

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) v. )  
 )  
 ) CHARLES SEWELL, SEWELLS )  
 ) SOLUTIONS, a.k.a, SEWELLS POINT )  
 ) LLC, )  
 )  
 ) DEFENDANTS. )

Case no. 1:12-cv-00040-JPJ-PMS

**FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

Since 2004, Charles Sewell (“Sewell”) has promoted a tax-fraud scheme in furtherance of which he prepared, assisted in preparing, and/or filed with the Internal Revenue Service (“IRS”) fraudulent IRS Forms 1099 for other taxpayers. The fraudulent information returns are designed to help his customers request large income tax refunds to which they are not entitled, based on false claims of income earned and federal tax withheld. Sewell’s tax-fraud scheme has resulted in claims of more than \$67 million in fraudulent refunds. The United States Treasury has erroneously paid out \$4.7 million in response to these fraudulent claims. In order to prevent future harm to taxpayers and the government, the United States requests that this Court enjoin Sewell from preparing tax returns for others and from promoting his tax evasion scheme.

Plaintiff United States for its complaint against Sewell alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a) and 7408 to enjoin Sewell and anyone in active concert or participation with him, from the following activities:
  - a. Preparing or filing, or assisting in, or directing the preparation or filing of any

- federal tax return, amended return or other related documents or forms for any other person or entity;
- b. Directly or indirectly organizing, promoting, marketing or selling any plan or arrangement that advises or assists taxpayers to attempt to violate the 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 or other false IRS forms 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 IRS Forms 1099, bonded promissory notes, or other documents;
  - ii. Taxpayers can issue false Forms 1099 to a creditor and report the amount on the false Form 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 tax refunds through a process that is often termed “redemption” or “commercial redemption” by promoters of this tax-fraud scheme.
- c. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing tax returns and other tax documents that understate the tax liabilities of others;
- d. Preparing for himself any federal tax document, including his own federal income tax returns, falsely claiming income tax withholding and refunds;
- e. Filing, providing forms for, or otherwise aiding and abetting the filing of

frivolous Forms 1040, Forms 1040X, Forms 1099 or other IRS forms for himself or others;

- f. Giving tax advice or assistance to anyone, and representing anyone other than himself before the Internal Revenue Service, and;
- g. Engaging in any other conduct that is subject to penalty under the Internal Revenue Code or that interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

- 2. Pursuant to 26 U.S.C. §§ 7402 and 7408, this action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States.
- 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402 and 7408.
- 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Sewell resides in and many of the activities occurred or originated in Bristol, Virginia, within this judicial district.

### **Proper Reporting Procedures for Certain Income and Tax Withholdings**

- 5. The IRS requires certain payors of funds to file documents called “information returns.” These documents provide the IRS information about, for example, money paid to a taxpayer and any federal income tax that the payor withheld. A common information return is the Form W-2 that an employer files with the IRS to report income paid to an employee and federal income tax withheld on the employee’s behalf.

6. Another information return is Form 1099-OID, which is used to report original issue discount (“OID”) income and any federal income tax withheld from that income. OID income refers to the difference between the discounted price at which a debt instrument is sold at issuance, and the stated redemption price at maturity.
7. For example, if a taxpayer buys for \$950 a 10-year bond with a stated redemption price at maturity of \$1,000, the OID is \$50. The taxpayer must account for the interest that accrues during each of the ten years, toward the ultimate \$50 of total OID interest. Although the taxpayer does not actually receive the interest each year, it must be reported on the taxpayer’s income tax return each year.
8. If any federal tax is withheld from the OID amount each year, the withholding is also reported on Form 1099-OID.
9. The party that issues a debt instrument that generates OID must issue a Form 1099-OID. The Form 1099-OID must be filed with the IRS and is typically sent to the taxpayer for reference.
10. If a taxpayer has OID interest income to report, he or she must record it on IRS Form Schedule B. Schedule B must be attached to the taxpayer’s federal income tax return, and information from Schedule B is reported on the taxpayer’s federal income tax return.
11. An entity that issues information returns like Form 1099-OID must also submit to the IRS a Form 1096, “Annual Summary and Transmittal of U.S. Information Returns.” Form 1096 contains a summary of the total contents of all of the Forms 1099-OID that the entity filed for a particular tax year.
12. An additional “information return” that must be filed with the IRS and is relevant to this

Complaint is IRS Form 1099-A, “Acquisition or Abandonment of Secured Property.” A taxpayer must file Form 1099-A to report income resulting from cancellation of a borrower’s indebtedness because of the acquisition of property as security for the debt.

**The Defendant**

13. Sewell currently resides in Bristol, Virginia.
14. For the past 35 years, Sewell has been employed as a technician for a company that manufactures metal products.
15. Sewell received an e-file number to file information returns with the IRS “FIRE” system (“File Information Returns Electronically”). A person who obtains an approval as a filer in the FIRE system can electronically file information returns such as Forms 1099.

**Sewell’s Abusive Tax Fraud Scheme**

16. Sewell promotes an abusive tax scheme in which he transmits fraudulent Forms 1099-OID and Forms 1099-A for his customers in order to generate large false claims of tax withheld and large false claims for tax refunds. Sewell claims that he is not paid for transmitting the Forms 1099; instead, he purports to be conducting a “public service.”
17. Sewell maintains that he does not solicit customers; instead, he claims that he assists individuals who independently obtain his e-mail address and e-mail him seeking his services.
18. Sewell has prepared or assisted in the preparation or transmittal of at least two thousand information returns reporting false Form 1099 withholding. The IRS identified the Forms 1099 filed by Sewell because Sewell’s name is associated with them. Almost all of the taxpayers for whom Sewell prepared and filed Forms 1099 state on their 1040 income tax return that the return was “self-prepared.”

19. The false Forms 1099-OID and/or Forms 1099-A that Sewell has prepared, or has assisted in preparing, fabricate the amount of income earned by his customers. The corresponding fabricated tax withholding that Sewell reports to the IRS on his customers' behalf results in fraudulent refund claims by his customers in amounts as large as \$2.7 million.
20. In support of the fraudulent refund claims that his customers report on their 1040 federal income tax returns, Sewell prepares and files, or assists with preparing and filing, false Forms 1099-OID.
21. The Forms 1099-OID that Sewell generates falsely state that his customer issued a debt instrument that generated OID or that an individual purchased a debt instrument that generated OID.
22. The Forms 1099-OID falsely state that federal income taxes were withheld for the full amount of income purportedly paid or received by his customer, or nearly the full amount of income purportedly paid or received by his customer.
23. The IRS Forms 1099-OID generated by Sewell falsely report that his customer has lent money to a creditor of the customer, usually a credit card company, a mortgage company, or a retailer. The false OID income reported appears to be in an amount needed to satisfy a debt (usually a mortgage, car loan, home improvement, or credit card debt) owed by the customer to the creditor, or nearly the total amount of debt owed by the customer to the creditor. The Forms 1099-OID submitted also report tax withholding for the full amount of the phony OID income, or nearly the full amount. The result is to eliminate all of the tax liability and to provide the taxpayer with a substantial refund of all or some of the false tax withholding.

24. The false OID income and false withholding are then reported on the customer's federal income tax return, Form 1040, or amended federal income tax return, Form 1040X. Sewell's name does not appear on the Forms 1040 or 1040X, but he transmits the Forms 1099 filed in connection with those returns. The result is an inflated tax liability for the customer, but with a correspondingly inflated false refund claim, sometimes in the amount of several hundred thousand dollars and as much as \$2.7 million.
25. Consequently, the individuals for whom Sewell prepares and files bogus Forms 1099 fail to file correct federal income tax returns and falsely claim tax refunds to which they are not entitled.
26. The central purpose of Sewell's abusive tax scheme is to state fraudulent claims for income and tax withholding in order to steal from the United States Treasury.

#### **Fraudulent Information Returns**

27. The over two thousand information returns that Sewell prepared and transmitted, or assisted in preparing and transmitting, generally follow the model described above.
28. For example:
  - a. In 2009, Sewell prepared and filed, or assisted in preparing and filing, fraudulent tax information documents for the 2008 tax year for Junior and Valerie Johnson, a married couple who reside in Norfolk, Virginia.
    - i. The Johnsons' federal income tax return for the 2008 tax year falsely claims that they received interest income in the amount of \$1,130,812.
    - ii. Attached to the couple's return are fraudulent Forms 1099-OID that purport to show the interest income that the couple received during 2008. The Forms

1099-OID claim that the couple received interest income from various financial institutions such as Bank of America, Chase, CitiBank, and Discover.

- iii. That ostensible interest income, combined with the Johnsons' other income and deductions, results in a grossly inflated taxable income of \$1,281,761.
- iv. Their amended return also falsely claimed that \$1,139,495 in federal income taxes were withheld on their behalf for that year.
- v. The Johnsons reported that they supposedly owed \$412,048 in federal taxes for the 2008 tax year, far less than the over \$1.13 million in purported tax withholdings.
- vi. As a result, the Johnsons requested and received a refund of \$727,447 for the tax year 2008—a refund to which they were not entitled and has not been recovered.

b. Sewell prepared and filed, or assisted in preparing and filing, fraudulent tax information documents for the 2007 tax year for Mary Ellen and Matthew Orewiler of Hanover, Pennsylvania.

- i. The Orewilers' federal income tax return for the 2007 tax year falsely claims that they received \$413,895 in interest income.
- ii. Attached to the couple's return are fraudulent Forms 1099-OID that purport to demonstrate the interest income that the couple allegedly received during the 2007 tax year. The Forms 1099-OID claim that the couple earned interest income from numerous financial institutions, including Chase Home



Financial, WR Starkley Mortgage LLC, and Wells Fargo Bank.

- iii. That purported interest income, combined with the Orewilers' other income and deductions, resulted in a grossly inflated taxable income of \$449,945.
  - iv. Their amended return also falsely claimed that \$413,168 in federal income taxes were withheld on their behalf for the 2007 tax year.
  - v. The Orewilers reported that they supposedly owe \$124,239 in federal taxes for the 2007 tax year, far less than the purported federal income tax withheld on their behalf.
  - vi. As a result, the Orewilers requested and received a \$288,929 refund for the 2007 tax year—a refund to which they were not entitled and has not been recovered.
- c. Sewell prepared and filed, or assisted in preparing and filing, fraudulent tax information documents for the 2008 tax year for Ronda Boone, of Vallejo, California.
- i. Boone's federal income tax return for the 2008 tax year falsely claims that she received interest income totaling \$4,139,898.
  - ii. Attached to Boone's return are fraudulent Forms 1099-OID that purport to demonstrate the \$4 million in interest income that she allegedly earned during the 2008 tax year from various financial institutions such as National City Mortgage, EMC Mortgage Corporation, Wells Fargo, and Washington Mutual.
  - iii. That purported interest income, combined with Boone's other income and deductions, results in a grossly inflated taxable income of \$4,132,115.

- iv. Boone's return also falsely claimed that \$4,138,698 of federal income tax was withheld on her behalf for the 2008 tax year.
- v. Boone reported that she supposedly owed \$1,432,028 in federal taxes for the 2008 tax year, far less than the purported federal income tax withheld on her behalf.
- vi. As a result, Boone requested a refund of \$2,706,670 for the 2008 tax year.

The IRS detected the fraud and did not issue this refund to Boone.

29. In addition to preparing and filing phony Forms 1099-OID for his customers, Sewell also prepared bogus returns based on the "redemption scheme" for his wife, Stamps Sewell, and himself. In 2009, Sewell prepared and filed amended 2004-2007 income tax returns for his wife and himself. On Schedule B of the Sewells' 2004 amended return, the couple reported \$1,400,498 of purported OID income from National Financial Services, Rydex Investments, and Highlands Union Bank. Mr. Sewell also submitted phony Forms 1099-OID purporting to be from these institutions, falsely claiming that the couple had received an enormous amount of OID income, but that taxes had been withheld in equal amounts. The IRS does not have any records of receiving Forms 1099 from these institutions, which they would have been required to submit under 26 U.S.C. § 6049(d)(6).
30. To set up the fraudulent refund claim, the Sewells falsely reported \$1,400,498 of interest income on their Schedule B, and false tax withholding of \$1,407,722 on their Form 1040. The amended return stated that they filed the amended return (and their claim for refund) because of the "Attached 1099s." The net result was that the Sewells claimed a refund of \$906,278 to which they were not entitled.

31. The Sewells' 2005-2007 amended returns make similar false claims for refund. In 2009, the couple filed amended returns for 2005-2007 and reported \$576,327, \$141,167, and \$537,573 of OID income, respectively, and nearly equal amounts of withholding on their Forms 1040 for those tax years. For the 2005-2007 amended returns, Sewell also included several phony Forms 1099-OID with the returns that the IRS has no record of receiving from the ostensible issuers. The Forms 1099 purportedly reflect interest income from entities such as JP Morgan Chase, Bank of America, and National Financial Services. The net result was that the Sewells claimed fraudulent refunds for the 2005-2007 tax years of \$358,797, \$96,947, and \$355,146, respectively.

**Sewell's Abusive Tax Fraud Scheme is Part of a Nationwide Trend**

32. Sewell's scheme is part of a nationwide trend among tax defiers to file frivolous tax returns and Forms 1099-OID with the IRS in an attempt to escape federal tax obligations and steal from the United States Treasury.

33. Sewell's scheme is based on the "commercial redemption" theory. Proponents of commercial redemption claim that the United States government is in possession of money rightfully owned by the taxpayer. One tenet of commercial redemption falsely claims that a "Treasury Account" is created in the name of each citizen at birth. Accordingly, the theory falsely claims that citizens can charge the United States Treasury for the amount of goods and services the citizen purchases. The amount of the purchase is listed as OID income and as withholdings because the citizen's Treasury Account has supposedly already funded the purchase. However, the notion of a secret Treasury Account assigned to each citizen is pure fantasy, let alone the notion that the United States Treasury will draw on these secret

accounts to reimburse individuals for purchases. See *United States v. Anderson*, 353 F.3d 490, 500 (6th Cir. 2003), *cert. denied*, 541 U.S. 1068 (2004) (explaining that the Treasury Department does not maintain depository accounts against which an individual can draw a check, draft, or any other financial instrument).

34. Other courts have condemned this and similar tax-fraud schemes. *Ray v. Williams*, No. CV-04-863-HU, 2005 WL 697041, at \*5-6 (D. Or. Mar. 24, 2005) (discussing the fraudulent claims of “redemptionists” when assessing the constitutionality of a prison denying a prisoner access to a book containing the theory and explaining how to exploit it); *Monroe v. Beard*, No. 05-04937, 2007 WL 2359833, at \*2 (E.D. Pa. Aug. 16, 2007) (characterizing redemption as an “anti-government scheme that utilizes commercial law to harass and terrorize its targets”); *United States v. Knupp*, No. 1:09-CV-2724, 2010 WL 2245551, at \*2-3 (N.D. Ga. May 14, 2010) (describing the commercial redemption theory as “frivolous[]” and the preparer’s use of false Forms 1099-OID as “fraudulent”).
35. In Notice 2008-14, the IRS alerted taxpayers about the very tax-fraud scheme that Sewell promotes. In the notice, the IRS advised that “[i]ndividuals may not avoid or evade their tax liability . . . by claiming that they can “chargeback” their debts to the Government.”

**Harm Caused by Sewell’s Misconduct**

36. The IRS has determined that Sewell prepared and filed, or assisted in the preparation and filing of, at least two thousand false Forms 1099.
37. As the examples above demonstrate, the bogus Forms 1099 that Sewell submits on behalf of his customers falsely show that his customer had income and tax withholdings in nearly equal amounts. The amounts listed on the Forms 1099 are typically based on the total

amount of debt the customer owes to his/her creditors.

38. While the IRS is able to detect and stop most fraudulent refund claims, Sewell's preparation and filing of fraudulent Forms 1099 has resulted in the IRS's issuance of at least \$4.7 million in erroneous refunds to his customers.
39. In addition to the lost revenue due to the issuance of erroneous refunds, there are significant expenses associated with attempting to detect and intercept frivolous filings in order to prevent future issuance of erroneous refunds. The government has also incurred the expense of investigating Sewell's fraudulent information return preparation and responding to and processing the frivolous documents Sewell submitted to the IRS. In addition, the United States must expend resources in an attempt to recover erroneous refunds promptly, and must also audit those customers' returns in order to determine correct tax liabilities and correct withholding.
40. In reliance on Sewell's services, many individuals have failed to file proper federal income tax returns, which has either deprived them of proper tax refunds to which they may have been entitled or deprived the United States of additional tax revenue.

**Count I: Injunction Under 26 U.S.C. § 7408 for Violations of 26 U.S.C. § 6701**

41. The United States incorporates by reference the allegations contained in paragraphs 1 through 40.
42. The United States may seek an injunction to enjoin any person from, *inter alia*, engaging in conduct subject to penalty under 26 U.S.C. § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.
43. Section 6701 of the Internal Revenue Code imposes a penalty on any person who aids or

assists in, procures, or advises with respect to, the preparation of any portion of a return, affidavit, claim, or other document, who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

44. At a minimum, Sewell presented over two thousand false Forms 1099-OID and Forms 1099-A to the IRS on behalf of his customers. All of these documents concern his customers' federal income tax liabilities, and he prepared and aided or assisted in the preparation and filing of federal tax documents knowing that his actions would result in the understatement of his customers' tax liabilities.

45. As a result, Sewell engaged in conduct subject to penalty under 26 U.S.C. § 6701.

46. Injunctive relief is appropriate to prevent recurrence of Sewell's penalty conduct.

**Count II: Injunction Under 26 U.S.C. § 7402**

47. The United States incorporates by reference the allegations contained in paragraphs 1 through 46.

48. Courts may issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws. 26 U.S.C. § 7402.

49. Sewell substantially interfered with the enforcement of the internal revenue laws by promoting his "redemption" or "commercial redemption" tax-fraud scheme and filing fraudulent federal tax documents on behalf of others.

50. As a result of Sewell's misconduct, the individuals for whom he prepared bogus Forms

1099 fail to file proper tax returns and instead file frivolous claims for refund.

51. Sewell's conduct results in irreparable harm to the United States for which the United States has no adequate remedy at law.
52. Sewell's conduct interferes with the proper administration of the internal revenue laws because it results in hundreds of frivolous filings that hinder the IRS's ability to determine the correct tax liabilities of those for whom Sewell filed Forms 1099-OID.
53. Unless enjoined by this Court, Sewell will continue to promote and administer his tax-fraud scheme.
54. The United States is entitled to injunctive relief under 26 U.S.C. § 7402 to prevent the recurrence of this misconduct.

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

- A. That the Court find that Sewell has engaged in conduct subject to penalty under 26 U.S.C. § 6701 and conduct that substantially interferes with the enforcement and administration of the internal revenue laws, and that injunctive relief against him is appropriate to prevent the recurrence of that misconduct pursuant to 26 U.S.C. §§ 7402 and 7408;
- B. That the Court, under 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction permanently barring Sewell 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;
- C. That the Court, under 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Sewell and his representatives, agents, servants, employees, attorneys,

independent contractors, and anyone in active concert or participation with him, from directly or indirectly:

1. Preparing or filing, or assisting in and directing the preparation or filing of any federal tax return, amended return, information return, or other related documents or forms for any other person or entity;
2. Giving tax advice or assistance to anyone for compensation;
3. Engaging in any other activity subject to penalty under the Internal Revenue Code; and
4. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

D. That this Court, under 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Sewell and his representatives, agents, servants, employees, and anyone in active concert or participation with him, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

1. 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;
2. Engaging in any activity subject to penalty under 26 U.S.C. § 6701; and
3. 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



or other fictitious IRS forms 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.”

- E. That this Court, under 26 U.S.C. § 7402, enter a permanent injunction prohibiting Sewell from preparing his own federal income tax returns claiming false income tax withholding and refunds based on amounts shown in false Forms 1099;
- F. That this Court, under 26 U.S.C. § 7402, enter a permanent injunction prohibiting Sewell from filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1099 for himself or others, including the notarization or signing of certificates of service or similar documents in connection with the frivolous information returns;
- G. That this Court, under 26 U.S.C. § 7402, enter an injunction requiring Sewell to contact by mail (and also by e-mail, if an e-mail address is known) all persons he assisted by preparing and submitting to the IRS frivolous or false information returns as part of the tax scheme described in this complaint and inform those

persons of the Court's findings concerning the falsity of Sewell's prior representations and attach a copy of the permanent injunction against Sewell;

- H. That this Court, under 26 U.S.C. § 7402, order Sewell to provide to the United States a list of all persons he has assisted by preparing and filing information returns or other bogus documents as part of this frivolous tax scheme;
- I. That this Court allow the government full post-judgment discovery to monitor Sewell's compliance with the injunction, and;
- J. That this Court grant the United States such other and further relief as the Court deems just and appropriate.

Dated: November 6, 2012.

Respectfully submitted,

TIMOTHY J. HEAPHY  
United States Attorney

s/ Jessica S. Reimelt  
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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing was made upon the following  
by depositing a copy in the United States mail, postage prepaid, this 6th day of November, 2012:

Charles Sewell  
615 Glenway Ave.  
Bristol, VA 24201

s/ Jessica S. Reimelt  
JESSICA S. REIMELT