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MICHAEL J. ...
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM J. BENSON, individually and
d/b/a Constitutional Research Associates,

Defendant.

04C 7403

Case No.

JUDGE FILIP

MAGISTRATE JUDGE KEYS

**COMPLAINT FOR
PERMANENT INJUNCTION AND OTHER RELIEF**

The United States of America alleges against defendant William J. Benson, individually and doing business as Constitutional Research Associates, as follows:

1. This is a civil action brought by the United States pursuant to Sections 7402(a) and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) ("IRC") to restrain and enjoin the defendant and all those in active concert or participation with him from:

- a. engaging in activity subject to penalty under IRC § 6700, including promoting, organizing or selling plans or arrangements known as the "Reliance Defense Package" and "16th Amendment Reliance Package," and making statements regarding the excludability of income that he knows or has reason to know are false or fraudulent as to any material matter;
- b. engaging in any other activity subject to penalty under IRC § 6700; and
- c. engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction

2. This action has been requested by the 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 of the United States, pursuant to IRC § 7408.

3. Jurisdiction is conferred upon this Court by sections 1340 and 1345 of title 28, United States Code, and IRC §§ 7402(a) and 7408.

Defendant

4. Defendant William J. Benson resides at 1128 East 160th Place in South Holland, Illinois, within the jurisdiction of this Court.

Defendant's Activities

5. Benson, doing business as Constitutional Research Associates, offers for sale on his website, www.thelawthatneverwas.com, a set of documents that he calls the "Reliance Defense Package."

6. According to Benson's website, "[t]he Reliance Defense Package is [a] compendium of information giving you the education and choice toward not filing an Income tax return. This compendium will give you the education to say 'Based on my state-of-mind, frame of mine, reliance and belief I am obeying the dictates of Constitutional law.'" (emphasis in original)

7. A condensed version of Benson's Reliance Defense Package is marketed for \$250 by a Fresno, California entity known as "The Free Enterprise Society" on the website www.thefreeenterprisesociety.com as the "16th Amendment Reliance Package." Benson has acknowledged that he is the author of the 16th Amendment Reliance Package.

8. Benson falsely tells customers that the federal income tax is unconstitutional because, according to his legally frivolous theory, the Sixteenth Amendment to the Constitution – which was adopted in 1913 and permits Congress to impose federal income taxes – was not properly ratified by the states.

9. In addition to the false and fraudulent tax advice put forth on his website, Benson offers to sell his “Reliance Defense Package” for the sum of \$3,500.00. Among the items contained in this package are:

- a. A letter to the purchaser from Benson, who claims to have proved that “the 16th Amendment to the U.S. Constitution is an absolute, complete, total fraud.”
- b. Letters from attorneys Guy G. Curtis and Lowell H. Becroft, Jr. and former IRS Special Agent Joe Banister that supposedly attest to Benson’s legal theories, including his theory that the 16th Amendment was not properly ratified.
- c. A DVD by Benson entitled “FRAUD of the 16th Amendment.”

10. On his website, Benson holds himself out as a “former criminal investigator for the Illinois Department of Revenue” who, in 1984, “began an investigation of the process of ratification of the 16th Amendment[] to determine if the amendment had been lawfully made a part of the constitution.”

11. As part of his efforts to sell the “Reliance Defense Package,” Benson falsely tells customers that “[t]o date, the IRS has steadfastly refused to prosecute any person standing on this defense.”

12. In fact, Benson was prosecuted for willfully failing to file federal income tax returns and evading taxes in violation of IRC §§ 7203 and 7201. On Benson’s appeal from his

criminal conviction, the U.S. Court of Appeals for the Seventh Circuit rejected Benson's claim that he did not need to file tax returns or pay income taxes because the Sixteenth Amendment was not properly ratified. *See United States v. Benson*, 941 F.2d 598, 607 (7th Cir.), *mandate recalled and amended*, 957 F.2d 301 (7th Cir, 1992), *appeal after remand*, 67 F.3d 641 (7th Cir. 1995).

13. Benson's extensive history of federal tax litigation and his criminal tax conviction demonstrate that Benson knows his theory regarding the Sixteenth Amendment is wrong.

14. Benson's "Reliance Defense Package" is designed to help his customers violate the internal revenue laws by providing them with a purported legal defense against actions taken by the IRS for their failure to file federal tax returns or pay federal taxes.

Harm to the Public

15. Benson's customers have been harmed by his promoting his legally frivolous theories, because his customers have paid him significant sums for worthless advice that results in his customers understating their income tax liabilities.

16. The United States is harmed by Benson's promotional activities because persons who follow Benson's advice are not paying their fair share of taxes to the United States Treasury.

17. The United States is also harmed because the IRS is forced to devote some of its limited resources to identifying and recovering this lost revenue from Benson's customers, thereby reducing the level of service that the IRS can give to honest taxpayers. Moreover, given the IRS's limited resources, identifying and recovering all revenues lost from Benson's scheme may be impossible.

