



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA

Plaintiffs,

v.

DAVID CARROLL STEPHENSON
individually and d/b/a AMERICAN
BUSINESS ESTATE & TAX PLANNING
SERVICE and ADVOCATE AND
ASSOCIATES, INC.; A-1 CREDIT & CO.;
AMERICAN BUSINESS LAW, INC.;
and AMERICAN BUSINESS AND ESTATE
PLANNING

Defendants.

Civil No. 3:03-CV-5712-LKK

~~PROPOSED~~
**DEFAULT JUDGMENT OF
PERMANENT INJUNCTION**

Upon motion by Plaintiff, the United States of America, the Court makes the following findings of fact and conclusions of law and enters this default judgment of permanent injunction against David Carroll Stephenson, individually and d/b/a the American Business Estate & Tax Planning Service and Advocate and Associates, Inc.; Advocate NW & Co., Inc.; A-1 Credit & Co.; American Business Law, Inc.; and American Business & Estate Planning.

FACTUAL FINDINGS

The Court entered default against A-1 Credit & Co.; American Business Law, Inc.; and American Business and Estate Planning on April 20, 2004. The Clerk of Court entered default against

PROPOSED
DEFAULT JUDGMENT OF PERMANENT INJUNCTION
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564



1 David Carroll Stephenson individually and d/b/a American Business Estate & Tax Planning Service and
2 Advocate and Associates, Inc. on June 1, 2004.

3 The defendants organize, promote, and market an abusive tax scheme targeted at self-
4 employed persons. (Compl. ¶ 14.) Defendants advocate funneling income to a series of sham trust and
5 business entities in a fraudulent attempt to avoid income and employment tax, and to thwart the IRS's
6 ability to collect customers' federal taxes. (Compl. ¶ 14.) Defendants instruct customers to divert their
7 income to a series of trusts, and report only a small fraction of that income on their tax returns. (Compl.
8 ¶¶ 18, 19.) Defendants also instruct customers to transfer their assets to these trusts in a fraudulent
9 attempt to avoid IRS collection efforts. (Compl. ¶¶ 14, 16, 17.) Defendants falsely advise customers
10 that disbursements from their trusts, for their personal use, need not be reported as income on the
11 customers' tax returns. (Compl. ¶¶ 18, 19.)

12 Because the customers fail to report this income on their returns, it is virtually impossible for the
13 IRS to detect without a thorough audit. And because Stephenson advises customers that trusts are not
14 required to file federal income tax returns, not only are no taxes being paid on this income, but the IRS
15 has no indication that no taxes are being paid on this income. (Compl. ¶¶ 18, 24.)

16 Defendants advise the use of "Pure Contract Trusts" and instruct customers to transfer their
17 personal assets into four different trusts, each intended to perform a unique function within the scheme,
18 with the ultimate goal of evading taxes on income and wages and hiding assets from IRS collection
19 efforts. (Compl. ¶ 16.) Stephenson serves as the "Executive Trustee" of these trusts, while the
20 customer acts as the "Managing Director." (Compl. ¶ 17.) This arrangement is intended to present the
21 appearance of an independent trustee. In fact, the customer maintains exclusive control over all trust
22 property; the customers' relationships to their income and assets is not altered by participation in
23 Stephenson's scheme. (Compl. ¶ 17.) In using Stephenson's program, customers typically transfer
24 their business assets to a trust, and purportedly operate their business as a trust. (Compl. ¶¶ 18, 22,
25 23.) The customer's relationship to either his personal or business income and assets, however, is not
26

27 PROPOSED
28 DEFAULT JUDGMENT OF PERMANENT INJUNCTION
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564

1 altered by participation in Stephenson's scheme. (Compl. ¶¶ 16, 18, 22, 23.) Customers continue to
2 operate their businesses in virtually the same manner under Stephenson's program as they did before
3 using Stephenson's program; the major difference is that payments for services are no longer made to
4 Stephenson's customer directly, but are instead made to the customer's trust. (Compl. ¶¶ 16, 18, 22,
5 23.)

