

SCANNED

1 DEBRA W. YANG
2 United States Attorney
3 SANDRA BROWN
4 Assistant United States Attorney
5 Chief, Tax Division
6 DARWIN THOMAS
7 Assistant United States Attorney
8 Federal Building Room 7211
9 300 North Los Angeles Street
10 Los Angeles, California 90012
11 Telephone: (213) 894-2740
12 Facsimile: (213) 894-0115
13 Email: darwin.thomas@usdoj.gov

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APR 11 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

8 MARY E. BIELEFELD
9 Trial Attorney, Tax Division
10 U.S. Department of Justice
11 Post Office Box 7238
12 Ben Franklin Station
13 Washington, D.C. 20044
14 Telephone: (202) 514-9375
15 Facsimile: (202) 514-6770
16 Email: marye.bielefeld@usdoj.gov
17 central.taxcivil@usdoj.gov

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MAR 21 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
17 Plaintiff,

Civil No. 05-6039 RGK (SSx)

~~Proposed~~

**Order of Default Judgment
and Permanent Injunction**

19 MICHAEL MUHAMMAD
20 a/k/a MICHAEL EUGENE WALL
21 a/k/a MICHAEL MUTA ALI
22 MUHAMMAD,
23 Defendant.

24 Upon motion of the United States for default judgment and permanent
25 injunction, the Court ~~makes the following findings of fact and conclusions of law~~
26 and enters this permanent injunction against the defendant Michael Muhammad,
27 a/k/a Michael Eugene Wall, a/k/a Michael Muta Ali Muhammad ("Muhammad").
28 //

Order of Default Judgment
and Permanent Injunction

United States v. Michael Muhammad
Case No. CV 05-6039-RGK (SSx)

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP RULE 77(b)

28

Standards for Default Judgment and Permanent Injunction

VACATED

The entry of default judgment is committed to the sound discretion of this Court. *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986); *Lau Ah Yew v. Dulles*, 236 F.2d 415, 416 (9th Cir. 1956). "If the court determines that defendant is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 2688 (3d ed. 1998).

In this action, the United States is seeking injunctive relief under 26 U.S.C. (I.R.C.) §§ 7402, 7407, and 7408. In order to obtain relief in a statutory-injunction action such as this, the plaintiff must demonstrate that the defendant has violated a statute and that a reasonable likelihood of future violations exists. *SEC v. Comserv Corp.*, 908 F.2d 1407, 1412 (8th Cir. 1990); *United States v. Kaun*, 827 F.2d 1144, 1148 (7th Cir. 1987); *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982). Because I.R.C. §§ 7407 and 7408 set forth specific criteria for injunctive relief, the United States need only meet those statutory criteria, without reference to traditional equitable factors, for this Court to issue an injunction under those sections. *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

To obtain an injunction under I.R.C. § 7407, the United States may show, among other things, that the defendant (1) engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct. To obtain an injunction under I.R.C. § 7407 preventing the defendant from acting as an income-tax-return preparer, the United States must additionally show that the defendant engaged in this conduct continually or repeatedly and that a narrower injunction would be insufficient to prevent the

1 defendants from interfering with the proper administration of the internal revenue
2 laws. *United States v. Bailey*, 789 F. Supp. 788, 816 (N.D. Tex. 1992).

3 To obtain an injunction under I.R.C. § 7408, the United States may show,
4 among other things, that the defendant engaged in conduct subject to penalty
5 under I.R.C. §§ 6700 or 6701 and that injunctive relief is appropriate to prevent
6 the recurrence of such conduct. Finally, to obtain an injunction under I.R.C.
7 § 7402(a), the United States must show that an injunction is necessary or
8 appropriate to enforce the internal revenue laws.

9 **Findings of Fact**

10 The Court finds that the defendant Michael Muhammad, a/k/a Michael
11 Eugene Wall, a/k/a Michael Muta Ali Muhammad ("Muhammad"), has failed to
12 answer or otherwise respond to the complaint and is therefore in default. Taking
13 the allegations in the complaint as true, the Court additionally finds as follows:

14 1. Muhammad resides at 433 S. Beredno, Apt. 202, Los Angeles, California
15 90020. Muhammad is also known as Michael Eugene Wall, a/k/a Michael Muta
16 Ali Muhammad.

17 2. Muhammad has prepared fraudulent federal income tax returns for
18 customers since 2001.

19 3. Muhammad organizes and promotes a tax-fraud scheme by preparing
20 federal income tax returns for customers that report no income based on the
21 frivolous position that the United States includes "only the District of Columbia
22 and territories over which the federal government has exclusive jurisdiction."

23 4. Muhammad advises customers that the United States is a foreign country
24 in relation to California (or any other state), and that the customers are citizens of
25 California (or another state, if the customer resides elsewhere) and not of the
26 United States.

