

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DAVID RAY FRANKLIN, RACHEL WIGGINS,)
WILLIAM BROWN, AND INSTANT REFUND)
TAX SERVICE INC., (d/b/a Instant Tax Service))
)
Defendants.)

Civil No.: 1:12-cv-394-SEB-DKL

**STIPULATED ORDER FOR PERMANENT INJUNCTION AGAINST
DAVID RAY FRANKLIN AND INSTANT REFUND TAX SERVICE, INC.**

Plaintiff, the United States of America, and defendants, David Ray Franklin and Instant Refund Tax Service, Inc (“IRTS”), stipulate and agree as follows:

1. The United States of America filed a Complaint for Permanent Injunction and Other Relief under 26 U.S.C. §§ 7402, 7407 and 7408 of the Internal Revenue Code (“I.R.C.”) against Franklin, IRTS, and others. Subsequently, the United States filed an Amended Complaint for Permanent Injunction and Other Relief under the same statutory provisions.
2. Franklin and IRTS admit that for purposes of this injunction the Court has personal jurisdiction over them pursuant to 28 U.S.C. §§ 1340 and 1345, and subject matter jurisdiction pursuant to 26 U.S.C. §§ 7402(a), 7407(a) and 7408(a).
3. Franklin and IRTS, without admitting any of the allegations in the Complaint or Amended Complaint and without waiving any rights under the Fifth Amendment to the U.S. Constitution, waive the entry of findings of fact and conclusions of law and voluntarily consent

to the entry of this permanent injunction without further notice and agree to be bound by its terms. This permanent injunction shall completely supplant the preliminary injunction entered by this Court on January 27, 2013 (Doc. No. 79).

4. Franklin and IRTS further understand and agree that:

A. The Stipulated Order For Permanent Injunction will be entered under Fed. R. Civ. P. 65 and will result in the entry, without further notice, of a Final Judgment in this matter;

B. Franklin and IRTS waive the right to appeal from any Final Judgment entered pursuant to this Stipulated Order For Permanent Injunction;

C. The Parties will bear their own costs, including any attorneys' fees or other expenses of this litigation;

D. The Court will retain jurisdiction over this matter for the purpose of implementing and enforcing the Stipulated Order For Permanent Injunction;

E. If Franklin or IRTS violate the Injunction, they may be subject to civil and criminal sanctions for contempt of court;

F. The United States may conduct reasonable post-judgment discovery to monitor compliance with the Injunction;

G. Franklin, IRTS, and their undersigned counsel in this action agree, without waiving any of the Defendants' Fifth Amendment rights or objections, that Franklin and IRTS shall maintain all evidentiary hard drives of electronic data from computers used by IRTS that were, with the assistance of a third-party commercial service, captured and preserved in 2012 in response to this litigation. To the extent those evidentiary hard

drives are in the possession, custody, or control of any law firm, lawyer, representative, or agent of Franklin or IRTS, they shall not destroy or alter the evidentiary hard drives. Franklin or IRTS shall provide any law firm, lawyer, representative, or agent who has or takes possession, custody, or control of the evidentiary hard drives with a copy of this order. Any effort by Plaintiff (or its agencies or instrumentalities, including a federal grand jury) to subpoena or summon said evidentiary hard drives shall be directed to Franklin or the person or entity then possessing said evidentiary hard drives, and not to the undersigned counsel; and

H. Entry of this Stipulated Order for Permanent Injunction resolves only this civil injunction action, and neither precludes the government from pursuing any other current or future civil or criminal matters or proceedings, nor precludes Franklin and IRTS from contesting their liability in any matter or proceeding, including by filing forms necessary or appropriate to contest their liability or recover amounts collected from them by the United States as a result of such matter or proceeding.

5. IT IS HEREBY STIPULATED, AGREED, AND ORDERED pursuant to I.R.C. §§ 7402, 7407 and 7408, that defendants Franklin and IRTS, and their representatives, agents, servants, employees, attorneys, and any person or entity acting in active concert or participation with Franklin and IRTS, are PERMANENTLY ENJOINED from directly or indirectly, by use of any means or instrumentalities:

A. Preparing or filing, or assisting in the preparation or filing of any federal tax return, amended return, form, or claim for refund, for any person or entity other than themselves (or Franklin's spouse, if filing a joint return);

- B. Owning, managing, supervising, or working in any tax return preparation business, or training tax preparers in connection with any tax preparation business;
- C. Representing before the Internal Revenue Service any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- D. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position the defendants know will (if so used) result in an understatement of another person's tax liability;
- E. Organizing, promoting, providing, advising or selling business or tax services that they know or have reason to know will promote noncompliance with federal tax laws;
- F. Willfully encouraging others to engage in conduct subject to penalty under any provision of the Internal Revenue Code;
- G. Engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws; and
- H. Misrepresenting any of the terms of this Stipulated Order for Permanent Injunction.

6. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Franklin and IRTS shall maintain all evidentiary hard drives of electronic data from computers used by IRTS that were, with the assistance of a third-party commercial service, captured and preserved in 2012 in response to this litigation. To the extent those evidentiary hard drives are in the possession, custody, or control of any law firm, lawyer, representative, or agent of Franklin or IRTS, they

shall not destroy or alter the evidentiary hard drives. Franklin or IRTS shall provide any law firm, lawyer, representative, or agent who has or takes possession, custody, or control of the evidentiary hard drives with a copy of this order. Any effort by Plaintiff (or its agencies or instrumentalities, including a federal grand jury) to subpoena or summon said evidentiary hard drives shall be directed to Franklin or the person or entity then possessing said evidentiary hard drives, and not to the undersigned counsel;

7. IT IS FURTHER STIPULATED, AGREED AND ORDERED that this Stipulated Order For Permanent Injunction shall not prohibit attorneys or representatives of Franklin or IRTS from providing legal advice respecting the prohibitions set out in this injunction, nor apply to any activities of attorneys or representatives when engaged in representing clients other than Franklin or IRTS, or when otherwise not acting in active concert with Franklin or IRTS.

8. IT IS FURTHER STIPULATED, AGREED AND ORDERED that the United States will be allowed reasonable post-judgment discovery to monitor compliance with the Injunction; and

9. IT IS FURTHER STIPULATED, AGREED, AND ORDERED that the Court will retain jurisdiction over this action for purpose of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest.

Consented to and submitted by,

KATHRYN KENEALLY
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Dated: 8/8/13


COUNSEL FOR PLAINTIFF

IT IS SO ORDERED.


Date: 08/19/2013


DAVID RAY FRANKLIN
DEFENDANT
Dated: 7-30-13


INSTANT REFUND TAX SERVICE, INC.
DEFENDANT
Dated: 7-30-13


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