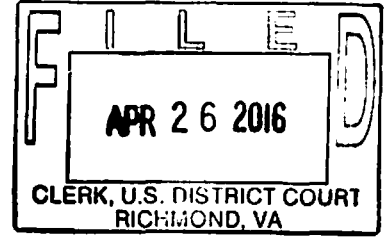


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION



UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 EDWARD G. HOLSINGER, )  
 )  
 Defendant. )  
 )

Case No. 3:15-cv-00412

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION**

The plaintiff, the United States of America, commenced this civil action on July 10, 2015, pursuant to 26 U.S.C. § 7402(a), to collect the federal employment and unemployment taxes, penalties and statutory interest assessed against the defendant taxpayer, Edward G. Holsinger, for the taxable periods between 2002 and 2011, and to permanently enjoin the defendant from violating and interfering with the administration of the internal revenue laws, including compelling the defendant to: (1) timely file the employment and unemployment tax returns for his sole proprietorship; (2) timely collect and pay over to the Internal Revenue Service his accruing federal employment and unemployment taxes; and (3) file his delinquent employment, unemployment, and income tax returns. (Doc. #1). The defendant, Edward G. Holsinger, failed to file an answer or otherwise defend in this action, and the Clerk entered the default of the defendant on November 6, 2015. (Doc. #6).

The United States has now moved for the entry of a default judgment against the defendant for the total amount of the federal employment and unemployment taxes, penalties and interest owed by him as of March 22, 2016, in the amount of \$298,715.04, along with a permanent injunction and other equitable relief.

The Court, having considered the United States' motion for a default judgment with respect to the defendant's unpaid federal tax liabilities, and for the entry of a permanent injunction under 26 U.S.C. § 7402 requiring him to comply with the internal revenue laws by timely report, deposit, and pay over his federal employment and unemployment taxes, the Declarations of Revenue Officer Deborah K. Gary and Lynn Brown, and the entire record in this matter, hereby **GRANTS** the United States' motion, and **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. This is an action by the United States instituted under section 7402(a) of the Internal Revenue Code (26 U.S.C.). The complaint seeks both legal and equitable relief in connection with the alleged failure of the defendant, Edward G. Holsinger, to collect and pay over to the United States the federal income and Federal Insurance Contributions Act (FICA) taxes that the defendant was required to withhold from the wages paid to the employees of his sole proprietorship, and to deposit those funds, along with the employer's share of FICA taxes and Federal Unemployment Tax Act (FUTA) taxes, in an appropriate federal depository institution.

2. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the defendant, Edward G. Holsinger, pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345.

3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

4. The defendant, Edward G. Holsinger, has been properly served with the summons and complaint in this action, as required by Fed. R. Civ. P. 4.

5. The defendant, Edward G. Holsinger, has failed to answer or otherwise defend in this action. The Clerk of the Court properly entered the default of the defendant on November 6, 2015.

6. Because of the defendant's default, the allegations in the complaint filed in this action are taken as true.

7. As alleged in count I of the complaint, a delegate of the Secretary of the Treasury properly and timely made assessments against the defendant, Edward G. Holsinger, for unpaid federal employment (Form 941) and unemployment (Form 940) taxes and statutory additions to tax for various taxable periods that ended between March 31, 2002 and March 31, 2011.

8. Despite notice and demand for payment by the Internal Revenue Service of the foregoing federal tax liabilities, Edward G. Holsinger failed to pay the federal employment and unemployment taxes assessed against him. As a result, the Court has determined that as of March 22, 2016, the defendant, Edward G. Holsinger, is indebted to the United States for unpaid federal employment and unemployment taxes in the total amount of \$298,715.04 for the tax periods and in the amounts indicated below:

<b>Tax Type</b>	<b>Tax Period</b>	<b>Amount Due as of March 22, 2016</b>
WT-FICA (Form 941)	3/31/2002	\$2,828.68
WT-FICA (Form 941)	12/31/2002	\$9,410.55
WT-FICA (Form 941)	3/31/2003	\$11,970.42
WT-FICA (Form 941)	6/30/2003	\$10,511.65
WT-FICA (Form 941)	9/30/2003	\$11,910.36
WT-FICA (Form 941)	12/31/2003	\$10,346.60
WT-FICA (Form 941)	3/31/2004	\$11,958.98
WT-FICA (Form 941)	6/30/2004	\$10,147.05
WT-FICA (Form 941)	9/30/2004	\$11,728.76

