

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:18-cv-00515-CRE
)	
BAILEY FAMILY CHIROPRACTIC and DAVID)	
BAILEY,)	
)	
Defendants.)	

JUDGMENT AND ORDER OF PERMANENT INJUNCTION

Having considered the United States’ motion for a default judgment, any opposition thereto, and the entire record of this proceeding and for good cause shown, the Court makes the following findings of fact and conclusions of law and enters this permanent injunction, pursuant to Federal Rules of Civil Procedure 52 and 65, and 26 U.S.C. § 7402(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter of this action and each defendant pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345.
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).
3. Defendants Bailey Family Chiropractic, P.C. a/k/a Bailey Chiropractic, Inc. (hereinafter “Bailey Chiropractic”) and its owner-operator, David Bailey have failed to answer or otherwise defend against this action. The Clerk of Court properly entered the default of both defendants on August 1, 2018.
4. Under 26 U.S.C. § 7402(a), this Court may issue any injunction necessary or appropriate for enforcement of the internal revenue laws. *See United States v. Ernst & Whinney*, 735 F.2d 1296, 1200-01 (11th Cir. 1984), *cert. denied*, 470 U.S. 1050 (1985).

5. Bailey Chiropractic, as an employer, is required to withhold federal income and Federal Insurance Contributions Act (FICA) taxes from its employee's wages, and to pay over those withholdings, along with the employer's share of its FICA and Federal Unemployment Tax Act (FUTA) taxes, to the Internal Revenue Service. 26 U.S.C. §§ 3102, 3111, 3301, and 3402.

6. Bailey Chiropractic, as an employer, is also required to timely file Employer's Quarterly Federal Tax Returns (IRS Forms 941) within thirty days of the end of each taxable quarter, and to file Employer's Annual Federal Unemployment (FUTA) Tax Returns (IRS Forms 940), with the Internal Revenue Service before January 31st following the end of each taxable year. 26 U.S.C. § 6011; Treas. Reg. § 31.6701(a)-1.

7. A permanent injunction against Bailey Chiropractic is necessary and appropriate for the enforcement of the internal revenue laws because Bailey Chiropractic and David Bailey is substantially interfering with the administration of the internal revenue laws in the following ways:

- a. Failing to fully pay its federal employment tax liabilities or make federal tax deposits to the IRS for all taxable quarters between 2008 and 2017;
- b. Failing to fully pay its federal unemployment tax liabilities over to the IRS that accrued for every year between 2009 and 2016;
- c. Failing to timely file its federal employment tax returns for every taxable quarter between 2008 through 2011 and since the second quarter of 2017; and
- d. Failing to file a federal unemployment tax return for the 2017 tax year.

8. The IRS has expended significant resources attempting to bring Bailey Chiropractic and David Bailey into compliance with the internal revenue laws including making assessments for the unpaid federal employment and unemployment taxes, filing lien notices with respect to those tax assessments against Bailey Chiropractic, sending notices of the taxes of the defendants, and informing them that the government could bring this action for an injunction.

9. Absent an injunction, Bailey Chiropractic and David Bailey is likely to continue its pattern of interference with the internal revenue laws that has already led to the nonpayment of \$325,107.44 (as of August 10, 2018) in outstanding tax liabilities. Bailey Chiropractic has failed to meet its filing obligations since the second quarter of 2017, and is currently not complying with its duty to properly withhold, account for, and pay over its employment tax liabilities. An injunction compelling compliance with federal tax withholding laws is necessary in this case.

10. Bailey Chiropractic, under the direction of David Bailey, has violated and continues to violate the affirmative obligation imposed by the internal revenue laws to timely withhold, collect, and makes deposits of the federal employment and unemployment taxes owed by Bailey Chiropractic. Moreover, Bailey Chiropractic also continues to violate its obligation to timely file its federal employment and unemployment tax returns. A permanent injunction is necessary to prevent future violations of the law, as the Internal Revenue Service's attempts to bring Bailey Chiropractic into compliance have been unsuccessful.

11. Although it is not necessary to satisfy the traditional equitable standard for an injunction pursuant to IRC § 7402(a), *see United States v. ITS Fin., LLC*, No. 3:12-CV-95, 2013 WL 5947222, at *104 (S.D. Ohio Nov. 6, 2013), enjoining the conduct of the defendants is nevertheless appropriate under section 7402(a) when the traditional equitable factors are considered because :

- A. The United States will likely succeed on the merits because defendants have continually and repeatedly failed to file its employment and unemployment tax returns and pay its employment and unemployment tax liabilities over to the Service.

