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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL A. ALLAMBY,)
)
 Defendant.)

1:04CV1432

JUDGE OLIVER

Case No.

MAG. JUDGE VECCHIARELLI

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, for its complaint against Michael A. Allamby,
Defendant, states as follows:

Jurisdiction

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345
and 26 U.S.C. (I.R.C.) §§ 7402(a), 7407, and 7408.

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a
delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the
Attorney General of the United States.

Nature of the Action

3. The United States brings this action pursuant to I.R.C. §§ 7402(a), 7407, and 7408 to restrain and enjoin the Defendant from:

- a. acting as a preparer of federal income tax returns;
- b. preparing or assisting in the preparation of federal income tax returns knowing that they will result in the understatement of any tax liability or the overstatement of federal tax credits or refunds;
- c. engaging in any other activity subject to penalty under I.R.C. § 6694;
- d. organizing or selling abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;
- e. making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement that he knows or has reason to know to be false or fraudulent as to any material federal tax matter;
- f. engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701; and
- g. engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Defendant

4. Michael A. Allamby resides at 1887 Knowles Avenue, East Cleveland, Ohio, 44112.

Facts Common to All Counts

5. Michael Allamby is a former minister with a Doctor of Theology degree from Ambassador College in Pasadena, California.

6. Allamby prepares federal income tax returns for persons residing in and around Cleveland, Ohio.

7. Allamby began preparing tax returns for others in 1975.

8. In 1994, upon reading the IRS instructions to Form 1040A (U.S. Individual Income Tax Return), Allamby began interpreting the instructions as requiring individuals to report only their "income from" wages, salaries, and tips on their tax returns. Allamby purports to believe that this amount is zero rather than the amount of wages, salaries, and tips received by individuals and that is reported on their Forms W-2 (Wage and Tax Statement).

9. Since 1994, Allamby has been preparing federal income tax returns based on this frivolous theory that report zero total income and request refunds of all federal income taxes withheld.

10. Allamby reports zero total income on his customers' tax returns despite filing the returns with attached Forms W-2 indicating that the customers have received thousands of dollars in wages or salaries that year.

11. Allamby has communicated to the IRS that he will continue to prepare federal income tax returns for others in accordance with his interpretation of the IRS instructions for Form 1040A because he alleges that no one has been able to show him the law by which Congress executed its power to impose income taxes under the Sixteenth Amendment to the United States Constitution.

12. Despite his having received numerous warnings from IRS and other government officials that the Internal Revenue Code classifies wages and salaries as gross income subject to taxation, Allamby continues to prepare frivolous tax returns reporting zero total income for individuals who earned wages or salaries.

13. Allamby conducts “training courses” across the country at which he explains his flawed interpretation of the IRS instructions for Form 1040A to the attendees and offers to prepare their federal income tax returns in accordance with his interpretation of the instructions. He has conducted ten courses since 2000, including courses in Detroit and New York City within the past year. Allamby charges between \$30 and \$150 to prepare a tax return.

14. Allamby has published a book entitled “To the Best of My Knowledge and Belief” in which he falsely states that individuals may lawfully report zero total income on their income tax returns despite having earned wages or salaries reported on Form W-2. Allamby states:

The wage earner has never been nor can ever be subject to income taxes. . . .
[Y]ou as a wage earner are not obligated or liable for income taxes on your wages.
April 15th should be just another day to you. As a wage earner you have not
created an income tax obligation which is due by that date.
[p. 21]

15. On the back cover of the book, Allamby states in part:

This book explains why you, a wage earner, do not and cannot owe income taxes to the federal, state, and local government. The I.R.S. makes plain in every instruction booklet that income, not wages, is subject to income taxes. . . . After reading this book you, as a wage earner, will never pay income taxes again. The law will be on your side and you will understand why you are not liable for income taxes.

16. According to Allamby, individuals earn income on their wages only if they invest their wages and realize gains on their investments. Allamby states that only such gains are taxable, not the wages that produced them.

17. In the book, Allamby encourages readers to prepare and file returns reporting zero total income in order to reduce or eliminate their tax liabilities. Chapter Four contains line-by-line instructions for completing a Form 1040A by entering zeros on most lines (including the line

for total income) and claiming a refund equal to the amount of withheld taxes shown on Form W-2. Allamby states in the book that the amount of tax withheld from an individual's wages is "the only figure that should be on your Return Form(s) 1040 that is also on your W-2." [p. 94-95]

18. The book contains copies of IRS notices that readers should "expect to receive" after they file their returns in accordance with Allamby's instructions. [p. 99] In Chapter Five, Allamby warns his readers of the tactics that the IRS may use against them at audits and instructs the readers how to respond. For example, Allamby advises audited individuals to say the following to IRS agents: "'Let me make one thing perfectly clear to you. I earn wages. I don't derive income from my wages. So stop your game and let's end this audit!'" [p. 131]

19. Allamby has prepared over 270 federal income tax returns processed by the IRS since January 2000. Allamby is likely to continue preparing federal tax returns that understate his customers' tax liabilities unless the Court enjoins him from doing so.

