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MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs. CASE NO. 8:02-CV-466-T-17MSS

DOUGLAS P. ROSILE, SR.,

Defendant.

_____/

ORDER

This cause is before the Court on the following:

Dkt. 12 Motion for Preliminary Injunction And Expedited Hearing
Dkt. 19 Motion to Assert Fifth Amendment Protections
Dkt. 21 Motion to Take Judicial Notice

Plaintiff seeks a preliminary injunction preventing Defendant Douglas P. Rosile, Sr. from:

1. Preparing federal tax returns or other documents to be filed with the IRS that understate taxpayers' liabilities using the Sec. 861 argument or other frivolous positions;

2. Failing to retain and produce to the Internal Revenue Service upon request, a list of all clients for whom her performed return-preparation services;

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3. Engaging in activity subject to penalty under IRC Sec. 6700, including organizing a plan or arrangement and making a statement regarding the excludibility of income that he knows or has reason to know is false or fraudulent as to an material matter.

4. Engaging in activity subject to penalty under IRC Sec. 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that he knows will result in the understatement of tax liability;

5. Engaging in any other activity subject to penalty under IRC Secs. 6694, 6695, 6700, or 6701; and

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

I. Standards for Preliminary Injunction

In order to obtain a preliminary injunction under 26 U.S.C. Sec. 7402, Plaintiff must show that the following four factors weigh in favor of granting a preliminary injunction against Defendant Douglas P. Rosile, Sr.:

1) there is a likelihood of irreparable injury to the United States as a result of the conduct complained of;

2) there is a likelihood of little or no harm to the counterclaim defendant if the temporary injunctive relief is granted;

3) there is a likelihood that the United States will prevail

on the merits;

4) an injunction will serve the public interest.

In order to obtain a preliminary injunction to 26 U.S.C. Secs. 7407 and 7408, Plaintiff must show that Defendant Rosile either: 1) engaged in conduct subject to penalty under IRC Secs. 6694 or 6695, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; or 2) Rosile engaged in conduct subject to penalty under Sec. 6700 or 6701; and 3) injunctive relief is appropriate to prevent the recurrence of such conduct.

II. Plaintiff's Argument

A. Irreparable Injury

Plaintiff argues that Defendant continues to prepare frivolous Sec. 861 returns, and refuses to turn over his client list or copies of clients' returns. Plaintiff argues that, as a result, it is impossible for the IRS to detect all improper Rosile-prepared returns and bogus refunds. Plaintiff argues that Defendant has prepared frivolous returns for at lease 174 taxpayers in 34 states. The processing of the frivolous returns consumes substantial resources of Plaintiff. Plaintiff argues that Defendant is harming his clients, the Government and all law-abiding taxpayers.

B. Likelihood of Prevailing on the Merits

Plaintiff argues that the Sec. 861 argument is completely without merit.

C. Threatened Injuries to Plaintiff Outweigh Injuries to Defendant

Plaintiff argues that the requested injunction will prevent Rosile from causing further irreparable injury to the Government and to future customers who will be liable for penalties if they file frivolous returns. Plaintiff requests an injunction to prevent Defendant from continuing to violate the law, not to prevent Defendant from preparing tax returns.

D. Public Interest

Plaintiff argues that the issuance of the injunction will stem the spread of the frivolous Sec. 861 argument, and taxpayers paying for worthless tax advice will be protected from the fraudulent scheme and associated tax penalties.

III. Defendant's response

Defendant denies that the Sec. 861 argument is frivolous (Dkt. 21). Defendant also asserts the Fifth Amendment as a defense (Dkt. 19). This is a civil proceeding, and the effect of the Defendant's assertion of the Fifth Amendment is that Defendant has brought forth nothing to weigh against Plaintiff's arguments.

IV. Discussion

Plaintiff has filed Exhibits and Affidavits in support of Plaintiff's request for preliminary injunction. The Court makes the following findings, based on the pleadings and supporting documents:

1. Defendant Rosile promoted and continues to promote the IRC Sec. 861 argument, a frivolous position that domestic income is not subject to the federal income tax.

