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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO. 8:02-CV-466-T-24MSS
	)	
DOUGLAS P. ROSILE, SR.	)	
	)	
	)	
Defendant.	)	

Complaint for Permanent Injunction and Other Relief
(Injunctive Relief Requested)

Plaintiff, United States of America, for its complaint against defendant Douglas P. Rosile, Sr. ("Rosile"), states as follows:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and §§ 7401, 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (IRC).

2. This complaint is brought by the United States of America pursuant to IRC §§ 7402(a), 7407, and 7408 to restrain and enjoin the defendant from:

a. further acting as a federal income tax return preparer;

b. understating taxpayers' liabilities as prohibited by IRC § 6694;

c. engaging in activity subject to penalty under IRC § 6700, including organizing or selling a plan or arrangement and, in connection with that activity, 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;

d. engaging in activity subject to penalty under IRC § 6701, including preparing

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and/or assisting in the preparation of documents related to a matter material to the internal revenue laws that include a position that he knows will result in the understatement of tax liability;

e. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, or 6701; and

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

3. An injunction is warranted based on Rosile's conduct as a tax-return preparer and abusive-tax-scheme promoter.

4. Rosile promotes a bogus tax-refund scheme based on an absurd misinterpretation of IRC § 861. He and other advocates of this position (the "§ 861 argument" or "foreign sources argument") assert that U.S. citizens and residents are not subject to federal income tax on their wages and other income earned or derived within the United States. This position is based on the claim that federal tax law imposes taxes only on income derived from certain foreign-based activities listed in an inapplicable Treasury regulation.

5. The IRS repeatedly has informed the public that the § 861 argument is frivolous and the United States Tax Court has sanctioned taxpayers who assert the frivolous position.

6. If Rosile is not enjoined, his continuing actions may result in his clients incurring frivolous return penalties and other possible civil and criminal sanctions. In addition, IRS employees will have to devote countless hours attempting to locate and process the frivolous documents Rosile produces. Finally, the IRS will have to take steps to prevent erroneous tax refunds, to assess and collect proper tax liabilities, and to recover any erroneous refunds that may be made.

7. This action has been authorized and requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of IRC §§ 7401, 7402, 7407, and 7408.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

Defendant

9. Defendant Rosile resides at 452 Glen Oak Road, Venice, Florida and conducts business at the same address.

Count I

(Injunction under IRC § 7407)

10. IRC § 7407 authorizes a court to enjoin a person from acting as an income tax return preparer if that person has continually or repeatedly:

a) engaged in conduct subject to penalty under IRC § 6694 (which penalizes a return preparer who prepares or submits a return that contains an unrealistic position) or IRC § 6695 (which penalizes a return preparer who fails to sign returns, include his identifying number (SSN/EIN), keep a list of clients, or turn over the client list to the IRS upon request),

b) guaranteed the payment of any tax refund or allowance of any tax credit, *or*

c) engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

and the Court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of federal tax law.

11. Rosile has practiced as a certified public accountant in Ohio and Florida, and was previously licensed by the state boards of accountancy in both states.

12. In an order dated January 19, 1995, the Securities and Exchange Commission permanently denied Rosile the privilege of appearing or practicing before the SEC.

13. On January 22, 1996 the Ohio Board of Accountancy revoked Rosile's Ohio CPA license, based on the Florida Board of Accountancy's earlier orders of probation and suspension.

14. On December 19, 1997, the State of Florida's Board of Accountancy revoked Rosile's Florida CPA license.

15. On information and belief, Rosile is not licensed as an accountant in any other state. In promotional literature described below Rosile refers to himself as "an accountant."

16. Rosile has been promoting the frivolous IRC § 861 argument since at least the year 2000. In 2000, Rosile prepared federal income tax returns and amended returns claiming improper refunds based on the § 861 argument. The § 861 argument falsely posits that a regulation promulgated under IRC § 861 (26 CFR § 301-1.861.8(f)) provides the exclusive list of sources of income subject to federal income tax. Since that list is narrow, and focuses on foreign income of U.S. citizens and similar international tax issues, § 861-argument proponents assert that U.S.-sourced income earned by U.S. citizens is not subject to income taxation.

17. Rosile obtains some or all of his clients through his association with American Rights Litigators ("ARL"). ARL advertises its services to customers on its website, americanrightslitigators.org. In addition to the services identified on its website, ARL offers tax-return-

preparation services through Rosile. An ARL letter sent to its customers encouraged them to consider filing tax returns based on the § 861 argument. As stated in the ARL letter: "The amended or current returns are not done by ARL staff, but rather by the accountant, Doug Rosile." The ARL customer letter further advised customers that "if you have any questions regarding any of the returns please call and ask for Mr. Rosile." Clients were charged $100 per return by ARL and also requested to forward to ARL 20% of all monies returned by the IRS as a result of filing § 861 returns. In exchange for preparing amended returns on behalf of ARL clients, Rosile received payments from ARL.

