FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

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COURT
FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY T. MAYER, LEGAL TAX NEWSLETTER, LC, a Florida Limited Liability Company, and MORTON & OXLEY, LTD, a business entity doing business in Florida, Defendants.	)	Civil No. 8:03-CV-415-T-26TGW

FILED
Date 5/6/03
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, states as follows for its complaint against defendant Gregory T. Mayer, Legal Tax Newsletter, LC, and Morton & Oxley, LTD:

Nature of Action

1. The United States brings this complaint to enjoin Gregory T. Mayer, Legal Tax Newsletter, LC and Morton & Oxley, LTD, and any other person or entity in active concert or participation with them, from directly or indirectly:

(a) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(b) Advocating through false and deceptive commercial speech, including through the preparation of federal tax returns and other tax documents, the false and frivolous position that U.S.-source income is nontaxable (the § 861 argument);

(c) Engaging in conduct subject to penalty under I.R.C. § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement that he knows or has reason to know to be false or fraudulent as to any material federal tax matter;

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(d) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, by preparing or 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 the defendant knows will (if so used) result in the understatement of tax liability;

(e) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, including but not limited to representing customers before the IRS and giving tax advice or providing tax services for compensation;

(f) Engaging in any conduct that violates I.R.C.§ 6694, *i.e.*, by preparing or assisting in the preparation of any return that results in the understatement of tax liability based on an unrealistic position, or I.R.C. § 6695, *i.e.*, by failing to retain and provide to the Internal Revenue Service a copy and list of all returns prepared; and

(g) Acting as income-tax-return preparers.

2. An injunction is warranted based on Mayer's and Legal Tax Newsletter, LC's continuing conduct as a preparer of false and abusive tax returns and all defendants' promotion of abusive tax plans. If not enjoined, defendants' actions will result in their customers incurring penalties and other civil or criminal sanctions and cause further revenue loss to the United States.

Jurisdiction and Venue

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407 and 7408.

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

Authorization

5. This action has been authorized and requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.

Defendants

6. Gregory T. Mayer resides at 1930 Cleveland Street, Clearwater, FL 33755.

7. Legal Tax Newsletter, LC is a Florida limited liability company doing business at 1008½ Drew Street, Clearwater FL 33755. Gregory T. Mayer is the manager and registered agent of Legal Tax Newsletter, LC.

8. On information and belief, Morton & Oxley, LTD is a Delaware corporation doing business in the state of Florida at 1008½ Drew Street, Clearwater FL 33755.

Defendants' Activities

9. Mayer has been a paid tax return preparer since at least 1998.

10. Legal Tax Newsletter, LC has been a paid tax return preparer since at least 1998.

11. The returns prepared by Legal Tax Newsletter are signed on its behalf by Mayer.

12. The IRS has determined that Mayer individually prepared at least 421 federal tax returns for customers between 1998 and 2002. During that period Legal Tax Newsletter, LC prepared at least 130 federal tax returns, all signed by Mayer.

13. Mayer has refused IRS requests that he provide a list of customers and returns to the IRS, in violation of I.R.C. § 6107(b).

14. Many of the returns Mayer and/or Legal Tax Newsletter prepared understated customers' tax liability based on either one or both of two fraudulent theories defendants promote.

15. First, defendants promote the frivolous "U.S. sources" or "§ 861 argument." This bogus argument posits that income earned within the United States is not taxable, based on a

regulation promulgated under I.R.C. § 861—namely C.F.R. § 1.861-8(f), which focuses on foreign income.

16. Mayer and/pr Legal Tax Newsletter, LC prepare "zero return" federal income tax returns for customers and includes with the returns various documents in which customers falsely claim to have no taxable income. Mayer and/or Legal Tax Newsletter also prepare amended federal income tax returns for customers, who previously reported income on their returns, which falsely claim that the customers in fact earned nothing and are entitled to refunds of taxes paid.

17. Second, defendants promote a scheme that improperly uses multiple tiers of sham domestic and offshore trusts and other business entities to conceal customers' income and assets.

18. Morton & Oxley frequently serves as the trustee or manager of the entities, and Mayer frequently signs documents on behalf of Morton and Oxley for the entities.

19. With defendants' assistance, their customers then purportedly shuttle assets and income between and among their bogus trusts and/or business entities with no entity paying taxes on the income, and with the customers retaining or receiving the ultimate benefits of the assets and income.