6 In instructing customers to deposit their business income directly to their trust checking
7 accounts, and bypassing any accounts linked to the customer, defendants advise customers that their
8 trusts are not obligated to pay tax on this income under the false notion that trust income is not taxable
9 income until it is disbursed to an individual. (Compl. ¶ 18.) Stephenson advises customers to draw
10 minimal salaries from their trusts, and to use this income to pay for food and certain other personal
11 items. Stephenson calculates this salary to be equal to his customers' combined personal exemption
12 and standard deduction amounts, so that nominal amounts of income, if any, are subject to tax.
13 (Compl. ¶ 19.) Also, no employment tax is withheld from this salary, in violation of internal revenue
14 laws. (Compl. ¶ 19.)

15 Stephenson advises customers to pay for certain personal assets and expenses directly from
16 their trust accounts. (Compl. ¶ 20.) He advises customers that they can purchase vehicles, household
17 furniture, jewelry, watches, and pay for insurance and upkeep for personal vehicles using non-taxed
18 trust income. (Compl. ¶ 20.)

19
20
21
22
23
24
25
26
27 PROPOSED
28 DEFAULT JUDGMENT OF PERMANENT INJUNCTION
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564

1 **Promoting the Scheme: False Statements about the Internal Revenue Laws**

2 Defendants market this scheme through word of mouth, through seminars held within the State of
3 Washington, and through written materials entitled *Real Solutions to Real Every Day Problems* and
4 *Business Engineering, Estate Planning, and Asset Protection*. (Compl. ¶ 26.) In promoting the
5 scheme, defendants falsely claim that the following benefits are available to participants:

- 6 a. "RETAIN *\$\$Thousands of Dollars\$\$* of Annual Earnings WHILE MINIMIZING
7 THE LIABILITY OF ...*Estate Taxes, Excessive Taxes, Property Seizures and Tax*
8 *Liens...* Through BUSINESS ENGINEERING, ESTATE & TAX PLANNING"
9 (Compl. ¶ 27);
10 b. Avoid probate, estate tax, and IRS seizures (Compl. ¶ 27);
11 c. Reduce or eliminate income taxes (Compl. ¶ 27.);
12 d. Eliminate capital gains taxes (Compl. ¶ 27); and
13 e. Become artificially poor without giving up your assets in order to qualify for Medicaid.
14 (Compl. ¶ 27.)

15 Defendants warn customers that "...Arranging one's personal and business affairs according to
16 the directions of the IRS and the government... could leave a citizen in a deadly trap, a sitting duck if
17 you will, for the IRS and other looting marauders." (Compl. ¶ 28.)

18 In marketing the scheme, Stephenson has made numerous false statements about the internal
19 revenue laws:

- 20 a. Trust income is not subject to tax (Compl. ¶ 29);
21 b. Filing tax returns is voluntary (Compl. ¶ 29);
22 c. Only those individuals or businesses that voluntarily disclose personal information on a tax
23 return are subject to tax (Compl. ¶ 29);
24 d. Participants' trusts cannot be compelled to turn over books or records to the IRS
25 (Compl. ¶ 29);
26 e. Property held by contract trust is exempt from IRS seizure (Compl. ¶ 29);
27 f. Only licensed business organizations have employees for employment tax purposes; all
28 other business organizations have independent contractors (Compl. ¶ 29);

- 1 g. Income to a trust can be used to purchase personal assets such as vehicles, household
2 furniture, jewelry, watches, and also to pay for car insurance and upkeep of personal
3 vehicles without first being subject to tax (Compl. ¶ 29);
- 4 h. Participating businesses should use the following statement instead of disclosing an EIN:
5 "Exempt as per U.S.C. 26 section 501(a); 645(b); 6109 and 7701(a)(31)" (Compl. ¶
6 29);
- 7 i. Estate tax can be avoided by naming your heir as your successor managing director, and
8 upon your death, your heir takes control of your assets tax free. (Compl. ¶ 29.)

9 Stephenson charges between \$2,500 and \$8,000 for his trust and corporation packages. In
10 exchange, customers generally receive a set of four trusts or other entities, pre-registered with different
11 states, complete with pre-selected names, and valid IRS employer identification numbers. (Compl. ¶
12 31.) Customers also receive the *Executive Trustee Operations Manual*, an instructional guide to
13 transferring assets into the trusts and setting up trust bank accounts. (Compl. ¶ 31.)

