

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
EXCEL HOME CARE, INC., and)	
DIANE E. PORTER,)	
)	
Defendants.)	

UNITED STATES' COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION

The plaintiff, the United States of America, by its undersigned counsel, at the request and with the authorization of a delegate of the Secretary of the Treasury and as directed by a delegate of the Attorney General, brings this complaint, pursuant to 26 U.S.C. §§ 7401 and 7402, to (A) seek preliminary and permanent injunctive relief against defendant Excel Home Care, Inc. (the "Taxpayer"), and Diane E. Porter, who is the President, Treasurer, Secretary, and sole Director of the Taxpayer, and (B) collect from the Taxpayer, the outstanding unpaid liability for federal employment and unemployment taxes, plus statutory accruals, and complains and alleges that:

1. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1340 and 1345, as well as 26 U.S.C. § 7402(a).
2. Diane E. Porter is the President, Treasurer, Secretary and sole Director of the Taxpayer, and resides within the jurisdiction of this Court.
3. Taxpayer is a Massachusetts corporation formed on or about May 8, 1997, with its principal office located at 1565 Main Street Building 2, Suite 301, Tewksbury, Massachusetts 01876, within the jurisdiction of this Court.

4. Taxpayer provides in-home health aide services.
5. Taxpayer employs approximately 129 individuals and credits them for withholding federal tax payments but fails to pay over the withheld amounts from its employees' wages to the United States or its agency the Internal Revenue Service ("IRS.")

COUNT I:
CLAIM FOR INJUNCTION

6. Taxpayer has failed to comply with its federal tax obligations by failing to file returns, failing to file returns timely, and failing to pay federal employment and unemployment taxes.
7. Though crediting its employees for withholding federal tax payments, Taxpayer continually fails to pay such credited withholdings to the United States or its agency, the IRS.
8. In addition to failing to pay employees' credited withholdings, Taxpayer continually fails to pay its employer's share of Form 941 employment taxes (FICA) and Form 940 unemployment taxes (FUTA), also due from employers.
9. The IRS has exhausted its administrative remedies and collection methods as follows:
 - a. The IRS has filed Notices of Federal Tax Lien with the Registry of Deeds for Northern Middlesex County, Massachusetts. Taxpayer leases its business space and has no significant assets from which the IRS may attempt to collect the unpaid taxes by levy.

- b. The IRS delivered numerous Notices of Intent to Levy to Taxpayer, and levied upon Taxpayer's bank accounts, insurance providers, and the Commonwealth of Massachusetts to collect the outstanding employment tax liabilities for the tax years 2000 through 2005. Despite, these collection actions, Taxpayer still continues to accrue substantial employment tax liabilities.
 - c. Taxpayer requested a Collection Due Process ("CDP") hearing in response to the issuance of Final Notices of Intent to Levy related to the employment tax liabilities for the four quarters of 2006, the four quarters of 2007 and the first and second quarters of 2008. The IRS issued a Notice of Determination on December 17, 2008, sustaining the proposed levy action. Taxpayer did not petition the United States Tax Court.
10. An injunction by this Court ordering Taxpayer to comply with the government's employment tax requirements is necessary and appropriate for the following reasons:
- a. The IRS has no adequate remedy at law other than an injunction because the above facts show that traditional collection methods have not and will not convince Taxpayer to stop pyramiding tax liabilities.
 - b. If Taxpayer is allowed to continue to ignore its employment tax requirements, Taxpayer will likely continue to accrue the loss of revenue in federal income and FICA taxes in the amount of approximately

\$100,000 per calendar quarter and exceeds \$7,000 in FUTA taxes per annum that the United States will not be able to collect.

- c. If the Court grants an injunction, it will compel Taxpayer to conduct its business like every other tax-paying business in the country. This will not result in an injury to Taxpayer, but instead will compel Taxpayer to comply with tax filings and tax liabilities just as every other business in the country must do.
- d. Taxpayer's failure to pay its employment and unemployment taxes gives it an unfair advantage over competitors and other businesses because Taxpayer effectively obtains the same amount of labor for less total payroll cost. An injunction will protect the public's interest in fair competition by halting Taxpayer's unfair practices and effectively leveling the playing field.