20. Mayer and/or Legal Tax Newsletter, LC also prepare returns on behalf of these sham trusts and other entities, on which he takes false and fraudulent positions including, but not limited to: taking improper deductions which completely offset the entity's income, resulting in no tax liability; failing to file paperwork indicating the recipient(s) of entity income; and asserting the frivolous § 861 argument.

21. When the IRS audits his customers, Mayer represents them before the IRS.

22. Mayer's representation consists of asserting the frivolous positions set forth above and engaging in disruptive and abusive tactics designed to frustrate or stop the audits.

23. These tactics include, but are not limited to: asserting the § 861 argument; making frivolous requests to the IRS for technical assistance; filing frivolous administrative complaints against IRS employees involved in the audits; and refusing to respond to IRS summonses for frivolous reasons.

24. Through their preparation of false and fraudulent returns and promotion of abusive tax schemes, defendants have cost the United States substantial lost tax revenue, drained IRS resources, and subjected their customers to potential civil and criminal sanctions.

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

26. The United States incorporates by reference the allegations made in paragraphs 1 through 24.

26. I.R.C. § 7407 authorizes a court to enjoin an income-tax-return preparer who:

a. engages in conduct subject to penalty under I.R.C. § 6694 (which penalizes a return preparer who prepares or submits a return that contains an unrealistic position) or I.R.C. § 6695 (which penalizes a return preparer who fails to keep a list of customers or turn over the client list to the IRS upon request); . . . or

b. engages in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

If the Court finds that a preparer's misconduct is continual or repeated, and that a narrow injunction (*i.e.*, prohibiting only specific proscribed conduct) is insufficient to prevent a person's interference with the proper administration of federal tax laws, the Court may enjoin the preparer from preparing *any* federal income tax returns.

27. Mayer and/or Legal Tax Newsletter, LC have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing and submitting returns based on the frivolous and false § 861 argument, as explained in paragraphs 15-16 above.

28. Mayer and/or Legal Tax Newsletter LC have also continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by asserting false and frivolous positions on returns based on sham trusts and other business entities on behalf of customers, as explained in paragraphs 18-21 above.

29. Mayer has engaged in conduct subject to penalty under I.R.C. § 6695 by refusing to keep a list of customers and returns or provide a list to the IRS on request.

30. Mayer is also subject to injunction under I.R.C. § 7407 because his assertion of frivolous positions about the tax laws and his disruptive and dilatory tactics when representing customers before the IRS constitute fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

31. Mayer and Legal Tax Newsletter, LC should be enjoined from preparing any federal income tax returns because of their continual and repeated pattern of abusive and fraudulent conduct, as described above.

Count II

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

32. The United States incorporates by reference the allegations made in paragraphs 1 through 31.

33. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701 from engaging in further such conduct.

34. I.R.C. § 6700 imposes a penalty on any person who organizes (or assists in the organization of) any shelter, plan, or arrangement and makes or furnishes or causes another person to make or furnish (in connection with such organization) a statement regarding the excludibility of any income which the person knows or has reason to know is false or fraudulent as to any material matter.

35. I.R.C. § 6701 imposes a penalty on any person who aids in the preparation of any portion of a return, who knows the portion will be used to assert a position under the internal revenue laws, and who knows the portion would result in an understatement in tax liability.

36. Defendants have engaged in conduct subject to penalty under I.R.C. § 6700 by promoting the § 861 argument and by making false and fraudulent statements regarding the tax benefits of this argument.

37. Defendants have also engaged in conduct subject to penalty under I.R.C. § 6700 by promoting a system of sham trusts and other entities to hide assets and income and by making false and fraudulent statements regarding the tax benefits of this system.

38. Mayer and Legal Tax Newsletter, LC have engaged in conduct subject to penalty under I.R.C. § 6701 by preparing tax returns based on the § 861 argument and sham trusts and other entities that they knew would result in understatements of tax liability.

39. Defendants should be enjoined from promoting and selling tax schemes and preparing tax returns and other documents based on the § 861 argument and sham trusts.

Count III
(Injunction under I.R.C. § 7402(a) for Unlawful Interference with the Enforcement of the Internal Revenue Laws)

40. The United States incorporates by reference the allegations made in paragraphs 1 through 39.

41. I.R.C. § 7402 authorizes an injunction against anyone who has engaged in conduct that substantially interferes with the administration of the internal revenue laws.

42. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

43. If defendants are not enjoined, they likely will continue to engage in conduct that interferes with the enforcement of the internal revenue laws. Defendants should be enjoined under I.R.C. § 7402(a) from interfering with the enforcement of the internal revenue laws. The injunction should include provisions barring defendants from representing customers before the IRS, giving tax advice or providing tax services for compensation, or otherwise inciting violations of the internal revenue laws.

Appropriateness of Injunctive Relief

44. Unless enjoined by the Court, defendants are likely to continue to engage in the conduct described in paragraphs 1 through 43.

45. Defendants' conduct, as described in paragraphs 1 through 44 of this complaint, results in irreparable harm to the United States for which the United States has no adequate remedy at law.

a. Defendants' conduct, unless enjoined, is likely to cause a substantial loss of revenue to the Treasury. Unless defendants are enjoined, the IRS will have to

spend substantial time and resources to detect their customers, and may be unable to detect all of them;

b. The detection and audit of taxpayers who have used defendants' schemes will place a serious burden on the IRS's resources; and

c. If defendants are not enjoined, they likely will continue to engage in conduct subject to penalty under I.R.C. §§ 6700, 6701, 6694, and 6695, and other conduct that interferes with the enforcement of the internal revenue laws, thereby undermining the federal tax system.

WHEREFORE, the plaintiff, United States of America, prays for the following:

A. That the Court find that Mayer and Legal Tax Newsletter, LC have engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent Mayer and Legal Tax Newsletter, LC, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from acting as income-tax-return preparers;

B. That the Court find that defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent them and anyone acting in concert with them from engaging in any further such conduct;

C. That the Court find that defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against them and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them is appropriate to prevent the recurrence of that conduct under the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, under I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting defendants, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

(1) Organizing, promoting, marketing, or selling (or assisting therein) any tax shelter, plan, or arrangement, including but not limited to abusive trusts and the § 861 position, or any other abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;

(2) Engaging in any conduct subject to penalty under I.R.C. § 6700, *i.e.,* making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement they know or have reason to know is false or fraudulent as to any material matter;

(3) Engaging in any conduct subject to penalty under I.R.C. § 6701, *i.e.,* 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 they know will (if so used) result in the understatement of income tax liability; and

(4) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service, including but not limited to representing customers before the Internal Revenue Service, giving tax advice or providing tax services for compensation, and inciting others to violate the internal revenue laws;

E. That this Court, under I.R.C. §§ 7402, 7407, and 7408, enter an injunction requiring Mayer and/or Legal Tax Newsletter, LC to contact all persons for whom Mayer and/or Legal Tax Newsletter, LC prepared and/or assisted in the preparation of any federal income tax returns or tax-related documents and inform those persons of the entry of the Court's findings concerning the falsity of the tax returns Mayer and/or Legal Tax Newsletter, LC prepared on these persons' behalf, the possibility of the imposition of penalties against them, and the fact that an injunction has been entered against Mayer.

F. That this Court, under I.R.C. §§ 7402, 7407, and 7408, enter an injunction requiring defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, to turn over to the United States any records in his possession or to which they have access, that identify (1) the persons to whom they gave or sold, directly or indirectly, any materials related to the tax schemes described above; (2) the persons who assisted in marketing or preparation of materials used by defendants or written materials sent to potential customers; (3) any individuals or entities for whom defendants, or their associates, prepared or assisted in the preparation of any tax-related documents, including claims for refund or tax returns; and (4) any individuals or entities who purchased or used any other tax shelter, plan, or arrangement in which defendants have been involved;

G. That this Court allow the government full post-judgment discovery to monitor compliance with the injunction;

H. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

I. That the Court grant the United States such other and further relief as the Court deems appropriate.

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Local Rule 3.01(g) Certification

IT IS HEREBY CERTIFIED that counsel for the United States has conferred with Joseph Izen, counsel for defendant Gregory T. Mayer, in a good faith effort to resolve the issues raised by this motion, and that counsel does not oppose the motion.

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Certificate of Service

IT IS HEREBY CERTIFIED that service of the foregoing **MOTION TO AMEND COMPLAINT** and **FIRST AMENDED COMPLAINT** has been made upon the following by United States Mail, this 28th day of April, 2003.

Joe Alfred Izen, Jr.
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