<b>Tax Type</b>	<b>Tax Period</b>	<b>Amount Due as of March 22, 2016</b>
WT-FICA (Form 941)	12/31/2004	\$11,604.54
WT-FICA (Form 941)	3/31/2005	\$9,832.11
WT-FICA (Form 941)	6/30/2005	\$9,694.27
WT-FICA (Form 941)	9/30/2005	\$10,826.97
WT-FICA (Form 941)	12/31/2005	\$9,847.47
WT-FICA (Form 941)	3/31/2007	\$26,845.74
WT-FICA (Form 941)	6/30/2007	\$11,035.15
WT-FICA (Form 941)	9/30/2007	\$9,308.73
WT-FICA (Form 941)	12/31/2007	\$10,451.21
WT-FICA (Form 941)	3/31/2008	\$9,055.89
WT-FICA (Form 941)	6/30/2008	\$10,459.45
WT-FICA (Form 941)	9/30/2008	\$8,959.04
WT-FICA (Form 941)	12/31/2008	\$9,969.51
WT-FICA (Form 941)	3/31/2009	\$8,182.30
WT-FICA (Form 941)	6/30/2009	\$8,751.72
WT-FICA (Form 941)	9/30/2009	\$5,986.64
WT-FICA (Form 941)	12/31/2009	\$6,926.98
WT-FICA (Form 941)	3/31/2010	\$5,374.38
WT-FICA (Form 941)	6/30/2010	\$6,443.64
WT-FICA (Form 941)	9/30/2010	\$4,847.50
WT-FICA (Form 941)	3/31/2011	\$3,924.46
FUTA (Form 940)	12/31/2000	\$3,928.15
FUTA (Form 940)	12/31/2001	\$3,595.87
FUTA (Form 940)	12/31/2002	\$386.60
FUTA (Form 940)	12/31/2005	\$332.19
FUTA (Form 940)	12/31/2007	\$417.02
FUTA (Form 940)	12/31/2008	\$412.13
FUTA (Form 940)	12/31/2009	\$299.33
FUTA (Form 940)	12/31/2010	\$203.00
	<b>TOTAL:</b>	<b>\$298,715.04</b>

Declaration of Revenue Officer Deborah K. Gary. ¶ 6.

9. **IT IS FURTHER ORDERED** that a default judgment shall be entered against the defendant, Edward G. Holsinger, by separate document for the unpaid federal employment and unemployment taxes and statutory additions to tax in the amount of \$298,715.04 as of March 22, 2016, plus statutory interest according to law after that date until paid.

10. Under 26 U.S.C. § 7402(a), the district courts are authorized to issue injunctions as may be necessary and appropriate for enforcement of the internal revenue laws. See United States v. Ernst & Whinney, 735 F.2d 1296, 1300-01 (11<sup>th</sup> Cir. 1984), cert. denied, 470 U.S. 1050 (1985); United States v. Hart, 701 F.2d 749, 750 (8<sup>th</sup> Cir. 1983); United States v. Ekblad, 732 F.2d 562, 563 (7<sup>th</sup> Cir. 1984).

11. Sections 3102, 3111, 3301 and 3402 of the Internal Revenue Code (26 U.S.C.) require employers such as Edward G. Holsinger to withhold federal income and Federal Insurance Contributions Act (FICA) taxes from their employees' wages, and to pay over those withholdings, along with the employer's own FICA and Federal Unemployment Tax Act (FUTA) taxes, to the Internal Revenue Service.

12. Section 6011 of the Internal Revenue Code and Treas. Reg. § 31.6701(a)-1 require employers to file Employer's Quarterly Federal Tax Returns (IRS Forms 941) on at least a quarterly basis, and to file Employer's Annual Federal Unemployment (FUTA) Tax Returns (IRS Forms 940), with the Internal Revenue Service on an annual basis.

13. The defendant, Edward G. Holsinger, has interfered with the proper administration of the internal revenue laws by:

- (a) Filing his federal unemployment tax returns (Forms 940) for 2000 and 2002 late without making sufficient tax deposits as required by law;

- (b) Failing to make sufficient federal tax deposits of federal employment and unemployment taxes between 2002 and 2011, which resulted in substantial losses of tax revenue to the United States as evidenced by the entry of a judgment against the defendant for the unpaid federal employment and unemployment taxes in the amount of \$298,715.04 as of March 22, 2016;
- (c) Failing to file his federal employment tax (Form 941) returns on a timely basis in 2007, and failing to make any federal tax deposits between 2007 and 2011, when he ceased filing federal employment and unemployment tax returns altogether;
- (d) Requiring the Internal Revenue Service to expend considerable resources to induce the defendant, Edward G. Holsinger, to comply with the federal tax laws by filing notices of federal tax liens with respect to the federal taxes that the defendant failed to deposit, as well as the efforts undertaken by the IRS to administratively collect the unpaid federal tax liabilities from the defendant via levy.

