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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA

Plaintiff,

v.

RONALD M. PAUL, individually and d/b/a/
THE TAX CLINIC

Defendant.

Case No. C04-0916L

ORDER GRANTING PLAINTIFF'S
MOTION FOR A PRELIMINARY
INJUNCTION AND DENYING
DEFENDANT'S MOTION TO STAY
ALL PROCEEDINGS

I. Introduction

This matter comes before the Court on the Government's motion for a preliminary injunction (Dkt. # 9) to enjoin the Defendant from preparing federal income tax returns or assisting or advising others in preparing returns while this lawsuit is pending. The Government's motion was noted for August 20, 2004. While the pro se Defendant has not filed a response to the Government's motion, he has filed a motion to stay all proceedings in objection to the appearance of Kristin Hodges (Dkt. # 20), counsel for the Government. For the reasons set forth in this Order, the Government's motion for a preliminary injunction is GRANTED and



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2 Defendant's motion to stay all proceedings is DENIED.¹

3 **II. Background**

4 The Government has alleged that the Defendant is an unlicensed and unenrolled tax
5 return preparer who guarantees customers big refunds, which he secures through fraudulent tax
6 returns. (Motion at 2.) According to Defendant's Airborne Express employment application
7 completed in November 2003, he has been self-employed as a personal and small business tax
8 practitioner since 1987. (Ustaris Decl. Ex. 1.) In addition, he has received a wide variety of
9 skills, training and education as an accountant for the businesses "Accountants on Call" and
10 "Accounting Quest," both in Seattle, Washington. (Ustaris Decl. Ex. 1.) The Government
11 claims that Defendant, doing business as the Tax Clinic, is responsible for over \$1.5 million in
12 understated tax liability. (Motion at 7.) The Government has supported its accusations by
13 declarations of Mr. Paul's former customers, which allege that their tax returns were
14 fraudulently prepared by the Defendant, who deducted non-existent business expenses and
15 charity contributions without their knowledge. (Childers Decl. at 2; Shonko Decl. at 2.)
16 Defendant denies that he has knowingly prepared federal income tax returns which would result
17 in the understatement of another person's federal income tax liabilities. (Answer at 5.)

18 **III. Discussion**

19 **A. Motion to Stay Proceedings**

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21 Defendant has asked this Court stay all proceedings until Kristin H. Hodges, counsel for
22 the Government, has produced her authority to act on behalf of the Government. (Motion at 4.)
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26 ¹ The Government requested oral argument in accordance with Local CR 7(b)(4).
27 Having considered the motion and supporting materials, the Court finds that resolution of this
28 matter without oral argument is appropriate.

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2 In support of this motion, Defendant points to 28 U.S.C. § 530B, which requires Government
3 attorneys to be subject to state laws and rules. He contends that pursuant to 28 U.S.C. § 530B,
4 Ms. Hodges is subject to Washington Court Admission to Practice Rule 8. However,
5 Washington's Admission to Practice Rules do not apply in federal courts. "Admission to
6 practice law before a state's courts and admission to practice before the federal courts in that
7 state are separate, independent privileges. The two judicial systems of courts . . . have
8 autonomous control over the conduct of their officers, among whom, in the present context,
9 lawyers are included." In re Poole, 222 F.3d 618, 620 (9th Cir. 2000). Pursuant to General Rule
10 2(b) of the Local Rules for Western District of Washington:
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12 An attorney who is a member in good standing of the Washington State Bar, and any
13 attorney who is a member in good standing of the bar of any state and who is
14 employed by the United States or one of its agencies in a professional capacity and
15 who, while being so employed may have occasion to appear in this court on behalf of
the United States or one of its agencies, is eligible for admission to the bar of this
court.

16 Ms. Hodges is not required to apply to appear before the Court *pro hac vice* as she is a member
17 of the bar of this Court. Furthermore, the Defendant has cited no authority for the proposition
18 that Ms. Hodges must present him with evidence that she is properly credentialed to speak on
19 behalf of the United States, and has presented no evidence that would cause this Court to doubt
20 Ms. Hodges' authority to do so.²
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24 ² Defendant has cited RCW 2.44.030, which gives Washington state court judges
25 authority to require an attorney to produce authority under which she appears, on a motion of
26 either party showing reasonable grounds for the request. (Motion at 3.) Without resolving
27 whether that statute grants federal judges such authority, the Court sees no reason to place this
additional burden on either of the parties.

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3 **B. Motion for Preliminary Injunction**

4 "The purpose of a preliminary injunction is merely to preserve the relative positions of the
5 parties until a trial on the merits can be held." University of Texas v. Camenisch, 451 U.S. 390,
6 395 (1981). Generally speaking, a party is not required to prove its entire case at this stage of
7 the litigation, but rather to present enough evidence to demonstrate "either: (1) a likelihood of
8 success on the merits and the possibility of irreparable injury; or (2) that serious questions going
9 to the merits were raised and the balance of hardships tips sharply in [their] favor." United
10 States v. Schiff, 397 F.3d 621, 625 (9th Cir. 2004) (internal quotation and citation omitted).
11 However, in this case the Government has asked for an injunction pursuant to 26 U.S.C. §§
12 7407, 7408, and thus a more specialized standard applies. Id. Section 7408 authorizes an
13 injunction "to enjoin any person from further engaging in conduct subject to penalty under . . .
14 section 6701 (relating to penalty for aiding and abetting understatement of tax liability)."³ The
15 Ninth Circuit has held that "[t]he traditional requirements for equitable relief need not be
16 satisfied since Section 7408 expressly authorizes the issuance of an injunction." United States v.
17 Estate Preservation Serv., 202 F.3d 1093, 1098 (9th Cir. 2000). In order to be granted a
18 preliminary injunction, the Government must prove each element of the alleged offense by a
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23 ³ 26 U.S.C. § 6701 provides: "Any person - (1) who aids or assists in, procures, or
24 advises with respect to, the preparation or presentation of any portion of a return, affidavit,
25 claim, or other document, (2) who knows (or has reason to believe) that such portion will be
26 used in connection with any material matter arising under the internal revenue laws, and (3) who
27 knows that such portion (if so used) would result in an understatement of the liability for tax of
28 another person, shall pay a penalty with respect to each document in the amount determined
under subsection (b)."

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2 preponderance of the evidence, and must also show that injunctive relief is appropriate to
3 prevent recurrence of such conduct. See id.; Schiff, 397 F.3d at 625.⁴ The Ninth Circuit has set
4 forth factors for courts to consider when determining the likelihood of future violations, and thus
5 the necessity of an injunction:
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7 (1) [T]he gravity of the harm caused by the offense; (2) the extent of the defendant's
8 participation, (3) the defendant's degree of scienter; (4) the isolated or recurrent
9 nature of the infraction; (5) the defendant's recognition (or non-recognition) of his
10 own culpability; and (6) the likelihood that the defendant's occupation would place
11 him in a position where future violations could be anticipated.

12 Id. (internal quotations omitted).

13 Pursuant to 26 U.S.C. § 7407, a court may issue an injunction against an income tax
14 preparer who has:

15 (A) [E]ngaged in any conduct subject to penalty under section 6694 [penalizing
16 knowing understatements due to undisclosed, unrealistic positions] or 6695
17 [penalizing failure to sign returns, provide an identifying number, or keep and provide
18 a list of clients], or subject to any criminal penalty provided by this title, (B)
19 misrepresented his eligibility to practice before the Internal Revenue Service, or
20 otherwise misrepresented his experience or education as an income tax return
21 preparer, (C) guaranteed the payment of any tax refund or the allowance of tax credit,
22 or (D) engaged in any other fraudulent or deceptive conduct which substantially
23 interferes with the proper administration of the Internal Revenue laws[.]

24 A court may only issue the injunction if it is "appropriate to prevent the recurrence of such
25 conduct." 26 U.S.C. § 7407(b)(2). Section 7407 gives courts the power either to 1) enjoin the
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27 ⁴ Schiff and Estate Preservation Services were cases involving violations of 26 U.S.C. §
28 6700. The analysis for determining whether an injunction is appropriate for violations of
sections 6700 and 6701 is substantially the same since both fall under the same requirements of
26 U.S.C. § 7408.

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2 preparer from engaging in the unlawful conduct, or to 2) issue a more comprehensive injunction,
3 enjoining the person from acting as an income tax return preparer. The latter option is only
4 appropriate if the past violations were recurrent and an injunction enjoining only unlawful
5 actions would not be sufficient "to prevent such person's interference with the proper
6 administration of this title." Id.
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8 In this case the Government has presented sufficient undisputed evidence that the
9 defendant violated 26 U.S.C. § 6701. The Government has submitted declarations and tax
10 returns which detail Defendant's alleged offenses including preparing tax returns which claim
11 fictitious business losses, charitable contributions, and unreimbursed employee business
12 expenses. (Herrmann Decl. ¶ 8.) In addition, Defendant, in preparing returns, has used a
13 fraudulent "claim of right" theory which has been clearly denounced as "frivolous" by the IRS in
14 a clarification of the tax code.⁵ (Herrmann Decl. Ex. 1.) While Defendant does present some
15 affirmative defenses in his answer, and denies having prepared fraudulent income tax returns, he
16 does not refute the Government's specific allegations. For example, he does not deny having
17 prepared the tax returns of Kathy Childers and Damian Shonko, which the Government provided
18 for the Court, and which both Ms. Childers and Mr. Shonko claim contain fraudulent
19 information. (Childers Decl. at 2; Shonko Decl. at 2.)
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22 The Government has further produced sufficient evidence to satisfy the Court that an
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25 ⁵ IRS Revenue Ruling 2004-29: "This ruling emphasizes to taxpayers, and to promoters
26 and return preparers who assist taxpayers with frivolous tax schemes, that there is no 'claim of
27 right' doctrine that permits an individual to take the position that either the individual or the
28 individual's income is not subject to federal income tax."

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2 injunction is necessary to prevent future misconduct. (1) The Government has alleged over
3 \$1,318,061 in understated tax liabilities. (Herrmann Decl. ¶ 14.) That significant number is
4 supported by the sworn declaration of Barbara Herrmann, an Internal Revenue Service (IRS) tax
5 compliance officer who investigated the Defendant. Id. (2) The Government further alleges that
6 the Defendant was responsible for that understated tax liability since he personally prepared the
7 fraudulent tax returns. This is supported not only by Ms. Herrmann, but also by declarations
8 from Defendant's clients who claim that they had no knowledge that Defendant was claiming the
9 unsubstantiated deductions. Id. ¶ 8; Childers Decl. ¶¶ 6-10; Shonko Decl. ¶¶ 12-16. (3)
10 Defendant's level of education and experience strongly suggest that his conduct was knowing
11 and willful. According to Defendant's Airborne Express job application, he has taken
12 accounting classes at both North Seattle and Green River Community College, and has held no
13 less than three accounting positions. (Ustaris Decl. Ex. 1.) Defendant's knowledge and
14 willfulness is also exemplified by accusations by his former client that he told her to disregard
15 examination letters from the IRS. (Childers Decl. ¶¶ 15-16.) (4) As the IRS has identified 391
16 suspicious Paul-prepared returns, the Court must conclude that the conduct was not isolated, but
17 rather recurrent. (Herrmann Decl. ¶ 13.) (5) Defendant has not recognized any personal
18 culpability. (Answer at 5.) (6) Finally, Defendant's chosen occupation as an accountant places
19 him in a position where future violations can certainly be anticipated.⁶
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24 ⁶ In addition to meeting the preliminary injunction standards of 26 U.S.C. § 7408, the
25 Government has also shown a likelihood of success on the merits, and the possibility of
26 irreparable harm. The Government has produced a number of declarations detailing the alleged
27 offenses, from fraudulent claims of business losses to unsubstantiated charitable deductions.
(Childers Decl. ¶ 7; Shonko Decl. ¶ 12.) Aside from Defendant's denials of any wrong-doing,

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2 The Government has met its burden for a preliminary injunction under both section 7407
3 and section 7408. The Court finds that the Government has proven, by a preponderance of the
4 evidence, that Defendant has engaged in activity which violates 26 U.S.C § 6701. In addition,
5 the Court finds that enjoining Defendant from engaging in conduct which violates 26 U.S.C. §
6 6701 would not be sufficient to prevent his interference with the proper administration of title
7 26. Thus, a preliminary injunction pursuant to 26 U.S.C. § 7407, enjoining Defendant from
8 acting as an income tax return preparer, is necessary to prevent further violations and harm to
9 both the Government and potential clients. The Court does not find it appropriate to order
10 Defendant to contact all of his past clients, as it is not necessary for the enforcement of the
11 internal revenue law as required by 26 U.S.C. § 7402.
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14 For all of the foregoing reasons, the Government's motion for a preliminary injunction
15 (Dkt. # 9) is GRANTED and Defendant's motion to stay all proceedings (Dkt. # 20) is
16 DENIED.⁷
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22 he has not set forth any specific evidence countering the Government's allegations. If the
23 Defendant continues with the allegedly illegal conduct, it is highly probable that not only the
24 Government, but also any future clients, will be irreparably harmed.

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26 ⁷ The Government has requested that the Court award costs and attorney's fees expended
27 in defense of Defendant's motion to stay. (Response at 2.) While the Defendant is not
28 represented by counsel, the motion was clearly frivolous. The Court will take the matter under
advisement and reserve judgment on the issue of fees until it can be determined whether the
frivolous motion was an isolated incident.

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2 **IV. Conclusion and Preliminary Injunction**

3 Defendant Ronald M. Paul is preliminarily enjoined and prohibited during the pendency
4 of this action, individually and through any entity, from directly or indirectly:
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6 1. Preparing or assisting in the preparation of any federal income tax returns for any
7 other person for compensation;

8 2. Providing any tax advice or services for compensation, including providing
9 consultative services or purported representation of customers before the IRS;

10 3. Engaging in activity subject to penalty under 26 U.S.C. § 6694, including
11 preparing any part of a return or a claim for refund that includes an unrealistic or frivolous
12 position;
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14 4. Engaging in activity subject to penalty under 26 U.S.C § 6701, including advising
15 with respect to, preparing, or assisting in the preparation of a document related to a material
16 matter under the internal revenue laws that includes a position he knows will result in an
17 understatement of tax liability;
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19 5. Misrepresenting his qualifications and eligibility to practice before the IRS and his
20 experience or education as an income tax return preparer;

21 6. Engaging in any conduct that substantially interferes with the administration and
22 enforcement of the internal revenue laws.
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24 Furthermore, if Defendant is contacted by any of his past customers, he is ORDERED to
25 disclose to them the contents of this Order and notify them of the possibility that their returns are
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being investigated by the IRS.

DATED this 17th day of September, 2004.



Robert S. Lasnik,
United States District Judge