- B. In the absence of an injunction, the United States will continue to suffer irreparable injury because Bailey Chiropractic and David Bailey will continue disregarding their obligations to pay the IRS the lawful tax revenues due to the government.
- C. The balance of hardships that would result from the issuance of an injunction weigh heavily in favor of the United States. If Bailey Chiropractic is not compelled to obey the federal tax laws, the government will experience irreparable harm in the form of permanent loss of tax revenue and the expenditure of already scarce government resources. On the other hand, Bailey Chiropractic and Mr. Bailey will not be harmed by the issuance of an injunction because they will merely be required to obey the same laws as every similarly situated employer.
- D. Finally, the public interest is served by enjoining the defendants from further draining the federal coffers and interfering with the enforcement of the internal revenue laws. In addition to compelling defendants to comply with the law, Bailey Chiropractic's failure to collect and remit its federal employment and unemployment taxes, including the income, social security, and Medicare taxes withheld from the wages of its employees, undermines the federal system of taxation by reducing federal tax revenues, and provides Bailey Chiropractic an unfair economic advantage over its competitors.

IT IS ORDERED that a permanent injunction is hereby issued against Defendants Bailey Family Chiropractic, P.C. a/k/a Bailey Chiropractic, Inc. and David Bailey pursuant to 26 U.S.C. § 7402(a) and Federal Rules of Civil Procedure 55(b)(2) and 65, and in favor of the United States of America, to prevent the defendant Bailey Family Chiropractic, P.C. a/k/a Bailey Chiropractic, Inc. from accruing, or “pyramiding,” unpaid employment and unemployment tax liabilities.

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Bailey Family Chiropractic, P.C. a/k/a Bailey Chiropractic, Inc., under the direction of David Bailey, has engaged, and is engaging in conduct that interferes with the enforcement of the internal revenue laws and injunctive relief under 26 U.S.C. § 7402(a) is appropriate to stop this conduct;
2. A permanent injunction is hereby entered prohibiting Bailey Chiropractic and David Bailey, and their agents, representatives, employees, accountants, attorneys, successors in interest and assigns, and all other people in active concert or participation with them, from failing to withhold and pay over to the Internal Revenue Service all employment and unemployment taxes as required by law;
3. Bailey Chiropractic and David Bailey are commanded to segregate, and hold separate and apart from all other funds, all monies withheld from employees or collected from others for taxes under any internal revenue laws of the United States, and to deposit the monies so withheld and collected, as well as the employer’s share of employment taxes, in an appropriate federal depository bank in accordance with federal deposit regulations;


4. Bailey Chiropractic and David Bailey are further commanded to segregate, and hold separate and apart from all other funds, all unemployment tax monies for deposit in an appropriate federal depository bank every two weeks in accordance with the federal deposit regulations;
5. Bailey Chiropractic shall, for a period of five years from the entry of this Order and Permanent Injunction, provide an affidavit signed by David Bailey to the Internal Revenue Service (Attn: Revenue Officer Laura J. Schmid, Internal Revenue Service, 10 Office Building, 4314 Old William Penn Highway, Monroeville, PA 15146-1455 – or to a different person or location that the Service designates), stating that the required withheld employment and unemployment tax deposits were made, no later than the twentieth day of each month that all required federal tax deposits have been made;
6. Bailey Chiropractic is further commanded to timely file with the Internal Revenue Service, in care of Revenue Officer Laura J. Schmid, or her designee, or to any other such person or location as the IRS directs, all required future employment and unemployment tax returns, including but not limited to IRS Forms 940 and 941, and pay any balance due on those returns upon filing;
7. Bailey Chiropractic and David Bailey are further commanded to file any unfiled and past-due federal employment and unemployment tax returns with the Internal Revenue Service, in care of Revenue Officer Laura J. Schmid, or her designee, or to any other such person or location as the IRS directs, within 60 days of the entry of this order of permanent injunction;
8. Bailey Chiropractic and David Bailey, and their representatives, agents, employees, accountants, attorneys, and anyone in active concert or participation with them, for a

period of five years, shall notify Internal Revenue Service Revenue Officer Laura J.

Schmid, or her designee, or any other such person as the IRS directs, within 10 business days upon beginning, operating, owning, managing, or working for any new business enterprise;

9. Bailey Chiropractic and its representatives, agents, servants, employees, accountants, attorneys, successors in interest and assigns, and anyone in active concert or participation with them, shall be enjoined from assigning or transferring any property, or rights to property, or making any disbursements after the date of entry of the injunction unless all federal employment and unemployment taxes due for every pay period after entry of injunction have been paid in full;
10. The United States may obtain post-judgment discovery from Bailey Chiropractic and David Bailey to monitor and ensure their compliance with the permanent injunction;
11. This Court retains jurisdiction over this case to ensure compliance with the injunction, installment payment order, and any other action necessary to effect the collection of any final judgment; and
12. The United States may give notice of the entry of the foregoing permanent injunction against Bailey Chiropractic and David Bailey by mailing a true and correct copy thereof by certified or registered mail, return receipt requested, to each of the defendants

Signed this 21st day of August, 201


UNITED STATES DISTRICT JUDGE