

delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to I.R.C. Sections 7402, 7407, and 7408.

4. The United States brings this complaint to permanently enjoin the defendants from:
 - (a) organizing or selling abusive tax shelters, plans, or arrangements that advise or encourage customers to attempt to evade the assessment or collection of their correct federal tax;
 - (b) engaging in any activity subject to penalty under I.R.C. Sections 6700, 6701, 6694, or 6695; and
 - (c) engaging in conduct that substantially interferes with the enforcement of the internal revenue laws.

5. The United States also seeks to have defendant Deborah Martin permanently enjoined from acting as an income tax preparer (as defined in I.R.C. Section 7701(a)(36)).

Defendants

6. Defendant Tax Strategies, Inc. (“Tax Strategies”) is incorporated in the state of Florida. It is located at 1401 Kimdale Street, LeHigh Acres, Florida 33936. Defendant Richard Alan Walters is Tax Strategies’ registered agent. Tax Strategies sells financial and tax services to the public. Tax Strategies is subject to this Court’s jurisdiction.

7. Defendant Fred J. Anderson resides in Marco Island, Florida. Before he formed Tax Strategies in October of 1997, Anderson owned an H&R Block franchise in LeHigh Acres, Florida. Anderson is subject to this Court’s jurisdiction.

8. Defendant Richard Alan Walters resides in Arlington, Texas. He purchased all or part of Tax Strategies from Anderson in April of 2001. He is the former vice president and current president of Tax Strategies. Walters conducts business through Tax Strategies within this

judicial district. Walters is subject to this Court's jurisdiction.

9. Defendant Deborah Martin resides in LeHigh Acres, Florida. She is the Vice President of Tax Strategies. Martin is subject to this Court's jurisdiction.

Defendants' Activities

10. The defendants promoted and marketed abusive tax schemes through seminars, the Internet, and promotional literature. Those schemes involve the creation and use of sham entities, such as trusts, charitable foundations, and limited liability companies, to eliminate or reduce reported federal income and/or self-employment tax liability.

A. Defendants' Promotion of a Scheme Involving a "Business Trust" and a "Private Foundation"

11. Defendants advise their customers to create business trusts and private foundations to eliminate or reduce their reported income and self-employment tax liability. The defendants advise the customers to use them as follows:

- . The business trust "contracts" with the customer's current business to provide facilities and management for that business. Selected assets of the customer, including the residence, are transferred to the business trust. The business trust uses the residence as the business headquarters, and the business trust deducts the cost of "operating and maintaining" the residence.
- . The customer becomes the director of the business trust, and the business trust enters into an "employment contract" with its director. As part of the employment contract, the director (who is the customer) "agrees" to "manage" the customer's business and protect, maintain, and improve the assets of the business, including caring for the business headquarters (which is the customer's residence), in exchange for compensation and benefits.
- . The business trust may provide housing and meals at the business headquarters (which is the customer's residence) for the director (who is the customer). The business trust may pay the customer as director the costs for the following: lodging, food, and transportation while on "company business," health care, insurance premiums, educational expenses for the director and his or her descendants, director's fees, and incidental expenses

associated with operating the business trust.

To avoid a tax on any remaining income after the above costs are paid, the business trust can “donate” that income to the customer’s private foundation. The business trust can “contribute” up to 100 percent of its taxable income to the private foundation, thereby, eliminating or reducing the business trust’s income tax liability.

The “donations” received by the private foundation are “invested” by its trustees. An amount equal to 5 percent of the private foundation’s “net investment assets” are to be used for “charitable” purposes and a 1 to 2 percent excise tax should be paid on the private foundation’s “net investment income.”

B. Defendants’ Promotion of the “Private Foundation Strategy” Scheme

12. The defendants advise their customers to use their “private foundation strategy” scheme to eliminate or reduce their reported income tax liability. Under this fraudulent scheme, the defendants advise the customers to use their existing limited liability company (“LLC”) or to create one to conduct their existing business. The customers are advised that if they are currently conducting their business through an S corporation or a C corporation, they should execute a “consulting agreement” between the newly created LLC and their corporation and an “employment agreement” between themselves and the LLC. The defendants then advise the customers to create a non-grantor trust and have the non-grantor trust in turn create a private foundation. The defendants advise the customers to “transfer” 99 percent of their ownership interest in the LLC to the non-grantor trust and keep the remaining 1 percent. The defendants falsely advise customers that: (1) as a result of the transfer of interest to the non-grantor trust, 99 percent of the LLC’s taxable income flows through to the non-grantor trust; (2) the non-grantor trust can give all of that taxable income to the private foundation as a “charitable contribution” and the foundation does not pay a tax on that income; (3) the private foundation only has to pay a 2 percent “federal exercise [sic] tax” on its “net investment income” and “contribute” 5 percent

of its “net investment assets” to public charities or other private foundations each year.

