

**Approximate Pages:** 5

**Code Section:** Section 6694 -- Understatement by Return Preparer; Section 7407 -- Return Preparer Injunctions; Section 7212 -- Interfering With Tax Administration

**Author:** Williams, Richard L.

**Institutional Author:** United States District Court for the Eastern District of Virginia

**Citations:** United States v. Robert L. Foster; No. 3:02CV133 (18 Oct 2002)

**Tax Analysts Reference:** 2002 TNT 224-15

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**Return Preparer Barred From Offering Fabricated Tax Credits**

A U.S. district court has granted the government's motion for summary judgment and entered a permanent injunction against an individual, prohibiting him from preparing or assisting in the preparation of claimed refunds based on fabricated tax credits.

===== SUMMARY =====

A U.S. district court has granted the government's motion for summary judgment and entered a permanent injunction against an individual, prohibiting him from preparing or assisting in the preparation of claimed refunds based on fabricated tax credits.

A preliminary injunction was entered against Robert L. Foster, preventing him from preparing returns that made claims for slavery credits and other fabricated tax credits, but not barring him from all tax-preparing activity. Foster did not dispute entry of the preliminary injunction. Foster prepared at least 13 tax returns that claimed false credits for slavery reparations that were identified as credits for undistributed long-term capital gains.

Senior U.S. District Judge Richard L. Williams determined that an injunction was necessary because Foster disregarded the IRS laws and created a substantial burden on the government. Judge Williams also found that Foster's conduct, if allowed to continue, would "seriously impair the proper administration" of IRS laws. The court also concluded that the public had a strong interest in minimizing the number of false refund claims and in ensuring that tax preparers follow the law when preparing and submitting tax returns.

===== FULL TEXT =====

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

**MEMORANDUM OPINION**

[1] This matter is before the Court on the government's motion for summary judgment. The motion was filed by the government on August 30, 2002. The government's complaint and motion for summary judgment seek a permanent injunction against Mr. Foster, preventing him from acting as a tax return

preparer and from preparing returns that contain claims for fabricated tax credits. A preliminary injunction was entered on July 31, 2002. The preliminary injunction did not prohibit Mr. Foster from all tax preparing activity; it only prevented him from preparing returns that made claims for credits for slavery reparations or other fabricated credits not provided for in the Internal Revenue Code. The defendant did not dispute entry of the preliminary injunction. The defendant did not file an opposition to the government's motion for summary judgment. Instead, on October 4, 2002, more than one month after the government filed its motion for summary judgment and past the time period allowed for a response, the defendant filed a response stating that he is in default and that he recognizes that the government's motion for summary judgment will be granted. While the defendant is not in default because he filed an answer on May 23, 2002, the defendant failed to file a response to the motion for summary judgment setting forth specific facts showing a genuine issue for trial. Rule 56(e) provides that where an adverse party does not so respond, "summary judgment, if appropriate, shall be entered against the adverse party." Therefore, the government's motion is ripe for evaluation by the Court.

[2] Summary judgment should be granted when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Since there is no opposition by the defendant, there is no evidence before the Court that creates a genuine issue as to any material fact, and the only question is whether the government establishes its claim as a matter of law.

[3] Section 7407 of the Internal Revenue Code provides in relevant part:

[I]f the court finds --

(1) that an income tax return preparer has --

(A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title, . . . or (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, and

(2) that injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin such person from further engaging in such conduct. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in subparagraphs (A) through (D) of this subsection and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as an income tax return preparer.

26 U.S.C. § 7407(b).

[4] The documents filed in support of the government's motion for summary judgment establish that Mr. Foster prepares income tax returns for compensation and is therefore an "income tax return preparer" as that term is defined by Section 7701(a)(36) of the Internal Revenue Code.

