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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT C. ARANT, *et al.*,

Defendants.

Case No. C07-0509RSL

TEMPORARY RESTRAINING  
ORDER; ORDER NOTING  
MOTION FOR PRELIMINARY  
INJUNCTION

**Filed Under Seal**

**I. INTRODUCTION**

This matter comes before the Court on a motion for a temporary restraining order (Dkt. #4) filed by plaintiff the United States of America (the "United States"). The United States seeks a temporary restraining order which prohibits defendants Robert Arant and the warehouse bank he owns and operates, Olympic Business Systems, LLC ("Olympic"), from operating the warehouse bank and freezing Olympic's assets.

The United States has filed this motion under seal and *ex parte*. For the reasons set forth below, the Court grants the motion.

**II. DISCUSSION**

**A. Background Facts.**

1 The United States alleges that since November 2002, Arant has promoted and  
2 marketed a "warehouse banking" scheme to assist his customers to evade federal taxes  
3 and hide their income, assets, expenditures, and identities from the Internal Revenue  
4 Service ("IRS"). Arant had promoted the warehouse bank via the internet. As the term  
5 was originally used, a "warehouse bank" was a private, unchartered bank that physically  
6 stored its customers cash, gold, silver, and other items. With advances in technology,  
7 some modern warehouse banks do not physically store customers' assets. United States'  
8 Motion at p. 3 n.4.

9 According to the website, Olympic's "cornerstone is dependable service and  
10 privacy." Declaration of IRS Revenue Agent Susan Killingsworth, (Dkt. #6)  
11 ("Killingsworth Decl."), Ex. 1 at pp. 1, 3. The website advertizes that the company  
12 specializes in "offering accounts payable and receivable services to . . . customers . . .  
13 who would rather not deal directly with the banking system." *Id.* at p. 1. Olympic  
14 charges fees for its services.

15 As part of Olympic's accounts receivable program, Olympic instructs its customers  
16 to endorse checks to Olympic. Olympic's customers must sign a Customer Banking  
17 Affidavit, which authorizes Olympic to endorse and deposit checks written to its  
18 customers into Olympic's bank accounts. The Customer Banking Affidavit also states  
19 that all customer deposits into Olympic's commercial bank accounts are the property of  
20 Olympic. *Id.* at p. 16.

21 Olympic also maintains an accounts payable program whereby it pays customers'  
22 bills at the direction of its customers. Olympic's customers have used Olympic checks to  
23 pay numerous personal expenses. Killingsworth Decl. at ¶ 28. The United States alleges  
24 that customers are able to conceal from the IRS the amount of their income and assets by  
25 having Olympic pay their expenses for them.

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1 The United States alleges that the warehouse bank scheme interferes with the  
2 IRS's enforcement of the internal revenue laws in various ways. It assists customers in  
3 hiding their assets from the IRS and reduces the amount of taxes customers pay. Also,  
4 because customers can "bank" through Olympic without revealing their identities, the IRS  
5 is unable to identify Olympic's customers or the money they have deposited.

6 Accordingly, the IRS cannot levy the customers' bank accounts to satisfy their  
7 outstanding federal tax liabilities. Furthermore, because their assets are deposited into  
8 Olympic's accounts rather than into customer accounts, the IRS is unable to identify the  
9 customers' sources of income or the exact amounts deposited, particularly once the funds  
10 are commingled with other Olympic funds. Finally, because Olympic customers can use  
11 an Olympic account, debit card, or money order to pay bills, the IRS is unable to identify  
12 the customers' expenditures.

13 In February and June 2006, the IRS issued summonses to the commercial banks  
14 holding Olympic accounts seeking information about the accounts. The IRS was required  
15 to give Arant notice of the summonses. After Arant learned of the IRS's investigation, he  
16 password protected his website, then shut it down. However, he continues to operate the  
17 warehouse bank. The IRS has requested various documents and a meeting with him, but  
18 Arant has refused to disclose his customer list or to cooperate. Instead, Arant responded  
19 with tax-protestor documents contesting the IRS's authority. Killingsworth Decl., Exs. 7,  
20 8.

