

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) Case No. 17-cv-1004 (RDB)  
 )  
 v. )  
 )  
 WEST POTOMAC FIRE & RESCUE, INC., )  
 *et al.* )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**[Redacted] DEFAULT JUDGMENT AND  
ORDER FOR PERMANENT INJUNCTION**

Plaintiff United States of America commenced this civil action under 26 U.S.C. § 7402(a) to (i) collect the unpaid federal employment tax liabilities of West Potomac Fire & Rescue, Inc. and Four State Emergency Equipment LLC; (ii) receive entry of a declaratory judgment that Four State Emergency Equipment LLC is the successor-in-interest to West Potomac Fire & Rescue, Inc.; (iii) permanently enjoin Defendants from violating and interfering with the administration of the internal revenue laws; and (iv) compel Defendants to timely file their employment and unemployment tax returns, and timely collect and pay over to the Internal Revenue Service its accruing federal employment and unemployment taxes. Defendants failed to file an answer or otherwise defend in this action, and the Clerk entered the default of Defendants on September 18, 2017. Dkt. No. 12.

The United States has now moved for the entry of a default judgment against West Potomac Fire & Rescue, Inc. for the total amount of the unpaid federal employment in the total amount of \$280,296.94 as of June 13, 2018, plus the statutory interest that has accrued and will continue to accrue according to law until the unpaid balance is paid in full. The United States

has also moved for the entry of a declaratory judgment that Four State Emergency Equipment LLC is the successor-in-interest to West Potomac Fire & Rescue, Inc., and for entry of a default judgment against Four State Emergency Equipment LLC for the unpaid federal employment taxes. Finally, the United States moved for entry of a permanent injunction against Defendants in addition to other equitable relief. Dkt. No. 13. Upon consideration of the United States' Motion for Default Judgment, the Memorandum in support, and the Declaration of Revenue Officer Phillip Rogers, the Court hereby **GRANTS** the United States' motion.

**IT IS THEREFORE HEREBY FURTHER ORDERED, ADJUDGED, and DECREED** as follows:

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court, having considered the Complaint and all motions, declarations, and memoranda of points and authorities filed in this action, finds that:

1. This Court has jurisdiction over the subject matter of this case and over Defendants William and Michelle Price, West Potomac Fire & Rescue, Inc. and Four State Emergency Equipment LLC (collective, "Defendants") pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345.

2. As alleged in the Complaint and as evidenced by the Declaration of Phillip Rogers and the certificates of assessments and payments, West Potomac Fire & Rescue, Inc. is indebted to the United States for unpaid federal employment taxes, including statutory additions to tax, in the total amount of \$280,296.94 as of June 13, 2018, plus statutory interest and penalties to accrue thereafter according to law until the balance is paid in full, for the tax periods and in the amounts indicated below:

<b>Tax Type</b>	<b>Tax Period Ending</b>	<b>Date of Original Assessment</b>	<b>Tax Assessed</b>	<b>Outstanding Balance (as of June 13, 2018)</b>
WT-FICA (Form 941)	03/31/2009	02/15/2010	\$21,430.44	\$16,811.07
WT-FICA (Form 941)	06/30/2009	03/13/2010	\$20,086.68	\$25,463.09
WT-FICA (Form 941)	09/30/2009	03/15/2010	\$16,078.28	\$32,791.47
WT-FICA (Form 941)	12/31/2009	04/05/2010	\$17,825.10	\$32,831.87
WT-FICA (Form 941)	03/31/2010	09/27/2010	\$13,616.88	\$21,930.95
WT-FICA (Form 941)	06/30/2010	09/13/2010	\$13,393.48	\$21,627.70
WT-FICA (Form 941)	09/30/2010	03/21/2011	\$18,763.50	\$36,781.17
WT-FICA (Form 941)	12/31/2010	03/21/2011	\$14,069.72	\$23,539.38
WT-FICA (Form 941)	03/31/2011	07/04/2011	\$12,211.36	\$21,345.60
WT-FICA (Form 941)	06/30/2011	10/10/2011	\$10,430.48	\$13,983.89
WT-FICA (Form 941)	09/30/2011	01/02/2012	\$10,564.73	\$18,472.40
WT-FICA (Form 941)	12/31/2011	03/05/2012	\$7,624.66	\$11,502.37
Penalty (Form 1120)	12/31/2012	11/04/2013	\$2,730.00	\$3,215.98
<b>Total</b>				<b>\$280,296.94</b>

