty of perjury that he is authorized to represent his clients before the IRS as their full-time employee. Prater is self-employed and is not a full-time employee of any of his clients.

21. For a monthly fee, defendants promise clients enrolled in their "Pre-Paid Tax Solution" program that defendants, their Certified Public Accountant, or their lawyer will

represent the enrolled clients before the IRS through telephone conversations, letters, and appearances at hearings.

22. Defendants have written frivolous letters to the IRS on behalf of their clients demanding, *inter alia*, that the IRS remove federal tax liens, cease administrative collection procedures, and accept the frivolous returns and amended returns that they have filed for their clients.

23. Defendants promote their abusive tax schemes through newspaper advertisements, seminars, "The Tax Informer," and their website, www.taxinformer.com.

24. In promoting their abusive tax schemes, defendants have made numerous false or fraudulent statements, including the following:

- "The 16th Amendment, the Income Tax Amendment to the Constitution, was never ratified (approved or made valid)."

- "There is a legal method by which you, or any ordinary taxpayer, may avoid Federal Income Tax and Social Security."

- "When you provide evidence that you were born in one of the 50 states and you are not a government employee or get [sic] 'salary' or 'wages' from Washington, D.C. . . . or one of their [sic] other territories, YOU DO NOT EVER HAVE TO PAY FEDERAL TAXES AGAIN."

- "Paying federal income tax is voluntary."

- "Wages are not income."

- The UBTO or UPT is "a legal method by which you, at no risk, can organize your affairs in such a way as to avoid personal income tax."

25. Defendants employ these and other false and fraudulent statements in advising clients to:

- cease filing federal income tax returns (IRS Forms 1040) and paying federal income tax;

• file "*nihil dicit* judgments" against the IRS;

• hide assets and income in UBTOs and UPTs;

• hide assets and income in LLCs;

• file federal income tax returns (IRS Forms 1040), falsely claiming no taxable income;

• file amended federal income tax returns (IRS Forms 1040X), falsely claiming that previous returns were filed in error and requesting a refund of paid taxes;

• submit Employee's Withholding Allowance Certificates (IRS Forms W-4) and statements in lieu of IRS Form W-4 to their employers falsely claiming an exemption from federal taxation; and

• sign Power-of-Attorney and Declaration of Representation Forms (IRS Forms 2848), purportedly giving Prater authority to represent them before the IRS under the false assertion that he is their full-time employee.

26. Defendants conduct the activities described in paragraphs 10 through 25 through the business names of Aero Investments, Goldcoast Enterprises, a/k/a Goldencoast Enterprises, Bartholomew Enterprises, C.A.P. Enterprises, Tax Informer Enterprises, Family Values International, Tax Escape Service, and New Found Freedom. Defendants use these business names interchangeably on contracts with clients, bank accounts, and their promotional materials.

27. Defendant Cantwell became associated with defendant Prater in or about February 2002 and has participated in the activities described in paragraphs 10 through 25 since that time.

Count I:
Injunction under I.R.C. § 7408 for Violation of I.R.C. §§ 6700 and 6701

28. The United States incorporates by reference the allegations in paragraphs 1 through 27.

29. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under I.R.C. § 6700 or § 6701 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

30. I.R.C. § 6700 penalizes any person who organizes or sells a plan or arrangement and makes, in connection with organizing or selling the plan or arrangement, a statement regarding the excludibility of income that the person knows or has reason to know is false or fraudulent as to any material matter.

31. I.R.C. § 6701 imposes a penalty on any person who prepares or assists in the preparation of a return, affidavit, or other document that the person knows or has reason to believe will be used in connection with any material matter arising under the internal revenue laws, and that the person knows would result in an understatement of tax liability.

32. Defendants organize and sell abusive tax schemes. In organizing and selling their abusive tax schemes, defendants make false or fraudulent statements regarding the excludibility of income. Defendants know or have reason to know that their programs and program materials contain false or fraudulent statements within the meaning of I.R.C. § 6700.

33. Defendants prepare or assist in preparing returns, affidavits, and other documents that they know or have reason to believe will be used in connection with material matters arising under the internal revenue laws. Defendants know that the returns, affidavits, and other documents will result in an understatement of their clients' tax liability.

34. If they are not enjoined, defendants are likely to continue to organize and sell their abusive tax schemes and to prepare returns understating their clients' tax liability.