21 The IRS's investigation of Olympic has shown that it has six accounts in three  
22 commercial banks. Between 2002 and 2005, Olympic deposited nearly \$28 million in  
23 funds obtained from its customers into Olympic's commercial bank accounts.  
24 Killingsworth Decl. at ¶ 50. Olympic has hundreds of customers throughout the United  
25 States. Pursuant to the investigation, the IRS has identified 13 Olympic customers who

1 have either failed to file federal income taxes or who have under-reported their income by  
2 using Olympic.

3 This motion is part of a parallel civil and criminal investigation of Arant and  
4 Olympic. The United States Attorney's Office for the Western District of Washington  
5 anticipates obtaining a search warrant to be executed on April 18, 2007. The United  
6 States avers that unless this motion is granted before that date, the United States will be  
7 irrevocably harmed if Arant learns of the investigation through the search warrant and  
8 dissipates Olympic's assets.

9 **B. Analysis.**

10 Federal Rule of Civil Procedure 65(b) permits a court to grant a TRO without  
11 notice to the other party only if "it clearly appears from the specific facts shown by  
12 affidavit or by the verified complaint that immediate and irreparable injury, loss, or  
13 damage will result to the applicant before the adverse party or that party's attorney can be  
14 heard in opposition." The applicant's attorney must also certify the efforts, if any, made  
15 to provide notice of the motion. The United States has requested injunctive relief  
16 pursuant to 26 U.S.C. § 7408.

17 26 U.S.C. § 7408(a) provides that the United States may file an action to enjoin  
18 any person from engaging in conduct that violates 26 U.S.C. §§ 6700 and 6701. Section  
19 6700 imposes a monetary penalty on any person who organizes, promotes, or sells a  
20 "partnership or other entity" or "any other plan or arrangement" and in connection  
21 therewith makes or furnishes a statement about the tax consequences to participants  
22 which he knows, or has reason to know, is false or fraudulent. 26 U.S.C. §  
23 6701(a)(2)(A). "The traditional requirements for equitable relief need not be satisfied  
24 since section 7408 expressly authorizes the issuance of an injunction." United States v.  
25 Stephenson, 313 F. Supp. 2d 1054, 1057 (W.D. Wash. 2004) (quoting United States v.

1 Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000)). The United States must  
2 prove five elements to obtain injunctions under Sections 6700 and 7408:

3 (1) the defendants organized or sold, or participated in the organization or sale of,  
4 an entity, plan, or arrangement; (2) they made or caused to be made, false or  
5 fraudulent statements concerning the tax benefits to be derived from the entity,  
6 plan, or arrangement; (3) they knew or had reason to know that the statements  
7 were false or fraudulent; (4) the false or fraudulent statements pertained to a  
8 material matter; and (5) an injunction is necessary to prevent recurrence of this  
9 conduct.

10 Estate Preservation Servs., 202 F.3d at 1098 (citing 26 U.S.C. §§ 6700(a), 7408(b)).

11 In this case, the Court finds that Arant, individually and through Olympic,  
12 participated in the sale of accounts with the warehouse bank, which is an entity, plan or  
13 arrangement within the meaning of Section 6700(a)(1)(A). In promoting the warehouse  
14 bank, Arant and Olympic made false or fraudulent statements that their contractual  
15 obligations superceded all other laws, that the warehouse bank would be beyond the reach  
16 of the IRS, and that the tax code and related laws do not apply. For example, the  
17 Customer Service Agreement Instructions state:

18 17. We regard our contractual obligation as superceding any imperative for  
19 compliance with and [sic] *ex post facto* law impairing such obligations.

