

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	ORDER
)	
v.)	Civil No. 4:09-cv-00547-EJL
)	
PENNY LEA JONES, f/k/a PENNY)	
LEA WARDROP)	
)	
Defendant.)	

Before the Court is the United States' Motion for Preliminary Injunction against Defendant, Penny Lea Jones, formerly known as Penny Lea Wardrop. (Doc. No. 4). The time for filing a response has passed with no response being filed. As such the motion is now ripe for the Court's review. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this motion shall be decided on the record before this Court without oral argument. Local Rule 7.1(d)(2)(ii). Based on the following findings of fact and conclusions of law, the Court finds as follows.

Discussion

I. Preliminary Injunction Standard

To obtain a preliminary injunction, the movant must show: 1) a substantial likelihood of prevailing on the merits; 2) a substantial threat of irreparable injury if the injunction is not granted; 3) the threatened injury outweighs any harm that will result to the non-moving party if the injunction is granted; and 4) the injunction will not disserve the public interest. Stormans, Inc. v. Selecky, 571 F.3d 960, 977 (9th Cir. 2009) (quoting Winter v. Natural Res. Def. Council, Inc., ___ U.S. ___, 129 S. Ct. 365, 375-76 (2008)).

Where, as here, a statute authorizes injunctive relief, the standard for obtaining relief is modified. “When an injunction is expressly authorized by statute and the statutory conditions are satisfied, the movant need not establish specific irreparable injury to obtain a preliminary injunction.” United States v. Estate Pres. Servs., 202 F.3d 1093, 1098 (9th Cir. 2000) (“The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction”); United States v. Reddy, 500 F. Supp. 2d. 877, 881-82 (N.D. Ill. 2007) (holding that for a preliminary injunction under Section 7407 the traditional preliminary injunction test is not applied and the United States only needed to meet the statutory criteria of Section 7407); United States v. Thompson, 395 F. Supp. 2d 941, 945-46 (E.D. Cal. 2005) (finding that consideration of the traditional equitable factors is not required); In re Dow Corning Corp., 280 F.3d 648, 657-58 (6th Cir. 2002) (holding that where a statute, such as 26 U.S.C. § 7402(a), grants the court injunctive power, the court is not “confined to traditional equity jurisprudence”).

II. Findings of Fact

Based on the record in this case, the Court finds as follows:

1. This Court has jurisdiction and venue is proper. Defendant Penny Lea Jones resides in Idaho and operates a tax return preparation business using a post office box in Shelley, Idaho. Jones answered the United States' complaint on November 10, 2009. (Doc. No. 3).

2. Jones promotes a tax-fraud scheme that involves filing fraudulent tax returns and other frivolous documents with the IRS on behalf of her customers. She has prepared at least 333 fraudulent federal tax returns for customers in 2008 and 2009. The tax returns that Jones prepares and files for her customers, claim large – but fraudulent – tax refunds based on phony IRS Forms 1099-OID she attaches with the returns. In her answer to the complaint, Jones admits to preparing the federal tax returns alleged by the United States.

3. Jones sought over \$93 million in fraudulent refunds for her customers. Before the IRS was sufficiently aware of the magnitude of Jones's scheme to take necessary precautions, the IRS erroneously issued over \$4.3 million in refunds to Jones's customers.

4. This fraudulent use of Forms 1099-OID, or fraudulent reporting of nonexistent original issue discount income, is itself based upon the long-rejected theory of "commercial redemption" or "redemption." This theory frivolously contends that all taxpayers have a secret account with the Treasury Department.

5. Through the above, Jones claims on her customers' IRS Form 1040 the total amount of the false "original issue discount" as both interest income and false withholding. This results in increased tax liability for the customer, but (because of the parallel false withholding claims) produces a huge false refund claim dwarfing the reported amount of taxes owed. Through this

scheme, nonexistent withheld taxes reported in the returns prepared and filed by Jones result in massive claimed refunds.

6. The result of Jones's scheme is that her customers fail to file proper federal income tax returns and falsely claim tax refunds to which they are in fact not entitled. The false returns potentially deprive the United States additional tax revenue owed by Jones's customers.

7. Although the IRS notified her of the frivolousness of her scheme, Jones continues to espouse such theories in this case. In her answer to the United States' complaint, Jones argues that "no 'Act of Congress' makes anyone 'liable' for income taxes," an argument long since rejected by the courts. Schiff v. United States, 919 F.2d 830, 834 (2d Cir. 1990); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Lively v. Commissioner, 705 F.2d 1017, 1018 (8th Cir. 1983). She also attaches a document entitled "Memorandum of Law in Support of 1099OID – Original Issue Discount," containing frivolous arguments regarding redemption theory. Jones is therefore fully aware of what she is doing.

8. Based on the foregoing, the Court finds that Jones has repeatedly and continually engaged in conduct in violation of 26 U.S.C. § 6694 by understating her customers' income tax liabilities by willfully preparing and filing frivolous and meritless federal tax returns and claims for refund that have no realistic possibility of being sustained on the merits.

9. Jones has continually engaged in conduct in violation of 26 U.S.C. § 6695 by failing to remit a list of her customers or copies of their returns when the Internal Revenue Service requested those items as required by 26 U.S.C. § 6107(b).