14 The law clearly shows that Stephenson's theories are wrong. His customers transfer assets and
15 income to the trusts but continue to control and enjoy them as if there had been no transfer. Such trusts
16 have been routinely rejected by courts as shams, and thus not entitled to trust treatment.¹ There is no
17 authority or basis for Stephenson's claim that these trusts render income and assets exempt from
18 taxation.

19 Stephenson, a convicted felon, claims to be a lawyer, and to have a variety of certifications in the
20 field of law. (Compl. ¶¶ 32, 33.) He claims to have spent over 20 years studying asset protection and

21 ¹ See, e.g., *O'Donnell v. Commissioner*, 726 F.2d 679, 681 (11th Cir. 1984) (rejecting a trust where
22 the taxpayer transferred his income to the trust and claimed business deductions for living expenses);
23 *Zmuda v. Commissioner*, 731 F.2d 1417, 1421 (9th Cir. 1984) (rejecting a trust where the taxpayer
24 retained control over the trust assets); *Schulz v. Commissioner*, 686 F.2d 490, 493 (7th Cir. 1982)
25 (rejecting a trust because "income is taxed to the person who earns it, regardless of what arrangements he
26 makes to divert the payment of it elsewhere"); *Muhich v. Commissioner of Internal
Revenue*, 238 F.3d 860 (7th Cir. 2001) (holding that a trust arrangement where the defendants placed
27 personal assets into five trusts but retained total control over the assets lacked economic substance and
28 therefore should not be recognized by the IRS); *United States v. Welti*, No. C-1-02-243 Doc. No. 55
(S. D. Ohio Sept. 24, 2003) (permanently enjoining a promoter of abusive trusts); *United States v.
Mosher*, No. 1:03-CV-208, Doc. No. 45 (W. D. Mich. Oct. 27, 2003) (preliminarily enjoining an abusive
trust promoter) See generally *United States v. Buttorff*, 761 F.2d 1056 (5th Cir. 1985) (discussing
abusive trusts); *United States v. Sweet*, No. 8:01-CV-331-R-23TGW, 2002 WL 963398 (M.D. Fla.
Feb. 20, 2002) (enjoining an abusive trust promoter).

1 is self-taught "in the relationship of the citizen to various levels of state and federal government provided
 2 for in the constitution and statutes." (Compl. ¶ 32.) Stephenson claims to have a "Doctorate of
 3 Common Law," and describes himself as a "lawyer," a "counsel," and "an advocate of the law," despite
 4 admitting that he is not a member of nor affiliated with any state bar association. (Compl. ¶ 33.) His
 5 office window bears the inscription "American Business Law, Inc.," "David Carroll Stephenson, FBA
 6 #8830," "Member of the Federal Bar Association." (Compl. ¶ 34.) Given that Stephenson holds
 7 himself out as a lawyer he should be charged with knowledge of the actual state of the law, which
 8 entirely undercuts his theories. Since the initiation of the civil investigation preceding this suit, numerous
 9 IRS audits of his customers, and a preliminary injunction against him, Stephenson has continued to
 10 actively market his abusive scheme. (Compl. ¶ 35, 36.)

11 **Harm to the Government**

12 As of March 2000, Stephenson had 472 customers in 22 states, as well as in Canada. (Compl. ¶
 13 37.) Civil examinations of 21 of Stephenson's customers resulted in a tax loss per participant of over
 14 \$96,000. (Compl. ¶ 38.) Assuming that 450 of the 472 participants as of March 2000 utilized
 15 Stephenson's fraudulent tax package, the tax loss as a result of this promotion could exceed \$43 million
 16 for these customers alone. (Compl. ¶ 38.) In all likelihood the total tax losses from Stephenson's
 17 promotion will exceed \$100 million and could be substantially more than that. Many of these tax
 18 dollars may never be recovered.

