

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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U.S. DISTRICT COURT E.D.N.Y.

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Case No.

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS B. PRUZAN,)
 D/B/A THE PRUZAN LAW FIRM,)
)
 Defendant.)

DEARIE, CH. J.

POHORELSKY, M.J.

UNITED STATES' COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION

The plaintiff, the United States of America, by its undersigned counsel, at the request and with the authorization of a delegate of the Secretary of the Treasury and as directed by a delegate of the Attorney General, brings this complaint, pursuant to 26 U.S.C. §§ 7401 and 7402(a), to seek preliminary and permanent injunctive relief against Thomas B. Pruzan, d/b/a the Pruzan Law Firm ("the taxpayer"), and complains and alleges that:

1. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1340 and 1345, as well as 26 U.S.C. § 7402(a).
2. Thomas B. Pruzan is the sole proprietor of the Pruzan Law Firm. Both Mr. Pruzan resides and the Pruzan Law Firm may be found within the jurisdiction of this Court.
3. The taxpayer leases his business location, located at 111 Livingston Street, Brooklyn, NY, and pays four full-time employees, including himself, and credits them for withheld federal tax payments.

THE TAXPAYER HAS EXHIBITED A PATTERN OF NONCOMPLIANCE AND
UNTIMELY FILING SPANNING MORE THAN 10 YEARS

4. For more than forty-five quarters, since the quarter ended September 30, 1997, the taxpayer has failed to comply with his federal tax obligations by failing to file returns, failing to file returns timely, and failing to pay federal employment and unemployment taxes.
5. Since the quarter ended September 30, 1997, the taxpayer has failed to file Form 941 seventeen times.
6. Since the quarter ended September 30, 1997, the taxpayer late filed Form 941 twenty-six times.
7. Though crediting his employees for withholding federal tax payments, the taxpayer continually fails to pay such credited withholdings to the United States or its agency, the Internal Revenue Service.
8. In addition to failing to pay employees' credited withholdings, the taxpayer continually fails to pay the employer's share of Form 941 employment taxes (FICA) and Form 940 unemployment taxes (FUTA), also due from employers.
9. The taxpayer's non-compliance with his federal tax obligations has resulted in a balance due of greater than \$1,000,000.00.

ADMINISTRATIVE COLLECTION EFFORTS HAVE PROVEN
INEFFECTIVE TO PREVENT PYRAMIDING.

10. Since the quarter ended September 30, 1997, the taxpayer has deliberately failed to make current employment tax deposits, and has, instead, used these trust funds as working capital, a practice referred to as "pyramiding".

11. The Internal Revenue Service has exhausted its administrative remedies and collection methods as follows:
 - a. Attempts to administratively collect the unpaid payroll taxes began in 2004. On May 4, 2004, an IRS representative contacted the taxpayer, and requested that he file the delinquent returns and resolve his outstanding liability.
 - b. On January 11, 2005, the taxpayer appeared at an office of the IRS, and met with an IRS representative who again explained his outstanding tax liabilities, discussed his missing returns, tax compliance and filing requirements.
 - c. On July 8, 2005, an IRS representative had a telephone conversation with the taxpayer in which the IRS again requested that the taxpayer satisfy his outstanding tax liability and provide proof that federal tax deposits for the Pruzan Law Firm were being made.
 - d. On November 17, 2005, an IRS representative had another telephone conversation with the taxpayer in which the IRS again requested that the taxpayer satisfy his outstanding tax liability and stay current with all federal tax deposits and filings for the Pruzan Law Firm.
 - e. On March 8, 2006, an IRS representative personally met with the taxpayer, and delivered in hand Publication 1932, which educates the public on federal tax deposit compliance. On that date, the taxpayer was also provided with Letter 903 and Notice 931, which alerted him to the

provisions of 26 U.S.C. § 7512, the Separate Accounting for Certain Collected Taxes. Despite the notification, the taxpayer continued to fail to collect, truthfully account for, or pay over the federal employment and unemployment taxes of the Pruzan Law Firm.

- f. On July 18, 2006, an IRS representative personally met with the taxpayer, and delivered in hand the following: Publication 1, “Your rights as a Taxpayer”, which includes information on the collection process; Publication 594, which explains steps the Internal Revenue Service can take to collect overdue taxes; Publication 1660, which advises taxpayers of their appeal rights; and Letter 903 and Notice 931 for a second time. The taxpayer was also handed Form 2841, “Notice to Make Special Deposits of Taxes”, which notified the taxpayer that he was required to open a special account and to make special monthly deposits of taxes pursuant to Treas. Reg. § 301.7512-1.
- g. On August 2, 2006, the taxpayer was placed on the monthly filing requirement. Although he filed a Form 941-M for July 2006 through May 2007, he did not file a Form 941-M again until July 25, 2008, when he filed Forms 941-M for April and May 2008. The taxpayer has failed to file another Form 941-M thereafter, and to date, he has failed to make any deposits required by Form 2481.
- h. On May 30, 2008, an IRS representative yet again met personally with the taxpayer. The representative personally discussed the special deposit of

taxes and the Form 941-M monthly filing requirement with the taxpayer, and explained how the procedures work. The representative informed the taxpayer that injunctive relief would be sought if he failed to comply. The taxpayer stated that he understood the consequences of injunctive relief.