3. Under Maryland law, the debts and liabilities of the predecessor company are imposed on the successor company if the successor is a “mere continuation” of the predecessor company. A company is the “mere continuation” of the predecessor company if it is essentially the same corporate entity as the predecessor corporation. The indicia of “mere continuation” liability includes, but is not limited to, common officers, directors, and stockholders; the existence of only one corporation after the completion of the sale of assets; the continuation of the seller’s business practices and policies; and the sufficiency of consideration running to the seller



corporation in light of the assets being sold. At least two of the indicia of mere continuation are evident in this case.

4. Four State Emergency Equipment LLC has the same equipment, the same business servicing fire and rescue vehicles, and the same customers as West Potomac Fire & Rescue, Inc.

5. Four State Emergency Equipment LLC is the only company that remains in existence since Mr. Price stopped operating under the name of West Potomac Fire & Rescue, Inc. in 2012.

6. Mr. Price was fully aware of West Potomac Fire & Rescue Inc.'s unpaid federal employment tax liabilities.

7. Although Mrs. Price is the sole member of the limited liability company, she has no background in fire and rescue equipment repair, and has another full-time job.

8. Under Maryland law, Four State Emergency Equipment LLC is the mere continuation of West Potomac Fire & Rescue, Inc.

9. Under Maryland law, Four State Emergency Equipment LLC is the successor-in-interest to West Potomac Fire & Rescue, Inc., and is accordingly liable for the tax liabilities assessed against its predecessor, West Potomac Fire & Rescue, Inc.

10. Four State Emergency Equipment LLC and West Potomac Fire & Rescue, Inc. have interfered with the proper administration of the internal revenue laws by:

- (a) Failing to make sufficient tax deposits for employment and unemployment tax liabilities as required by law; and
- (b) Requiring the Internal Revenue Service to expend considerable resources to induce them to comply with the federal tax laws by filing notices of federal tax lien and attempting to administratively to collect the unpaid federal tax liabilities.

11. A permanent injunction is necessary and appropriate under § 7402(a) because Defendants have violated, and will continue to violate, the tax laws by refusing to withhold and deposit the taxes and comply with the filing requirements that apply to employers. An injunction is necessary to prevent future violations of the law, as the Internal Revenue Service's attempts to bring them into compliance have been unsuccessful.

12. The United States lacks an adequate remedy at law to compel Defendants' compliance with the internal revenue laws, as evidenced by Defendants' continued failure to pay over the withheld federal employment taxes along with their share of FICA and FUTA taxes to the Internal Revenue Service.

13. As the owner of West Potomac Fire & Rescue, Inc., Defendant William Price was responsible for West Potomac Fire & Rescue, Inc.'s failure to pay its tax liabilities during all times relevant to this suit.

14. As the sole member of the limited liability company Four State Emergency Equipment LLC, Defendant Michelle Price was responsible for Four State Emergency Equipment LLC's failure to pay its tax liabilities during all times relevant to this suit.

15. The United States would suffer irreparable injury in the absence of an injunction in this case if Defendants were allowed to continue to refuse to pay over to the Internal Revenue Service the lawful tax revenues due to the government. When statutory interest and penalties are taken into consideration, Defendants have deprived the United States of nearly \$300,000. Defendants should not be allowed to continue on their present path of converting the government's tax monies to their own use.

16. Additionally, the United States is being harmed because it is being required to devote considerable resources to the tasks of persuading Defendants to comply with the tax laws, and attempting to collect the federal taxes that they should have deposited.

17. The balance of harms tips sharply in favor of the issuance of an injunction. If Defendants are not restrained from continuing to violate the federal tax laws, the Government will experience irreparable harm in the form of the permanent loss of its tax revenue. If an injunction is issued, Defendants will not be harmed because they will merely be required to obey the same laws as other employers.