19 **CONCLUSIONS OF LAW**

20 **A. Standard for Default Judgment**

21 Rule 55 of the Federal Rules of Civil Procedure provides that where a party fails to plead or
 22 otherwise defend against a complaint, and after entry of default, default judgment may be entered
 23 against such person.² Upon entry of default, the well-pleaded allegations of the complaint relating to a
 24 defendant's liability are taken as true, with the exception of the allegations as to the amount of damages,
 25

26 ² See *Broadcast Music, Inc. v. M.T.S. Enters., Inc.*, 811 F.2d 278, 280 (5th Cir. 1987).

1 which is not an issue here because the United States is seeking injunctive, not monetary, relief.³ Default
 2 judgment should not be different in kind than what is sought in the complaint.⁴ Here, the United States
 3 seeks only the injunctive relief requested in the complaint.

4 Whether to grant a motion for default judgment is within the Court's discretion.⁵ In *Eitel v.*
 5 *McCool*, the Ninth Circuit set forth factors to consider in exercising this discretion: (1) the possibility of
 6 prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the
 7 complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning
 8 material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy
 9 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.⁶ The *Eitel* factors
 10 favor entry of default judgment in this case.

11 **B. The Merits of the United States' Substantive Claims Set Forth in its Complaint Satisfy**
 12 **the Standards for a Permanent Injunction.**

13 As pled in the complaint, the United States' claims merit entry of a permanent injunction, thus
 14 satisfying the second and third *Eitel* factors for default judgment. In a statutory injunction action such
 15 as this, the moving party must demonstrate that the statute has been violated and that "there is a
 16 reasonable likelihood of future violations."⁷ Because I.R.C. §§ 7402(a) and 7408 set forth the criteria
 17 for injunctive relief, the United States need only meet those criteria, without reference to the traditional
 18 equitable factors, for a court to issue a permanent injunction under these sections.⁸ Nonetheless, the

19 _____
 20 ³ See *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

21 ⁴ Fed. R. Civ. P. 54(c).

22 ⁵ *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).

23 ⁶ *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

24 ⁷ *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982).

25 ⁸ See I.R.C. §§ 7402(a) and 7408. See also *United States v. Estate Pres. Servs.*, 202 F.3d 1093,
 26 1098 (9th Cir. 2000) (finding, with regard to I.R.C. § 7408, that the "traditional requirements for equitable
 relief need not be satisfied since [the statute] expressly authorizes the issuance of an injunction."); *Duke v.*

1 traditional equitable standards for granting a permanent injunction are also met here. In the Ninth
 2 Circuit, the requirements for the issuance of a permanent injunction are (1) the likelihood of substantial
 3 and immediate irreparable injury, and (2) the inadequacy of remedies at law.⁹

4 The allegations in the complaint, and the evidence submitted with the preliminary injunction motion
 5 clearly establish that a permanent injunction under I.R.C. §§ 7402(a) and 7408 should issue to stop
 6 defendants from promoting their abusive tax scheme and interfering with the enforcement of the internal
 7 revenue laws.

8 **1. Injunctive Relief is Warranted Under I.R.C. § 7408 Because Defendants Abusive Tax
 9 Scheme Violates I.R.C. §§ 6700 and 6701.**

10 An injunction under I.R.C. § 7408 is warranted to enjoin a person from further engaging in
 11 conduct subject to penalty under I.R.C. §§ 6700 or 6701. The evidence before the Court establishes
 12 that defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 in
 13 connection with the organization and promotion of the abusive tax scheme described above, and that
 14 they will continue to do so absent injunctive relief.

15 **a. Defendants engaged in conduct subject to penalty under § 6700.**

16 Section 6700 imposes a penalty on a person who organizes or participates in the sale of any plan
 17 or arrangement and, in connection therewith, makes or furnishes a statement with respect to the
 18 excludability of any income that the person knows or has reason to know is false or fraudulent as to any
 19 material matter. The evidence supporting the Government's motion establishes that defendants
 20 organize, promote, and market an abusive tax scheme, advocating a series of sham trust and business
 21 entities in a fraudulent attempt to avoid income and employment tax, and to thwart the IRS's ability to

22 _____
 23 *Uniroyal, Inc.*, 777 F. Supp. 428, 433 (E.D.N.C. 1991) (finding that where an injunction is expressly
 24 authorized by statute, and the statutory conditions have been satisfied, the moving party is not required to
 25 establish irreparable injury before obtaining injunctive relief). *Cf. In re Dow Corning Corp.*, 280 F.3d
 648, 658 (6th Cir. 2002) (holding, in a bankruptcy case, that where a statute, such as I.R.C. § 7402(a),
 grants the court injunctive power, the court is not "confined to traditional equity jurisprudence").