14. Code section 7402(a) affords the district courts broad discretion in procedural matters relating to the enforcement of the tax laws. United States v. Asay, 614 F.2d 655, 661-62 (9<sup>th</sup> Cir. 1980). See United States v. Thompson, 395 F. Supp.2d 941, 945-46 (E.D. Cal. 2005) (finding that an injunction is appropriate for the enforcement of the internal revenue laws, when ordering an injunction under section 7402(a));

15. The Fourth Circuit has not determined whether the equitable factors must be weighed in cases brought under 26 U.S.C. § 7402(a). In United States v. Renfrow, 612

F. Supp.2d 677 (E.D.N.C. 2009), the court held that the traditional equitable factors need not be applied in cases brought under section 7402(a). Contra United States v. Clarkson, 2007 WL 1988257 (D. S.C. July 3, 2007) at \*3; United States v. Cohen 222 F.R.D. 652, 654 (W.D. Wash. 2004) (requiring a showing of the traditional equity factors before ordering an injunction under section 7402(a)). Section 7402(a) provides that : “The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, *writs and orders of injunction*, . . . as may be necessary *or appropriate for the enforcement of the internal revenue laws*. The remedies hereby provided are *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.” 26 U.S.C. § 7402(a) (emphasis added). By its terms, the statute requires only that an injunction be “appropriate for the enforcement of the internal revenue laws,” and that such a remedy is “in addition to and not exclusive of any . . . other remed[y].” *See, e.g., United States v. Cappetto*, 502 F.2d 1351, 1358-59 (7<sup>th</sup> Cir. 1974) (“It was plainly the intention of Congress. . . to provide for injunctive relief . . . without any requirement of a showing of irreparable injury other than that injury to the public which Congress found to be inherent in the conduct made unlawful . . . . It is also obvious that Congress did not intend to require a showing of inadequacy of the remedy at law. If, as defendants contend, the existence of the criminal remedy . . . would defeat an action in equity . . . the latter section [providing for injunctive relief] would be a nullity.”).

If principles of equity apply with respect to the granting of a permanent injunction under Section 7402(a) of the Internal Revenue Code (26 U.S.C.), the Court finds: (1) that the United States has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the United States and the defendant, a remedy in equity is warranted; and (4)

that the public interest would not be disserved by a permanent injunction. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (citing *Weinberger v. Romero—Barcelo*, 456 U.S. 305, 311–313 (1982) and *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987)).

16. In this case, a permanent injunction is necessary and appropriate under section 7402(a) because Holsinger has violated, and continues to violate the tax laws by refusing to withhold and deposit the taxes and comply with the filing requirements that apply to employers. An injunction is appropriate to prevent future violations of the law, as the Internal Revenue Service's attempts to bring Holsinger into compliance have been unsuccessful.

17. The United States lacks an adequate remedy at law to coerce the defendant's compliance with the internal revenue laws, as evidenced by the defendant's continual failure to withhold, account for, and pay over the federal employment taxes, along with the defendant employer's share of FICA and FUTA taxes, notwithstanding the efforts of the Internal Revenue Service to enforce compliance.

18. The United States would suffer irreparable injury in the absence of an injunction in this case if the defendant were allowed to continue to refuse to file returns or pay over to the IRS the lawful tax revenues due the government. "[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need." *Bull v. United States*, 295 U.S. 247, 259 (1935). When statutory interest and penalties are taken into consideration, the defendant has deprived the United States of more than \$298,000. The defendant should not be allowed to continue on his present path of converting the government's tax monies to his own use.

19. Additionally, the United States is being harmed because it is being required to devote considerable IRS resources to the tasks of persuading the defendant to comply with the tax laws, and attempting to collect the federal taxes that should have been deposited by him.



20. The balance of harms tips sharply in favor of the issuance of an injunction. If the defendant is not restrained from continuing to violate the federal tax laws, the government will experience irreparable harm in the form of the permanent loss of its tax revenue. Conversely, if an injunction issues, the defendant, Edward G. Holsinger, will not be harmed because he will merely be required to obey the same laws as other employers.

21. An injunction would serve the public interest. The tax system relies on employers to collect employment and unemployment taxes and to pay those taxes over to the United States. Holsinger undermines this system by continuing to accrue or “pyramid” his tax liabilities. Enjoining Holsinger will protect the public’s interest in the fair administration of the internal revenue laws and in fair competition by halting his wrongful practices.

22. Accordingly, it is adjudged, determined and decreed that the defendant, Edward G. Holsinger, has engaged and is engaging in conduct that interferes with the administration of the internal revenue laws, and that injunctive relief under Code section 7402(a) and the Court’s inherent equity powers is necessary and appropriate to stop that conduct.