Count II:
Injunction under I.R.C. § 7407

35. The United States incorporates by reference the allegations in paragraphs 1 through 27.

36. I.R.C. § 7407 authorizes a court to enjoin a person from acting as an income-tax-return preparer if that person has continually or repeatedly:

a. engaged in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who prepares or submits a return that contains an unrealistic position, or I.R.C. § 6695, which penalizes a return preparer who fails to sign returns, include his identifying number, keep a list of clients, or turn over the client list to the IRS upon request,

b. misrepresented his eligibility to practice before the IRS, or otherwise misrepresented his experience or education as an income tax return preparer,

c. guaranteed the payment of any tax refund or allowance of any tax credit, or

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

and the Court finds that a narrower injunction (*i.e.*, one prohibiting only that specific conduct), would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws.

37. Defendants have prepared on behalf of their clients numerous federal income tax returns (IRS Forms 1040) and amended federal income tax returns (IRS Forms 1040X) asserting the false and frivolous § 861 position that their clients are not liable for federal income tax, have no taxable income, are not required to file federal income tax returns, and are entitled to a full refund of taxes paid. This unrealistic position violates I.R.C. § 6694.

38. Defendants have failed to include their signatures and identifying numbers on the federal income tax returns and amended federal income tax returns that they prepared. Their failure to do so violates I.R.C. § 6695.

39. Prater falsely claims, under penalty of perjury, that he is authorized to represent his clients before the IRS as a full-time employee of his clients. His misrepresentation of his eligibility to practice before the IRS violates I.R.C. § 7407(b).

40. If defendants are not enjoined under I.R.C. § 7407 from preparing or assisting in the preparation of others' tax returns and from misrepresenting their ability to represent taxpayers before the IRS, they are likely to continue interfering with the proper administration of internal revenue laws.

Count III:
Injunction under I.R.C. § 7402 for Unlawful Interference with Enforcement of the Internal Revenue Laws and Appropriateness of Injunctive Relief

41. The United States incorporates by reference the allegations in paragraphs 1 through 27.

42. I.R.C. § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

43. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

44. Defendants' conduct results in irreparable harm to the United States. Defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

45. Unless defendants are enjoined, the IRS will have to devote substantial time and resources auditing each of their clients individually. The burden of pursuing individual clients may be an insurmountable obstacle given the IRS's limited resources.

46. If defendants are not enjoined, they are likely to continue to engage in conduct subject to penalty under I.R.C. §§ 6700, 6701, 6694, and 6695 that interferes with the enforcement of the internal revenue laws.

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

A. That the Court find that defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

B. That the Court find that defendants have engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695 and, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting defendants from acting as income tax return preparers;

C. That the Court find that defendants have engaged in conduct interfering with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and under I.R.C. § 7402(a);

D. That this Court, pursuant to I.R.C. §§ 7402, 7407, and 7408, enter a permanent injunction prohibiting defendants, individually and doing business under the various names listed in this complaint or under any other name or using any other entity, and their representatives,

agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly, by means of false, deceptive, or misleading commercial speech:

a. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter;

b. Engaging in activity subject to penalty under I.R.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 they know will result in an understatement of tax liability;

c. Advocating, through seminars, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that U.S.-source income is nontaxable (the § 861 argument);

d. Selling any type of trust, limited liability company, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the receipt of income;

e. Preparing or assisting in the preparation of federal tax returns for any other person or entity;

f. Engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; and

g. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That this Court, pursuant to I.R.C. §§ 7402, 7407, and 7408, enter an injunction requiring defendants to contact by mail all individuals who have purchased their abusive tax shelters, plans, arrangements, or programs, including the "*nihil dicit* judgments," the UBTOs, the UPTs, the LLCs, the book "The Tax Informer," or any other shelter, plan, or program in which defendants have been involved either individually or through their related entities, and inform those individuals of the Court's findings concerning the falsity of defendants' prior

representations and attach a copy of the permanent injunction against defendants and their organizations;

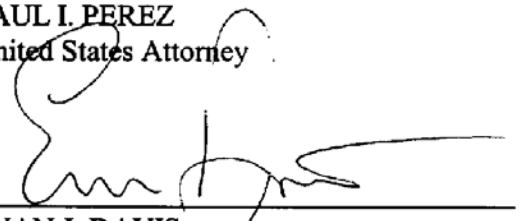
F. That this Court, pursuant to I.R.C. §§ 7402, 7407, and 7408, enter an injunction requiring defendants to produce to the United States any records in their possession or to which they have access, identifying the persons who have purchased their abusive tax shelters, plans, arrangements, or programs, including the default judgments, UBTOs, LLCs, the book "The Tax Informer," or any other shelter, plan, or program in which defendants have been involved either individually or through their related entities;

G. That this Court, pursuant to I.R.C. §§ 7402, 7407, and 7408, enter an injunction requiring defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, to remove from their websites all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including tax laws), to display prominently on the first page of those websites a complete copy of the Court's permanent injunction, and to maintain their websites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time; and

H. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

PAUL I. PEREZ
United States Attorney



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