26 ⁹ See *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1107 (9th Cir. 2003); *LaDuke v. Nelson*, 762
 F.2d 1318, 1330 (9th Cir. 1985).

27 PROPOSED
 28 DEFAULT JUDGMENT OF PERMANENT INJUNCTION
 (Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
 P.O. Box 7238, Ben Franklin Station
 Washington, D.C. 20044
 Telephone: (202) 514-0564

1 collect customers' unpaid federal tax liabilities. In marketing the scheme, Stephenson has made
2 numerous false statements about the internal revenue laws. He has claimed that

- 3 1. Trust income is not subject to tax;
- 4 2. Filing tax returns is voluntary;
- 5 3. Only those individuals or businesses that voluntarily disclose personal information on a
6 tax return are subject to tax;
- 7 4. Participants' trusts cannot be compelled to turn over books or records to the IRS;
- 8 5. Property held by contract trust is exempt from IRS seizure;
- 9 6. Only licensed business organizations have employees for employment tax purposes;
all other business organizations have independent contractors;
- 10 7. Income to a trust can be used to purchase personal assets without first being subject
11 to tax;
- 12 8. Participating businesses should use the following statement instead of disclosing an
EIN: "Exempt as per U.S.C. 26 section 501(a); 645(b); 6109 and 7701(a)(31);"
13 and
- 14 9. Estate tax can be avoided by naming your heir as your successor managing director,
and upon your death, your heir takes control of your assets tax free.

15 These false statements have induced hundreds of customers to participate in this illegal scheme.

16 Stephenson knew or had reason to know that his promotional statements concerning the tax
17 benefits obtainable using his scheme were frivolous. Courts consider three factors in determining
18 whether the Government has established the "knew or had reason to know" standard of § 6700: (1) the
19 extent of the defendant's reliance on knowledgeable professionals; (2) the defendant's level of
20 sophistication and education; and (3) the defendant's familiarity with tax matters.¹⁰ All three factors
21 point to Stephenson's knowledge of the falsehoods contained in his promotional material. Stephenson
22 claims to have a variety of legal certifications and to be self-educated in the law. He also claims to have
23 conducted over 20 years of personal research in asset protection. As such, he is undoubtedly aware
24

25
26 ¹⁰ *United States v. Estate Preservation Services*, 202 F.3d 1093, 1103 (9th Cir. 2000).

1 that his positions are frivolous and have been repeatedly rejected by the federal courts. At a minimum
2 he had reason to know that statements he made in promoting his scheme were false.

3 Stephenson's false statements made in the course of his promotion were material. A matter is
4 material if it would have a substantial impact on the decision-making process of a reasonably prudent
5 investor.¹¹ Accordingly, because Stephenson made false statements during the course of promoting his
6 abusive tax scheme, he and his enterprise have engaged in conduct subject to penalty under I.R.C. §
7 6700.

8 **b. Defendants engaged in conduct subject to penalty under § 6701.**

9 I.R.C. § 6701 penalizes a promoter who aids, assists, or advises with respect to the preparation
10 or presentation of any portion of a return or other document, knowing or having reason to believe that
11 such advice will be used in connection with any material matter, and who knows that such portion, if
12 used, would result in an understatement of tax. Stephenson advised customers to funnel their income to
13 their trusts, use the trust bank accounts to pay for personal living expenses, and to draw a small salary
14 from the trust which would be reported on the customers' Forms 1040. Stephenson also advised
15 customers that their trusts need not file tax returns, and that they need not report any income received
16 by their trusts, despite using this income to pay for personal living expenses. Based upon Stephenson's
17 claimed expertise in the law, and his many years of research in the area, he must know that the positions
18 he advocates result in understatements on his customers' returns. Additionally, as the IRS has audited
19 many of his customers' returns, he cannot credibly claim that he lacked knowledge. Stephenson's
20 conduct is therefore subject to I.R.C. § 6701 penalties.