13. The defendants have made false or fraudulent statements to their customers regarding the use of the schemes involving sham business trusts and sham private foundations. Examples of the defendants’ false or fraudulent statements are:

- . Selected assets of the customer, including the residence, can be transferred to a business trust. The business trust can use the residence as the business headquarters, and the business trust can deduct the cost of “operating and maintaining” the residence;
- . The customer can become a director of the business trust, and the business trust can enter into an “employment contract” with the customer. As part of the employment contract, the customer can “agree” to “manage” his or her own business and “protect, maintain, and improve” the assets of the businesses, including caring for the business headquarters, which is the customer’s residence, in exchange for compensation and benefits;
- . The customer’s business trust may provide tax-deductible housing and meals for the customer as the director at the business headquarters, which is the customer’s residence;
- . The customer’s business trust may make tax-deductible payments to the customer as director for the costs of such things as lodging, food, transportation while on “company business,” health care, insurance premiums, educational expenses for the director and his or her descendants, director’s fees, and incidental expenses associated with operating the business trust;
- . To avoid tax on any remaining income after the above costs are paid, the customer’s business trust may “donate” that income to the customer’s purported private foundation. The business trust may “contribute” up to 100 percent of its taxable income to the private foundation, thereby, eliminating or reducing the business trust’s income tax liability;
- . The donations received by the private foundation can be “invested” by its trustee. An amount equal to 5 percent of the private foundation’s “net investment assets” can be used for “charitable purposes” and only a 1 to 2 percent excise tax should be paid on the private foundation’s “net investment income;” and
- . Customers’ use of the business trust and private foundation will “legally” reduce their income and self-employment taxes.

14. The defendants have made false or fraudulent statements to their customers regarding the defendants' "private foundation strategy" scheme. An example is:

The customer can transfer 99 percent of his or her business interest to a LLC created by the customer and keep the remaining 1 percent, and the LLC can transfer its interest to the customer's non-grantor trust. As a result of the LLC's transfer of business interest to the customer's non-grantor trust, 99 percent of the business's taxable income flows through to the non-grantor trust. The non-grantor trust can give all of that taxable income to a private foundation" as a "charitable contribution" and the foundation does not pay a tax on that income. The private foundation only has to pay a 2 percent "federal exercise [sic] tax" on its "net investment income" and "contribute" 5 percent of its "net investment assets" to public charities or other private foundations each year.

15. Anderson acts as the purported trustee of the sham trusts and sham private foundations used by the defendants and their customers.

Defendant Deborah Martin's Preparation of Tax Returns

16. Martin prepares federal tax returns for the defendants' customers using the schemes described in paragraphs 11 and 12 above.

17. Martin prepares customers' returns for sham trusts improperly claiming deductions for sham charitable contributions. As a result of the above, those customers' income and tax liability are understated on their federal-income-tax returns.

18. Martin prepares customers' corporate federal-income-tax returns improperly, claiming deductions for sham management fees. As a result, those customers' income and taxes are understated on their federal-income-tax returns.

19. Martin prepares customers' federal-income-tax returns for their LLCs improperly, claiming deductions for non-deductible personal living expenses, such as "rent" and repairs for the customers' residence, medical expenses, groceries, utilities, and travel. As a result, those customers' income and taxes are understated on their federal-income-tax returns.

20. Martin also prepares federal-income-tax returns for the defendants' customers' sham foundations. Martin improperly claims deductions for sham contributions to the customers' sham foundations. Most of the funds in the foundations are used to pay customer fees to Tax Strategies and to make investments for the benefit of the customers and not used for charity. As a result of the above, the defendants' customers' income and taxes are understated on their federal-income-tax returns.

21. Defendants charge an "initial planning fee" of \$2,000 and a monthly fee of \$325 for, among other things, accounting and tax-return preparation to their customers using the private foundation strategy scheme. Those customers are also charged for "third party legal fees" of \$2,000 to \$5,000 for the "organization" of a sham LLC, non-grantor trust, and private foundation.

22. Defendants' customers incur a "third party implementation cost" of \$5,000 to \$15,000 to have documentation completed for the scheme involving the sham business trust and private foundation. Defendants charge their customers who purchase the scheme involving the sham business trust and private foundation \$325 a month for tax accounting, tax return preparation, and trust administration and management services.

23. From 1998 to June of 2003, the defendants' customers have paid defendants approximately \$283,000 relating to the schemes described in paragraphs 11 and 12 above.

Harm to the Public

24. Defendants' customers have been harmed by their promotion of the schemes described in paragraphs 11 and 12 above because they are under-reporting and under-paying their federal taxes, and thus are subject to being assessed additional taxes, plus penalties and interest.

They could also be charged criminally for participating in defendants' schemes.

25. The United States is harmed because the defendants' customers are not reporting or paying the correct amount of taxes. To date, Martin is known to have prepared federal tax returns for at least 30 customers between 1998 and June of 2003. Based on IRS audits of the defendants' customers to date, the IRS has estimated that the defendants' misconduct has so far caused a loss of more than \$7.5 million in tax revenue. Some of these taxes may never be collected, resulting in a permanent loss to the United States Treasury.

26. The United States is also harmed because the IRS is forced to devote its limited resources to identifying and recovering this lost revenue from the defendants and their customers.

27. In addition to the harm caused by the defendants' promotions and fraudulent tax-return preparation, described above, defendants' activities undermine the integrity of the federal tax system and encourage noncompliance with the internal revenue laws.

COUNT I

Injunction under I.R.C. Section 7407

28. Plaintiff incorporates by reference the allegations in paragraphs 1-27.

29. IRC Section 7407 authorizes a district court to enjoin an income tax preparer from:

- (a) engaging in conduct subject to penalty under I.R.C. Section 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position),
- (b) engaging in conduct subject to penalty under I.R.C. Section 6695 (which penalizes a return preparer who fails to furnish a proper identifying number, keep copies of returns prepared or list of customers for whom returns were prepared, or turn over those copies of returns or list of customers to the IRS upon request),
- (c) misrepresenting his experience or education as a tax return preparer, or

- (d) engaging in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal-income-tax preparer.

30. Between 1998 and June of 2003, Martin prepared federal tax returns for at least 30 customers improperly claiming deductions for, among other things, non-deductible personal living expenses, sham charitable contributions, and sham management fees. In doing so, she has asserted positions that she knew or should have known were unrealistic within the meaning of I.R.C. Section 6694.

31. Specific examples of the unrealistic positions asserted by Martin include:

- (a) A customer in Florida agreed to IRS proposed adjustments that increased his tax by a total of more than \$149,000 for 1999, 2000, 2001, and 2002. The tax understatements on his returns resulted from the customer's Martin-prepared returns improperly claiming deductions for nondeductible personal expenses, sham charitable contributions, and sham management fees.
- (b) Martin prepared the tax returns of two customers (husband and wife) residing in Florida. After an IRS audit the customers agreed to an adjustment for four tax years that increased their tax by a total of more than \$160,000. The understatements resulted from improperly claimed deductions for nondeductible personal expenses, sham charitable contributions, and sham management fees.

32. Martin's actions, as described above, fall within I.R.C. Section 7407(b)(1)(A) and

(D), and thus are subject to injunction under Section 7407.

33. Martin's repetition of conduct that is subject to injunction under I.R.C. Section 7407, even after she was advised that her conduct was subject to penalty and that her positions were frivolous, combined with her other conduct described in this complaint, warrants an injunction permanently barring her from acting as a federal-income-tax-return preparer.

COUNT II

Injunction under I.R.C. Section 7408

34. Plaintiff incorporates by reference the allegations in paragraphs 1-33.

35. Section 7408 of the I.R.C. authorizes a district court to enjoin any person from engaging in conduct subject to penalty under Sections 6700 and 6701 of the I.R.C., if injunctive relief is appropriate to prevent recurrence of that conduct.

36. Section 6700 of the I.R.C. imposes a penalty on any person who, in connection with organizing, promoting, or selling a plan or arrangement, makes or furnishes a statement about the tax consequences of participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter.

37. Section 6701 of the I.R.C. imposes a penalty on any person who aids or assists in or advises with respect to the preparation or presentation of a federal tax return, claim for refund, or other document while knowing (or having reason to believe) that the return, claim, or other document will be used in connection with any material matter arising under the internal revenue laws and if used would result in an understatement of another person's tax liability.

38. In connection with the promotion of the schemes described in paragraphs 11 and 12 above, the defendants knew or had reason to know that the statements that they made about the

tax consequences of participating in those schemes, which are described in paragraphs 13 and 14 above, were false or fraudulent because of their experience in the financial and tax-return-preparation business.

39. Martin knew or had reason to know that her assistance or advice, as described in paragraphs 16 through 20 above, with respect to the preparation or presentation of the defendants and their customers' federal tax returns would be used in connection with a material matter under the internal revenue laws (namely the reporting of their federal tax liabilities) and knew that if it was so used it would result in the understatement of the defendants and their customers' tax liabilities.

40. The defendants have engaged in conduct subject to penalty under Sections 6700 and 6701 in connection with the organization and promotion of the schemes described in paragraphs 11 and 12 above, and Martin's preparation of federal tax returns.

41. Unless enjoined by this court, the defendants are likely to continue to engage in such conduct. Injunctive relief is therefore appropriate under I.R.C. Section 7408.

COUNT III

Injunction under I.R.C. Section 7402 for Unlawful Interference with Enforcement of the Internal Revenue Laws and Appropriateness of Injunctive Relief

42. The United States incorporates by reference the allegations in paragraphs 1 through 41.

43. I.R.C. Section 7402 authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

44. The defendants, through the actions described above, have engaged in conduct that

interferes substantially with the enforcement of the internal revenue laws.

45. The schemes promoted by the defendants improperly instruct and encourage their customers to file false tax returns. The federal tax returns that Martin prepared for customers improperly and illegally reduced their reported federal-income-tax liabilities.

46. If the defendants are not enjoined, the United States will suffer irreparable harm because the losses caused by them will continue and will not all be recoverable.

47. While the United States will suffer irreparable harm if the defendants are not enjoined, the defendants will not be harmed by being compelled to obey the law.

48. The public interest will be advanced by enjoining the defendants because an injunction will stop their illegal conduct and the harm that conduct is causing.

49. If the defendants are not enjoined, they are likely to continue to interfere with the enforcement of the internal revenue laws.

WHEREFORE, plaintiff United States of America respectfully prays for the following:

A. That the Court find that the defendants have engaged in conduct subject to penalty under I.R.C. Sections 6694, 6695, 6700, and 6701, and that injunctive relief under I.R.C. Sections 7407 and 7408 is necessary and appropriate to prevent recurrence of that conduct;

B. That the Court find that the defendants have engaged in conduct interfering with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and under I.R.C. Section 7402(a);

C. That this Court, pursuant to I.R.C. Section 7407, enter a permanent injunction prohibiting Martin from acting as a federal-income-tax-return preparer;

D. That this Court, pursuant to I.R.C. Sections 7402(a) and 7408, enter a permanent injunction prohibiting the defendants, under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly, by means of false, deceptive, or misleading commercial speech:

- a. Engaging in activity subject to penalty under I.R.C. Section 6700, including organizing, promoting, or selling a plan or arrangement and making statements regarding the excludibility of income and the IRS's filing requirements that he knows or has reason to know are false or fraudulent as to any material matter;
- b. Engaging in activity subject to penalty under I.R.C. Section 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know or have reason to know will, if used, result in an understatement of tax liability;
- c. Selling any type of asset-protection device, including trusts, limited liability companies or corporations, private foundations, or similar arrangements, that advocate or facilitate tax evasion or noncompliance with the income tax laws, or that misrepresent the tax savings realized by using the arrangements, or by concealing the receipt of income or location of assets from the IRS;
- d. Engaging in any other activity subject to penalty under I.R.C. Sections 6700 or 6701; and
- e. Engaging in other conduct interfering with the enforcement of the internal revenue laws;

E. That this Court, pursuant to I.R.C. Sections 7402(a) and 7408, enter an injunction requiring the defendants to contact by mail all customers who have purchased their abusive shelters, plans, or arrangements, or programs, or any other shelter, plan, or program in which they have been involved, and inform those customers of the Court's findings concerning the falsity of their representations and attach a copy of the permanent injunction against them;

F. That this Court, pursuant to I.R.C. Sections 7402(a) require the defendants to provide

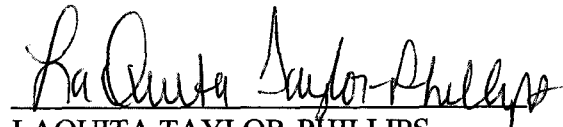
the Justice Department with a list of the names, taxpayer-identification numbers, addresses, telephone numbers, and e-mail addresses of all individuals and entities: (1) to whom they sold or distributed, either directly or indirectly, tax plans, arrangements, or programs, or any other shelter, plan or program in which they have been involved; or (2) for whom they have prepared federal tax returns;

G. That this Court retain jurisdiction over the defendants and this action for the purpose of enforcing any permanent injunction entered against them.

H. That the United States be entitled to conduct discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring the defendants' compliance with the terms of any permanent injunction entered against him;

I. That this Court grant the United States such other relief, including costs, as is just and equitable.

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