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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WALTER THOMPSON, a/k/a AL THOMPSON, d/b/a CENCAL SALES COMPANY, d/b/a CENCAL AVIATION PRODUCTS, Defendant.	CIV.S- 03 - 1532 FCD GGH Civil No. **Complaint for Permanent Injunction**

Plaintiff, the United States of America, states as follows for its complaint against defendant Walter Thompson, also known as Al Thompson, doing business as Cencal Sales Company and Cencal Aviation Products ("Cencal"):

Jurisdiction

1. This Court has jurisdiction over this action to enjoin Thompson from violating and interfering with the administration of the internal revenue laws pursuant to 28 U.S.C. §§ 1340 and 1345 and Internal Revenue Code (I.R.C.) (26 U.S.C.) § 7402(a).

Venue

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because Thompson resides in this judicial district.

Nature of Action

3. This action has been 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 I.R.C. § 7402.

4. The United States is bringing this complaint to permanently enjoin Thompson from failing to (a) withhold federal taxes from employee wages, (b) file timely federal employment and unemployment tax returns, (c) file timely wage and tax statements (IRS Forms W-2) with the Social Security Administration (SSA) and issue them to employees, and (d) make timely federal employment and unemployment tax deposits and payments to the IRS.

5. An injunction is warranted based on Thompson's continuing violation of the internal revenue laws, including I.R.C. §§ 3102, 3111, 3301, 3402, 6011, and 6041. Since July 2000, Thompson has failed to withhold federal taxes from his employees' wages, to file federal employment and unemployment tax returns, to file Forms W-2 with the SSA, to issue Forms W-2 to his employees, and to pay the federal employment and unemployment taxes that are lawfully owing.

Defendant

6. Thompson resides at 504 Hanland Court, Redding, California. He does business as Cencal Sales Company and Cencal Aviation Products (Cencal), a sole proprietorship engaged in the manufacture and sale of travel bags and other accessories for aviators. Cencal is located at 3400 Shasta Gateway Drive, Suite D, Shasta Lake, California.

Defendant's Activities

7. Thompson has approximately 25 employees, to whom he pays wages and other compensation.

8. I.R.C. §§ 3102, 3111, 3301, and 3402 require employers to withhold federal income and Federal Insurance Contributions Act (FICA) taxes from their employees' wages, and to pay over those withholdings, along with the employer's own FICA and Federal Unemployment Tax Act (FUTA) taxes, to the IRS.

9. I.R.C. § 6011 and Treasury Regulation (26 C.F.R.) § 31.6071(a)-1 require employers to file Employer's Quarterly Federal Tax Returns (IRS Forms 941) and Employer's Annual Federal Unemployment (FUTA) Tax Returns (IRS Forms 940) with the IRS.

10. I.R.C. §§ 6011 and 6041 and Treasury Regulation § 1.6041-2 require employers to file annually with the SSA a Form W-2 for each employee, and to give each employee a copy of his or her Form W-2.

11. In July 2000, Thompson announced to his employees that he would no longer withhold federal taxes from their wages because he believes that he is not required to do so.

12. Thompson bases his professed belief that he is not required to withhold federal taxes from his employees' wages on the so-called "§ 861 argument."

13. The patently frivolous § 861 argument posits that I.R.C. § 861 and Treasury Regulation § 1.861-8(f) provide the exclusive list of income sources subject to federal income tax. Because that narrow list focuses on foreign income, § 861 proponents argue that U.S.-source income is not subject to federal income taxation.

14. Every court that has considered the § 861 argument has rejected it as frivolous. Courts have sanctioned people for asserting the § 861 argument and enjoined people from promoting it and preparing tax returns asserting it.

15. In July 2000, Thompson stopped withholding federal income and FICA taxes from his employees' paychecks.

16. Thompson has not made any federal employment tax deposits, either of withholdings from his employees' paychecks or of his own FICA taxes, since July 20, 2000.

17. Thompson last filed a Form 941 return for the third quarter of 2000. That return failed to report all wages paid and taxes owed because Thompson began relying on the § 861 argument in July 2000.

18. Thompson has not filed a Form 941 return for any period after the third quarter of 2000.

19. Thompson last filed a Form 940 return and paid FUTA taxes for the year 1999. He has not filed a Form 940 return or paid FUTA taxes for any year after 1999.

20. The IRS prepared tax returns for Thompson's employment taxes for the fourth quarter of 2000 through the fourth quarter of 2002, and for his unemployment taxes for 2000, 2001, and 2002, and assessed tax liabilities against him based on these prepared returns totaling $321,339.05.