[5] The government's evidence also shows that Mr. Foster engaged in conduct subject to penalty under Section 6694(a) of the Internal Revenue Code. That section establishes a penalty if an understatement of liability or a claim for refund is "due to a position for which there was not a realistic possibility of being sustained on its merits," 26 U.S.C. § 6694(a). Mr. Foster prepared or assisted in preparing at least

thirteen tax returns claiming false tax credits for slavery reparations, which were identified on the tax claims as tax credits for "undistributed long-term capital gains." No provision of the Internal Revenue Code provides for a tax credit for slavery reparations. Therefore, these claims for refunds made by Mr. Foster were based on a position for which there was no realistic possibility of being sustained on the merits. Additionally, attempts by taxpayers to fabricate tax credits or to exempt themselves from the operation of the Internal Revenue Code are frivolous and routinely rejected by the courts. *See, e.g., McKee v. United States*, 781 F.2d 1043 (4th Cir. 1986). Mr. Foster's conduct is of the type covered by Section 7407(b)(1)(A).

[6] Additionally, Mr. Foster's conduct amounted to "fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws," as described in Section 7407(b)(1)(D). Mr. Foster knew that the Internal Revenue Code does not provide tax credits for slavery reparations, and despite that knowledge, he prepared tax returns claiming credits to which his clients were not entitled. Such returns are false and create a substantial burden on the Internal Revenue Service.

[7] Furthermore, the Court finds that injunctive relief is appropriate to prevent the recurrence of Mr. Foster's misconduct. Five factors are relevant to determining the likelihood of recurrence of particular misconduct: 1) the gravity of the harm caused by the offense, 2) the extent of the defendant's participation and his degree of scienter, 3) the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions, 4) the defendant's recognition of his own culpability, and 5) the sincerity of the defendant's assurances against future violations. *See United States v. Raymond*, 228 F.3d 804, 813 (7th Cir. 2000). Here, Mr. Foster's claims for refunds caused a burden on the Internal Revenue Service in its processing of the claims, identifying, and denying improperly asserted claims for refunds. Mr. Foster knows and knew at the time he made the claims that the Internal Revenue Code does not provide for refunds for slavery reparations, Mr. Foster regularly prepares returns and claimed the false refunds on multiple occasions, and he continues to assert that he feels the claims are justified. Therefore, Mr. Foster's conduct is of a recurrent nature and an injunction is an appropriate form of remedy.

[8] Because the government's evidence shows that Mr. Foster's conduct is of the type specified in Section 7407 and because injunctive relief is appropriate to prevent the recurrence of such conduct, Section 7407 provides that the Court may enjoin Mr. Foster from further engaging in the offensive conduct. The government's complaint and motion for summary judgment ask the Court to go further and permanently enjoin Mr. Foster from acting as an income tax preparer, not simply to cease the particular conduct of making false claims. Section 7407 allows the Court to do this if the Court finds first, that Mr. Foster "continually or repeatedly" engaged in the conduct described in Section 7407, which, in this case is making false claims for credits or refunds, and second, that an injunction prohibiting only that conduct would be insufficient to prevent Mr. Foster's interference with the proper administration of the Internal Revenue laws. In addition to Section 7407, Section 7402(a) gives district courts power to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." The statute provides that this remedy is "in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws." 26 U.S.C. § 7402(a).

[9] In determining whether to enter an injunction, the Court must consider: 1) the likelihood of irreparable harm to the plaintiff without the injunction, 2) the likelihood of harm to the defendant with the injunction, 3) the plaintiff's likelihood of success on the merits, and 4) the public interest. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1054 (4th Cir. 1985); *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189, 193 (4th Cir. 1977). Here, Mr. Foster's false claims have been made repeatedly, his conduct causes the Internal Revenue Service and the government considerable harm on each occasion, the government has successfully shown that Mr. Foster's conduct in making false claims is in violation of the Internal Revenue Code, and the public has a

strong interest in minimizing the number of false claims for refunds that are made and in ensuring that tax preparers follow the law in the preparation and submission of tax returns. All of these factors weigh in favor of granting an injunction in this case. Mr. Foster may suffer significant harm if he is enjoined from acting as a tax preparer in any capacity, particularly if that is his method of earning a livelihood. On the other hand, there is a very limited risk of harm to Mr. Foster, if any, from an injunction that merely prohibits him from making false claims for tax credits and requires him to abide by the existing Internal Revenue laws in preparing tax returns.

[10] The Court finds that an injunction is necessary and appropriate in this case. While the Court finds that Mr. Foster disregarded the Internal Revenue laws and caused a substantial burden on the government in doing so, and that such conduct, if continued, would seriously impair the proper administration of the Internal Revenue laws, the Court does not find that an injunction prohibiting only the offensive conduct would be insufficient to prevent Mr. Foster from interfering with the proper administration of the Internal Revenue laws. Therefore, the Court will grant the government's motion for summary judgment and will enter an injunction against Mr. Foster, but only to the extent that it prohibits Mr. Foster from preparing or assisting in the preparation of claiming refunds based on fabricated tax credits for slavery reparations or other comparable frivolous grounds.

[11] An appropriate Order shall enter.

DATE: October 18, 2002

Richard L. Williams  
SENIOR UNITED STATES DISTRICT  
JUDGE

\* \* \* \* \*

#### FINAL ORDER

[12] This matter is before the Court on the government's motion for summary judgment. For reasons stated in the accompanying Memorandum Opinion, the motion is GRANTED. The defendant and anyone acting in concert with him are PERMANENTLY ENJOINED from:

1. Preparing returns, amended returns, and/or other documents to be submitted to the Internal Revenue Service claiming or supporting claims for refunds based on fabricated tax credits for reparations for slavery, segregation, or treatment as second-class citizens, or any other comparable grounds, as well as any other fabricated tax credit;
2. Providing any samples of returns, amended returns, and/or other documents to third parties to be copied and submitted to the Internal Revenue Service claiming or supporting claims for refunds based on fabricated tax credits for reparations for slavery, segregation, treatment as second-class citizens, or any other comparable grounds, as well as any other fabricated tax credit;
3. Representing, advertising, or promoting the frivolous position that an individual may claim a tax credit for reparations for slavery, segregation, or treatment as second-class citizens, or any other comparable grounds;
4. Engaging in any conduct subject to penalty under Section 6701 of the Internal Revenue Code,

such as assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which he knows will, if so used, result in the understatement of income tax liability;

5. Engaging in any conduct subject to penalty under Section 6694 of the Internal Revenue Code, such as preparing any part of a return or claim for refund that includes an unrealistic position;

6. Engaging in any other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

7. Inducing, aiding, or abetting any person to engage in any of the above-identified conduct.

[13] Finally, the Court DIRECTS that Mr. Foster shall contact:

(A) all persons to whom he gave, sold, or distributed any materials espousing his fabricated tax credit for slavery reparations;

(B) all persons on whose behalf he prepared or assisted in the preparation of any federal income tax return containing a fabricated tax credit for slavery reparations; and

(C) all persons who contacted him regarding his fabricated tax credit for slavery reparations (in correspondence, through personal or telephone conversations, or through electronic means)

and inform those persons of the Court's findings concerning the falsity of his fabricated tax credit for slavery reparations, the falsity of the returns he prepared containing the fabricated tax credit, the possibility of the imposition of frivolous-return penalties against them, the possibility that the United States may seek to recover any erroneous payment they may have received, and the fact that a permanent injunction has been entered against him.

[14] It is so ORDERED.

[15] Let the Clerk send a copy of this Final Order and the accompanying Memorandum Opinion to all counsel of record.

DATE: October 18, 2002

Richard L. Williams  
SENIOR UNITED STATES DISTRICT  
JUDGE

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**Date Published:** 10-18-2002

**Date Added to File:** 11/19/2002 10:02 PM EST

**Microfiche Number:** Doc 2002-25636 (8 original pages)

**Index Terms:**

**Cross Reference:**

## History

Doc. No.	Dates	Description
	<i>Filed &amp; Entered:</i> 03/06/2002	Summons Issued
	<i>Docket Text:</i> SUMMONS(ES) issued for Robert L. Foster; plaintiff's attorney telephoned for pick-up (FedEx) (rpiz)	
1	<i>Filed &amp; Entered:</i> 03/06/2002	Complaint
	<i>Docket Text:</i> COMPLAINT for Permanent Injunction and Other Relief (rpiz)	
2	<i>Filed &amp; Entered:</i> 03/06/2002	Motion to appear Pro hac vice
	<i>Terminated:</i> 03/07/2002	
<i>Docket Text:</i> MOTION by United States for Seth Galbraith Heald to appear pro hac vice (rpiz)		
	<i>Filed &amp; Entered:</i> 03/07/2002	Order
	<i>Docket Text:</i> So Ordered: granting [2-1] motion by United States for Seth Galbraith Heald to appear pro hac vice ( signed by Judge Richard L. Williams ) Copies Mailed: y (rpiz)	
3	<i>Filed:</i> 03/28/2002	Summons Returned Executed
	<i>Entered:</i> 04/01/2002	
<i>Docket Text:</i> Summons returned unexecuted as to Robert L. Foster (rpiz)		
4	<i>Filed:</i> 04/08/2002	Motion to appear Pro hac vice
	<i>Entered:</i> 04/09/2002	
	<i>Terminated:</i> 04/11/2002	
<i>Docket Text:</i> MOTION by United States for Andrew Thomas Pribe to appear pro hac vice (rpiz)		
5	<i>Filed:</i> 04/08/2002	Motion to appear Pro hac vice
	<i>Entered:</i> 04/09/2002	
	<i>Terminated:</i> 04/11/2002	
<i>Docket Text:</i> MOTION by United States for Daniel Robert Conrad to appear pro hac vice (rpiz)		
7	<i>Filed:</i> 04/08/2002	Notice of Appearance
	<i>Entered:</i> 04/11/2002	
	<i>Terminated:</i> 04/11/2002	
<i>Docket Text:</i> NOTICE of Attorney Appearance for United States by Andrew T. Pribe and Daniel R. Conrad (substituted for Seth G. Heald) (rpiz)		
6	<i>Filed:</i> 04/09/2002	Motion to Dismiss
	<i>Entered:</i> 04/10/2002	
	<i>Terminated:</i> 06/25/2002	
<i>Docket Text:</i> MOTION by Robert L. Foster to Dismiss (filing pro se) (scoo)		
	<i>Filed &amp; Entered:</i> 04/11/2002	Order
	<i>Docket Text:</i> So Ordered: granting [4-1] motion by United States for Andrew Thomas Pribe to appear pro hac vice ( signed by Judge Richard L. Williams ) Copies Mailed: y (rpiz)	
	<i>Filed &amp; Entered:</i> 04/11/2002	Order
	<i>Docket Text:</i> So Ordered: granting [5-1] motion by United States for Daniel Robert Conrad to appear pro hac vice ( signed by Judge Richard L. Williams ) Copies Mailed: y (rpiz)	
	<i>Filed &amp; Entered:</i> 04/11/2002	Order
	<i>Docket Text:</i> So Ordered: granting [7-1] Notice of Appearance (substitution) by United States (signed by Judge Richard L. Williams) Copies Mailed: y (rpiz)	
8	<i>Filed &amp; Entered:</i> 04/23/2002	Response to Motion
	<i>Terminated:</i> 10/18/2002	
<i>Docket Text:</i> RESPONSE by United States to [6-1] motion by Robert L. Foster to Dismiss (rpiz)		
9	<i>Filed:</i> 05/06/2002	Reply to Response to Motion
	<i>Entered:</i> 05/07/2002	
<i>Docket Text:</i> REPLY by Robert L. Foster to response to [6-1] motion by Robert L. Foster to Dismiss (rpiz)		
10	<i>Filed &amp; Entered:</i> 05/13/2002	Scheduling Order
	<i>Docket Text:</i> SCHEDULING ORDER setting Pretrial Conference for 9:00 7/11/02 ; ( signed by Judge Richard L. Williams ) Copies Mailed: yes (jpea)	
	<i>Filed:</i> 05/16/2002	Set/Clear Flags

	Entered:	05/23/2002	
	Docket Text: Jury Trial Flag (rpiz)		
11	Filed & Entered:	05/16/2002	Jury Demand
	Docket Text: DEMAND for jury trial by Robert L. Foster (rpiz)		
12	Filed & Entered:	05/23/2002	Answer to Complaint
	Terminated:	10/18/2002	
	Docket Text: ANSWER to Complaint by Robert L. Foster; jury demand (rpiz)		
13	Filed:	05/30/2002	Motion to Strike
	Entered:	05/31/2002	
	Terminated:	06/25/2002	
	Docket Text: MOTION by United States to Strike [11-1] jury demand by Robert L. Foster (rpiz)		
14	Filed:	05/30/2002	Memorandum in Support
	Entered:	05/31/2002	
	Docket Text: MEMORANDUM by United States in support of [13-1] motion by United States to Strike [11-1] jury demand by Robert L. Foster (rpiz)		
15	Filed & Entered:	06/19/2002	Motion to appear Pro hac vice
	Terminated:	06/20/2002	
	Docket Text: MOTION by United States for Hilarie E. Snyder to appear pro hac vice (rpiz)		
16	Filed & Entered:	06/19/2002	Notice of Appearance
	Docket Text: NOTICE of Attorney Appearance for United States by Hilarie E. Snyder (rpiz)		
	Filed & Entered:	06/20/2002	Order
	Docket Text: So Ordered: granting [15-1] motion by United States for Hilarie E. Snyder to appear pro hac vice ( signed by Judge Richard L. Williams ) Copies Mailed: y (rpiz)		
	Filed & Entered:	06/25/2002	Set/Clear Flags
	Docket Text: **Remove Jury Flag per 6/25/02 Order (rpiz)		
17	Filed & Entered:	06/25/2002	Order
	Docket Text: ORDER denying [6-1] motion by Robert L. Foster to Dismiss, granting [13-1] motion by United States to Strike [11-1] jury demand by Robert L. Foster; the matter will be set for a trial without a jury (signed by Judge Richard L. Williams) Copies Mailed: y [EOD Date: 6/25/02] (rpiz)		
18	Filed:	07/02/2002	Motion for Preliminary Injunction
	Entered:	07/03/2002	
	Terminated:	07/31/2002	
	Docket Text: MOTION by United States for Preliminary Injunction (rpiz)		
19	Filed:	07/02/2002	Memorandum in Support
	Entered:	07/03/2002	
	Docket Text: MEMORANDUM by United States in support of [18-1] motion by United States for Preliminary Injunction (Appendix of Authorities and Exhibits 1-13 placed in brown expandable folder) (rpiz)		
20	Filed:	07/02/2002	Roseboro Notice
	Entered:	07/03/2002	
	Docket Text: Roseboro Notice by United States (rpiz)		
	Filed & Entered:	07/11/2002	Pretrial Conference - Final
	Docket Text: Pre-Trial Conference held (jpea)		
21	Filed & Entered:	07/11/2002	Order
	Docket Text: PRETRIAL ORDER filed Trial date 9:30 9/27/02 ( signed by Judge Richard L. Williams ) Copies Mailed: yes (jpea)		
22	Filed & Entered:	07/11/2002	Notice of Appearance
	Docket Text: NOTICE of Attorney Appearance for Robert L. Foster by Thomas L. Johnson, Jr. (rpiz)		
23	Filed:	07/22/2002	Response to Motion
	Entered:	07/23/2002	
	Terminated:	10/18/2002	
	Docket Text: RESPONSE by Robert L. Foster to [18-1] motion by United States for Preliminary Injunction (rpiz)		
24	Filed & Entered:	07/31/2002	Order
	Docket Text: ORDER (PRELIMINARY INJUNCTION): It is hereby ordered that Robert L. Foster and any persons acting in concert with him are prohibited from (A) preparing returns, amended returns, and/or other documents to be submitted to the IRS claiming or supporting claims for refunds based on fabricated tax credits for reparations for slavery, segregation, or treatment as second-class citizens, as well as any other fabricated tax credit or any other comparable frivolous grounds (SEE ORDER FOR DETAILS)... This preliminary injunction shall remain in effect until this Court orders otherwise (signed by Judge Richard L. Williams) Copies Mailed: y [EOD Date: 7/31/02] (rpiz)		
	Filed & Entered:	08/30/2002	Motion for Summary Judgment

25	<i>Terminated:</i>	10/18/2002	
	<i>Docket Text:</i> MOTION by United States for Summary Judgment (rpiz)		
26	<i>Filed &amp; Entered:</i>	08/30/2002	Memorandum in Support
	<i>Docket Text:</i> MEMORANDUM by United States in support of [25-1] motion by United States for Summary Judgment (Exhibits part I and part II-III placed in brown expandable folder) (rpiz)		
	<i>Filed &amp; Entered:</i>	09/11/2002	Set/Reset Deadlines
	<i>Docket Text:</i> Deadline updated; RESET Bench Trial for 9:30 10/30/02 (jpea)		
27	<i>Filed &amp; Entered:</i>	10/04/2002	Response to Motion
	<i>Terminated:</i>	10/18/2002	
<i>Docket Text:</i> RESPONSE by Robert L. Foster to [25-1] motion by United States for Summary Judgment (cgar)			
	<i>Filed &amp; Entered:</i>	10/10/2002	Set/Reset Deadlines
	<i>Docket Text:</i> Deadline updated; Bench Trial for 9:30 10/30/02 before Judge Richard L. Williams (clerk)		
	<i>Filed &amp; Entered:</i>	10/18/2002	Terminated Case
	<i>Docket Text:</i> Case closed (mful)		
28	<i>Filed &amp; Entered:</i>	10/18/2002	Memorandum Opinion
	<i>Docket Text:</i> MEMORANDUM OPINION ( signed by Judge Richard L. Williams ) Copies Mailed: yes (mful)		
29	<i>Filed &amp; Entered:</i>	10/18/2002	Order
	<i>Docket Text:</i> ORDER granting [25-1] motion by United States for Summary Judgment; see order for additional details ( signed by Judge Richard L. Williams ) Copies Mailed: yes [EOD Date: 10/18/02] (mful)		
30	<i>Filed:</i>	12/17/2002	Notice of Appeal
	<i>Entered:</i>	12/18/2002	
<i>Docket Text:</i> NOTICE OF APPEAL OF [29-1] order by United States . (TPO package was given; fee waived.) (cmcc)			
	<i>Filed:</i>	01/07/2003	USCA Case Number
	<i>Entered:</i>	01/13/2003	
<i>Docket Text:</i> USCA Case Number Re: [29-1] order CASE MANAGER: Diane Burke USCA NUMBER: 03-1021 (cmcc) Modified on 01/14/2003			
31	<i>Filed &amp; Entered:</i>	01/22/2003	USCA Order
	<i>Docket Text:</i> USCA Order as to defendant Robert L. Foster, the Court dismisses this appeal with prejudice pursuant to Rule 42(b), as and for the mandate. (cmcc) Modified on 07/22/2003		

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
10/30/2012 11:30:13			
<b>PACER Login:</b>	ir3219	<b>Client Code:</b>	
<b>Description:</b>	History/Documents	<b>Search Criteria:</b>	3:02-cv-00133-RLW
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30