UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

01-8816

Case No. CIV-FERGUSON

MAGISTRATE JUDGE SNOW

UNITED STATES OF AMERICA,

Plaintiff,

v.

LOUIS W. RATFIELD and
LWR FINANCIAL SERVICES TRUST,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

The United States of America, by its attorneys, alleges against the defendants, Louis W. Ratfield and LWR Financial Services Trust, as follows:

Nature of Action

1. This is a civil action brought by the United States of America pursuant to Sections 7402(a), 7407 and 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) to restrain and enjoin the defendants, Louis W. Ratfield and LWR Financial Services Trust, and all those in active concert or participation with them from:

(a) further acting as a federal tax-return preparer,

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

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

(d) assisting in the preparation of or preparing tax returns that they know will result in the understatement of any tax liability;

(e) understating taxpayers' liabilities as prohibited by I.R.C. § 6694;

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

(g) refusing to provide to the IRS lists of customers for who, they have prepared tax returns; and

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

Jurisdiction

2. This action has been authorized and 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 a delegate of the Attorney General of the United States, pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.

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

Defendants

4. The defendant Louis W. Ratfield resides at 4526 Hunting Trail, West Palm Beach, Florida, within the jurisdiction of this Court.

5. The defendant LWR Financial Services Trust (LWR), also known as LWR Financial Services, is Ratfield's sole proprietorship that purports to be a "business trust." LWR was established pursuant to a "Declaration and Contract of Trust" executed on or about November

28, 1996 by and between Robbie J. Self, James T. Mullane and Gregory D. Garrison. Ratfield purports to be the "General Manager" of the purported trust. LWR has its principal office at 7318 Lake Worth Road, Lake Worth, Florida, within the jurisdiction of this Court.

Count I
Injunction under I.R.C. § 7408

6. On his own and through LWR, Ratfield prepares, promotes, and sells multiple trust packages for the ostensible reasons (among others) of liability protection, avoiding probate, and tax savings. Ratfield promotes these trust arrangements through brochures, word of mouth, and through a publication entitled "The Constitutional Common-Law Trust," which identifies him as "[a]n accountant who specializes in Common-Law Trusts." "The Constitutional Common-Law Trust" has been sold or advertised on the following Internet websites: Amazon.com, puretrusts.com, givemeliberty.net, helionpub.com, loveforamerica.freeyellow.com/trust.html, and FreeAmerican.com.

7. Ratfield advises taxpayers to convert their businesses to what he refers to as "common-law," "Constitutional" or "pure" trusts by transferring their personal and business assets to trusts established with Ratfield's assistance. These "trusts" are established by obtaining an IRS Employer Identification Numbers (EIN) for each trust and completing a form for each trust, provided by the Defendants, entitled "Declaration and Contract of Trust." As part of this arrangement, a purported trust called a "Business Trust" is established to hold the taxpayer's principal business activity. The taxpayer's business equipment and other business assets are transferred to that trust in exchange for certificates of "Capital Units." The taxpayer then contracts with the "Business Trust" to act as the trust's "general manager," usually for

approximately $12,000 per year. In some cases defendants' customers—acting at defendants' suggestion—have added another layer by creating a "Management Trust" to act as general manager so as to enable the customer to avoid reporting even the $12,000 in income while still benefitting personally from the "management fee."

8. The trust documents sold by defendants state that the "general manager" is on duty 24 hours a day, thus purporting to justify the trust's paying the taxpayer/general manager's personal expenses and deducting them as business expenses. Similarly, the taxpayer/general manager's house is referred to in the trust documents as the "trust headquarters" in an attempt to justify the trust deducting the taxpayer's rent or mortgage payments and other housing expenses.

9. Although trust beneficiaries are named (usually the children of the "General Manager"), no economic interest passes to them. Rather, the taxpayers continue to use all of their personal and business property—ostensibly transferred to the "trusts"—as their own. For example, despite the transfer of the property to the "trusts," the taxpayers continue to exercise sole signature authority and control over their businesses' bank accounts and other property.

10. Thereafter, at defendants' direction, the taxpayers' personal living expenses are deducted on federal income tax returns filed by the trusts (IRS Form 1041). These personal living expenses include many items that individuals are not entitled to deduct, such as costs of maintaining the customer's personal residence, private school tuition, and the like. Additionally, the defendants advise their customers to report on their personal federal income tax returns only the $12,000 (or other similar amount) purportedly received in connection with their "duties" as "General Manager" of the "trusts." By reporting these much smaller amounts, rather than the much greater income that the taxpayers actually receive from the operation of their businesses,

the taxpayers underreport and underpay their true liability for federal income and self-employment taxes.

11. In many instances, defendants' customers, using defendants' trust package, have improperly reported only the $12,000 "management" payment on their individual federal income tax returns and then claimed deductions on those returns sufficient to improperly claim and receive an Earned Income Credit.

12. The "trusts" that defendants create for their customers are sham trusts, devoid of economic substance. Alternatively, the "trusts" (1) are grantor trusts that may be disregarded for federal income tax purposes; or (2) fail to comply with the requirements of Florida law.

