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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	1:06-cv-1368 OWW TAG
)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW AFTER
v.)	HEARING ON MOTION FOR
)	PRELIMINARY INJUNCTION
LOWELL BAISDEN,)	
)	
Defendant.)	
)	
_____)	

Plaintiff, United States of America's, Motion for Preliminary Injunction was heard on March 2, 2007, at 10:00 a.m. and March 6, 2007, at 9:00 a.m. in Courtroom 3 before the Honorable Oliver W. Wanger. During these proceedings, the Plaintiff was represented by attorney Jacqueline Brown with the United States Department of Justice. The Defendants were represented by attorneys Arthur Pearson with the firm of Murphy, Pearson, Bradley & Feeney in San Francisco, California and Marshall C. Whitney and Jerry D. Casheros of McCormick, Barstow, Sheppard, Wayte & Carruth in Fresno, California. The Court makes the following Findings of Fact and Conclusions of Law in support of the order of preliminary injunction entered on March 16, 2007.

(Doc. 73.)

FINDINGS OF FACT

1
2 1. Lloyd Baisden ("Baisden") has been a Certified Public
3 Accountant licensed in California and Utah since 1978.

4 2. Baisden is a solo practitioner in Bakersfield,
5 California.

6 3. Baisden acts as an income tax return preparer for
7 clients in California and Nebraska.

8 4. Baisden was the paid accountant and tax preparer for
9 the following customers: Michael and Deanna Trierweiler for the
10 tax years 2002 through 2004, Walter and Deborah Weaver for 2003,
11 Michael and Susan Koning for 1999 through 2002, Donald and
12 Kathryn Snoozy for 2002 and 2005, Evan and Jane Geilenkirchen for
13 2002, Larry and Vicki Hastings for 2002, Joel and Deborah Cooper
14 for 1995 through 2004, Joseph and Rhonda Ghyselink for 2002,
15 Anthony and Kimberly Telese for 2002 through 2004, Burt and
16 Pamela McKeag for 2002, John and June Sherley for 2002, Sue
17 Brittian for 2003, Daniel Swartz and Jennifer Erale for 2002
18 through 2004. (Exs. 5K-5M, 5P, 13A-13E, 5B, 5E, 2E, 6B, 14A,
19 14F, 14C-14D, 1B, 6D, 6F, Ex. 14 at ¶¶ 2, 24, and Doc. 22 at
20 ¶ 3.)

21 5. Baisden also acted as the paid accountant and prepared
22 federal tax returns for Anesthesia Consultants of Nebraska, Inc.,
23 a Nebraska corporation; Bioventures, Inc.; Oceana Blue
24 Corporation; Amethyst Sands, Inc.; Charpup Corporation; PTCW
25 Corporation; Red Desert Resources Corporation; and Axhandle
26 Corporation of Nevada. In addition, Baisden was the accountant
27 and paid tax preparer for Joel N. Cooper Physical Therapist,
28 Inc.; Anthony Telese Company, Inc.; and Chuck's Automotive of

1 California. (Exs. 1A, 2D, 5A, 5D, 5I, 5J, 5O, 5S, 6A, 14B, 14E.)

2 6. Baisden also worked with the Arcturus Corporation,
3 which was incorporated in Nevada in 2002. Michael Koning is
4 listed in the Nevada Secretary of State records as the President
5 and Treasurer of Arcturus, and Susan Baisden-Koning, Baisden's
6 sister, is listed as the Secretary. Michael Koning is Susan's
7 husband. Lowell Baisden is listed as a source of contact for
8 Arcturus in an advertisement posted on the Arcturus website.
9 (Exs. 7, 8.)

10 7. Bioventures was incorporated in 1999 in Nevada.
11 Michael Koning is listed in the Nevada Secretary of State records
12 as the President and Secretary of Bioventures, and Susan Baisden-
13 Koning is listed as the Treasurer. (Ex. 8.)

14 8. Oceana Blue, Amethyst Sands, Charpup, and Red Desert
15 were incorporated in Nevada in 2002. PTCW and Axhandle were
16 incorporated in Nevada in 2003. For each corporation, Deborah
17 Fields of Las Vegas is listed by the Nevada Secretary of State as
18 the President, Secretary, and Treasurer for the corporations.
19 (Ex. 8.)

20 9. Baisden has entered an appearance as a Power of
21 Attorney in the IRS civil audits/examinations for all of the
22 customers for whom he prepared federal income tax returns, as
23 listed above.

24 10. Baisden is the registered agent and president of the
25 Gravity Corporation, Cranberry Place Corporation, and Pendant
26 Corporation of Wyoming, in which the Trierweilers and Weavers
27 have an interest.

28

BAISDEN'S TAX METHODS

1
2 11. Baisden prepared and submitted a document entitled
3 "Brief of Model" to the IRS which he said explains his tax
4 methods. Baisden's model has four parts: 1) tax mitigation; 2)
5 business activity; 3) saving cash after tax; 4) tax mitigation as
6 it relates to income. See Ex. 29.

7 12. Under the "tax mitigation" aspect of Baisden's plan,
8 Baisden states that customers can reduce their income tax
9 liability by reporting deductions related to a "business
10 activity" other than the [professional] practice." (Ex. 29.)

11 13. Under the "business activity" aspect of Baisden's plan,
12 customers engage in a real estate investment such as improving an
13 unimproved lot, "rather than...run[ning] another business."
14 Baisden states that the business activity results in tax savings,
15 which is reflected as equity in real estate. (Ex. 29.)

16 14. Under the "saving cash after tax" aspect of Baisden's
17 plan, Baisden advises customers that "[y]ou can save as much as
18 \$120,000 after tax each year at these low rates." Baisden
19 advises that customers use the money they save in taxes to invest
20 or otherwise save the money in lieu of a pension plan. See Ex.
21 29.

22 15. Under the final element of Baisden's plan, "tax
23 mitigation as it relates to income," a customer's corporation
24 purchases the customer's stream of employment income. Baisden
25 states that the purchase of the stream of income will then be
26 taxed to the customer at the lower capital gains rates rather
27 than the high ordinary rates as payments received for the sale of
28 an asset. (Ex. 29.)

1 16. Baisden's model does not include any statement
2 regarding benefits to customers such as asset protection or
3 limiting professional liability. Baisden's model does not
4 describe any benefit to the customer from the real estate
5 investment other than tax savings.

6 17. Baisden incorporated various elements of the above plan
7 in the tax returns he prepared for the customers listed above.
8 See *supra* at ¶ 2. Baisden paid Dr. Koning a fee for referring
9 customers to him. (Doc. 22, Baisden Decl. at ¶ 9 and Ex. 1 at ¶
10 21.) Baisden advocated the use of his tax methods to at least
11 nine persons (not including their spouses) who worked with Dr.
12 Koning at the Great Plains Regional Medical Center in North
13 Platte, Nebraska, not including corporations for whom Baisden
14 also acted as the account and tax preparer.