20 Killingsworth Decl., Ex. 1 at p. 10. Similarly, the Customer Service Agreement provides:

21 The parties expressly recognize as the basis of the Agreement, the Constitution of  
22 the United States of America and the State constitution for the above-mentioned  
23 State of the Union, and American Common Law with enumerated Unalienable  
24 Rights from Almighty God the Creator of all. The parties freely enter into this  
25 Client Service Agreement unrestricted by any acts, statutes, ordinances, regulations  
26 or customs working to the deprivation of any such private Citizen's Rights,  
Privileges, and Immunities secured or protected by the Nation's Founding  
Documents.

27 Id. at p. 8. The fact that these statements attempt subtlety is irrelevant; their message is  
28 clear. Furthermore, Arant knew or had reason to know of the falsity of the statements.  
29 Arant is or should be aware that the tax laws apply to defendants, their customers, and to  
30 this "banking" arrangement. Arant is or should be aware that courts have repeatedly held

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1 that warehouse banks are tax evasion schemes. Arant's statements are "material" within  
2 the meaning of the statute because they pertain to the legality of a scheme to hide income,  
3 expenditures and identities from the IRS.

4 Moreover, an injunction is necessary to prevent recurrence of this conduct. Arant  
5 continued to make the false statements and operate the warehouse bank after the IRS  
6 notified him that Olympic was under investigation. Olympic's customers have failed to  
7 file federal tax returns and have used Olympic and its six commercial bank accounts to  
8 hide their income, assets, expenditures, and identities from the IRS.

9 Although the statutory elements are met, it is a close call whether to grant this  
10 motion without notice to defendants. On one hand, Arant has known about the IRS's  
11 investigation for over a year and has not dissipated the assets. On the other hand, once  
12 the criminal warrant is executed, he will have significant incentive to dissipate the assets.  
13 Also, Arant has refused to produce records as requested by the IRS or to recognize the  
14 IRS's authority. His scheme is, in itself, indicative of his lack of respect for the IRS and  
15 the federal government. Accordingly, the Court finds that there is a substantial likelihood  
16 that absent an asset freeze, Arant will conceal, dissipate, or otherwise divert Olympic's  
17 assets before responding to the motion, thereby defeating the possibility of effective final  
18 relief and causing the United States irreparable harm. For all of these reasons,

19 **IT IS HEREBY ORDERED AND DECREED THAT:**

20 1. The Court GRANTS the motion for a TRO and issues this Temporary  
21 Restraining Order, which shall remain in effect for no longer than 10 days. The United  
22 States is not required to provide security pursuant to Federal Rule of Civil Procedure  
23 65(c).

24 2. Pursuant to 26 U.S.C. § 7408, a TRO is entered prohibiting Arant, individually  
25 and doing business as Olympic Business Systems LLC, and his representatives, agents,

1 servants, employees, attorneys, and those persons acting in concert or participation with  
2 him, from directly or indirectly promoting, marketing, or selling the warehouse bank  
3 scheme referenced above, or any similar false and fraudulent schemes, and from  
4 providing services to Olympic's customers.

5 3. That Arant and his representatives, agents, servants, employees, attorneys, and  
6 those persons acting in concert or participation with him are temporarily restrained and  
7 enjoined from transferring, converting, encumbering, selling, concealing, dissipating,  
8 disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds,  
9 property, or other assets, wherever located, that are (1) owned or controlled by  
10 defendants, in whole or in part; or (2) in the actual or constructive possession of  
11 defendants; or (3) owned, controlled by, or in the actual or constructive possession of  
12 defendants or any other entity that is directly or indirectly owned, managed, or controlled  
13 by, or under common control with, defendants, including but not limited to, any assets  
14 held by or for defendants in any account at any bank or savings and loan institution, or  
15 with any broker-dealer, escrow agent, title company, commodity trading company,  
16 precious metal dealer, or other financial institution of any kind, including the assets in the  
17 bank accounts listed in the United States' proposed order on this motion.

18 Defendants are also temporarily restrained from opening or causing to be opened  
19 any safe deposit boxes or storage facilities titled in the name of any defendants, or subject  
20 to access by any defendants or under their control, without providing the Department of  
21 Justice with prior notice and an opportunity to inspect the contents in order to determine  
22 that they contain no assets covered by this Order.

