UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOUIS W. RATFIELD and
LWR FINANCIAL SERVICES TRUST,

Defendants.

Case No. 01-8816-CIV-FERGUSON

FILED by ad D.C.
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ORDER GRANTING PRELIMINARY INJUNCTION

THIS CAUSE is before the Court on the United State's Motion for Preliminary Injunction [D.E.11] and the United States' Renewed Motion for Preliminary Injunction [D.E.30]. There has been no written opposition to the motions. The matter came on for hearing before the Court on August 12 and August 13, 2002. Having considered the motions, affidavits, arguments made during the hearing, and pertinent portions of the record, the Court GRANTED the motions [D.E.11 and D.E.30] *ore tenus* at the conclusion of the hearing. The issues having been duly heard and a decision having been duly rendered, the Court hereby supplements its *ore tenus* ruling and states as follows:

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

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promoting and selling "pure" or "common-law" trusts, from acting as federal income tax return preparers, and from engaging in the other conduct in violation of tax laws pending a trial on the merits.

Facts

It is alleged and shown by the evidence that defendants Ratfield and LWR market trust arrangements which involve transferring individual taxpayers' businesses to "pure" or "common law" trusts created by defendants. After the taxpayer's business has been transferred to one of the defendants' trusts, the income and expenses of the taxpayer's business are reported on a Schedule C (Profit or Loss from Business) attached to a U.S. Income Tax Return for Estates and Trusts (Form 1041) prepared by Ratfield as a tax accountant.[1]

The Government further contends that the net profit from the taxpayer's business is reported as the "business income" of the trust, and improperly eliminated by the "Other deductions not subject to the 2% floor" claimed on line 15a of the Form 1041. A statement prepared by Ratfield

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[1] According to IRS Revenue Agent Patricia L. Grimes, Ratfield was employed by the IRS from January 29, 1968 to February 8, 1969 as an economist for the Assistant Commissioner (Planning & Research), Statistics Division, Income, Finance and Wealth Branch. Ratfield was also employed by the IRS from December 8, 1969 to December 14, 1973 as an economist for the Assistant Commissioner (Planning & Research), Statistics Division, Operations Branch, Methods and Procedure Section, and later as a statistician in the same division and branch until December 30, 1977. Ratfield told Revenue Agent Grimes that he has worked in the tax area since January 4, 1978. He operated a sole proprietorship from 1978 to 1996, when he first began to operate as a business trust. Ratfield admitted to Revenue Agent Grimes that he has over a thousand total clients. Those clients, according to Ratfield, reside in seventeen (17) states.

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and attached to the Form 1041 itemizes the allegedly improper deductions claimed on line 15a. Those deductions include, but are not limited to, the "Trust Headquarters" (the individual taxpayer's nondeductible personal living expenses, such as groceries, utility bills and mortgage principal payments); "medical" (the individual taxpayer's nondeductible medical bills); "pension" (the individual taxpayer's contributions to a private pension plan); and "insurance" (the individual taxpayer's disability and life insurance premiums).

Federal income and self-employment tax liabilities of the individual taxpayers who purchase a trust from Ratfield, according to the Government, are artificially reduced by employing the trust purchaser as the "General Manager" of the trust, which pays the individual taxpayer a yearly salary of approximately $12,000 in lieu of the income which he or she previously received from the business. A significant understatement of the individual taxpayers' federal tax liabilities results from the challenged trust arrangement. Ratfield promotes the purported transfer of individual taxpayers' personal and business assets into a series of trusts which he refers to as "pure" trusts, "common-law" trusts, "Constitutional" trusts and/or Massachusetts trusts. Ratfield creates the trusts by securing an Employer Identification Number ("EIN") from the Internal Revenue Service ("IRS") and filling out a standard form called the "Declaration and Contract of Trust".

According to the Government, a "business trust" is then created for the individual taxpayer's principal business activity to operate the business and make a profit. The assets of the business are exchanged for "Certificates of Capital Units" of "indeterminate value." The previous business owner then contracts with the trust he has purchased from Ratfield to be the "General Manager" of the trust

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for approximately $12, 000 per year. The individual taxpayer's relationship (as the "Exchanger") to his or her property does not change before or after the formation of the trust. Although beneficiaries are named (usually children of the "General Manager"), no economic interest in the business or property purportedly transferred to the trust passes to them. If a client of Ratfield does not have any suitable individuals to designate as the "trustee" of his or her trust, Ratfield allegedly provides trustees. The "trustees" furnished by Ratfield - usually Robbie J. Self, Kathleen R. Lewis, Adam Jacobs or Sandra Perry - play no role in the management of the "trusts" created by Ratfield for his customers, according to the Government's filings in this case.