10. Jones has repeatedly and continually engaged in conduct in violation of 26 U.S.C. § 6701 by preparing fraudulent returns that make false claims for refunds, knowing that such returns

understate her customers' tax liabilities and that the returns will be used in connection with a material matter arising under the internal revenue laws.

11. Absent this preliminary injunction, Jones is likely to continue to defraud the United States Treasury by intentionally understating her customers' income tax liabilities.

12. Jones's fraudulent activities are sufficiently egregious that a narrow injunction prohibiting only certain enjoined activities is unlikely to prevent continued interference by Jones with the proper administration of the internal revenue laws.

13. If this injunction is not granted, the United States will suffer irreparable harm because Jones understates her customers' income tax liabilities and thus, defrauds the United States Treasury. Furthermore, considerable government resources will be consumed investigating and correcting Jones's understatements of her customers' tax liabilities.

14. Jones will be only minimally harmed by entry of an injunction, as she does not have a right to make a livelihood through illegal conduct.

15. The United States has demonstrated a high likelihood of success on the merits, as many of the Jones-prepared tax returns are fraudulent on their face.

16. The public will be served by this preliminary injunction. The preliminary injunction will prevent Jones's customers from having inaccurate returns filed in their name that might subject them to penalties for filing frivolous returns under 26 U.S.C. § 6702.

III. Conclusions of Law

The Court finds that Jones has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent Jones and anyone acting in concert with her, from further engaging in such

conduct. See also United States v. Kapp, 564 F.3d 1103, 1109 (9th Cir. 2009). Jones has prepared over 330 returns understating her customers' returns based on a frivolous position not supported by any authority. The Court further finds that because such conduct was continual and repeated, and because a narrower injunction would not be sufficient to prevent Jones's interference with the proper administration of the internal revenue laws, that Jones should be enjoined from further acting as a federal tax return preparer under 26 U.S.C. § 7407(b).

The Court further finds that Jones engaged in conduct subject to penalty under 26 U.S.C. § 6701, which imposes penalties on any person who prepares or assists in the preparation of "any portion of a return, affidavit, claim, or other document" that she "knows (or has reason to believe) will be used in connection with any material matter" under the Internal Revenue Code and that she knows will "result in an understatement of the liability for tax." Injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent Jones from further engaging in such conduct. See also United States v. Schiff, 379 F.3d 621, 624 (9th Cir. 2004).

The Court finds that Jones engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a) to prevent recurrence of such conduct.

ORDER

Based on the foregoing and the record in this case, and for good cause shown, the Court will **GRANT** the Plaintiff's Motion for Preliminary Injunction. (Dkt. No. 4).

THEREFORE IT IS HEREBY ORDERED that Defendant Penny Lea Jones, formerly known as Penny Lea Wardrop, and anyone in active concert or participation with her, are enjoined from directly or indirectly:

1. From acting as a federal tax return preparer and from preparing or filing federal tax returns for others, and from representing others before the IRS, including prohibiting her from directly or indirectly:

- a. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any other person or entity;
- b. Giving tax advice or assistance to anyone for compensation;
- c. Engaging in activity subject to penalty under 26 U.S.C. §§ 6694 or 6695;
- d. Engaging in any other activity subject to penalty under the Internal Revenue Code; and
- e. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. From directly or indirectly by means of false, deceptive, or misleading commercial speech:

- a. Organizing or selling tax shelters, plans or arrangements that advise or assist taxpayers to attempt to evade the assessment or collection of such taxpayers' correct federal tax;
- b. Engaging in any other activity subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludability of income or any other tax benefit by participating in the plan that she knows or has reason to know is false or fraudulent as to any material matter;

- c. Engaging in any activity subject to penalty under 26 U.S.C. § 6701; and
- d. Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or encourages taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the use of false Forms 1099 based on the false claims that:

- I. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debts using Forms 1099 or other documents;
- ii. Taxpayers can issue false Forms 1099 to a creditor and report the amount on the false Forms 1099 as income taxes withheld on their behalf, and;
- iii. Taxpayers have a secret account with the Treasury Department which they can use to pay their debts or which they can draw on for refunds through a process that is often called “redemption” or “commercial redemption.”

- 3. From preparing her own federal income tax returns claiming false income tax withholding and refunds based on amounts shown in false Forms 1099 issued to her creditors, and;
- 4. From filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040, Forms 1040X, or Forms 1099 for herself or others, including the notarization or signing of certificates of service or similar documents in connection with the frivolous tax returns

IT IS FURTHER ORDERED that Penny Lea Jones shall produce to counsel for the United States, within fifteen days of this Order, a list that identifies by name, social security number, address, email address, and telephone number, all persons for whom she prepared federal tax returns

or claims for refund in the last three (3) years. Within 14 days of the date of the entry of this order, Jones shall also contact by mail (and also by e-mail, if an address is known) all persons who have purchased any products, services or advice associated with the false or fraudulent tax scheme and inform those persons of the preliminary injunction entered against her. Within 28 days, Jones shall file with the Court a certificate, signed under penalty of perjury, that she has done so.

IT IS FURTHER ORDERED that the United States is permitted to conduct discovery to ensure compliance with the terms of this preliminary injunction.



DATED: **January 4, 2010**

A handwritten signature in black ink that reads "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge