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TAMPA DIVISION

CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DAVID MARVIN SWANSON,)
 d/b/a DYNAMIC MONETARY STRATEGIES,)
 a purported trust,)
)
 Defendant.)

Civil No. 8:04-CV-339-T-17TCW

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, states as follows for its complaint against defendant David Marvin Swanson, d/b/a Dynamic Monetary Strategies, a purported trust:

Nature of Action

1. The United States of America brings this complaint to enjoin defendant and any other person in active concert or participation with him, from directly or indirectly:
 - a. Engaging in activity subject to penalty under Internal Revenue Code (26 U.S.C.) ("I.R.C.") § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that he knows or has reason to know is false or fraudulent as to any material matter;
 - b. Selling or organizing any type of trust, limited liability company, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the receipt of income;
 - c. Engaging in any other activity subject to penalty under I.R.C. § 6700; and
 - d. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. An injunction is warranted based on defendant's continuing conduct as a promoter of abusive tax plans. Defendant has solicited customers from across the United States for his abusive tax plans, promising—in exchange for thousands of dollars in fees—elimination or reduction of tax liability. If defendant is not enjoined, his continuing actions will result in his customers incurring frivolous return penalties and other possible civil and criminal sanctions and cause further revenue loss to the United States.

Jurisdiction and Venue

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a) and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

Authorization

5. This action has been requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. §§ 7402 and 7408.

Defendant

6. Defendant David Marvin Swanson resides at 1731 Mellon Way, Sarasota, Florida 34232, and does business at that location individually and as Dynamic Monetary Strategies.

7. Dynamic Monetary Strategies is a purported trust belonging to David Marvin Swanson and doing business at 1731 Mellon Way, Sarasota, Florida 34232.

Defendant's Activities

8. Defendant markets various “asset protection” programs, through which his customers place their assets into a series of “unincorporated business trust organizations” (“UBTOs”) and/or limited liability companies (“LLCs”). Though his programs are ostensibly designed for asset protection, defendant falsely promises that this system will result in elimination or reduction of tax liability.

9. Defendant was an associate of Carel A. “Chad” Prater, against whom an injunction suit is currently pending in this district (United States of America v. Carel Prater, et al., Case No. 8:02-CV-2052-T-23), from approximately March 2001 to August 2001. Prater was preliminarily enjoined from operating his tax scams on December 19, 2002.

10. During this time, Prater and Swanson worked together closely, referring customers to each other, sharing other customers, and jointly managing their customers’ affairs.

11. As part of their association, Swanson routinely formed UBTOs and LLCs for customers he shared with Prater.

12. Since approximately August 2001, defendant has conducted his abusive activities independently of Prater.

13. Defendant advises customers to hide their income and assets from the IRS in UBTOs, also referred to by Swanson as “pure trusts,” “blind trusts,” “Massachusetts trusts,” “Massachusetts business trusts,” “business trusts,” and/or “common law trust organizations.”

14. Defendant creates these UBTOs for his customers, often structuring multiple layers of trusts for customers to obscure the ownership of their assets and to create an appearance that customers receive no income.

15. Defendant then helps his customers to transfer their assets into the trusts he has established for them.

16. Defendant also advises customers to hide their income and assets from the IRS in LLCs.

17. Defendant creates LLCs, registered in Nevada, for customers and obtains from the IRS Employer Identification Numbers (EINs) for the LLCs. Defendant suggests using UBTOs or other business entities as the LLCs' "managers" or "members," which is permissible under Nevada law, thereby concealing the ownership of the assets and income. Because neither the instruments creating the LLCs nor the applications for EINs contain the customers' names, the true ownership of the LLCs' assets and income is concealed.

18. Defendant instructs customers to transfer their assets and income to these "anonymous" LLCs. He also instructs customers to use their LLCs to manage income, because LLCs can obtain bank accounts more easily than can a UBTO.

19. Defendant instructs his customers that they need not file income tax returns for, nor pay any taxes on, income or assets they have placed into UBTOs or LLCs.

20. The IRS has determined that a significant percentage of defendant's customers are not regularly filing proper federal income tax returns. Of 36 customers it has fully identified and linked with a social security number—a small percentage of the total number of customers—28 have not filed all returns required over the last five years, and nine have not filed any returns.

21. A significant percentage of Swanson-formed LLCs are not regularly filing proper federal income tax returns—of 58 identified LLCs, 42 have never filed returns which were due; 12 have filed at least one return, but ten of those have not filed all required returns; and three have not had a return due since they have been identified.

22. In at least one instance, Swanson has helped a customer to complete and file a frivolous “not liable” income tax return, in which the lines of the return are left blank and the words “not liable” are written across the face of the return.

Defendant’s False Statements

23. Defendant promotes these programs through a manual entitled *A\$\$et Protection Strategies for the Next Millennium*, and a website, www.dynamicmonetarystrategies.com.

24. Defendant sells his self-published manual, *A\$\$et Protection Strategies for the Next Millennium*, for \$50. This manual, which is several hundred pages long, explains defendant’s scheme and contains numerous false and misleading statements about the tax consequences of his scheme.

25. The crux of defendant’s tax scam, as explained in his manual and the attendant trust documents, is that UBTOs will reduce customers’ taxes because they are not “taxable entities.” This is a false statement. Business trusts such as those defendant creates are generally *disregarded* as independent entities for tax purposes. This does not mean the income and assets in the trusts are exempt from taxation; rather, it means that the information must either be reported on the return of, and the resulting taxes paid by, the individual customer, or that a business trust must file a return as the recognized taxable entity, such as a corporation, to which

it is most similar. Defendant's claims that the trusts' assets and/or income are entirely exempt from taxation is therefore false.

26. Defendant is or should be aware of the falsity of his claims that the trusts are tax exempt. In support of his theory, his manual and trust documents quote part of Treas. Reg. § 301.7701-4(b), which concerns the tax status of trusts. He quotes the first portion of this regulation, which provides:

There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, *but which are not classified as trusts for purposes of the Internal Revenue Code* because they are not simply arrangements to protect or conserve the property for the beneficiaries. [Emphasis supplied by defendant]

He omits, however, the balance of the paragraph, which provides:

These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business which normally would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code. However, the fact that the corpus of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association or partnership. *The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701-2.* [Emphasis supplied]

Thus, defendant intentionally and falsely mischaracterizes the law in an effort to convince his customers that his trusts are something other than a simple tax scam.

27. Defendant's manual and trust documents contain numerous other false, misleading, and incomplete statements concerning the tax benefits of his system, including the following:

- "Income . . . that would normally be regarded as subject to individual taxation would not be subject to income tax or capital gains taxes if owned by entities outside the taxing jurisdiction of the Internal Revenue Service."

- “One can use the Business Trust to control, reduce or eliminate one’s federal income, capital gains, and state income tax liabilities.”
- “The Business Trust has no periodic reports or accounting to make to the federal government, any state government, or any federal or state government agency (including the IRS).”
- “The Business Trust itself is not a taxable entity. The income the Business Trust earns is not taxable to the trust. The Business Trust has no reporting requirements to any state or government, including the IRS. However, when money is distributed, income reporting may fall on the recipient. (But what recipient of such a trust would not already have had a trust created for himself, thus perpetuating the tax immunity of the assets?)”
- “Throughout history, the Business Trust has proved to be the best defense against the tax collector.”
- “The Pure, Private, Common law, Non-associated, Unincorporated Business Trust Organization (UBTO) May Receive Income from its Trustees’ or Agents’ Contracted Work without Taxable Consequences to the Worker under Contract.”
- “Congress never gave the IRS any authority to COMPEL citizens to submit tax returns, produce records, or pay federal income taxes.”
- “To those who still wish to cling to the mistaken notion that individuals have no choice but to file [tax returns], with the income contractually pledged to the UBTO (which has no filing status or requirement), the individual is left with no personal income. And even the IRS would have to admit that an individual with no personal income has no requirement to file individual tax returns.”

28. Defendant’s manual also includes an entire chapter consisting of a “Paper Trail and Letters from the IRS proving the NON-FILING, NON-TAXABLE STATUS, of the Pure, Private, Irrevocable, Non-Associated Limited Liability Common Law, Unincorporated Business Trust Organization.” This misleading “paper trail” consists of letters by which defendant falsely claims he “convinced” the IRS that his position that his trusts are tax exempt was accurate. These letters in fact prove no such thing. Nevertheless, defendant’s trust packages contain form letters, modeled on those in the manual, for customers’ use when dealing with the IRS.