15 18. Baisden charged his customers an initial fee for the
16 corporations he assisted them to create, and a monthly fee for
17 his accounting and tax preparation services. (Exs. 1C, 4 at ¶
18 10, 3 at ¶ 14, 9 at ¶ 9.) Baisden also charged at least one
19 customer for reimbursement for his travel expenses to Nebraska.
20 (Ex. 9 at ¶ 9.) According to his own calculations, for the year
21 2002, Baisden received 78% of his income from the customers
22 listed above. See Ex. 6J.

23 19. Baisden states that he never tells his customers how
24 much they will save in taxes by using his methods. Doc. 22 at ¶
25 21.) Baisden told the Geilenkirchens they would pay
26 approximately \$10,000 each year in tax using his methods, rather
27 than the \$40,000 they had paid in previous years. (Ex. 9 at ¶
28 17.) Baisden told Shane Kryzsko that by using his methods,

1 Kryzsko would save between \$20,000 and \$25,000 in taxes each
2 year. (Ex. 3 at ¶ 13.) Baisden told Dr. Bianco that he could
3 save approximately \$7,500 in tax each month using Baisden's tax
4 methods. (Ex. 4 at ¶ 10.)

5 20. Baisden states that his customers do save taxes using
6 his methods. (Doc. 36 at Exs. B and C.)

7 21. In 2004, the IRS opened an examination to determine
8 whether Baisden was subject to penalty under I.R.C. §§ 6700,
9 6701, and 6694, or subject to an injunction under I.R.C. §§ 7402,
10 7407, and 7408 in 2004. In October 2004, the IRS had a meeting
11 with Baisden in which Baisden explained his tax methods and tax
12 return preparation. At the meeting, the IRS agent and IRS
13 counsel notified Baisden that they needed to investigate the
14 validity of his tax methods further, but they had some problems
15 with Baisden's methods as he described them.

16 22. In subsequent conversations with Baisden, the IRS
17 confirmed that a § 6700 investigation was ongoing and that the
18 IRS had identified problems with Baisden's alleged scheme
19 regarding the compensation reported to the officers/service
20 providers of Baisden's customers' corporations. Baisden later
21 told two other IRS agents that the investigation was concluded in
22 his favor and that there were no problems with his tax methods.
23 (Meyer Decl. ¶¶ 9-10, Ex. 11 at ¶¶ 8, 10, 12, 13, and 15 and
24 Cheung Testimony.)

25 23. Baisden declares that several IRS agents in California
26 informed him that his tax practice was not abusive and that a
27 manager in California had requested that an IRS agent stop
28 auditing Baisden's customers. (Doc. 22 at ¶¶ 37, 41.) Neither

1 the IRS agent nor his manager made any such statements.

2 (Chynoweth and Cheung testimony.)

3 24. On March 8, 2007, following the two-day hearing on the
4 preliminary injunction motion during which the Court stated that
5 it would issue a partial injunction, Baisden sent an e-mail to a
6 former customer, Jane Geilenkirchen, in which he stated "[t]he
7 result is that the Government did NOT get an injunction. This
8 implies that your audit would have been resolved in your favor if
9 you had only waited patiently." (Ex. 33.)

10 25. The IRS has not endorsed or affirmed Baisden's tax
11 methods or tax return preparation, as described herein. The IRS
12 has made determinations of deficiencies on tax returns Baisden
13 prepared, or otherwise accepted amended returns, for the Hastings
14 for 2002, the Geilenkirchens for 2002, the McKeags for 2002, and
15 the Shyselinks for 2002. (Ex. 2F, 5H, 1D, and Ex. 15 at ¶ 8.)
16 The IRS has also determined that the following of Baisden's
17 customers have deficiencies in taxes reported, but the customers
18 have appealed the determinations: the Coopers for 2002, the
19 Teleses 2002 and 2003, and the Swartzes for 2002 through 2004.
20 (Ex. 6 at ¶¶ 14-15, 21, Ex. 14 at ¶ 22 and Chynoweth Testimony.)
21 These returns and the amount of taxes due, if any, from each
22 taxpayer, is a matter of dispute. At least two taxpayers have
23 admitted they owe additional taxes.

24
25 BAISDEN'S TAX RETURN PREPARATION

26 26. From 1999 through 2004 Baisden was the accountant for
27 Anesthesia Consultants of Nebraska (ACN), a corporation co-owned
28 and operated by his brother-in-law, Dr. Michael Koning, in North

1 Platte, Nebraska.

2 27. Dr. Koning received income in the amounts of \$634,557,
3 \$945,500, and \$893,234 for the years 1999 through 2001. (Exs. 2A
4 and 13A, 2B, 2C.)

5 28. Baisden's customers Kathryn Snoozy, Evan Geilenkirchen,
6 and Shane Kryzsko worked as nurse anesthetists for ACN from 2001
7 through 2004. Baisden's customers Deborah and Walter Weaver,
8 Michael Trierweiler, Chris Johng, Burt McKeag, and Michael Bianco
9 are physicians who also work at the Great Plains Regional Medical
10 Center in North Platte, Nebraska. Williams Testimony. (Ex. 1 at
11 ¶ 12, 2 at ¶ 17, Ex. 3 at ¶ 1, Ex. 4 at ¶ 1, Ex. 5 at ¶¶ 3, 43.)

12 29. In 1999, 2000, 2001, and 2002, Baisden prepared federal
13 tax returns for Bioventures Corporation on which he reported that
14 Dr. Koning's income from ACN was assigned to Bioventures.

15 Baisden did not report any gross receipts to Bioventures other
16 than Koning's compensation from ACN. (Exs. 2A, 2B, and 2C.)

17 30. After Baisden failed for several months to produce a
18 Joint Venture Agreement to the IRS, Baisden gave the IRS a copy
19 of a purported Joint Venture Agreement between Bioventures and
20 the Konings. The purported Agreement, effective September 1,
21 1999, states that the Konings and Bioventures enter into an
22 agreement to "repair, improve, and sell 2569 acres of land near
23 Del Norte, Rio Grande, Colorado." The purported Agreement
24 provides that the Konings are to receive the income from the
25 initial sales of the land and an unspecified "monthly rent
26 payment that may change from time-to-time" from Bioventures.
27 Bioventures was to pay for all repairs and improvements to the
28 land and receive two-thirds of the proceeds from sales of the

1 property, after the Konings had recovered their original
2 investment. (Ex. 30 and Shepka Testimony.)

3 31. The purported Joint Venture Agreement does not state
4 any specific amount of rent, does not specify who is authorized
5 to approve amendments on behalf of Bioventures, and does not
6 specify any service or income Dr. Koning or any other person is
7 to provide or assign to Bioventures. Although the IRS asked them
8 to do so, neither Baisden nor Dr. Koning have given the IRS a
9 corporate charter, a list of the officers or directors, the names
10 of any service providers or employees, a list of shareholders, or
11 the minutes of any shareholder or board of directors meetings for
12 Bioventures. (Ex. 30.) Nor did Baisden introduce into evidence
13 any such documents at the hearing on the motion for preliminary
14 injunction.

