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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-2225
	)	
JOHN LAWRENCE LeBOURGEOIS,	)	SECT. K MAG. 3
	)	
Defendant.	)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America, for its Complaint, alleges and avers the following:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and by Sections 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (I.R.C.).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

3. This action is brought at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury. This action is commenced at the direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402, 7407, and 7408.

Defendant

4. Defendant John Lawrence LeBourgeois is a natural person who resides within this judicial district.

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5. Defendant is a federal income tax return preparer, within the meaning of I.R.C. § 7701(a)(36). Defendant prepares and files with the Internal Revenue Service Forms 1040 (individual income tax returns) and Forms 1040X (administrative claims for tax refund), to assist taxpayers in filing for and receiving federal income tax refunds.

Facts Common to All Counts

6. Defendant has prepared and filed federal income tax returns on which individual taxpayers claimed a so-called "mariner's tax deduction" on Form 1040 Schedule A. Typically, the individual taxpayers for whom such returns were prepared and filed were employed as mariners, during the course of which maritime employment they from time-to-time worked and lived on vessels. While on board, as part of their employment, the mariners were provided with meals and other incidentals without charge to them. Notwithstanding that the mariners were not charged for, and did not pay for, the meals and incidentals, Defendant prepared and filed returns that claimed a "mariner's tax deduction" or business expense deduction, calculated with reference to the number of days on board a vessel and a per diem allowance of $38.00. The client taxpayers would tell Defendant how many days they were on a boat, and Defendant would then multiply the product of (i) the number of days and (ii) $38.00 by a factor of 65 percent (65%). The result would be entered onto a Form 2106 and Schedule A attached to the Form 1040.

7. The so-called mariner's tax deduction (or similar business expense deduction calculated as above) is improper, and not supported by the Internal Revenue Code or other law. Because the mariners are furnished with food and incidentals without cost to the employee, the employee does not incur any expense, and therefore may not claim a per diem deduction.

8. The Internal Revenue Service has identified at least three separate tax returns or tax refund claims that Defendant prepared claiming a purported mariner's tax deduction, or a similar business expense deduction described in paragraphs 6 and 7 above.

9. Defendant knew, or should have known, that a so-called "mariner's tax deduction" or similar business expense deduction in the circumstances described above is not supported or authorized by the Internal Revenue Code or any other law. Defendant has prepared, or assisted in preparing, tax returns and refund claims that Defendant knows, or should have known, understate the claimant's tax liability or overstate the amount of tax refund claimed, and that Defendant knows, or should have known, are frivolous.

10. The understatements of tax liability reflected on such returns or amended returns prepared by the defendant are due, at least in material part, to the assertion of a position for which there is not a realistic possibility that it will be sustained.

11. Returns containing a mariner's tax deduction in the aforesaid circumstances, or similar mariner business expense claims, interfere with the proper administration and enforcement of the internal revenue laws.

12. Defendant's conduct results in irreparable harm to the United States, for which the United States has no adequate remedy at law. Specifically:

a. Defendant's conduct, unless enjoined, is likely to cause the United States Treasury to expend significant resources to locate and process tax returns and refund claims containing frivolous claims, and to assess and collect proper tax liabilities and penalties.

b. If not enjoined, Defendant's actions will continue to sow confusion about

the tax laws, by causing taxpayers to believe, falsely, that the United States Government is allowing a tax deduction or refund for the mariner's tax deduction described above, or a similarly calculated business expense deduction.

c. Defendant's actions require the Internal Revenue Service to devote resources to processing a substantial volume of false and fraudulent returns and claims for tax refund, thereby reducing the level of service that the agency can provide to honest taxpayers.

Count I
(Injunction under I.R.C. § 7407)

13. The United States incorporates herein by reference the allegations and averments in paragraphs 1 though 12.

14. Section 7407 of the Internal Revenue Code authorizes a court to enjoin an income tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, and that injunctive relief is appropriate to prevent the recurrence of the conduct.

15. Section 6694 of the Internal Revenue Code imposes penalties on income tax return preparers who prepare returns that contain frivolous positions, or who willfully understate the tax liability of another person.

16. Defendant, an income tax return preparer, has engaged in conduct subject to the I.R.C. § 6694 penalty because he knew, or should have known, that the so-called mariner's tax deduction (or similar business expense deduction claim) is a frivolous position with no realistic

possibility of being sustained on the merits, and because he willfully prepared or assisted in preparing returns that understated the tax liability of other persons.

17. I.R.C. Section 7407 also authorizes a court to enjoin an income tax return preparer if the court finds (i) that the return preparer has engaged in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and (ii) that injunctive relief is appropriate to prevent the recurrence of the conduct.

18. Defendant engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws by, among other things, filing false and fictitious returns or amended returns that contained wholly fictitious tax deductions.

Count II

(Injunction under I.R.C. § 7408 for violations of I.R.C. §§ 6700 and 6701)

19. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 18.

20. Section 7408 of the Internal Revenue Code authorizes a court to enjoin a person from engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701, if injunctive relief is appropriate to prevent recurrence of such conduct.