23. **IT IS FURTHER ORDERED** that this injunction is issued to prevent the defendant, Edward G. Holsinger, from further accruing or “pyramiding” his employment and unemployment tax liabilities by accruing such liabilities beyond the defendant’s ability to pay over the liabilities as they become due.

24. This injunction order authorizes enforceable injunctive relief and, if any provision of this permanent injunction is violated, the injunction can be enforced by the United States or the Court through the mechanisms set forth below.

25. An injunction shall issue as follows from the date of this Order:

- a. Parties Covered by Injunction: This injunction binds Edward G. Holsinger, as well as his agents, employees, and persons in concert or participation with him, in whatever form they continue to carry on Holsinger's land surveyor business.
- b. Withholding Requirement: The defendant, Edward G. Holsinger, shall withhold federal income and FICA taxes from the wages of the defendant's employees when those wages are paid, shall keep the withheld funds in a bank account separate from any operating account or other accounts, and shall pay the withheld taxes to the Internal Revenue Service as they become due and payable.
- c. Deposit Requirements: In accordance with federal deposit regulations, the defendant, Edward G. Holsinger, shall make timely deposits of withheld federal income and FICA taxes, the defendant employer's share of FICA, and Federal Unemployment Tax Act (FUTA) taxes, in an appropriate federal depository bank each quarter, in accordance with the federal deposit regulations.
- d. Reporting Requirements: Within three days after the defendant, Edward G. Holsinger, makes a federal tax deposit as required by paragraph (c), Holsinger shall provide proof to the Internal Revenue Service at 1320 Central Park Boulevard, Suite 400, Fredericksburg, Virginia 22401 or such other location as the Internal Revenue Service may deem appropriate, that the requisite withheld federal income taxes, FICA taxes (both the employees' withheld portion and the employer's portion), and

unemployment tax deposits were timely made.

- e. Return Requirements: The defendant, Edward G. Holsinger, shall timely file with the IRS all of its employment (Form 941) and unemployment (Form 940) tax returns. Each return shall be considered to be timely filed if it is filed before the date it is due or within three days after the return is due. The defendant shall pay any balance due on those returns upon filing. Within 60 days of this order, file all delinquent employment, unemployment, and income tax returns.
- f. Transfer Prohibition: The defendant, Edward G. Holsinger, is prohibited after the date of this permanent injunction from assigning any property or making any disbursements until all income taxes and FICA taxes required to be withheld from employees' wages (together with the employer's liability for FICA taxes and FUTA taxes) are in fact paid to the IRS.
- g. Notification of New Business: For the next five years, the defendant, Edward G. Holsinger, shall notify the Internal Revenue Service at the address specified in paragraph d, above, of any new or presently operating company or entity with which the defendant becomes involved in relation to federal employment tax withholding, depositing, or reporting and shall also inform the IRS if the defendant assumes a new name or transfers his employees or business operations to another entity. The defendant shall notify the Internal Revenue Service within 10 days after the aforementioned actions.
- h. Failure to Comply: If the defendant, Edward G. Holsinger, or anyone

subject to this injunction violates any part of this injunction, the following enforcement mechanisms may be taken:

- i. the IRS may seize the business property of the defendant or any other entity that the defendant uses, directs, or controls as part of his business, and may sell the seized property to satisfy the defendant's outstanding tax liabilities; and
  - ii. the Court may find the defendant, Edward G. Holsinger, to be in civil or criminal contempt of this Court and punish the violator with a fine, incarceration, or both.
- i. Enforcement of Injunction: The United States shall be permitted to issue discovery requests during the pendency of the injunction to assure that the defendant, Edward G. Holsinger, is in compliance with the injunction. The Court shall retain jurisdiction of this action for the purposes of implementing and enforcing this injunction and entering all additional decrees and orders necessary and appropriate for the public interest.

26. The defendant, Edward G. Holsinger, shall deliver to all of his current employees a copy of this Permanent Injunction Order.

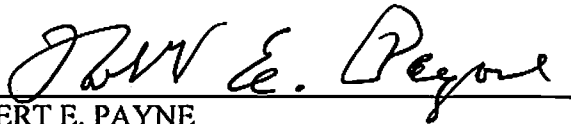
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27. The Clerk of Court is instructed to enter judgment against the defendant, Edward G. Holsinger, and in favor of the United States consistent with this Order.

IT IS SO ORDERED.

  
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ROBERT E. PAYNE  
SENIOR UNITED STATES DISTRICT JUDGE

Dated: April 25, 2016  
Richmond, Virginia