- i. The Internal Revenue Service has filed twenty-two Notices of Federal Tax Lien spread between the King's County Register's Office, in Brooklyn, NY, the Secretary of State, in Albany, NY, and the Suffolk County Clerk, in Riverhead, NY. As described in paragraph 3, above, the taxpayer leases, but does not own, real property; thus the taxpayer has no substantial assets from which the IRS may attempt to collect the unpaid taxes by levy.
- j. The IRS delivered numerous Notices of Intent to Levy to the taxpayer, and levied upon the taxpayer's bank accounts and accounts receivable, with minimal collection success. The IRS has not seized the taxpayer's business assets, which consist of office furniture and fixtures, because they are of negligible value.
- k. The taxpayer has not requested a collection due process hearing in response to any of the collection actions by the IRS.
- l. In November of 2005, the taxpayer filed an offer in compromise, which was rejected as non-processable due to noncompliance. The taxpayer also inquired into an installment agreement. Despite his inquiries, the taxpayer

was, and remains, ineligible for an installment agreement due to the failure to comply with the tax filings and liabilities.

12. In summary, all of the IRS' administrative and alternative collection actions have yielded minimal payments of the employment tax debt, and all attempts to induce compliance have failed.

REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION

13. An injunction by this Court ordering the taxpayer to comply with the United States' employment tax requirements is necessary and appropriate for the following reasons:
 - a. The Internal Revenue Service has no adequate remedy at law other than an injunction because the above facts show that traditional collection methods have not and will not convince the taxpayer to stop pyramiding tax liabilities.
 - b. If the taxpayer is allowed to continue to ignore its employment tax requirements, the taxpayer will likely continue to accrue approximately \$6,000 to \$12,000 of Form 941 taxes per quarter and approximately \$1,000 of Form 940 taxes annually that the United States will not be able to collect.
 - c. If the Court grants an injunction, it will compel the taxpayer to conduct its business like every other tax-paying business in the country. This will not result in an injury to the taxpayer, but instead will compel the taxpayer to

comply with tax filings and tax liabilities just as every other business in the country must do.

- d. The taxpayer's failure to pay its employment taxes gives it an unfair advantage over competitors and other businesses because the taxpayer effectively obtains the same amount of labor for less total payroll cost. An injunction will protect the public's interest in fair and efficient tax administration by halting the taxpayer's unfair practices and effectively leveling the playing field.

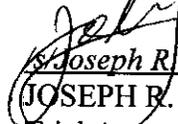
WHEREFORE, the United States of America prays for judgment against the defendant-taxpayer Thomas B. Pruzan, d/b/a the Pruzan Law Firm, awarding the United States' its costs incurred in prosecuting this action, and issuing both a Preliminary Injunction and Permanent Injunction ordering that Thomas B. Pruzan, d/b/a the Pruzan Law Firm do the following:

1. Deposit withheld FICA taxes, as well as the taxpayer's (employer's) share of FICA taxes, in an appropriate federal repository bank in accordance with the federal deposit regulations;
2. Deposit FUTA taxes in an appropriate federal repository bank in accordance with the federal deposit regulations;
3. Deposit withholdings from his employee's wages in an appropriate federal depository bank in accordance with the federal deposit regulations;
4. Sign and deliver affidavits to the revenue officer (presently Lorraine Tong), or such other person as the IRS may deem appropriate, on the 1st day of each month,

stating that the requisite withheld income, FICA and FUTA tax deposits were timely made;

5. Timely file all employment and unemployment tax returns with the IRS;
6. Pay within 30 days, any outstanding liabilities due on each return required to be filed by subparagraph 5, above.
7. Refrain from making any disbursements or assigning any property after the date of the injunction until amounts required to be withheld from wages after the date of the injunction are, in fact, paid to the IRS;
8. Notify the IRS of future employment tax conduct with respect to any new or presently unknown company, including the imposition of an affirmative duty upon the taxpayer to notify the revenue officer, or such other person as the IRS may deem appropriate, in the future of any new company he may come to own, manage, or work for.
8. Any other action or relief the Court deems just and appropriate.

BENTON J. CAMPBELL
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