21 **2. Defendants Should Be Enjoined From Interfering with the Enforcement of the Internal**
22 **Revenue Laws Under I.R.C. § 7402.**

23
24
25

26 ¹¹ S.Rep. No. 97-494, Vol. 1 at 267 (1982).

1 Manifesting "a Congressional intention to provide the district courts with a full arsenal of powers
2 to compel compliance with the internal revenue laws,"¹² 26 U.S.C. § 7402 "has been used to enjoin
3 interference with tax enforcement even when such interference does not violate any particular tax
4 statute."¹³ Here, I.R.C. § 7402 injunctive relief is appropriate to prevent defendants' interference with
5 tax enforcement.

6 The allegations in the complaint, and the declarations and exhibits submitted in support of the
7 preliminary injunction motion present irrefutable evidence that Stephenson and the other defendants
8 repeatedly have impeded the administration of the internal revenue laws. Defendants instruct customers
9 not to file trust returns, not to report income to the IRS, and to interfere with and obstruct legitimate
10 IRS collection efforts. They also instruct customers to stop withholding employment tax on their
11 employees' wages, and not withhold employment tax on the salary they draw from their own trusts.

12 The United States has suffered and will continue to suffer irreparable injury if Stephenson and his
13 businesses are not enjoined. The IRS estimates that Stephenson's customers have tried to evade at a
14 minimum \$43 million in taxes. Because the defendants will not end their scheme unless forced to do so,
15 the United States Treasury, funded by United States taxpayers, will continue to lose money as long as
16 Stephenson and his businesses are operating. Given the audacity and breadth of their scam, at last
17 count, in March 2000, involving over 450 clients in 22 states and Canada, and given the IRS's limited
18 resources, identifying and recovering all lost revenue may be impossible.

19 In addition to the harm caused by their advice and services, Stephenson's scheme undermines
20 public confidence in the federal tax system and incites non-compliance with the internal revenue laws. If
21 defendants are not enjoined now, they will cause even greater damage to the United States. Indeed, it
22

23 ¹² *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). See *United States v. First Nat'l City*
24 *Bank*, 568 F.2d 853 (2d Cir. 1977).

25 ¹³ *Ernst & Whinney*, 735 F.2d at 1300. See *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis.
26 1986) ("federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from
disseminating their rather perverse notions about compliance with the Internal Revenue laws or from
promoting certain tax avoidance schemes"), *aff'd*, 827 F.2d 1144 (7th Cir. 1987).

27 PROPOSED
28 DEFAULT JUDGMENT OF PERMANENT INJUNCTION
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564

1 is difficult to imagine a more compelling case for an injunction that is— in the words of
 2 § 7402: “necessary or appropriate for the enforcement of the internal revenue laws.”

3 **3. Equitable Factors Weigh in Favor of Enjoining Defendants**

4 In addition, a permanent injunction is appropriate under the Ninth Circuit’s permanent injunction
 5 standard. Defendants are causing the United States substantial and immediate irreparable injury, for
 6 which the United States has no adequate remedy at law. That harm, described above, has cost the
 7 United States over \$43 million in lost tax revenue. Further, despite the Preliminary Injunction entered in
 8 this case, Stephenson has shown no signs of ending his scheme.¹⁴ Given the IRS’s limited resources,
 9 identifying and recouping the lost revenue may be impossible. Apart from an injunction, the United
 10 States has no means, civilly, of stopping defendants. Accordingly, defendants should be permanently
 11 enjoined.

12 **C. Default Judgment is Appropriate Under the Remaining *Eitel* Factors**

13 The remaining *Eitel* factors—the possibility of prejudice to the plaintiff, the sum of money at stake
 14 in the action, the possibility of a dispute concerning material facts, whether the default was due to
 15 excusable neglect, and the strong preference for decisions on the merits—all weigh in favor of default
 16 judgment in this case.

