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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 SAMUEL S. FUNG,)
)
 Defendant.)
)
 _____)

Case No. *03-3123-CO*

**COMPLAINT FOR PERMANENT
INJUNCTION**

Plaintiff United States of America complains and alleges against defendant Samuel S. Fung as follows:

Jurisdiction

1. This Court has jurisdiction over this injunction action pursuant to 28 U.S.C. Sections 1340 and 1345 and Internal Revenue Code (26 U.S.C.) (I.R.C.) Sections 7402(a), 7407, and 7408.

Venue

2. Venue is proper in this Court pursuant to 28 U.S.C. Sections 1391 and 1396 because Fung resides in this judicial district.

Nature of Action

3. This action has been requested by the Acting Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to I.R.C. Sections 7402, 7407, and 7408.

4. The United States is bringing this complaint to permanently enjoin Fung from:

(a) acting as an income tax preparer (as defined in I.R.C. Section 7701(a)(36));

(b) organizing or selling abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;

(c) engaging in any activity subject to penalty under I.R.C. Sections 6700, 6701, 6694, or 6695;

(d) engaging in conduct that substantially interferes with the enforcement of the internal revenue laws and from promoting any false or fraudulent tax scheme.

Defendant

5. Samuel S. Fung resides in Medford, Oregon. He owned and operated a tax preparation service under the name "Cortland Tax Management" in California. He has now relocated his tax-preparation service to Oregon. Fung also owns and operates a "business restructuring" service under the name of Professional Business Consultants, LLC in Medford, Oregon.

Defendant's Activities

Defendant's Preparation of Tax Returns

6. Fung was closely associated with National Trust Services (NTS) and its successors, an abusive trust marketing organization, from approximately 1994 to 2001.

7. Fung prepares federal income tax returns for trusts that his customers purchased from NTS during the time he was associated with it. One of NTS's founders, Roderick A. Prescott, has been permanently enjoined from organizing, promoting, marketing, or selling purported trusts like those purchased from NTS by Fung's customers. (Civil No. 02-CV-0692 S.D. Cal.).

8. Fung advises his customers to deduct non-deductible personal living expenses on their trusts' federal income tax returns. Those personal living expenses include such items as costs of maintaining the customer's personal residence, food, clothing, vacation, and the like. As a result of deducting their personal living expenses, Fung's customers' federal taxes are understated on their federal-income-tax returns.

9. Fung also advises his customers to pay or assign their income and assets to sham charitable trusts that they own and control and then claim a false charitable deduction in the amount of those funds. As a result of claiming these false charitable deductions, Fung's customers' federal taxes are understated on their federal-income-tax returns.

10. Fung advises his customers that their trusts may borrow funds that were paid or assigned to their sham charitable trusts without any federal tax consequence.

11. Fung charges his customers \$300 to \$400 to prepare an income tax return. From 1997 to June of 2003, Fung received over \$315,000 in fees for preparing income tax returns.

12. Fung has failed to furnish a proper tax identification number on the federal tax

returns that he has prepared for his customers.

13. The IRS has requested Fung to provide copies of federal tax returns that he has prepared since January 1, 1997, or a list of the taxpayers for whom he has prepared those returns. Fung has refused to comply with the IRS's request.

Defendant's Promotion of his "Business Restructuring" Scheme

14. Fung advises his customers to "restructure" their trust arrangements through the use of his "business restructuring plan." Under his "plan," his customers' businesses would no longer file trust returns. Instead the business is reclassified as a C-Corporation, an S-Corporation, or a partnership. The customer creates a sham "charitable foundation" that purportedly owns 98 percent of the customer's business, with the customer owning the remaining 2 percent. Under the plan all business profits are "donated" or distributed to the charitable foundation. Then Fung advises his customers that they may "borrow" from the charitable foundation to pay their personal living expenses and those borrowed funds do not have to be repaid and are nontaxable. Fung also advises his customers that under his "business restructuring plan," their business entities do not have to file federal tax returns.

15. Fung has made false or fraudulent statements to his customers regarding his "business restructuring plan." Examples of Fung's false or fraudulent statements are:

- . that their business profits can be donated or distributed to their sham charitable foundation and they may borrow from that foundation to pay their personal living expenses and not repay those funds or be taxed on those funds.
- . that their business entities do not have to file federal tax returns.

Harm to the Public

16. Fung's customers have been harmed by his preparing false and fraudulent tax returns because they have paid him significant sums—\$300 to \$400 per return—to prepare tax returns that understate their income tax liabilities. Additionally, they have been harmed by his promotion of a “business restructuring plan” because his customers are being misled about the tax consequences of their business income.

17. The United States is harmed because Fung's customers are not reporting or paying the correct amount of taxes. To date, Fung is known to have prepared federal tax returns for at least 108 customers between 1997 and 2001. Based on IRS audits of Fung customers to date, the IRS has estimated that Fung's misconduct has so far caused a loss of more than \$6 million in tax revenue. Some of these taxes may never be collected, resulting in a permanent loss to the United States Treasury.