21. Section 6701 of the Internal Revenue Code imposes a penalty on any person who (i) aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; (ii) 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 (iii) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

22. Defendant has engaged in conduct subject to penalty under I.R.C. § 6701 by preparing, or assisting in the preparation of, documents that falsely claimed that mariners who did not incur any expense for meals or incidentals while on board vessels could nonetheless claim a tax deduction measured by the federal per diem allowance for such expenses. Defendant knew or had reason to believe that the documents would be used in connection with material matters arising under the internal revenue laws. Defendant also knew that, if so used, the documents would result in understatements of tax liabilities.

23. Injunctive relief is appropriate to prevent the recurrence of such conduct.

24. The United States is entitled to an injunction under I.R.C. § 7408 to prevent the defendant from engaging in conduct subject to penalty under I.R.C. § 6701.

Count III

(Unlawful Interference with the Enforcement of the Internal Revenue Laws, I.R.C. § 7402)

25. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 24.

26. Section 7402(a) of the Internal Revenue Code authorizes federal district courts to issue injunctions as may be necessary or appropriate to enforce the internal revenue laws.

27. Defendant, through the conduct described above, engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. Defendant's conduct causes irreparable injury to the United States, and an injunction under I.R.C. § 7402(a) is necessary and appropriate.

28. The United States is entitled to injunctive relief under IRC § 7402(a).

WHEREFORE, the United States respectfully requests the following relief:

A. That the Court find that Defendant has repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent recurrence of that conduct.

B. That the Court find that Defendant has repeatedly engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent recurrence of that conduct.

C. That the Court find that Defendant has engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent recurrence of that conduct.

D. That the Court find that Defendant has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent recurrence of that conduct, pursuant to the Court's inherent equity powers and I.R.C. § 7402(a).

E. That the Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting Defendant, individually, and anyone in active concert or participation with him, including any agent, servant, or employee, from directly or indirectly, by the use of any means or instrumentalities:

(1) engaging in any conduct subject to penalty under I.R.C. § 6694, *i.e.*, preparing any part of a return, amended return, or claim for refund that includes an unrealistic position, including, without limitation, a claim for a

"mariner's deduction" based on meals or incidentals that are provided to an employee without cost;

(2) assisting or aiding others to evade the payment of taxes or to prepare false or fraudulent federal income tax returns;

(3) engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws.

F. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Defendant, individually, and anyone in active concert or participation with him, including any agent, servant, or employee, from directly or indirectly, by the use of any means or instrumentalities:

(1) engaging in any conduct subject to penalty under I.R.C. § 6701, *i.e.,* preparing or assisting others in preparing any document (i) that is to be used in connection with any material matter arising under the internal revenue laws and (ii) that he or such other person knows will (if so used) result in understating the income tax liability of another person;

(2) engaging in conduct that interferes with the administration or enforcement of the internal revenue laws, including preparing or assisting in preparing any return, amended return, refund claim, or other document to be filed with the IRS claiming a credit or refund based on the so-called "mariner's deduction" or purported per diem meal expenses for mariners.

G. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Defendant, at his own expense, to contact, in writing –

all persons for whom he prepared or assisted in preparing any federal income tax return, amended return, or refund claim that contained a "mariner's deduction" or claim based on purported per diem meal or incidental expenses of mariners, from January 1, 2000 through the present, and inform each such person of (i) the entry of Final Judgment in this case, (ii) the possibility of the imposition of penalties against them, and (iii) the possibility that the United States may seek to collect additional federal income taxes, penalties, and interest that they may owe.

H. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Defendant--

(1) to provide to counsel for the United States, within fourteen (14) days after entry of its order or judgment of injunction against Defendant, a complete list of the persons for whom Defendant has prepared any federal income tax return, amended return, or refund claim containing or including a "mariner's deduction" or claim based on purported per diem meal expenses of mariners, at any time from January 1, 2000 through the present, such list to include for each such person the name, address, phone number, e-mail address (if known), social security number or employer identification number, and the tax period(s) to which or for which such return, amended return, or refund claim relates;

(2) to file with the Clerk of this Court, within twenty-one (21) days after entry of the Court's order or judgment of injunction a sworn certificate of compliance, stating that he has complied with the foregoing directive.

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

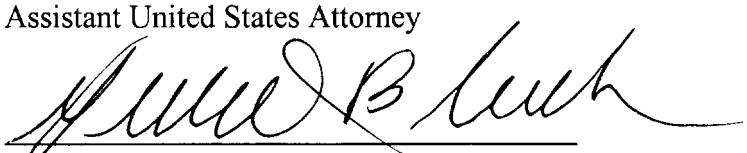
J. That this Court retain jurisdiction over this action for the purpose of implementing and enforcing the final judgment and all additional decrees and orders necessary and appropriate to the public interest.

K. That this Court grant the United States such other and further relief, including its costs, as is just and equitable.

Respectfully submitted,

Jim Letten
United States Attorney

Stevens E. Moore
Assistant United States Attorney



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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on **August 2, 2004**, consistent with the agreement reflected in the Waiver Of Service Of Process, Response, And Hearing On Injunction Application (hereinafter "Waiver of Service") signed by the Defendant, and filed with the Complaint, undersigned Government counsel sent to the named defendant, by prepaid FedEx overnight delivery, at the address stated on the Waiver of Service, a true, correct, and complete copy of the Complaint for Permanent Injunction and Other Relief filed herewith.

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