29. Defendant employs these and other false and fraudulent statements in advising customers to:

- cease filing federal income tax returns (IRS Forms 1040) and paying federal income tax;
- hide assets and income in UBTOs; and
- hide assets and income in LLCs.

30. Defendant's website, www.dynamicmonetarystrategies.com, provides an overview of defendant's abusive tax schemes similar to that contained in *A\$\$et Protection Strategies for the Next Millennium* and encourages potential customers to contact defendant for more information.

31. Defendant conducts the activities described in paragraphs 8 through 30 both personally and through the business name Dynamic Monetary Strategies.

Count I:

Injunction under I.R.C. § 7408 for Violation of I.R.C. § 6700

32. The United States incorporates by reference the allegations in paragraphs 1 to 31.

33. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under I.R.C. § 6700 if the court finds that injunctive relief is appropriate to prevent the recurrence of that conduct.

34. I.R.C. § 6700 penalizes any person who organizes or sells a plan or arrangement and makes, in connection with organizing or selling the plan or arrangement, a statement regarding the excludibility of income that the person knows or has reason to know is false or fraudulent as to any material matter.

35. Defendant organizes and sells abusive tax schemes. In organizing and selling his abusive tax schemes, defendant makes false or fraudulent statements regarding the excludibility

of income. Defendant knows or has reason to know that these statements are false or fraudulent within the meaning of I.R.C. § 6700.

36. If he is not enjoined, defendant is likely to continue to organize and sell his abusive tax schemes and to prepare returns understating his customers' tax liability.

Count II:

**Injunction under I.R.C. § 7402 for Unlawful Interference
with Enforcement of the Internal Revenue Laws**

37. The United States incorporates by reference the allegations in paragraphs 1 to 31.

38. I.R.C. § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

39. Defendant, through the actions described above, has engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

40. Defendant's conduct results in irreparable harm to the United States. Defendant's conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

41. Unless defendant is enjoined, the IRS will have to devote substantial time and resources auditing each of their customers individually. The burden of pursuing individual customers may be an insurmountable obstacle given the IRS's limited resources.

WHEREFORE, plaintiff, the United States of America, respectfully prays for the following:

A. That the Court find that defendant has engaged in conduct subject to penalty under I.R.C. § 6700, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

B. That the Court find that defendant has engaged in conduct interfering with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

C. That this Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting defendant, individually and doing business as Dynamic Monetary Strategies, or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly, by means of false, deceptive, or misleading commercial speech:

- a. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that he knows or has reason to know is false or fraudulent as to any material matter;
- b. Selling any type of trust, limited liability company, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the receipt of income;
- c. Engaging in any other activity subject to penalty under I.R.C. § 6700; and
- d. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

D. That this Court, pursuant to I.R.C. §§ 7402 and 7408, enter an injunction requiring defendant to contact by mail all individuals who have purchased his abusive tax shelters, plans, arrangements, or programs, including the UBTOs and/or LLCs, the self-published manual *A\$\$et*

Protection Strategies for the Next Millennium, or any other shelter, plan, or program in which defendant has been involved either individually or through their related entities, and inform those individuals of the Court's findings concerning the falsity of defendant's prior representations and attach a copy of the injunction against defendant;

E. That this Court, pursuant to I.R.C. §§ 7402 and 7408, enter an injunction requiring defendant to produce to the United States any records in his possession or to which he has access, identifying the persons who have purchased his abusive tax shelters, plans, arrangements, or programs, including the UBTOs and/or LLCs, the manual *A\$\$et Protection Strategies for the Next Millennium*, or any other shelter, plan, or program in which defendant has been involved either individually or through his related entities;

F. That this Court, pursuant to I.R.C. §§ 7402 and 7408, enter an injunction requiring defendant and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, to remove from his website all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including tax laws), to display prominently on the first page of that website a complete copy of the Court's permanent injunction, and to maintain his website for one year with a complete copy of the Court's permanent injunction so displayed throughout that time; and

G. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

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