

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:10-cv-0060
)	
SIDNEY DOVE, individually, and)	
d/b/a/ Sid's Tax,)	
)	
Defendant.)	

PRELIMINARY INJUNCTION ORDER

This matter is before the Court on Plaintiff's Motion for a Preliminary Injunction Against Sidney Dove. The Court held an evidentiary hearing on April 13, 2010, at which time it heard testimony from Revenue Agent Kollett Kaehlert, Special Agent Brenda Euell, Revenue Agent Peter Chlimon, and defendant Sidney Dove, and considered various documents admitted as evidence. After due consideration of the record, the government's motion for a preliminary injunction is GRANTED.

I. Preliminary Injunction Under 26 U.S.C. § 7407.

Under 26 U.S.C. §7407, a district court is authorized to enjoin an income tax return preparer from preparing income tax returns for others upon proving: (1) an income tax return preparer has engaged in specified prohibited conduct, and (2) injunctive relief is appropriate to prevent the recurrence of such conduct. 26 U.S.C. § 7407(b)(2). As 26 U.S.C. § 7407 expressly authorizes the issuance of a permanent injunction upon satisfying the criteria above, the United States is not required to meet the equitable factors typically required before the issuance of an injunction. United States v. Reddy, 500 F. Supp. 2d 877, 881 (N.D. Ill. 2007); see also SEC v.

Mgmt. Dynamics, Inc., 515 F.2d 801, 808 (2d Cir. 1975).

Section 6694(a) of the Internal Revenue Code penalizes a return preparer if he understates a customer's tax liability based on a position for which there is no realistic possibility of being sustained on the merits, if the return preparer knew or reasonably should have known of the unrealistic position and the unrealistic position was not disclosed or was frivolous.

Section 6694(b) of the Internal Revenue Code penalizes a return preparer who wilfully attempts to understate a taxpayer's liability or who understates a taxpayer's liability due to reckless or intentional disregard of rules and regulations.

The government has provided substantial and compelling evidence that Sidney Dove engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing tax returns that understated his customers' tax liabilities based on positions for which there was no realistic possibility of being sustained on the merits. Specifically the government has provided strong evidence that Mr. Dove has continually and repeatedly prepared tax returns for others for compensation that contain deductions on Schedules A, C and E to which those customers were not otherwise entitled. Mr. Dove knew or should have known that the information reported on the returns he prepared for customers was unrealistic and without a reasonable basis.

The government has sufficiently established that Mr. Dove violated 26 U.S.C. § 6694 (b) because his understatement of his customer's tax liabilities was willful or due to reckless or intentional disregard of internal revenue rules and regulations.

Mr. Dove's continual, repeated violations of 26 U.S.C. § 6694 and his deceptive conduct fall within the provisions of 26 U.S.C. §7407 (b)(1)(A) and (D), and are subject to injunction under §7407. A narrow injunction prohibiting only specific misconduct would not prevent his

continued interference with the proper administration of the internal revenue laws. An injunction preliminarily barring Mr. Dove from acting as a tax return preparer or providing tax advice to others is warranted.

II. Preliminary Injunction Under 26 U.S.C. § 7408.

Section 7408 of the Internal Revenue Code authorizes a district court to enjoin a person from engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct. “When an injunction is expressly authorized by statute, the standard preliminary injunction test is not applied.” SEC v. Mgmt. Dynamics, Inc., 515 F.2d at 808; see also United States v. Gleason, 432 F.3d 678, 682 (6th Cir 2005); United States v. White, 769 F.2d 511, 515 (8th Cir. 1985); United States v. Buttorff, 761 F.2d 1056, 1059 (5th Cir. 1985).

Section 6701 penalizes any person (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and (3) who knows that such portion (if so used) would result in an understatement of the tax liability of another person.

The government has presented strong evidence that Mr. Dove knowingly inflated and fabricated deductions on his customers’ federal income tax returns. Mr. Dove has engaged in conduct that is subject to penalty under § 6701, and an injunction under 26 U.S.C. § 7408 is appropriate to prevent him from engaging in such conduct in the future.

III. Preliminary Injunction Under 26 U.S.C. § 7402(a).

Federal district courts are granted broad authority to “make and issue in civil actions,

writs and orders of injunction ... and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.” 26 U.S.C. § 7402(a). An injunction under § 7402 can be issued “in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.” Id.

The Court finds that the government has presented strong and compelling evidence that it, the public, and Mr. Dove’s clients will suffer irreparable harm if he is not preliminarily enjoined. The United States has also presented sufficient evidence to convince the Court that the United States has a strong likelihood of success on the merits. Further, the United States has presented evidence that the public interest will be served by granting this preliminary injunction. While Mr. Dove will be denied the right to earn compensation by preparing federal income tax returns, the harm to him is substantially outweighed by the harm to which his clients are subjected by having improper tax returns prepared in their names. The Court therefore finds that a preliminary injunction is also warranted under 26 U.S.C. § 7402.

IV. Conclusion.

The government’s motion for a preliminary injunction (Docket Entry No. 17) is GRANTED. Until further order of this Court, Sidney Dove, individually, and d/b/a Sid’s Tax, is hereby precluded from:

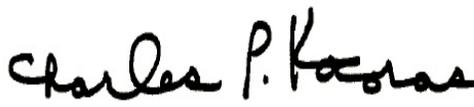
- (1) Preparing federal income tax returns, amended federal income tax returns and other related documents and forms for others;
- (2) Filing federal income tax returns for others;
- (3) Representing customers before the Internal Revenue Service (“IRS”);

- (4) Advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return;
- (5) Engaging in any activity subject to penalty under 26 U.S.C. § 6694, 6695, or 6701;
- (6) Promoting tax-fraud schemes or other plans or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of federal income taxes; or
- (7) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Within fifteen (15) days of the issuance of this order, Mr. Dove will send to counsel for the United States a complete list of anyone for whom he has prepared or assisted in preparing a federal income tax return since January 1, 2006. The list will contain the customers' names, addresses, telephone numbers and social security numbers or tax identification numbers.

In addition, Mr. Dove shall mail a copy of this Preliminary Injunction Order to all persons or entities for whom he has prepared federal tax returns, amended returns, or other federal tax documents or forms since January 1, 2006. Mr. Dove must mail the copies within thirty (30) days of the date of this Order and must file with the Court a sworn certificate stating that he has complied with this requirement. This mailing shall include a cover letter in a form either agreed to by counsel for the government or approved by the Court, and shall not include any other documents or enclosures.

Dated: April 16, 2010



CHARLES P. KOCORAS
U.S. District Court Judge