13. Ratfield has made false or fraudulent statements regarding the tax advantages available to purchasers of these "trusts." Some of these false or fraudulent statements are contained in the publication "The Constitutional Common-Law Trust." Other false or fraudulent statements are contained in pamphlets and other documents that defendants have distributed to their clients and in the informational material included in the trust packages that the defendants sell. Examples of defendants' false or fraudulent statements in such materials include these:

- "The initial exchange of the [taxpayer's] business into the trust for a certificate IS NOT A TAXABLE EVENT."

- "We all have insurance policies, mortgage payments, automobile loan payments, and perhaps even private school tuition or college expenses for our children. Must we give all that up when we reduce our personal income to a level where the taxes become bearable? Not at all. . . Let an irrevocable business trust take on those responsibilities. [Your daughter] can be the beneficiary, and therefore her college tuition or insurance policy premiums are legitimate business expenses of the business trust."

- "One of the biggest savings that becomes immediately recognized with an irrevocable business arrangement is that the high FICA [Federal Insurance Contributions Act] tax is dramatically reduced. For example if the previous [business] owner was making $57,600.00 a year he would pay a whopping $8,812.00 in FICA taxes. After being contracted by the trust (note, he is an independent contractor, not an employee of the trust) he only makes $12,000.00 a year as opposed to his previous $57,600.00 salary, and so he is only liable for a personal FICA tax of $1,836.00, a much more manageable figure."

14. Defendants knew or had reason to know that the trust arrangements or packages they sold, as well as the other materials described above, contained false or fraudulent statements within the meaning of I.R.C. § 6700. Ratfield has training in income tax accounting and worked at the IRS for a number of years. In the statements quoted above and in other materials the defendants falsely or fraudulently claimed:

- That federal income and self-employment taxes could be reduced or eliminated by placing the customer's business and real and personal property in a business trust;
- That customers could exchange, tax-free, their assets for trust "Capital Units" ;
- That customers who purchased trust documents and arrangements from defendants could properly claim income tax deductions for their personal residences, furnishings and other property;
- That customers could convert their residences into "trust headquarters" and claim all expenses relating to upkeep of those residences, including utilities, repairs, maintenance and depreciation as deductions; and
- That customers using the defendants' trusts could properly claim business deductions for their personal life and disability insurance premiums, personal medical expenses, contributions to private pension plans, education, food, clothing and other personal expenses.

15. Ratfield charges his clients a fee of approximately $5,995.00 for the trust package. He has admitted to the IRS that he has sold or promoted over 100 trust packages to customers

located throughout the United States. Ratfield has prepared over 250 federal tax returns for the customers and their "trusts," but has refused to comply with IRS requests for customer lists and lists of clients for whom he has prepared "trust" documents.

16. The trust packages that defendants have sold instructed or encouraged taxpayers to file federal individual and trust income tax returns that improperly and illegally reduced or eliminated their federal income, self-employment, and social security tax liabilities. The Internal Revenue Service estimates that the potential tax revenue loss to be $4.5 million or greater.

17. For fees ranging between $800 and $1,200, defendants have also prepared or assisted in preparing their customers' trust and individual tax returns claiming improper deductions and failing to report income based on the abusive-trust scheme. In so doing, the defendants have engaged in the preparation or presentation of a portion of a tax return or other document in connection with a matter arising under the internal revenue laws, knowing that such portion will be used in connection with a material matter arising under the internal revenue laws, and knowing that such portion (if so used), will result in an understatement of the liability for tax of another person. The defendants' conduct is thus subject to penalty under I.R.C. § 6701.

18. Defendants have persisted in promoting their abusive trust scheme, and in preparing tax returns based on that scheme, after being advised that their conduct was subject to penalty under I.R.C. §§ 6700 and 6701, and to injunction under I.R.C. § 7408.

19. Defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 in connection with the promotion, organization, and sale of the trust packages and arrangements described above, and preparation of tax returns relating to those trusts. Unless enjoined by this Court, they are likely to continue to engage in such conduct. Injunctive relief is

therefore appropriate under I.R.C. § 7408.

Count II
Injunction Under I.R.C. § 7407

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

21. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin an income tax return preparer from:

- engaging 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),
- engaging in conduct subject to penalty under I.R.C. § 6695 (which penalizes a return preparer who fails to keep a list of clients or to turn over the list to the IRS upon request),
- misrepresenting his experience or education as an income tax return preparer, or
- engaged 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 a preparer has continually or repeatedly engaged in such conduct and 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 law, the Court may enjoin the person from further acting as a federal income tax return preparer.

22. Ratfield has prepared federal income tax returns for other taxpayers since 1978. From 1978 to 1996, Ratfield operated as a sole proprietor. Since 1997, Ratfield has operated a tax-preparation service from the offices of LWR in Lake Worth, Florida.