18. In addition to the harm caused by his advice and services, Benson's activities undermine public confidence in the fairness of the federal tax system and incite non-compliance with the internal revenue laws.

Count I

Injunction under IRC § 7408 for violation of § 6700

19. The United States incorporates by reference paragraphs 1-17.

20. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC § 6700 from further engaging in such conduct. In pertinent part, § 6700 imposes a penalty on any person who organizes or sells any shelter, plan or arrangement and who, in connection with such organization or sale, makes or furnishes (or causes another person to make or furnish) a statement regarding the excludability of income which the person knows or has reason to know is false or fraudulent as to any material matter.

21. Benson has engaged in conduct subject to penalty under IRC § 6700 by organizing and selling a plan or arrangement – the “Reliance Defense Package” – and, in connection with that organization and sale, furnishing statements with respect to the excludability of income which he knows or has reason to know are false or fraudulent as to a material matter.

22. If Benson is not enjoined, he is likely to continue to engage in conduct subject to penalty under IRC § 6700. Injunctive relief under IRC § 7408 is therefore appropriate to prevent recurrence of this conduct.

Count II

Unlawful Interference with the Enforcement of the Internal Revenue Laws

23. The United States incorporates herein the allegations in paragraphs 1 through 22.

24. Benson, through the conduct described above, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. If Benson is not enjoined, he likely will continue to engage in such conduct, thereby undermining the federal tax system.

25. Injunctive relief under IRC § 7402(a) to halt Benson's substantial interference with the administration and enforcement of the internal revenue laws, is necessary and appropriate.

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

A. That the Court determine, adjudge and decree that the defendant, William J. Benson (individually and doing business as Constitutional Research Associates) has engaged in conduct subject to penalty under IRC § 6700, and that injunctive relief is appropriate under IRC § 7408 to prevent Benson and anyone acting in concert with him from engaging in any further such conduct;

B. That the Court determine, adjudge and decree that the defendant, William J. Benson (individually and doing business as Constitutional Research Associates) has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief under the Court's inherent equity powers and IRC § 7402(a) is necessary and appropriate against Benson and anyone acting in concert with him to prevent the recurrence of that conduct;

C. That the Court, pursuant to IRC §§ 7402 and 7408, enter a permanent injunction prohibiting Benson 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;

- (1) Organizing, promoting, marketing, or selling (or assisting therein) the tax shelter, plan, or arrangement known as "The Reliance Defense Package," or any other abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (2) Engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an abusive tax shelter, plan, or arrangement, a statement they know or have reason to know is false or fraudulent as to any material matter; and
- (3) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;

D. That this Court, pursuant to IRC §§ 7402(a), enter an injunction requiring Benson to send to all persons to whom he sold or otherwise distributed the "Reliance Defense Package" or any related materials (including, but not limited to, the "16th Amendment Reliance Package" marketed by the Free Enterprise Society), a letter enclosing a copy of this Court's permanent injunction and informing such persons that Benson's representations about the constitutionality of the federal income tax system are false and that civil tax penalties may be imposed against persons acting in accordance with such false and erroneous theories, and requiring Benson to file with the Court, within 30 days of the date the permanent injunction is entered, a certification that he has done so;

E. That this Court, pursuant to IRC §§ 7402(a), enter an injunction requiring Benson to turn over to the United States, within 30 days of the date the permanent injunction is entered, any

records in his possession or to which he has access, that identify, by name, Social Security number, address, telephone, and email address, (1) the persons to whom Benson gave or sold, directly or indirectly, "The Reliance Defense Package" and any related materials; (2) the persons who assisted Benson in marketing or preparing materials sent to potential customers; and (3) any individuals or entities who purchased or used any other tax shelter, plan or arrangement in which Benson has been involved;

F. That this Court, pursuant to IRC §§ 7402(a), enter an injunction requiring Benson to maintain for one year his website, www.thelawthatneverwas.com, to remove from that website all abusive tax shelter promotional materials, false commercial speech, and all materials designed to incite others imminently to violate the law (including the internal revenue laws), and to display prominently on the first page of that website a copy of the Court's permanent injunction;

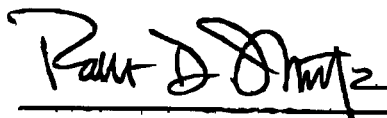
G. That this Court, pursuant to IRC §§ 7402(a), enter an injunction prohibiting Benson and any person acting in concert with him from operating any other website that contains abusive tax shelter promotional materials, false commercial speech, and any materials designed to incite others imminently to violate the law (including the internal revenue laws);

H. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and

I. That the Court grant the United States such other and further relief as the Court deems just and appropriate, including the costs of bringing this action.

Dated this 12th day of November, 2004.

PATRICK FITZGERALD
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