2. Rosile knew or should have known that the Sec. 861 argument is frivolous because 1) the argument is absurd on its face; 2) judicial decisions dating back to 1993 have universally rejected the argument; and 3) the IRS issued numerous public documents describing the invalidity of the argument. Also, Rosile continued to advance the argument even after the IRS informed him that he was being investigated for promoting an abusive tax plan.

3. Rosile prepared tax returns on behalf of client that advocated the Sec. 861 argument. He charged fees for this service.

4. Rosile was asked by the IRS to provide a list of his clients or copies of returns he prepared, but he refused to comply with this request, in violation of IRC Sec. 6107.

5. Rosile admitted to preparing tax returns based on the Sec. 861 argument.

6. The Sec. 861 argument, if used, results in an understatement of liability for tax and requires the user to list fraudulent and false information concerning the amount of income earned.

7. Absent this injunction, Rosile will continue to promote the Sec. 861 argument.

8. If this injunction is not granted, the United States will suffer irreparable harm because Rosile, by refusing to turn over his client lists or copies of his clients' returns, makes it virtually impossible for the IRS ro catch all of the incoming, improperly prepared Rosile returns. Further, considerable government resources are spent reviewing and dealing with returns and correspondence advocating the frivolous Sec. 861 argument. This injunction will prevent the expenditure of some of those resources.

9. The Sec. 861 argument is frivolous and without merit. The Government, therefore, will likely prevail on the merits.

10. The injury to the United States caused by Rosile's conduct outweighs any injury an injunction might cause.

11. The public is served by granting this injunction. If a preliminary injunction is granted, it will help to stem the spread of the frivolous Sec. 861 argument. Rosile's clients will be protected from Rosile's fraudulent scheme and from the tax penalties resulting from participation in the frivolous scheme.

V. Conclusion

The Court finds that the United States has presented sufficient evidence to obtain a preliminary injunction, based on the factual findings listed above. Accordingly, it is

ORDERED that the Motion for Preliminary Injunction (Dkt. 12) is **granted**. Defendant Douglas P. Rosile, Sr. is enjoined from:

1. Preparing or helping to prepare federal tax returns (or other documents to be filed with the IRS) for others;

2. Failing to produce to the Internal Revenue Service either: 1) a list of all clients for whom he has performed return-preparation services, or 2) copies of all federal income tax returns he has prepared for other from September 17, 1998 to the entry date of this Order.

The Court also **ORDERS** Defendant Douglas P. Rosile, Sr. and his agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order are enjoined from:

3. Engaging in activity subject to penalty under IRC Sec. 6700, including organizing the Sec. 861 argument or any other plan or arrangement and making a statement regarding the excludibility of income that he knows or has reason to know is false or fraudulent as to any material matter;

4. Engaging in activity subject to penalty under IRC Sec. 6701, including preparing and/or assisting in preparing a document related to a matter material to the internal revenue laws that includes a position, including the Sec. 861 argument, that he knows will result in the understatement of tax liability;

5. Engaging in any other activity subject to penalty under IRC Secs. 6694, 6695, 6700, or 6701; and

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

Further, the Court **ORDERS** that Defendant Rosile, within ten days of the date of this Order, mail to counsel for the United States, at the address listed on the Complaint, either: 1) a complete list, including names, addresses, phone numbers and social security numbers or employer identification numbers) of all persons and entities for whom he has prepared, or assisted in preparing, federal tax returns or amended tax returns from September 17, 1998 to the entry date of this Order, or 2) complete copies of all federal tax returns or amended tax returns that he has prepared, or assisted in preparing, on behalf of any other person or entity from September 17, 1998 to the entry date of this Order.

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As to Defendant's Motions (Dkts. 19, 21), the Court has noted the contents of the Motions in considering the Motion for Preliminary Injunction. To that limited extent, the Motions are **granted.**

DONE and ORDERED in Chambers, in Tampa, Florida on this 10th day of June, 2002 at 9:00 A. M.

ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record

F I L E C O P Y

Date Printed: 06/10/2002

Notice sent to:

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