15 32. In 2000, 2001, 2002, and 2003, Baisden prepared federal
16 income tax returns for Michael and Susan Koning on which he
17 reported that the Konings had earned no income attributable to
18 wages, salaries, or tips. Baisden reported that the Konings had
19 earned income from interest, rent, royalty, and capital gains.
20 Baisden reported that the rental income was attributable to
21 several different tracts of land in Del Norte, Colorado and
22 grassland in Rickreall, Oregon. Baisden did not report that the
23 Konings earned any income from non-employee compensation or as
24 constructive dividends from Bioventures. (Exs. 13A-E and Shepka
25 Testimony.)

26 33. Although the IRS asked them to do so, neither Baisden
27 nor Dr. Koning have provided to the IRS a rental agreement
28 relating to the above-listed properties. (Shepka Testimony.)

1 Nor did Baisden introduce into evidence any such document at the
2 hearing on the motion for preliminary injunction.

3 34. On the Konings' federal income tax returns that Baisden
4 prepared for tax years 1999 through 2003, Baisden reported Dr.
5 Koning's occupation as "investor." From 1999 through 2003, Dr.
6 Koning worked full-time as an anesthesiologist and was the
7 President of ACN. (Exs. 13A-13E and Shepka Testimony.)

8 35. On Bioventures' federal income tax returns that Baisden
9 prepared for tax years 2000 through 2003, Baisden reported the
10 following items, the IRS contends are personal, as ordinary
11 business expense deductions: 1) the cost to purchase and store an
12 airplane owned by the Konings; 2) lawncare expenses for the
13 Konings' residence in North Platte, Nebraska; 3) construction and
14 other costs for the Konings' residence in Montana; 4) utilities
15 for the Konings' residence in Nebraska; 5) expenses for the
16 Konings' personal vehicles; 6) the cost of homeowners' insurance
17 for the Konings' residence in Nebraska; and 7) various costs from
18 the Konings' personal credit cards. (Ex. 13 at ¶ 18 and Shepka
19 Testimony.)

20 36. Although the IRS asked them to do so, neither Baisden
21 nor Dr. Koning have provided a flight log for the airplane.
22 Although the IRS asked them to do so, neither Baisden nor Dr.
23 Koning have provided any promissory note or a loan agreement.
24 When the IRS questioned them about the deductions described
25 above, neither Baisden nor Dr. Koning advised or suggested to the
26 IRS that Dr. Koning operated a home office from either of his
27 residences in Nebraska or Montana. (Shepka Testimony.) Nor did
28 Baisden introduce any such evidence at the hearing on the motion

1 for preliminary injunction.

2 37. The Konings did not transfer ownership of the
3 properties to Bioventures. Instead, they retained full ownership
4 of the property in Del Norte, Colorado, and their residences in
5 Nebraska and Montana. (Ex. 13 at ¶ 12 and Shepka Testimony.)

6 38. On Bioventures' federal income tax returns that Baisden
7 prepared for tax years 2000 through 2003, Baisden reported as
8 ordinary business expenses the costs related to capital
9 improvements to the property owned by Dr. Koning in Del Norte,
10 Colorado. Such costs include expenses related to the
11 construction of roads and utilities on the property. Baisden did
12 not report the development expenses as capital expenses, which
13 are deductible over the lifetime of the property. Baisden did
14 not treat the Colorado property as inventory for accounting
15 purposes, whereby the costs to purchase and improve the lots
16 would be reflected as the adjusted basis of the property upon a
17 sale, rather than deductible expenses. Dr. Koning later sold
18 individual lots of the Colorado property on various occasions
19 from 2000 through 2003. (Ex. 13 at ¶ 13 and Shepka Testimony.)

20 39. On federal income tax returns that Baisden prepared for
21 the Konings, Baisden reported the gains from the sales of the
22 parcels of the Colorado property, Baisden reported depreciation
23 deductions on the Konings' tax returns for the same property for
24 tax years 2000 through 2003. (Exs. 13A-13E.)

25 40. In addition to reporting on Bioventures' tax returns
26 deductions for the costs of the Del Norte, Colorado property,
27 Baisden reported depreciation deductions on the Konings' tax
28 returns for the same property for tax years 2000 through 2003.

1 (Exs. 13A-13E.)

2 41. For tax year 2002, Baisden prepared federal tax returns
3 for William and Vicki Hastings and Amethyst Sands, Inc. William
4 Hastings was a 50% owner of Anesthesia Consultants of Nebraska
5 and an anesthesiologist. (Ex. 2 at ¶ 17, Ex. 2D, 2E.)

6 42. On the Hastings' 2002 return, Baisden reported that Dr.
7 Hastings had assigned \$247,682 of his income from Anesthesia
8 Consultants of Nebraska to Amethyst Sands, Inc. On Amethyst
9 Sands' return Baisden did not report that Amethyst Sands earned
10 any income other than Hastings' income as a physician. Yet,
11 Baisden reported ordinary business expense deductions for rent,
12 depreciation of two automobiles, and other costs for advertising,
13 contract labor, equipment rental, utilities, vehicles, and
14 lodging. (Exs. 2D, 2E.)

15 43. On Amethyst Sands' return Baisden reported that
16 Amethyst Sands was in the real estate business and had no
17 deductible expenses related to the compensation of officers or
18 for salaries and wages. On Amethyst Sands' return Baisden did
19 not report that Amethyst Sands was a personal service
20 corporation. (Ex. 2D.)

21 44. Although the IRS asked them to do so, neither Baisden
22 nor Dr. Hastings have provided to the IRS an employment
23 agreement, joint venture agreement, or other document related to
24 the services Dr. Hastings purportedly provides to Amethyst Sands.
25 Although the IRS asked them to do so, neither Baisden nor Dr.
26 Hastings have provided to the IRS a corporate charter, a list of
27 the officers or Board of Directors, the names of any service
28 providers or employees, a list of shareholders, or the minutes of

1 any shareholder or Board of Directors meeting for Amethyst Sands.
2 (Shepka Testimony.) Nor did Baisden introduce any such evidence
3 at the hearing on the motion for preliminary injunction.

4 45. On the Hastings' return that he prepared, Baisden
5 reported income primarily from wages from the first part of 2002
6 and rent from a property in Emmitt, Idaho. (Ex. 2E.) Although
7 the IRS asked them to do so, neither Baisden nor the Hastings
8 have provided to the IRS a rental agreement, lease, or other
9 document relating to the rental of the property in Idaho.

10 (Shepka Testimony.) Nor did Baisden introduce any such evidence
11 at the hearing on the motion for preliminary injunction.

12 46. The IRS conducted research regarding the value of the
13 Hastings' purported rental property, and found that the Hastings
14 had purchased the property for approximately \$100,000. Baisden
15 then reported that the Hastings had earned rent of \$70,013 for
16 one year for the purported rental of the property. (Shepka
17 Testimony.)

18 47. For tax year 2002, the IRS issued a notice of
19 deficiency to the Hastings stating that the IRS has determined
20 that they are liable for additional taxes in the amount of
21 \$190,236 and penalties in the amount of \$142,677 pursuant to
22 I.R.C. § 6663. The Hastings did not respond to the notice of
23 deficiency, so the IRS assessed the additional taxes in 2006.
24 (Ex. 2F.)