21. Thompson last filed Forms W-2 and issued them to his employees for the year 2000. Those Forms W-2 failed to report all wages paid because Thompson began relying on the § 861 argument in July 2000.

22. Thompson has not filed Forms W-2 or issued them to his employees for any year after 2000.

23. Thompson continues to employ approximately 25 people in his business, Cencal, and to pay those people wages and other compensation without withholding and paying the federal employment and unemployment taxes.

24. Thompson's actions cause hardship for his employees, who must determine and pay their federal income tax liabilities without the benefit of Forms W-2 and tax withholding.

25. The IRS has advised Thompson that the § 861 argument is incorrect, but he persists in violating the law by failing to withhold and pay federal taxes and file federal income and unemployment tax returns and Forms W-2.

26. I.R.C. § 7402(a) authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws. The injunction remedy is in addition to and not exclusive of other remedies available to the United States.

27. Thompson, through the actions described above, has engaged and continues to engage in conduct that substantially interferes with the enforcement of the internal revenue laws.

28. If Thompson is not enjoined, he is likely to continue to violate and interfere with the enforcement of the internal revenue laws.

29. The actual and potential loss to the United States caused by Thompson's violation of the internal revenue laws as of June 30, 2003 is estimated to be $429,399.73.

30. If Thompson is not enjoined, his continuing violation of the internal revenue laws will result in additional losses to the United States estimated at more than $31,000 in federal income and FICA taxes per quarter, plus more than $21,000 in FUTA taxes per year.

31. If Thompson is not enjoined, the United States will suffer irreparable harm because Thompson's mounting employment tax liabilities will be unrecoverable if they surpass his ability to pay.

32. If Thompson is not enjoined, the United States will suffer irreparable harm because the IRS's administrative enforcement procedures are inadequate to stop his continuing violation of the internal revenue laws. The IRS can only prepare returns, assess taxes, and then attempt to collect the taxes through levies and seizures; the IRS has no administrative procedure to stop Thompson from accumulating more liabilities.

33. While the United States will suffer irreparable injury if Thompson is not enjoined, Thompson will not be harmed by being compelled to obey the law.

34. The public interest would be advanced by enjoining Thompson because an injunction will stop his illegal conduct and the harm that conduct is causing to the United States Treasury and Thompson's employees.

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

A. That the Court find that Thompson has engaged and is engaging in conduct interfering with the enforcement of the internal revenue laws, and that injunctive relief under I.R.C. § 7402(a) and the Court's inherent equity powers is appropriate to stop that conduct;

B. That this Court, pursuant to I.R.C. § 7402, enter a permanent injunction prohibiting Thompson (individually and doing business as Cencal Sales Co. or Cencal Aviation Products or under any other name or using any other entity), and his representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with him, from failing to

withhold and pay over to the IRS all employment taxes, including federal income, FICA, and FUTA taxes, required by law;

C. That this Court, pursuant to I.R.C. § 7402, enter a permanent injunction requiring Thompson to file accurate and timely federal employment and unemployment tax returns (including Forms 940 and Forms 941), and Forms W-2, and, for the first two years after entry of the injunction, to send copies of such returns and Forms W-2 to counsel for the United States at the same time that he files the originals;

D. That this Court, pursuant to I.R.C. § 7402, enter a permanent injunction requiring Thompson within three days of making each Cencal payroll to make employment tax deposits with his bank and on the same day the deposit is made to send by fax to the IRS Revenue Officer assigned to his case a receipt for each employment tax deposit and a completed worksheet showing the calculation for each deposit;

E. That this Court, pursuant to I.R.C. § 7402, enter a permanent injunction requiring Thompson to prepare and file a corrected amended Form 941 for the third quarter of 2000, file a complete and accurate Form 941 for the first quarter of 2003, and pay the taxes lawfully owing, plus interest thereon, within 30 days of the entry of the injunction;

F. That this Court, pursuant to I.R.C. § 7402, enter a permanent injunction requiring Thompson to amend and correct his Forms W-2 for 2000 and file with the SSA and issue to his employees complete and accurate Forms W-2 for the years 2000 through 2002 within 30 days of the entry of the injunction;

G. That this Court require Thompson to deliver to all of his current employees, and any former employees employed at any time since July 1, 2000, a copy of the Court's findings and permanent injunction;

H. That this Court require Thompson to post and keep posted for two years in one or more conspicuous places on his business premises where notices to employees are customarily posted, a copy of this Court's findings and permanent injunction;

I. That the Court retain jurisdiction over this case to ensure compliance with this injunction; and

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

Dated: 7/18/03

Respectfully submitted,

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