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1 5. Muhammad advises customers that federal taxes withheld from their
2 earnings in California (or another state) are being withheld by a foreign country,
3 which entitles the customers to a foreign earned income exclusion and reduces
4 their taxable income to zero.

5 6. Muhammad prepares IRS Forms 2555, Foreign Earned Income, falsely
6 reporting that the customer spent the entire tax year living outside the United
7 States and that his or her income is therefore excludible from income on their
8 federal income tax returns, Forms 1040 or 1120.

9 7. Muhammad then reports the customer's income on federal income tax
10 returns, but then improperly excludes all the income using IRS Form 2555,
11 Foreign Earned Income, and falsely reduces the customer's income to zero.

12 8. Since 2001, Muhammad has prepared at least ten individual income tax
13 returns and one corporation income tax return for customers falsely reporting zero
14 taxable income and seeking refunds of all federal income taxes withheld.

15 9. Muhammad charges each customer a fee ranging from \$60 to \$500 per
16 return.

17 10. Muhammad prepares tax returns for customers in California and
18 includes with the return, a one-page explanation of his position that income earned
19 in a state is not taxable.

20 11. The net result of this arrangement is that the income tax returns
21 Muhammad prepares falsely report no taxable income.

22 12. In the years following Muhammad's preparation of a customer's return,
23 the customer has little or no federal income tax withheld, and the customer ceases
24 filing returns.

25 13. Muhammad also falsely and fraudulently advises his customers that
26 wages or earnings from labor are not subject to tax because the term "income" is
27

1 not defined by statute or case law as specifically including wages or earnings from
2 labor.

3 14. Muhammad prepares at least 12 income tax returns or amended returns
4 per year for customers and has been preparing returns claiming zero taxable
5 income using Form 2555, Foreign Earned Income, since 2001.

6 15. The returns Muhammad prepares fail to provide the preparer's Social
7 Security Number (SSN), preparer tax identification number (PTIN), or employer
8 identification number (EIN).

9 16. Muhammad claims to have studied the Internal Revenue Code, to have
10 taken a basic tax law course offered by H & R Block, and to have written the one-
11 page attachment to the Form 2555 included with the returns he prepares,
12 explaining the frivolous position taken in the tax return.

13 17. Muhammad intends to continue to function as an income tax return
14 preparer and promoter and insists on the viability of the position on which his tax-
15 fraud scheme is based.

16 18. Muhammad continues to promote his tax-fraud scheme or prepare false
17 and fraudulent returns despite being advised by the Internal Revenue Service that
18 his conduct (including the specific activities described above in paragraphs 2
19 through 17) is subject to penalty and injunction.

20 19. The following specific examples show the impact of Muhammad's
21 unrealistic position in preparing federal income tax returns:

- 22 a. After a tax return prepared for a California customer improperly
- 23 excluded income using the foreign earned income Form 2555, the customer
- 24 failed to file a return at all in the following year. IRS prepared a return
- 25 resulting in an income tax deficiency of \$25,000 (plus interest and
- 26 penalties) being assessed against the customer.

b. Two other California customers failed to file income tax returns for the years 2002, 2003, and 2004, after having filed a return prepared by Muhammad for the year 2001.

20. Muhammad's customers paid him money to prepare tax returns understating their income tax liabilities resulting in the likely audit of their returns and assessment of tax, penalties, and interest.

21. Muhammad's customers are not paying the correct amount of tax to the United States Treasury.

22. IRS has identified 5 of the 11 returns admittedly prepared by Muhammad and filed for 2001 and 2002. IRS disallowed \$43,866 claims for refund in the 5 returns.

23. This figure does not include the 6 returns admittedly prepared by Muhammad and filed for 2001 and 2002, or returns for subsequent years not yet identified as prepared by Muhammad.

24. Other returns prepared by Muhammad but not yet identified may result in erroneous refunds to his customers. Some of these losses may never be recovered.

25. Customers participating in Muhammad's tax-fraud scheme later cease filing tax returns altogether.

26. The defendant Muhammad will not cease this illegal activity unless he is enjoined.

Conclusions of Law

Based on the above findings of fact, the Court finds that it has jurisdiction over this action pursuant to §§ 1340 and 1345 of Title 28 of the United States Code, and §§ 7402, 7407 and 7408 of the Internal Revenue Code of 1986, as amended (26 U.S.C.) ("I.R.C."). The defendant Muhammad has continually and

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1 repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695,
2 6700, and 6701 and in fraudulent and deceptive conduct that substantially
3 interferes with the administration of the internal revenue laws. Moreover, the
4 Court finds that injunctive relief is appropriate to prevent the recurrence of such
5 conduct and that a narrow injunction only prohibiting defendant from engaging in
6 such conduct would be insufficient to prevent his further interference with the
7 administration of the internal revenue laws. The Court further finds that a
8 permanent injunction is necessary and appropriate in this instance to enforce the
9 internal revenue laws.