25 48. Baisden prepared the federal income tax returns for
26 Evan and Jane Geilenkirchen for the year 2002, and also for their
27 wholly owned corporation, PTCW. (Ex. 5D.) Evan Geilenkirchen
28 was a nurse anesthetist who worked with Dr. Koning at ACN in

1 North Platte, Nebraska. (Ex. 9 at ¶ 1.)

2 49. In 2002, Dr. Koning met with Evan Geilenkirchen at work
3 and asked if Geilenkirchen was interested in working with
4 Baisden. Baisden later told the Geilenkirchens that by setting
5 up a corporation, they could save money on their taxes and that
6 it would offer protection from lawsuits. (Ex. 9 at ¶ 4.)

7 50. Baisden had the Geilenkirchens provide him the name
8 they wanted for their corporation, and he incorporated PTCW for
9 them on February 7, 2003. (Ex. 9 at ¶ 7 and Ex. 8.) On PTCW's
10 tax return, Baisden reported that it was incorporated on December
11 7, 2002. Deborah Fields was listed as the President, Secretary,
12 and Treasurer of PTCW. (Ex. 5D.) Geilenkirchen was to be the
13 Vice-President, but the corporation did not have an employment
14 agreement, joint venture agreement, or other document related to
15 any services Geilenkirchen was to provide. PTCW had no
16 employees. (Williams Testimony.)

17 51. The Geilenkirchens do not know Ms. Fields and neither
18 they nor Baisden have provided to the IRS a corporate charter, or
19 the minutes of any shareholder or Board of Directors meetings.
20 (Ex. 9 at ¶ 8.)

21 52. Throughout 2003 and 2004, the Geilenkirchens
22 periodically sent Baisden their checking account statements,
23 credit card statements, and copies of Quicken™ spreadsheets
24 listing their expenses and income. (Ex. 9 at ¶ 10.)

25 53. Baisden submitted the Geilenkirchens' return for 2002
26 reporting that Evan Geilenkirchen was an investor, rather than a
27 nurse anesthetist. Geilenkirchen did not have any investments.
28 (Ex. 9 at ¶ 19 and Williams Testimony.)

1 54. Baisden also reported that Geilenkirchen had assigned
2 his entire income of \$176,164 from ACN to the PTCW corporation
3 and that PTCW was in the real estate business. Baisden did not
4 report any other income to PTCW other than Geilenkirchen's ACN
5 income. Neither the Geilenkirchens nor PTCW rented any property
6 or engaged in any real estate activities for the year 2002. (Ex.
7 5D, Ex. 9 at ¶¶ 19, 31.)

8 55. On the returns he prepared for PTCW, Baisden reported a
9 total of \$150,903 as ordinary business expense deductions, which
10 included amounts for repairs, rent, depreciation, advertising,
11 meals and entertainment, contract labor, insurance, supplies, and
12 vehicle and office expenses. The Geilenkirchens did not own any
13 property other than their home. Evan Geilenkirchen did not
14 operate any business from their home though Jane Geilenkirchen
15 did operate a small scrapbooking business from the home. The
16 Geilenkirchens later confirmed in IRS examinations that many of
17 the expenses Baisden reported to PTCW as business expenses were
18 non-deductible personal expenses. (Ex. 5D, 5 at ¶ 25, and
19 Williams Testimony.)

20 56. Baisden reported income to the Geilenkirchens for 2002
21 only from royalties and refunds of taxes. Baisden did not report
22 any income to the Geilenkirchens as wages, non-employee
23 compensation, or as constructive dividends. (Ex. 9 at ¶ 31, 5E.)

24 57. After meeting with the IRS to discuss their tax
25 liability for 2002, the Geilenkirchens agreed to the assessment
26 of additional tax in the amount of \$25,713. (Ex. 5H.)

27 58. For the year 2002, Baisden prepared federal income tax
28 returns for Burt and Pamela McKeag and their wholly owned

1 corporation, Oceana Blue Corporation. (Exs. 1A, 1B.)

2 59. On the 2002 return he prepared, Baisden reported that
3 Burt McKeag had assigned \$93,685 of his income as an
4 anesthesiologist to Oceana Blue. Baisden reported on Oceana
5 Blue's tax returns that it was in the real estate business and
6 had no deductible expenses related to the compensation of
7 officers or for salaries and wages. Baisden also reported that
8 the corporation had incurred deductible business expenses for
9 equipment rental, utilities, insurance, lodging, professional
10 services, and vehicle and office expenses. (Ex. 1A.)

11 60. Baisden did not report on the tax returns that Oceana
12 Blue was a personal services corporation, though Dr. McKeag was
13 the sole shareholder and service provider and worked as an
14 anesthesiologist during 2002. On Oceana Blue's tax return,
15 Baisden did not report any income other than McKeag's income as a
16 physician. The only listed asset of the corporation was the
17 McKeags' personal automobile. (Exs. 1A, 1B.)

18 61. On the McKeags' individual tax return for 2002, Baisden
19 reported that the McKeags had earned \$47,307 from royalty income,
20 but had not earned any income from constructive dividends or non-
21 employee compensation for Dr. Burt McKeag's work for the Oceana
22 Blue Corporation. (Ex. 1B.)

23 62. In 2004, the McKeags filed an amended federal income
24 tax return, which was not prepared by Baisden, stating that the
25 original Oceana Blue tax return was being amended "because the
26 entity was found to be invalid and the income and expense
27 originally reported by this entity is now reported by the
28 taxpayer and sole shareholder on this amended form 1040." The

1 McKeags claimed all of the income originally attributed to Oceana
2 Blue on their amended individual tax return, and reported no
3 income for Oceana Blue on its amended tax return, stating that
4 the corporation was not valid in Nebraska for several reasons,
5 including that it was not established as a professional
6 corporation and the income was not legally assigned to the
7 corporation. (Exs. 1D, 1E.)

8 63. As a result of the amendments to their federal tax
9 returns, the McKeags owed an additional \$764. (Exs. 1D, 1E.) In
10 conversations with the IRS, McKeag said that he had not produced
11 any works for which royalties would be due and that many of the
12 expenses Baisden had reported on tax returns as business
13 deductions were actually for personal expenses. (Ex. 1 at ¶ 16
14 and Cheung Testimony.)

15 64. Baisden prepared federal income tax returns for Michael
16 and Deanna Trierweiler for the years 2002 through 2004, Walter
17 and Deborah Weaver for 2003, and Donald and Deborah Weaver for
18 2003, and Donald and Kathryn Snoozy for 2003-2004. (Exs. 5K-5M,
19 5P, and 5B.) Baisden prepared federal income tax returns for the
20 Trierweilers', Weavers', and Snoozys' wholly owned corporations
21 Red Desert Resources Corporation, Axhandle Corporation, and
22 Charpup Corporation. (Exs. 5I, 5J, 5O, and 5A.)