23. Ratfield has prepared more than 250 federal income tax returns claiming deductions (on behalf of trusts that he created for customers) for the non-deductible personal expenses of the customers who established the trusts. Also Ratfield has prepared individual income tax returns for customers who purchased these trust packages, on which Ratfield listed only the customers' income as "general manager" of the trusts, in the amount of $12,000 (or other similarly understated amount). In so doing, Ratfield asserted "positions" which he knew or should have known were "unrealistic" within the meaning of I.R.C. § 6694.

24. Ratfield has refused, on several occasions, to comply with the IRS's legitimate requests for lists of customers for whom he has prepared federal income tax returns, as well as other tax returns, in violation of I.R.C. § 6107(b).

25. Ratfield has engaged in other fraudulent and deceptive conduct to substantially interfere with the proper administration of the internal revenue laws. He has attempted to delay or obstruct the IRS investigation into defendants' abusive trust schemes and IRS audits of participants in the scheme by refusing to provide the financial and other records of the taxpayers for whom he prepared tax returns, and by refusing to appear for IRS examinations of tax returns which he prepared. Ratfield has used incorrect EINs in preparing the federal tax returns of at least 29 corporations and "trusts." He has also used an incorrect EIN to identify LWR as the return preparer on federal tax returns that he has prepared for his clients.

26. Ratfield's actions described above fall within I.R.C. §§ 7407(b)(1)(A) and (D), and are thus subject to injunction under § 7407.

27. Ratfield's continual and repeated conduct subject to injunction under I.R.C. § 7407, even after the IRS advised him that his conduct was subject to penalty and injunction and

that his positions were frivolous, combined with his other conduct described in this complaint, requires that he be permanently enjoined from acting as an income-tax-return preparer.

Count III
Injunction Under I.R.C. § 7402

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

29. Defendants, through the conduct described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court, they are likely to continue to engage in such conduct. The conduct of the defendants results in 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 I.R.C. § 7402(a) to prevent such conduct.

Appropriateness of Injunctive Relief

30. Unless enjoined by the Court, defendants are likely to continue to engage in the conduct described in paragraphs 1 through 29, above.

31. Defendants' conduct, as described in paragraphs 1 through 29 above, results in irreparable harm to the United States and the United States has no adequate remedy at law. Specifically, the defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury. Unless the defendants are enjoined the IRS will have to devote substantial time and resources simply to detect future returns with improper deductions and underreported income, and may be unable to detect all of them. The IRS will also have to devote even more resources to then audit the federal tax returns of Ratfield's trust customers. In

light of the large number of Ratfield's clients, and in light of other abusive promotions the IRS must deal with, the IRS may not be able to audit all of the erroneous federal tax returns prepared by Ratfield and all of the returns filed by Ratfield's trust customers.

32. If defendants are not enjoined, they likely will 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, the plaintiff United States prays for the following relief:

A. That the Court find that Louis W. Ratfield and LWR Financial Services Trust engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent Ratfield (and any business through which he operates, including LWR Financial Services Trust) and anyone acting in concert with them from engaging in any further such conduct;

B. That the Court find that the defendants, Louis W. Ratfield and LWR Financial Services Trust, engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent Ratfield (and any business or entity through which he operates, including LWR Financial Services Trust) from acting as an income tax return preparer;

C. That the Court find that Louis W. Ratfield and LWR Financial Services Trust engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against Ratfield and any business through which he operates, including LWR Financial Services Trust, is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting Louis W. Ratfield and LWR Financial Services Trust, or any other business or entity established or controlled by Ratfield, from acting as an income tax return preparer;

E. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Louis W. Ratfield, individually and doing business as or through any other entity, including the defendant, LWR Financial Services Trust, and prohibiting 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:

(1) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(2) Inciting other individuals and entities to understate their federal tax liabilities, avoid the filing of federal tax returns, or avoid paying federal taxes;

(3) 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 the defendants know or have reason to know is false or fraudulent as to any material matter;

(4) Further engaging in any conduct subject to penalty under Section 6701 of the Code, *i.e.,* assisting others in the preparation of any tax forms or other documents to be filed with the IRS that the defendants know, if so filed, will result in the understatement of income tax liability; and

(5) Further engaging in any conduct which interferes with the administration and enforcement of the internal revenue laws; and

F. That this Court, pursuant to I.R.C. §§ 7402, 7407, and 7408, enter an injunction requiring the defendants to contact:

1) all persons for whom the defendants prepared federal income tax returns or any other federal tax forms from January 1, 1997, to the present; and

2) all persons who purchased trust packages from defendants (or agents or designees of the defendants),

and inform those persons of the entry of the Court's findings concerning the falsity of the defendants' 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 which they may owe, and the entry of the permanent injunction against the defendants.

G. That this Court, pursuant to Sections 7402, 7207, and 7408 of the Code, enter an injunction requiring the defendants to turn over to the United States any records in their possession or to which they have access, that identify all taxpayers for whom the defendants have prepared income tax returns since January 1, 1997.

H. For such other and further relief as the Court deems appropriate.

Dated this 6th day of September, 2001.

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