20. If the Court does not enjoin Allamby, his continuing actions will pose a substantial risk of revenue loss to the United States Treasury and will require IRS employees to devote substantial resources to auditing his customers and assessing and collecting their proper federal income tax liabilities.

Count I
(Injunction under I.R.C. § 7407)

21. The United States incorporates by reference the allegations made in paragraphs 1 through 20.

22. Section 7407 of the Internal Revenue Code authorizes a court to enjoin an income tax

return preparer from engaging in conduct subject to penalty if, among other things, that person:

- a. engaged in conduct specified in I.R.C. § 6694, which penalizes an income tax return preparer who prepares or submits a return that contains a frivolous position for which there was not a realistic possibility of being sustained on the merits, and the preparer knew or should have known the position was unrealistic and frivolous, or
- b. engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

and injunctive relief is appropriate to prevent the recurrence of such conduct. If a court finds that a preparer's misconduct is continual or repeated, and that a narrow injunction prohibiting only the specific proscribed conduct is insufficient to prevent that person's interference with the proper administration of federal tax laws, the court may enjoin the preparer from preparing any federal income tax returns.

23. The Defendant has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing and filing federal income tax returns based on the meritless positions described above.

24. The Defendant is also subject to injunction under I.R.C. § 7407 because his filing of frivolous federal income tax returns constitutes fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

25. Injunctive relief is appropriate to prevent the recurrence of such conduct because, absent an injunction, the Defendant is unlikely to refrain from conduct subject to penalty under I.R.C. § 6694.

26. The United States is entitled to an injunction under I.R.C. § 7407 to prevent the Defendant from preparing federal income tax returns.

Count II
(Injunction under I.R.C. § 7408)

27. The United States incorporates by reference the allegations made in paragraphs 1 through 26.

28. Section 7408 of the Internal Revenue Code authorizes a court to enjoin a person who has engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701 from further engaging in such conduct if injunctive relief is appropriate to prevent the recurrence of such conduct.

29. Section 6700 of the Internal Revenue Code imposes a penalty on any person (1) who organizes, or assists in the organization of, or participates in the sale of any interest in, any plan or arrangement, (2) who, in connection with such organization or sale, either makes or furnishes a false or fraudulent statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of participating in the plan or arrangement, and (3) who knows or has reason to know that such statement is false or fraudulent as to any material matter.

30. Section 6701 of the Internal Revenue Code imposes a penalty on any person (1) who aids in the preparation of any portion of a return, claim, or other document, (2) who knows or has reason to believe the portion will be used in connection with a material matter under the internal revenue laws, and (3) who knows the portion (if so used) would result in an understatement of tax liability.

31. The Defendant has engaged and continues to engage in conduct subject to penalty under I.R.C. § 6700. Specifically, the Defendant makes false or fraudulent statements regarding

the excludability of wage and salary income while knowing or having reason to know that his statements are false or fraudulent as to such excludability. The Defendant makes these false or fraudulent statements in connection with his organizing, or assisting in the organization of, his "training courses."

32. The Defendant has engaged and continues to engage in conduct subject to penalty under I.R.C. § 6701. Specifically, the Defendant prepares or aids in the preparation of federal income tax returns knowing that the exclusion of his customers' wage and salary incomes from the returns will result in understatements of their tax liabilities.

33. Injunctive relief is appropriate to prevent the recurrence of such conduct because, absent an injunction, the Defendant is likely to continue preparing (and promoting the preparation of) federal income tax returns that significantly understate federal income tax liabilities because they are based on his flawed interpretation of the internal revenue laws.

34. The United States is entitled to an injunction under I.R.C. § 7408 to prevent the Defendant from engaging in further conduct subject to penalty under I.R.C. §§ 6700 and 6701.

Count III
(Injunction under I.R.C. § 7402(a))

35. The United States incorporates by reference the allegations made in paragraphs 1 through 34.

36. Section 7402(a) of the Internal Revenue Code authorizes courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

37. Through the conduct described above, the Defendant has substantially interfered with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court,

the Defendant is likely to continue to engage in such conduct. The Defendant's conduct is causing irreparable injury to the United States and an injunction under I.R.C. § 7402(a) is necessary or appropriate.