10 **ORDER**

findings of fact and conclusion of law issued concurrently herewith with

11 Based on the ~~above findings of fact and conclusions of law~~, the Court

12 ORDERS that:

13 1. Muhammad is permanently enjoined and restrained from, directly or
14 indirectly, by the use of any means or instrumentalities, acting as an income tax
15 return preparer (as defined in I.R.C. § 7701(a)(36)).

16 2. Muhammad, individually and doing business under any other name or
17 using any other entity, and his representatives, agents, servants, employees,
18 attorneys, associates, and those persons in active concert or participation with him,
19 are permanently enjoined and restrained from, directly or indirectly, by the use of
20 any means or instrumentalities:

21 (a) Engaging in activity subject to penalty under I.R.C. § 6700, including
22 organizing or selling a plan or arrangement and making a statement
23 regarding the excludibility of income that he knows or has reason to
24 know is false or fraudulent as to any material matter;

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26 //

1 (b) Engaging in activity subject to penalty under I.R.C. § 6701, including
2 preparing and/or assisting in the preparation of a document related to
3 a matter material to the internal revenue laws that includes a position
4 that he knows will result in an understatement of tax liability;

5 (c) Organizing, promoting, marketing, or selling any type of abusive tax
6 shelter, plan, or arrangement, including any asset protection device
7 such as trusts, limited liability corporations, or similar arrangements,
8 advocating noncompliance with the income tax laws or tax evasion,
9 misrepresenting the tax savings realized by using such an
10 arrangement or concealing the receipt of income or location of assets
11 from the IRS;

12 (d) Organizing or selling abusive tax shelters, plans, or arrangements that
13 advise or encourage taxpayers to attempt to evade the assessment or
14 collection of their correct federal tax;

15 (e) Making false representations that:

16 (1) the United States includes “only the District of Columbia and
17 territories over which the federal government has exclusive jurisdiction;”

18 (2) the United States is a foreign country in relation to California (or
19 any other state), and that customers of Muhammad, are citizens of California (or
20 another state, if the customer resides elsewhere) and not of the United States;

21 (3) federal taxes withheld from earnings of customers in California
22 (or another state) are being withheld by a foreign country;

23 (4) income earned in a state is not taxable;

24 (5) wages or earnings from labor are not subject to tax because the
25 term “income” is not defined by statute or case law as specifically including wages
26 or earnings from labor.

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(f) Engaging in any other activity subject to penalty under the Internal Revenue Code; and

(g) Engaging in other conduct interfering with the administration and enforcement of the internal revenue laws and from promoting any false tax scheme.

3. It is further ORDERED, ADJUDGED AND DECREED that Muhammad shall contact by mail all individuals, corporations, or business entities for whom he has prepared tax returns, and inform them of the Court's findings concerning the falsity of Muhammad's representations and attach a copy of the permanent injunction against Muhammad, and shall file with the Court within 30 days. a certification that he has done so.

4. It is further ORDERED, ADJUDGED AND DECREED that Muhammad shall produce to the United States within 30 days, a list of the names, Social Security Numbers (or Employer Identification Numbers or Taxpayer Identification Numbers), addresses, e-mail addresses, and telephone numbers of all individuals, corporations, or other business entities for which he has prepared federal tax returns or that have purchased his tax-fraud plans, arrangements, or programs, or any other tax shelter, plan, or program in which Muhammad has been involved;

5. It is further ORDERED, ADJUDGED AND DECREED that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction.

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1 6. It is further ORDERED, ADJUDGED AND DECREED that this Court
2 shall retain jurisdiction of this action for the purpose of implementing and
3 enforcing this Final Judgment.

4 There being no just reason for delay, the Clerk is directed to enter this Final
5 Judgment forthwith.

6 IT IS SO ORDERED.

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8 Date: APR 10 2006

Gary Klausner
R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

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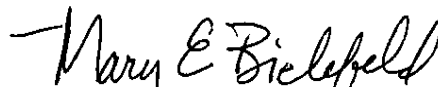
CERTIFICATE OF SERVICE

FILED

IT IS HEREBY CERTIFIED that service of the foregoing proposed Order of Default Judgment and Permanent Injunction, has been made upon the following by depositing a copy in United States' mail, postage prepaid, this 20th day of March, 2006, addressed to:

Michael Eugene Wall
a/k/a Michael Muhammad
a/k/a Michael Muta Ali Muhammad
P.O. Box 70304
Los Angeles, CA 90070

DEBRA W. YANG
United States Attorney
SANDRA BROWN
Assistant United States Attorney
Chief, Tax Division
DARWIN THOMAS
Assistant United States Attorney
Federal Building Room 7211
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2740
Facsimile: (213) 894-0115
Email: darwin.thomas@usdoj.gov



MARY E. BIELEFELD
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-9375
Facsimile: (202) 514-6770
Email: mary.e.bielefeld@usdoj.gov
central.taxcivil@usdoj.gov

Attorneys for Plaintiff,
United States of America

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