17 If default judgment is not entered, the United States will be prejudiced. Defendants are violating
 18 the law and causing irreparable damage to the United States; they will continue unless they are
 19 enjoined. To deny the United States’ motion for default judgment would leave the United States
 20 without a remedy. The United States is not seeking monetary damages here, but is only requesting an
 21 injunction against future violations. Even if defendants had answered the complaint, it is unlikely that the
 22 material facts would be in dispute—their promotional materials, distributed to customers and obtained
 23 by Revenue Agent Martin, provide the bulk of the United States’ evidence against them. Given
 24 Stephenson’s tenacity in filing papers with the Court, it is improbable that his default was caused by

25
 26 ¹⁴ See Motion for Contempt by Plaintiff United States of America and supporting declarations, Docket
 No. 50.

1 excusable neglect. Finally, while defendants' failure to answer precludes a decision on the merits, the
2 United States has produced uncontroverted evidence with its preliminary injunction motion showing that
3 a permanent injunction is warranted.

4 **ORDER**

5 Based on the foregoing factual findings and legal conclusions, and for good cause shown, the
6 Court **ORDERS** that defendants David Carroll Stephenson, individually and d/b/a American Business
7 Estate & Tax Planning Service and Advocate and Associates, Inc.; Advocate NW & Co., Inc.; A-1
8 Credit & Co.; American Business Law, Inc.; and American Business & Estate Planning are
9 permanently enjoined from:

- 10 1. Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that
11 incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the
12 assessment of their federal tax liabilities;
- 13 2. Causing other persons and entities to understate their federal tax liabilities and avoid paying
14 federal taxes;
- 15 3. Further engaging in any conduct subject to penalty under I.R.C. § 6700, *i.e.*, making or
16 furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement,
17 a statement defendants know or have reason to know is false or fraudulent as to any material
18 matter;
- 19 4. Further engaging in any conduct subject to penalty under I.R.C. § 6701, *i.e.*, aiding, assisting, or
20 advising with respect to the preparation or presentation of any portion of a return or other
21 document knowing that such assistance or advice will result in the understatement of another
22 person's income tax liability; and
- 23 5. Further engaging in any conduct that interferes with the administration and enforcement of the
24 internal revenue laws.

25 It is further

26
27 **PROPOSED**
28 **DEFAULT JUDGMENT OF PERMANENT INJUNCTION**
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564

1 ORDERED, pursuant to I.R.C. § 7402, that defendants within 10 days file with the Court and serve
2 upon the government a complete list of customers (including names, addresses, phone numbers, and
3 social security numbers or employer identification numbers) who have purchased any trust or other type
4 of entity from defendants, or sought or received any tax advice from defendants; it is further
5 ORDERED, pursuant to I.R.C. § 7402, that defendants, at their own expense and as a corrective
6 measure, provide a copy of the complaint and injunction to each of their customers, current and former,
7 within ten days of entry of the injunction. Defendant David Carroll Stephenson must file a sworn
8 certificate of compliance stating that the defendants have complied with this portion of the Order, within
9 ten days of the date of this Order, and must attach a copy of all correspondence sent with the complaint
10 and injunction; it is further

11 ORDERED, pursuant to I.R.C. § 7402, that defendants prominently display a copy of this permanent
12 injunction in the front window of their business office, located at 7406 27th Street West, Suite 17,
13 Tacoma, Washington 98466. This shall be maintained for a period not less than one year. Defendant
14 David Carroll Stephenson must file a sworn certificate of compliance stating that the defendants have
15 complied with this portion of the Order, within ten days of the date of this Order.

16 SO ORDERED this 30th day of July, 2004.

17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT JUDGE

PROPOSED
DEFAULT JUDGMENT OF PERMANENT INJUNCTION
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Prepared by:

s/ Kari M. Larson
KARI M. LARSON
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Telephone: (202) 514-0564
Facsimile: (202) 514-6770
Email: Kari.M.Larson@usdoj.gov
Central.taxcivil@usdoj.gov

PROPOSED
DEFAULT JUDGMENT OF PERMANENT INJUNCTION
(Civ. No. 3:03-cv-05712-LKK)

U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0564