COUNT II:

CLAIM TO REDUCE TAX ASSESSMENTS OF THE CORPORATION TO JUDGMENT

11. A delegate of the Secretary of the Treasury of the United States made assessments against the Taxpayer for its failure to pay federal employment and federal unemployment taxes as follows:

Tax Type	Tax Period	Assessment Date	Unpaid Balance of Assessment	Unpaid Balance as of November 17, 2008
941 FICA	December 31, 2005	May 29, 2006	\$107,995.88	\$149,978.06
941 FICA	March 31, 2006	October 2, 2006	\$108,362.71	\$141,840.87
941 FICA	June 30, 2006	November 6, 2006	\$10,496.38	\$12,130.47
941 FICA	December 31, 2006	April 2, 2007	\$25,470.09	\$31,106.51
941 FICA	March 31, 2007	July 16, 2007	\$165,519.35	\$205,182.95
941 FICA	September 30, 2007	November 27, 2007	\$8,886.13	\$9,439.64
941 FICA	December 31, 2007	March 31, 2008	\$32,730.54	\$35,409.64
941 FICA	March 31, 2008	August 25, 2008	\$87,819.57	\$90,770.67
940 FUTA	December 31, 2003	April 19, 2004	\$27,005.27	\$38,756.66
940 FUTA	December 31, 2005	May 14, 2007	\$7,771.44	\$9,285.36
940 FUTA	December 31, 2006	April 30, 2007	\$256.09	\$277.93
940 FUTA	December 31, 2007	November 17, 2008	\$10,174.17	\$10,174.17
Total				\$913,249.90

12. On, or about, each date of assessment, a delegate of the Secretary of the Treasury of the United States of America gave notice of the assessment to and made a demand for payment of the assessed liability upon Taxpayer.
13. Taxpayer has failed, neglected, or refused to pay the amount of each assessment in full, and, after the application of all abatements, payments and credits, remains indebted to the United States of America for unpaid assessed internal revenue taxes and interest in the amount of \$913,249.90, plus such additional amounts as may have accrued from each date of assessment, or may continue to accrue as provided by law.

WHEREFORE, the United States of America prays for:

A. Judgment against Taxpayer and in favor of the United States of America in the amount of \$913,249.90, plus such additional amounts as may continue to accrue as provided by law;

B. An award to the United States of its costs;

C. Injunctive relief in the form of a Preliminary Injunction and a Permanent Injunction ordering that:

1. Taxpayer and Diane E. Porter deposit withheld FICA and income taxes, as well as the share of FICA taxes for Taxpayer in an appropriate federal depository bank in accordance with federal deposit regulations;
2. Taxpayer and Diane E. Porter deposit FUTA taxes for Taxpayer in a appropriate federal depository bank in accordance with federal deposit regulations;
3. Taxpayer and Diane E. Porter sign and deliver affidavits to a designated revenue officer, or such other location as the IRS may deem appropriate, on the first day of each month, stating that the requisite withheld income, FICA and FUTA tax deposits were timely made;
4. Taxpayer and Diane E. Porter timely file all employment and unemployment tax returns with the IRS;
5. Taxpayer and Diane E. Porter timely pay all required outstanding liabilities due with each tax return at the time it is filed;
6. Taxpayer and Diane E. Porter be prohibited after the date of injunction from making any disbursements or assigning any property from the date of payment of

wages until the amounts which are required to be withheld from the payment of those wages are, in fact, paid to the IRS;

7. Taxpayer and Diane E. Porter notify the revenue officer of any new company or business Diane E. Porter may come to own or manage, in the next five (5) years;
8. Any other action or relief the Court deems just and appropriate.

MICHAEL J. SULLIVAN
United States Attorney

/s/ Lisa L. Bellamy

LISA L. BELLAMY
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044-0055
Tel: (202) 307-6416
Fax: (202) 514-5238
Email: Lisa.L.Bellamy@usdoj.gov