18. An injunction would serve the public interest. The tax system relies on employers to collect employment and unemployment taxes and to pay those taxes over to the United States. Defendants undermine this system by continuing to accrue or “pyramid” its tax liabilities. Enjoining it will protect the public’s interest in the fair administration of the internal revenue laws and in fair competition by halting these wrongful practices.

19. Defendants have engaged and are engaging in conduct that interferes with the administration of the internal revenue laws, and injunctive relief under Internal Revenue Code § 7402(a) and the Court’s inherent equity powers is necessary and appropriate to stop their conduct.

## **II. PERMANENT INJUNCTION**

**IT IS HEREBY ORDERED** that Defendants are enjoined from further accruing unpaid federal employment and unemployment tax liabilities.

1. This injunction order authorizes enforceable injunctive relief and, if any provision of this permanent injunction is violated, the injunction can be enforced by the United States or the Court through the mechanisms set forth below.



2. An injunction shall issue as follows from the date of this Order:
  - a. Parties Covered by Injunction: This injunction binds Defendants as well as any agents, employees, and persons in concert or participation with them, in whatever form they continue to carry on their business.
  - b. Withholding Requirement: Defendants shall withhold federal income and FICA taxes from the wages of its employees when those wages are paid, shall keep the withheld funds in a bank account separate from any operating account or other accounts, and shall pay the withheld taxes to the Internal Revenue Service as they become due and payable.
  - c. Deposit Requirements: In accordance with federal deposit regulations, Defendants shall make timely deposits of withheld federal income and FICA taxes and its share of FICA and FUTA taxes in an appropriate federal depository bank each quarter, in accordance with the federal deposit regulations.
  - d. Reporting Requirements: No later than the 20<sup>th</sup> day of each month, Four State Emergency Equipment LLC shall sign and deliver affidavits or other proof to the Internal Revenue Service, c/o Phillip Rogers at 1260 Maryland Avenue, Hagerstown, Maryland 21740 showing that the requisite withheld federal income taxes, FICA taxes (both the employees' withheld portion and the employer's portion), and unemployment tax deposits were timely made.
  - e. Return Requirements: Defendants shall timely file with the Internal Revenue Service its employment (Form 941) and unemployment (Form

940) tax returns. Each return shall be considered to be timely filed if it is filed before the date it is due or within three days after the return is due. Four State Emergency Equipment LLC shall pay any balance due on those returns upon filing.

- f. Transfer Prohibition: Defendants are prohibited after the date of this permanent injunction from assigning any property or making any disbursements until all income taxes and FICA taxes required to be withheld from employees' wages (together with the employer's liability for FICA taxes and FUTA taxes) are in fact paid to the Internal Revenue Service.
- g. Quarterly Statement Requirements: Defendants shall provide a quarterly statement of income and expenses and to timely make a quarterly estimated tax payment of personal income taxes to the Internal Revenue Service at Hagerstown, Maryland, or at such other location as the Internal Revenue Service may deem appropriate.

3. If Defendants or anyone subject to this injunction violates any part of this injunction, the following enforcement mechanisms may be taken:

- (a) the Internal Revenue Service may seize Defendants' business property or any other entity that the defendants use, direct, or control as part of their business, and may sell the seized property to satisfy his outstanding tax liabilities; and
- (b) the Court may find Defendants to be in civil or criminal contempt and punish them with a fine, incarceration, or both.



4. Defendants shall deliver to all of their current employees a copy of this Permanent Injunction Order.


5. The United States shall be permitted to issue discovery requests during the pendency of the injunction to ensure that Defendants are in compliance with the injunction. The United States may provide notice of the entry of this injunction under Fed. R. Civ. P. 65 by mailing a true and correct copy thereof by certified or registered mail to Defendants.

**III. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDRED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcing this injunction and entering all additional decrees and orders necessary and appropriate for the public interest.

IT IS SO ORDERED:

DATED: July 9, 2018.

  
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RICHARD D. BENNETT  
Judge, United States District Court