23 4. The assets affected by this Order shall include both existing assets and assets  
24 acquired after the effective date of this Oder, and defendants shall hold and account for  
25 such property and assets and payments received by them, including but not limited to

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1 borrowed property and gifts.

2 5. Any financial or brokerage institution, escrow agent, title company, storage  
3 facility, commodity trading company, business entity, or person maintaining or having  
4 custody or control of any account or other asset of the defendants, or any corporation,  
5 partnership, or other entity directly or indirectly owned, managed, or controlled by, or  
6 under common control with, the defendants or that at any time since 2002, has maintained  
7 or had custody of any such account or other asset, and which is served with a copy of this  
8 Order, or otherwise has actual knowledge of this Order, shall:

9 a. Prohibit the withdrawal, removal, assignment, transfer, pledge,  
10 hypothecation, encumbrance, disbursement, dissipation, conversion, sale, or other  
11 disposal of any of the assets, funds, or other property held by, or under its control, on  
12 behalf of defendants in any account maintained in the name of, or for the benefit of the  
13 defendants, in whole or in part, except in accordance with any further order of the Court,  
14 and

15 b. Deny access to any safe deposit boxes or storage facilities that are either  
16 (1) titled in the name, individually or jointly, of the defendants; (2) or otherwise subject to  
17 access by the defendants.<sup>1</sup>

18 6. Arant and his representatives, agents, servants, employees, attorneys and those  
19 persons acting in concert or participation with him are temporarily restrained and  
20 enjoined from destroying, erasing, mutilating, concealing, altering, transferring or  
21 otherwise disposing of, in any manner, directly or indirectly, any documents that relate to  
22

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23 <sup>1</sup> The United States also sought an order requiring the financial institutions to  
24 provide a certified statement providing detailed information about the accounts. The  
25 Court denies that request because it is better presented via a motion for expedited third  
26 party discovery, if necessary.



1 the business practices or business or personal finances of the defendants; to the business  
2 practices or finances of entities directly or indirectly under the control of defendants; or to  
3 the business practices or finances of entities directly or indirectly under common control  
4 with any defendant.

5 7. The parties are directed to appear for a hearing before the Court regarding the  
6 motion for a preliminary injunction on Friday, April 27, 2007 at 10:00 a.m. **before the**  
7 **Honorable Marsha J. Pechman**, United States District Judge. This date is the earliest  
8 possible time to hear the motion. Defendants shall show cause at that hearing why a  
9 preliminary injunction should not be ordered according to the terms and conditions set  
10 forth above.

11 8. The United States sought this TRO on an *ex parte* basis based in part of its  
12 representation that it will execute a criminal warrant on defendants on April 18, 2007. No  
13 later than 5:00 p.m. on April 19, 2007, the United States shall provide defendants with a  
14 copy of this Order as well as a copy of the Complaint, the motion for a TRO, and the  
15 Declaration of Susan Killingsworth with attached exhibits.

16 9. Defendants may file and serve a written response to the United States' motion  
17 no later than 12:00 p.m. on April 25; the United States' reply, if any, must be filed no  
18 later than 5:00 p.m. on April 26, 2006.

19 10. The United States has filed all of the documents in this case under seal. Once  
20 it executes its search warrant in the related criminal matter, presumably there will no  
21 longer be a need to maintain the documents in this case under seal. Therefore, the United  
22 States must show cause, within five days of the date of this order, why the documents  
23 filed in this case should not be unsealed. They will remain under seal until that time. The  
24 Clerk of the Court is directed to place this Order to Show Cause on the Court's calendar  
25 for April 27, 2007.

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11. The Clerk of the Court is directed to NOTE the United States' motion for preliminary injunction on the Court's calendar for April 27, 2007.

12. The Clerk of the Court is directed to file this Order under seal.

DATED this 17<sup>th</sup> day of April, 2007 at 4:30 p.m.

Robert S. Lasnik  
Robert S. Lasnik  
United States District Judge