23 65. On the corporate income tax returns Baisden prepared
24 for Red Desert, Axhandle, and Charpup, Baisden reported that all
25 three corporations were in the real estate business and had no
26 deductible expenses related to the compensation of officers or
27 for salaries and wages. Baisden reported that Michael
28 Trierweiler, Walter Weaver, and Kathryn Snoozy had assigned their

1 incomes as medical professionals to their corporations. Baisden
2 reported no other income to any of the corporations. Baisden did
3 not report that any of Red Desert, Axhandle, or Charpup were
4 personal services corporations. (Exs. 5A, 5I, 5J, and 5O.)

5 66. Although the IRS asked them to do so, neither Baisden
6 nor his customers have provided to the IRS an employment
7 agreement, joint venture agreement, or other document related to
8 the services Dr. Trierweiler, Dr. Weaver, and Ms. Snoozy
9 purportedly provided to their corporations. Although the IRS
10 asked them to do so, neither Baisden nor his customers have
11 provided to the IRS a corporate charter, a list of the officers
12 or board of directors, the names of any service providers or
13 employees, a list of shareholders, or the minutes of any
14 shareholder or board of directors meetings for the corporations.
15 (Williams Testimony.) Nor did Baisden introduce any such
16 evidence at the hearing on the motion for preliminary injunction.

17 67. On federal income tax returns that he prepared for Red
18 Desert, Axhandle, and Charpup, Baisden reported ordinary business
19 expense deductions for rent, repairs, depreciation of
20 automobiles, and other costs for advertising, contract labor,
21 equipment rental, utilities, travel, vehicles, professional
22 services, and lodging. (Exs. 5A, 5I, 5J, and 5O.) Although the
23 IRS asked them to do so, neither Baisden nor his customers have
24 provided to the IRS documentation to support the claim that all
25 of the reported deductions are for legitimate business expenses.
26 (Williams Testimony.)

27 68. On the federal income tax returns he prepared for the
28 Trierweilers, Weavers, and Snoozys, Baisden reported that Kathryn

1 Snoozy, Walter Weaver, and Michael Trierweiler were employed as
2 "investors." In actuality, Trierweiler and Weaver were
3 physicians and Snoozy was a nurse anesthetist. (Exs. 5K-5M, 5P,
4 5B and Williams Testimony.)

5 69. On the federal income tax returns he prepared for the
6 Trierweilers and Snoozys, Baisden reported large amounts of
7 income from the purported rental of the commercial properties in
8 Nebraska and South Dakota. Although the IRS asked them to do so,
9 neither Baisden nor the Trierweilers or Snoozys have provided a
10 rental agreement, lease, or other document relating to the rental
11 of the properties. (Exs. 5K-5M, 5P, 5B and Williams Testimony.)
12 Nor did Baisden introduce any such evidence at the hearing on the
13 motion for preliminary injunction.

14 70. On the federal tax returns Baisden reported that the
15 Weavers had sustained \$46,352 in losses and depreciation due to
16 the operation of a farm. The Weavers provided documentation to
17 support the rental of the farm land by a third party of their
18 property in 2004, but no documentation to support the operation
19 of a farm in 2003. (Exs. 5P and 13 at ¶¶ 7-12, and Williams
20 Testimony.)

21 71. The IRS has not issued final determinations regarding
22 the tax liabilities of the Trierweilers, Snoozys, and Weavers.
23 The IRS estimates that the tax returns Baisden prepared for these
24 customers greatly understate their true tax liabilities. (Ex. 5
25 at ¶¶ 16-18, 29, 33, and 34.)

26 72. Baisden also advocated the use of his tax methods to
27 prospective customers Shane Kryzsko and Dr. Michael Bianco. In
28 June 2002, Baisden met with Kryzsko, a nurse anesthetist employed

1 by ACN, and explained that he could help Kryzsko form a
2 corporation through which he could deduct personal expenses and
3 reduce his claimed federal income tax liability. Baisden told
4 Kryzsko that he established the corporations in Nevada because
5 that state's laws are more protective regarding the disclosure of
6 corporate ownership information.

7 73. In 2003, Baisden met with Dr. Michael Bianco, an
8 obstetrician/gynecologist who also works at the Great Plains
9 Regional Medical Center. Baisden also told Bianco that by using
10 his tax methods, Bianco would reduce his tax liability. Baisden
11 explained that he would use a corporation in Nevada because the
12 IRS and other government agencies would not have access to
13 corporate ownership information. Baisden told Bianco that, using
14 the corporation, he could take deductions for Bianco's personal
15 residence, cars, telephones, travel expenses and computer. (Ex.
16 4 at ¶ 7.) No contrary evidence was presented.

17
18 BAISDEN'S TAX PREPARATION IN CALIFORNIA

19 74. Baisden prepared federal income tax returns for Joel
20 and Deborah Cooper for the years 2002 through 2004, as well as
21 the corporate income tax returns for Joel N. Cooper Physical
22 Therapist, Inc. Although Joel Cooper was the owner of the
23 corporation and provided some physical therapy services, Baisden
24 reported that the corporation had not paid any wages or other
25 compensation to officers for the year 2004. (Ex. 14B.)

26 75. On Cooper's corporation's tax return, Baisden reported
27 ordinary business deductions for items including the Coopers'
28 golf course expenses, country club membership, home utilities,

1 pool expenses, the majority of their car expenses, the cost of a
2 van, and portions of the cost of constructing their home. (Ex.
3 14B, Ex. 6 at ¶ 12.)

4 76. Baisden did not report that the corporation had paid
5 any constructive dividends or non-employee compensation to the
6 Coopers. For the years 2002 and 2004, Baisden reported that the
7 Coopers had only a small amount of wages, and had earned the
8 great majority of their income from rent from two medical
9 properties owned by the Coopers. (Ex. 6 at ¶¶ 8-15, 6A-6C, 14 at
10 ¶¶ 10-15.)

11 77. The IRS conducted an examination of the Coopers' tax
12 liability and met with Cooper and Baisden. After the meetings,
13 the IRS determined that many of the deductions Baisden had
14 reported for business expenses were actually for non-deductible
15 personal expenses, and the IRS issued a Notice of Deficiency for
16 the year 2002 stating that the Coopers owe an additional \$29,137
17 for the year 2002. (Exs. 6 and 14.) No contrary evidence was
18 presented.

19 78. Baisden prepared federal income tax returns for Sue
20 Brittian wherein he reported deductions for expenses related to
21 Brittian's sewing activities. The IRS determined that Brittian
22 was liable for additional taxes in the amount of \$4,888 because
23 of improper deductions for expenses Baisden had reported
24 including: tennis lessons, club membership, vacations, a scooter,
25 and utility payments. Brittian has appealed the determination,
26 but no final decision on the appeal has been rendered. (Ex. 6 at
27 ¶¶ 16-17.)

28 79. Baisden prepared federal income tax returns for Daniel

1 Swartz and Jennifer Erale for the years 2002 through 2004 on
2 which he reported that the Swartzes had incurred losses from the
3 operation of a farming business. (Ex. 6F, Ex. 6 at ¶¶ 19-20.)