Ratfield's customers use all of the purported trust properties as their own, and have sole signature authority and control over the bank accounts of the trusts. The personal living expenses of the taxpayers who purchase trusts from Ratfield are then deducted by the trusts on line 15a of the U.S. Income Tax Return for Estates and Trusts (Form 1041), along with all of the costs for maintaining the individual taxpayers' personal residences. In some cases, by this manipulation of taxable income the individual taxpayers qualified for Earned Income Tax Credits ("EITC") or a tax refund.

The Government has presented evidence that Ratfield prepared and sold "trusts," virtually identical to his own "LWR Financial Services Trust," to numerous other individuals living in Florida and throughout the United States. Through its affidavits and evidence presented during the hearing, the Government showed that the following individuals had purchased "trusts" from the defendants:

(A) Raphael ("Ray") Levy ("U.S. Benefit Services Trust" and "First R & R Trust");

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(B) Ronalee Levy Orlick ("M&M Associates Irrevocable Trust");

(C) Robert B. Rabeck ("Regency Heritage Trust" and "United Fidelity Trust");

(D) Adam Jacobs and Sandra Perry ("Superior Management Consultants Trust");

(E) Steven J. Oshinsky ("RAM Capital Management Trust"); and

(F) Richard J. Porcelli ("A.J. Madison Investment Group Trust").

The "trusts" described above were similar to the "LWR Financial Services Trust" which Ratfield created for himself. They operated in the same manner. Ratfield has admitted to IRS agents to selling over 100 trust packages. The basic cost of the trust packages, according to Ratfield, was $2,995 in 1997, $3,500 in 1998 and $5,995 in 2000. Additional fees were charged by Ratfield and/or LWR for each holding trust in excess of five, for the use of Ratfield's professional settlor and trustees, and for preparation of federal income tax returns for the trust and the individual taxpayer who purchased the trust.

Injunctive Relief

Pursuant to 26 U.S.C. § 7407, a Court may award injunctive relief prohibiting specific conduct if the Court finds that a tax preparer has:

> (A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,
> (B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax preparer,
> (C) guaranteed the payment of any tax refund or the allowance of any tax credit, or
> (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, and [the Court finds]
> (2) that injunctive relief is appropriate to prevent the recurrence of such conduct.

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§ 7407.

> A willful understatement of tax liability can also include an intentional disregard of rules and regulations. For example, an income tax return preparer who deducts all of a taxpayer's medical expenses, intentionally disregarding the percent of adjusted gross income limitation, may have both intentionally disregarded rules and regulations and willfully understated tax liability.

United States v. Ernst & Whinney, 735 F.2d 1296, 1304 (11th Cir. 1984) (citation omitted).

Section 7407 further provides that "if the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in subparagraphs (A) through (D) of this subsection and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as an income tax return preparer." Id. Section 7407 vests jurisdiction upon this district court "pursuant to the jurisdictional grant contained in § 7402(a) and specifically states that an action under § 7407 is 'separate and apart from' any other action brought by the IRS against the preparer in question." Ernst & Whinney, 735 F.2d at 1302. "It is not necessary for the Court to address directly the common law requisites for injunctive relief since Congress, in legislatively granting injunctive powers, has already taken these requirements into account." U.S. v. Bailey, 789 F. Supp. 788, 812 (N.D. Tex. 1992). Accord U.S. v. Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000). Therefore, it is

ORDERED AND ADJUDGED that the United State's Motion for Preliminary Injunction [D.E.11] and the United States' Renewed Motion for Preliminary Injunction [D.E.30] are **GRANTED**. Accordingly, it is

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ORDERED AND ADJUDGED that a preliminary injunction is hereby issued pursuant to Federal Rule of Civil Procedure 65(a) barring defendants from organizing, promoting and selling "pure" or "common-law" trusts, and from acting as federal income tax return preparers pending a final determination on the merits.

The defendants, Louis W. Ratfield ("Ratfield") and LWR Financial Services Trust ("LWR"), and all those in active concert or participation with them, are hereby prohibited and enjoined from:

(a) further acting as a federal income tax return preparer until there has been complete compliance with statutory disclosure requirements to the satisfaction of the IRS or the Court;

(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;

DONE and ORDERED in Chambers at Fort Lauderdale, Florida, this 29TH day of September, 2002.

WILKIE D. FERGUSON, JR.
UNITED STATES DISTRICT JUDGE

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