18. The United States is also harmed because the IRS is forced to devote its limited resources to identifying and recovering this lost revenue from Fung's customers

19. In addition to the harm caused by Fung's promotions and fraudulent tax-return preparation, his 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

20. Plaintiff incorporates by reference the allegations in paragraphs 1-19.

21. 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.

22. Between 1997 and 2001, Fung prepared federal tax returns for at least 108 taxpayers claiming deductions for nondeductible personal expenses and/or false charitable contributions. In doing so, he has asserted positions that he knew or should have known were unrealistic within the meaning of I.R.C. Section 6694.

23. Specific examples of the unrealistic positions asserted by Fung include:

- (a) A Fung customer in California who agreed to IRS proposed adjustments that increased his tax by more than \$300,000 for 1998, 1999, and 2000.

The tax understatements on his returns resulted from the customer's Fung-prepared trust returns improperly claiming deductions for nondeductible personal expenses and false charitable contributions.

- (b) Fung prepared the trust income tax returns of two customers (mother and son) residing in California. After an IRS audit the customers agreed to an adjustment for three tax years that increased their tax by \$156,000. The understatements resulted from improperly claimed deductions for non-deductible personal expenses.

24. Fung has attempted to delay or obstruct IRS audits of the federal income tax returns that he prepared by: (a) failing to furnish a proper tax identification number on those returns and (b) refusing to provide to the IRS copies of those returns or a list of customers for whom he has prepared returns.

25. Fung'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.

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

COUNT II

Injunction under I.R.C. Section 7408

- 27. Plaintiff incorporates by reference the allegations in paragraphs 1-26.
- 28. 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.

29. 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.

30. 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 had 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.

31. In connection with the promotion of his "business restructuring plan," Fung knew or had reason to know that the statements that he made about the tax consequences of participating in that scheme, which are described in paragraph 15 above, were false or fraudulent because of his experience as a federal income tax return preparer.

32. Fung knew or had reason to know that his assistance or advise, as described in paragraphs 8 through 10 above, with respect to the preparation or presentation of his 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 if used would result in the understatement of his customers' tax liabilities.

33. Fung has engaged in conduct subject to penalty under Sections 6700 and 6701 in connection with the organization and promotion of his business restructuring scheme described

above, and his preparation of federal tax returns.

34. Unless enjoined by this court, Fung is 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

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

36. 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.

37. Fung, through the actions described above, has engaged in conduct that interferes substantially with the enforcement of the internal revenue laws.

38. The federal income tax returns that Fung prepared improperly and illegally reduced his customers' reported federal-income-tax liabilities. Fung's business-restructuring scheme improperly instructs and encourages customers not to file tax returns for their businesses.

39. If Fung is not enjoined, the United States will suffer irreparable harm because the losses caused by him will continue and will not all be recoverable.

40. While the United States will suffer irreparable harm if Fung is not enjoined, Fung will not be harmed by being compelled to obey the law.

41. The public interest will be advanced by enjoining Fung because an injunction will stop his illegal conduct and the harm that conduct is causing.

42. If Fung is not enjoined, he is 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 Fung has 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 Fung has 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 Fung 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 Fung, individually and doing business under any other name or using any other entity, and his 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 excludability 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 he knows or has

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 corporations, or similar arrangements, advocating noncompliance with the income tax laws or tax evasion, misrepresenting the tax savings realized by using the arrangements, or 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 Fung to contact by mail all customers who have purchased his abusive shelters, plans, or arrangements, or programs, or any other shelter, plan, or program in which he has been involved, and inform those customers of the Court's findings concerning the falsity of his representations and attach a copy of the permanent injunction against him;

F. That this Court, pursuant to I.R.C. Sections 7402(a) and 7408, enter an injunction requiring Fung to produce to the United States any records in his possession or to which he has access, identifying by name, taxpayer-identification number, address, and telephone number all individuals and entities: (1) for whom he has prepared federal tax returns or (2) to whom he has sold or distributed, either directly or indirectly, tax plans, arrangements, or programs, or any other shelter, plan or program in which he has been involved;

G. That this Court retain jurisdiction over defendant Samuel S. Fung, individually and

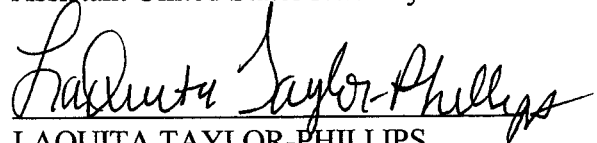
doing business as Cortland Tax Management and Professional Business Consultants, LLC, and this action for the purpose of enforcing any permanent injunction entered against Fung.

H. That the United States be entitled to conduct discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring Fung's 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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