4 80. After discussing the Swartzes' purported business
5 activity with Baisden, the IRS determined that Baisden had
6 improperly reported that the Swartzes operated a farm business
7 because though they owned a horse, the horse was not trained, the
8 Swartzes derived no income from the horse, and had no evidence to
9 support the business use of the animal. The IRS determined that
10 the Swartzes are liable for additional taxes in each year of more
11 than \$35,600. The Swartzes have appealed the IRS determinations,
12 but no final decision on the appeals have been rendered. (Ex. 6
13 at ¶¶ 19-22.)

14 81. Baisden prepared federal income tax returns for Anthony
15 and Kimberly Telese for the years 2002 through 2004, and their
16 corporation Anthony Telese Company, Inc. On the Teleses
17 individual federal income tax returns, Baisden reported that the
18 Teleses had earned the vast majority of their income from rent.
19 Anthony Telese worked full time for his engineering business.
20 (Ex. 14C, 14D, 14E, Ex. 14 at ¶ 18.)

21 82. After neither Baisden nor the Teleses provided a rental
22 agreement or documentation to support the claimed rent in
23 response to IRS inquiries, the IRS conducted research to
24 determine a reasonable rent for the property the Teleses' owned
25 that was used by Telese's engineering business. The IRS found
26 that the amount Baisden reported as rent was not consistent with
27 rental rates for Bakersfield, California for the property.
28 (Chynoweth Testimony.)

1 83. On the federal tax returns Baisden prepared for the
2 Teleses' corporation, Baisden reported ordinary business expense
3 deductions for items including the cost of a motorcycle, another
4 personal vehicle, utility payments and other expenses. The IRS
5 determined that the Teleses owed \$117,637 in additional taxes for
6 2002, and substantial additional taxes for 2003. The IRS re-
7 allocated a portion of the rent to wages to Telese, and also
8 determined that Telese's corporation owes additional employment
9 taxes. The Teleses have appealed the determinations, but no
10 final decision on the appeal has been rendered. (Ex. 14 at ¶¶
11 21-22.) No other evidence.

12 84. Baisden prepared federal income tax returns for Joseph
13 and Rhonda Shyselinck for the year 2002, (Ex. 14F), and their
14 corporation Chuck's Automotive. On the Ghyselincks' individual
15 federal income tax returns, Baisden reported that the Ghyselincks
16 had earned the vast majority of their income from rent. Joseph
17 Shyselinck worked full-time in his automotive business. (Ex. 14
18 at ¶¶ 4-8.)

19 85. After neither Baisden nor the Ghyselincks provided a
20 rental agreement or documentation to support the claimed rent in
21 response to IRS inquiries, the IRS conducted research to
22 determine a reasonable rent for the property the Ghyselincks
23 owned that was used by Chuck's Automotive. The IRS found that
24 the amount Baisden reported as rent was not consistent with
25 rental rates for Bakersfield, California, for the property.
26 (Chynoweth Testimony.)

27 86. On the federal tax returns Baisden prepared for Chuck's
28 Automotive, Baisden reported ordinary business expense deductions

1 for items including medical expenses, life insurance, car
2 expenses, and for the repair of a recreational vehicle. After
3 the IRS met with the Ghyselincks and a new accountant in 2005,
4 the Ghyselincks agreed to reallocate \$24,000 of the amount
5 Baisden reported as rent to salary to Joseph Shyselinck. The
6 Ghyselincks agreed to the disallowance of some of the expenses
7 Baisden reported as business expense deductions, and agreed to
8 additional taxes of \$2,316 individually, and additional tax to
9 their corporation of \$8,765. (Ex. 14 at ¶¶ 4-9.) No contrary
10 evidence.

11 12 UNFILED RETURNS

13 87. Baisden's customers have not filed federal income taxes
14 for the following years: Konings for 2004-2005, Bioventures for
15 2003-2005, Snoozys for 2003-2004, Trierweilers for 2005, Weavers
16 for 2004-2005, Hastings for 2003-2005, Johng for 2002-2005,
17 Swartzes for 2005, and the Teleses for 2005. Many of Baisden's
18 customers' corporations have similarly not filed past due tax
19 returns. Neither Baisden nor his customers have secured
20 extensions such that the tax returns would not be deemed late
21 upon filing. (Ex. 2 at ¶¶ 16, 33, Ex. 5 at ¶ 41, 43, Ex. 14 at ¶
22 23, Ex. 27.)

23 88. In addition, the Geilenkirchens retained and paid
24 Baisden to prepare tax returns for the years 2003 and 2004.
25 After Baisden had not prepared the returns by their required
26 filing dates, the Geilenkirchens retained a new accountant to
27 prepare and file the returns. After the return-filing deadlines
28 passed, Baisden told the Geilenkirchens that he had not filed

1 their returns because he was awaiting a determination from the
2 IRS regarding the Konings' tax returns. (Ex. 9 at ¶¶ 14, 15, and
3 21.)

4 89. Baisden told the Geilenkirchens that though he had not
5 filed their tax returns, they would not suffer any overall harm
6 because of the amount they were saving in taxes. Despite the
7 unfiled returns, Baisden told the Geilenkirchens a specific
8 amount of estimated tax payments they should make. Pursuant to
9 Baisden's advice, the Geilenkirchens made estimated tax payments
10 in the amount of \$1,300 for the year 2003. (Ex. 9 at ¶ 23.)
11 After a new accountant prepared their taxes for 2003, the
12 Geilenkirchens reported a total tax liability of \$26,293. (Ex.
13 5F.)

14 90. When questioned by the IRS about his unfiled returns,
15 Hastings told the IRS that he would not file the returns until a
16 determination has been made by the IRS regarding Mr. Baisden's
17 tax advice. (Shepka Testimony.) Baisden states that he has
18 advised some of his customers not to file federal tax returns
19 because of pending IRS investigations. (Doc. 22 at ¶ 44.)

20 91. Baisden states that he is aware of his customers' past
21 due federal income tax returns, and that he intends to assist at
22 least one customer in filing the returns. (Doc. 22 at ¶¶ 43-44.)
23 Baisden states that he believes that his customers have made
24 estimated tax payments. Bioventures has made no estimated tax
25 payments for 2003 through 2005. The Konings have made estimated
26 tax payments of \$2,800 for 2004, and \$45,000 for 2005. (Exs. 24,
27 25.) For much of the year 2004, Dr. Koning continued to work as
28 an anesthesiologist for Anesthesia Consultants. (Shepka

1 Testimony.)

2 92. The Hastings and Amethyst Sands have made estimated
3 federal income tax payments for 2003 through 2005 in the amounts
4 of \$56,125, \$62,750, and \$18,000. From 2003 through 2005,
5 Hastings continued to work as an anesthesiologist at the Great
6 Plains Regional Medical Center. (Ex. 13 at ¶ 9, Ex. 23.) The
7 Snoozys and Charpup Corporation made estimated federal income tax
8 payments of \$3,625 and \$1,500 for 2003 and 2004, though they
9 continued to work as an educator and nurse anesthetist throughout
10 2003 and 2004. (Exs. 15, 16.) The Trierweilers made estimated
11 tax payments of \$9,000 for 2005, though Michael Trierweiler
12 continued to work as a physician during the year. (Ex. 19.) The
13 Weavers have made estimated tax payments of \$77,700 for 2004 and
14 \$88,000 for 2005, though the majority of the payments are
15 attributable to Deborah Weaver's withholdings. (Ex. 20.) The
16 Weavers continued to work as physicians throughout 2004 and 2005.
17 (Williams Testimony.)