38. The United States is entitled to injunctive relief under I.R.C. § 7402(a).

Appropriateness of Injunctive Relief

39. The Defendant's conduct, as described in paragraphs 1 through 38 of this complaint, results in irreparable harm to the United States for which the United States has no adequate remedy at law. Specifically:

- a. Unless enjoined, the Defendant's conduct is likely to cause a substantial loss of revenue to the United States Treasury due to the understatement of the tax liabilities of the Defendant's customers;
- b. Auditing individuals who have used the Defendant's scheme and assessing and collecting their proper federal income tax liabilities will place a serious burden on the IRS's resources and – to the extent the IRS uses judicial methods to collect such liabilities – on the resources of the federal judicial system; and
- c. If the Court does not enjoin the Defendant, he likely will continue to engage in conduct subject to penalty under I.R.C. §§ 6694, 6700, and 6701 that interferes with the enforcement of the internal revenue laws, thereby undermining the federal tax system.

WHEREFORE Plaintiff, the United States of America, prays for the following relief:

A. That the Court find that the Defendant has continually or repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and that injunctive relief is appropriate under I.R.C. § 7407 to prevent him and anyone acting in concert with him from acting as a preparer of federal income tax returns and related documents.

B. That the Court find that the Defendant has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief is appropriate under I.R.C. § 7408 to prevent him and anyone acting in concert with him from engaging in any further such conduct.

C. That the Court find that the Defendant has engaged in conduct that interferes with the enforcement of the internal revenue laws and that injunctive relief against him and anyone acting in concert with him is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a).

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting the Defendant and his representatives, agents, servants, employees, attorneys, and any persons in active concert or participation with him, from directly or indirectly:

1. Preparing any federal tax returns or forms for others;
2. Engaging in any conduct subject to penalty under I.R.C. § 6694; *i.e.*, preparing any part of a federal income tax return or claim for refund that includes an unrealistic and frivolous position that the preparer knows or should know is unrealistic and frivolous and that results in an understatement of tax liability;
3. Advertising, marketing, or promoting any false, misleading, or deceptive position, including the position that wages are not taxable income, by any means, including selling or distributing materials or holding seminars or training courses, for the purpose of advising or encouraging others to evade the assessment or payment of federal income taxes;
4. Assisting or inciting others to violate the tax laws, including the evasion of assessment or payment of taxes, by any means, including selling or distributing materials or holding seminars or training courses that provide direction about how to fill out false or fraudulent tax documents;
5. Instructing or assisting others by any means, including selling or distributing materials or holding seminars or training courses, to hinder or disrupt the enforcement of the internal revenue laws by asserting frivolous positions at IRS audits;

6. Engaging in any conduct subject to penalty under I.R.C. § 6700; *i.e.*, organizing or selling any plans or arrangements that contain false or fraudulent statements about material matters under the federal tax laws;
7. Engaging in any conduct subject to penalty under I.R.C. § 6701; *i.e.*, preparing or assisting others in the preparation of any federal income tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws knowing that they will (if so used) result in the understatement of income tax liability;
8. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
9. Representing customers before the IRS.

E. That the Court, pursuant to I.R.C. § 7402(a), enter an injunction requiring the Defendant, within eleven days of the entry of the Court's order, to contact in writing all persons for whom he has prepared or assisted in the preparation of any federal income tax returns or tax-related documents, or to whom he has distributed materials about his tax schemes, and inform those persons of the Court's findings and provide each person with a copy of the Court's injunction order.

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring the Defendant, within eleven days of the entry of the Court's order, to turn over to the United States all records in his possession or to which he has access that identify the following: (1) the persons or entities, including the taxpayer identification number, for whom the Defendant or his associates prepared or assisted in preparing any federal income tax return or other tax-related document; (2) the persons who assisted in the marketing or preparation of materials used by the Defendant or written materials sent to potential customers; and (3) the persons or entities, including the taxpayer identification number, who purchased or used any other tax shelter, plan,

or arrangement that the Defendant has promoted.

G. That the Court order the Defendant to file an affidavit certifying compliance with the requirements described above in paragraphs E and F within thirteen days of the entry of the Court's injunction order.

H. That the Court allow the United States full post-judgment discovery to monitor compliance with the injunction.

I. That the Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders necessary and appropriate to guard the public interest.

J. That the Court grant such other relief as it deems just and proper.

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