18 93. No contrary evidence was adduced about filing of tax
19 returns.

20

21

ARCTURUS CORPORATION

22

23

24

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94. Baisden acted as a consultant for the Arcturus
Corporation. (Doc. 22, ¶ 31.) In the year 2003, the Snoozys and
Hastings arranged to have portions of their incomes diverted
monthly from ACN to Arcturus Corporation. The IRS requested that
the Snoozys and Hastings provide documentation regarding the
diverted income, but Baisden, the Snoozys, and the Hastings
failed to provide any contracts, agreements, or other documents

1 regarding the "investment plan" with Arcturus. Baisden has also
2 provided no documents in response to the preliminary injunction
3 motion. (Shepka and Williams Testimony.)

4 95. Baisden states that the primary purpose of Arcturus is
5 to purchase shares of stock in medical practices, and that
6 "investors" did not have a repurchase option. (Doc. 22 at ¶ 30.)
7 Both the Snoozys and Hastings told the IRS during their
8 examinations that they believed they could retrieve the assets
9 they had "invested" in Arcturus at any time, except for the
10 management fee paid to Baisden and Dr. Koning. (Williams and
11 Shepka Testimony.) Dr. Koning also told Mr. Kryzsko about a
12 repurchase option. (Ex. 3 at ¶ 16.)

13 96. Baisden states that Arcturus has other purposes
14 including management, insurance reimbursement analysis, medical
15 billing and accounting, and taxes. (Doc. 22 at ¶ 30.) In a
16 review of Arcturus records, the IRS found no evidence of such
17 activities during the time the Snoozys and Hastings were
18 diverting their income to the corporation. (Shepka Testimony.)
19 Baisden has provided no evidence in response to the preliminary
20 injunction motion of such activity in 2003.

21
22 BAISDEN'S OTHER CONDUCT

23 97. In customer examinations, Baisden has failed to timely
24 provide all of the documents the IRS has requested by information
25 request and by summons. On at least one occasion, Baisden told
26 customers that they should do nothing in response to the IRS's
27 inquiries, that the IRS would ignore their lack of response, and
28 that the IRS was engaging in a "witchhunt." (Ex. 9 at ¶¶ 28,

1 33.)

2 98. In four instances, the IRS issued summonses directly to
3 his clients after Baisden refused to provide the requested
4 documents and appear for meetings with IRS agents. Only after
5 the clients themselves received summonses did the four clients
6 provide the requested documents and testimony. (Ex. 5 at ¶¶ 35-
7 36.)

8 99. On approximately seven occasions, Baisden failed to
9 attend meetings he had scheduled with the IRS agent in Nebraska
10 related to examinations to determine Baisden's clients' true tax
11 liabilities. Despite numerous requests from the IRS that he do
12 so, Baisden has never attended a meeting with Agent Williams.
13 (Williams Testimony.)

14 100. On one occasion, Baisden scheduled a meeting with an
15 IRS agent in California on the same date he had scheduled a
16 meeting with an IRS agent in Nebraska and failed to show up for
17 either meeting. (Ex. 11 at ¶¶ 17-19.)

18 101. During customer examinations, Baisden has filed IRS
19 Forms 911 claiming that the IRS summonses were causing his
20 customers a hardship. The IRS Taxpayer Advocate's office
21 determined that none of the forms Baisden submitted had merit.
22 Baisden's filing of the Forms 911 caused interruptions to IRS
23 investigations during the pendency of the taxpayer advocate
24 investigations. (Ex. 5 at ¶¶ 37-38, Ex. 6 at ¶ 35, Williams and
25 Chynoweth Testimony.)

26 102. The Government has issued no criminal indictments
27 against Baisden or any of his clients relating to alleged
28 improper tax practices.

1 103. The Internal Revenue Service has not issued Forms 4549
2 or statutory notices of deficiency to the majority of Baisden's
3 clients that it has audited.

4 104. No cases have been litigated in tax court pertaining
5 to Baisden's alleged tax practices.

6 105. On occasion some of these corporations entered a joint
7 venture with the individual taxpayer-owner to carry on an
8 additional business activity, such as the development of real
9 estate in the case of the Konings.

10 106. In at least one case an individual client purchased
11 real estate and reported on his or her return monthly rent from
12 the property paid to the individual by the corporation.

13 107. The monthly rent is allegedly based on a combination
14 of the market value and the assessment of "risk" that the
15 individual is taking. No evidence of fair rental value was
16 presented.

17 108. If real property is sold, both the corporation and the
18 individual share in the income based on their alleged relative
19 risk throughout the joint venture.

20 109. In the case of physician clients, their corporations
21 earned income by contracting with a medical practice unit to
22 provide it medical services, and contracted with the individual
23 to work as a physician for that particular medical unit.

24 110. Bioventures Corporation contracted with Anesthesia
25 Consultants of Nebraska for physician services. Income for such
26 medical services was reported by the corporation. Rental income
27 was being paid by Bioventures Corporation and that corporation
28 deducted the rent. No evidence was adduced how such rent was

1 established.

2 111. Baisden argues that neither Bioventures nor any of the
3 other tax structures discussed at the hearing engaged in any
4 scheme to avoid taxes.

5 112. Baisden claims to have advised his clients that they
6 needed to keep track of their business related expenses because
7 there could be an audit. Not all documents requested by the IRS
8 from Baisden and/or his clients were produced.

9 113. Baisden asserts he informed his clients that expenses
10 that were 100% personal needed to be paid with personal funds,
11 which included personal residence mortgage, personal residential
12 property taxes, food purchased at the grocery store, clothes, all
13 expenses for children, tithing, individual income taxes, personal
14 savings, and the personal use of personal residence.

15 114. Baisden alleges he does not advise clients that
16 improvements to their homes may be deducted by their
17 corporations.

18 115. Baisden produced approximately 25,000 documents to the
19 IRS with regard to the Koning audit.

20 116. Some of Baisden's clients made some estimated tax
21 payments during the years they did not file returns. The
22 estimates are a fraction of what the IRS claims these taxpayers
23 owe for taxes.

24 117. Baisden claims he informed the IRS that any personal
25 improvements will be repaid to the corporation.

26 118. In connection with improvements to Mr. Koning's home,
27 Koning claims that the note receivable in favor of his
28 corporation for amounts paid to improve his residence during 2003

1 and 2004 have been "paid back" with leasehold improvements made
2 in 2004 and 2005 for a new retail store that his corporation now
3 operates.

4 119. Plaintiff did not provide the court with most of the
5 back-up documents that its agents relied upon in arriving at
6 their opinions, which is information that the IRS has in its
7 possession and control.

8 120. The IRS initiated 11 audits of Baisden's clients
9 concurrently during the 2005 accounting tax season.

10 121. Baisden claims he gave his clients the option of his
11 acting as their Power of Attorney and the clients' election to
12 appoint him as such was "voluntary."

13 122. Arcturus Corporation ceased doing business in August
14 2004.

15 123. Agent Peter Shepka did not characterize Amethyst Sands
16 as a sham corporation. However, he did characterize a similar
17 corporation, Bioventures, as a "sham."

18 124. The Employer Identification Number used by Baisden is
19 valid and was issued to him by the Internal Revenue Service.

20 125. At least six of Baisden's 30 clients use the disputed
21 corporate tax structure at issue.

22 126. Baisden argues he would suffer significant harm were a
23 preliminary injunction issued preventing him from practicing
24 accounting and working as a tax preparer.

25
26 CONCLUSIONS OF LAW

27 1. The Plaintiff seeks injunctive relief under IRC 7402,
28 7407, and 7408. The Government has the burden of proof for

1 proving each of the following elements: (a) organization, sale or
2 participation in organizing an entity or plan; (2) making of
3 false or fraudulent statements regarding tax benefits; (3)
4 knowledge or reason to know that the tax matters are fraudulent;
5 (4) the false statements pertain to a material matter; and (5) an
6 injunction is necessary to prevent recurrence of this conduct.

7 2. As to IRC 7402, Plaintiff bears the additional burden
8 of proving each element of traditional equitable relief: (1)
9 substantial likelihood of succeeding on the merits; (2)
10 substantial threat of irreparable harm; (3) injury that outweighs
11 the opponent's injury; and (4) harm to public interest.

12 3. The United States has established a substantial
13 likelihood that Baisden has in some instances engaged in conduct
14 subject to penalty under I.R.C. §§ 6700 and 6701 and there is a
15 substantial likelihood that injunctive relief is appropriate to
16 prevent the recurrence of such conduct.

17 4. The United States has established a substantial
18 likelihood of success in proving that Baisden is subject to at
19 least a partial injunction under I.R.C. § 7407 because he has
20 engaged in conduct subject to penalty under I.R.C. § 6694 and
21 there is a substantial likelihood that injunctive relief is
22 appropriate to prevent the recurrence of such conduct.

23 5. The United States has established a substantial
24 likelihood of success in proving that Baisden has otherwise
25 interfered with the proper administration of the internal revenue
26 laws and an injunction under I.R.C. § 7402 is necessary or
27 appropriate for the enforcement of the internal revenue laws.

28 6. Baisden has engaged in conduct some of which is likely

1 subject to penalty under I.R.C. § 6700 by developing, organizing
2 and promoting a plan or arrangement that encourages and assists
3 professional customers to create corporations to which they
4 purportedly assign their professional incomes, the primary or
5 only purpose for which is to decrease their tax liability. In so
6 doing, Baisden has made the following statements that constitute
7 conduct subject to the § 6700 penalty:

8 a. Baisden inaccurately advised customers that by
9 using corporations they can deduct personal expenses that are not
10 ordinarily deductible to individuals;

11 b. Baisden inaccurately advised customers who he
12 knows are statutory employees of corporations that they can
13 assign all of their incomes to other corporations;

14 c. Baisden inaccurately advised customers that they
15 could assign their professional employment income to corporations
16 having reason to know that some of such corporations do not have
17 any legitimate business activity other than the activities of his
18 clients, medical professionals themselves;

19 d. Baisden inaccurately advised clients or potential
20 clients that they can save specific amounts of taxes by creating
21 or using corporations to which they can assign their income.

22 7. Baisden has engaged in conduct subject to penalty under
23 I.R.C. § 6701 by preparing federal tax returns for customers for
24 submission to the IRS containing items he knew would result in
25 understatements of customers' tax liability. Baisden has engaged
26 in conduct subject to penalty under I.R.C. § 6694 by preparing
27 federal tax returns for customers containing understatements of
28 liability based on positions for which there was no reasonable

1 basis for avoiding tax liability. Baisden has also engaged in
2 conduct subject to penalty under I.R.C. § 6694 by preparing
3 federal tax returns containing understatements of tax due to a
4 willful attempt to understate such liabilities, and in reckless
5 or intentional disregard of the internal revenue laws and
6 regulations. Baisden has done so by:

7 a. Preparing some federal tax returns claiming
8 deductions for business expenses that are in fact non-deductible
9 personal expenses, and/or for which he and his customers have not
10 produced supporting documentation;

11 b. Preparing some federal tax returns and forms
12 containing misstatements of fact as to customers' occupations,
13 the business activities of corporations, dates of incorporation,
14 and customers' sources of income;

15 c. Preparing some tax returns of corporations engaged
16 only in the activities related to the field of medical services
17 and failing to properly identify such corporations as personal
18 services corporations;

19 d. Preparing some federal tax returns for clients on
20 which he assigns the entire incomes of statutory employees to
21 their corporations and on which he does not report a reasonable
22 compensation to the owners/employees of corporations;

23 e. Preparing some federal tax returns for clients on
24 which he mischaracterizes wage or dividend income as rent or
25 royalties to individual owners;

26 f. Preparing some federal tax returns for clients on
27 which he reports ordinary business deductions for items that are
28 capital expenses that cannot be deducted in one year, or for the

1 costs of items intended to be sold, and properly categorized as
2 inventory;

3 g. Preparing some federal tax returns for clients
4 containing deductions for purported business expenses when the
5 clients have not provided supporting evidence to show they are
6 engaged in legitimate business activities with the intent to make
7 a profit.

8 8. Baisden has in some instances obstructed or interfered
9 with lawful IRS investigations in the following manner:

10 a. Advising his clients not to file federal tax
11 returns by the proper filing date;

12 b. Advising his clients to make estimated federal
13 income tax payments substantially below the amounts lawfully due;

14 c. Advising some of his clients not to comply with
15 IRS investigations in any way and advising some customers to
16 ignore IRS requests for documents;

17 d. Filing IRS forms 911 on behalf of his clients
18 asserting claims that are false or have no merit;

19 e. Repeatedly and inexcusably failing to provide
20 documents requested by the IRS;

21 f. Interrupting and otherwise not allowing clients to
22 answer questions posed by the IRS agents during interviews and
23 examinations;

24 g. Making factual misrepresentations to the IRS and
25 his clients regarding the status of IRS investigations and
26 examinations;

27 h. Repeatedly agreeing to scheduled appointments with
28 IRS agents and then failing to attend.

1 CONCLUSION

2 The Court further ORDERS as follows:

3 1. A preliminary injunction shall issue, in the form
4 previously prepared and filed with the court;

5 2. Baisden is ordered to serve a copy of the Order of
6 Preliminary Injunction on the customers listed on the Order; and

7 3. Baisden is ordered to provide proof of service of the
8 Order of Preliminary Injunction to the United States within 20
9 days following date of service of this Order.

10
11 DATED: April 5, 2007.

12 /s/ Oliver W. Wanger

13 _____
14 Oliver W. Wanger
15 UNITED STATES DISTRICT JUDGE
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