18. Rosile has prepared § 861-based amended and/or current-year federal income tax returns for at least 188 clients. The current-year and amended tax returns generally list zero gross income, and therefore request a refund of all taxes paid.

19. The IRS's frivolous filing unit in Ogden, Utah and the fraud unit in the IRS Atlanta Service Center identified Rosile-prepared returns as frivolous documents and began to cull out returns prepared by Rosile in July, 2000. The IRS noted that all of Rosile's confirmed client activities fit the following profile: 1) Rosile prepared current-year federal income tax returns for the taxpayers; 2) the taxpayers filed amended income tax returns for earlier years, claiming refunds of all or most taxes paid; and 3) the taxpayers filed a power-of-attorney form listing an ARL-affiliated attorney as their power of attorney. Using this profile, the IRS has identified 188 taxpayers as Rosile clients who asserted the § 861 argument.

20. The IRS requested that Rosile turn over a list of his clients for the prior three years, as described in paragraph 27, but Rosile has refused to comply with this request. Because Rosile has

refused (in violation of IRC § 6107) to give the IRS his client list or copies of all returns he has filed, the IRS is currently unable to establish with certainty how many frivolous § 861-based returns Rosile has prepared.

21. The IRS estimates the total under-reporting of tax liability attributable to Rosile's known activities—comprising bogus refund claims made and tax liability not reported—at more than $36 million.

22. Rosile's § 861 argument tax scheme is nationwide in scope, and includes clients from at least 32 states: Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Mexico, New Jersey, New York, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

23. The largest Rosile-prepared bogus refund claim that the IRS has detected is an amended income tax return prepared for Wesley Snipes, whose address is listed on the amended return as C/O Starr & Co., New York, NY. Snipes's amended return, signed by Rosile as preparer and dated April 14, 2001, requested a $7,360,755 refund of 1997 income taxes paid, based on reducing Snipes's adjusted gross income to zero. Attached to the return was a document stating "amounts previously reported not from a taxable source per 26 CFR 1.861-8(f)(1)." The IRS detected this claim as bogus and did not pay it.

24. Other large Rosile-prepared claims were filed on behalf of James Shahinian of San Pedro, California. These amended returns, signed by Rosile as preparer, claimed refunds totaling $407,399

for three tax years based on reducing Shahinian's adjusted gross income to zero. Attached to the returns were documents stating "amounts previously reported not from a taxable source per 26 CFR 1.861-8(f)(1)." The IRS detected these claims as bogus and did not pay them.

25. Rosile also prepared an amended income tax return for Douglas and Barbara Harms of Englewood, Florida, claiming an improper $30,796 tax refund based on the § 861 argument. The amended return reduced the Harms's reported gross income to zero. The IRS detected this claim as bogus and did not pay it.

26. Rosile has also relied on the § 861 argument for his own tax returns. Rosile's 1996 federal income tax return, filed on March 26, 2000, reports adjusted gross income of zero based on a handwritten notation stating "Per section 1.861-8(f) income not from taxable sources." Because Rosile had made estimated tax payments of $1,000 for that year, the IRS—failing to detect the bogus nature of Rosile's claim—erroneously sent him a refund check in that amount. In addition, Rosile filed six claims on behalf of his dissolved corporate tax-preparation businesses, Affordable Tax/Accounting Service, seeking refunds of federal employment taxes paid based on the § 861 argument. On information and belief, Rosile received erroneous refunds totaling $22,464.91 in employment taxes because the IRS failed to detect the bogus nature of his claims. Rosile has not filed federal income tax returns for 1997 through 2000, presumably based on the frivolous § 861 argument.

27. An IRS revenue agent advised Rosile in September, 2001, that he was under investigation for possible violations of IRC § 6700 and an injunction under IRC § 7408 for promoting an abusive tax shelter. The IRS further requested that Rosile provide a variety of documents, including documents that

"identify names, addresses and social security numbers of any purchasers or clients of any plans, operations, or arrangements offered by you . . . that . . . employ the "IRC 861 position" on any Federal or State tax returns ." The IRS also requested that Rosile provide a list "of all federal and state tax returns and amended returns prepared by you . . . including, but not limited to 1040s, corporate returns, trust returns and payroll returns, with a detailed schedule of the names of the entities, addresses, and taxpayer's identification numbers."

28. Rosile has refused to comply with the IRS requests, in violation of IRC § 6107. Rosile, through his attorney, sent a letter to the IRS falsely stating that it had no authority to conduct an investigation.

29. Rosile, through his attorney, also sent a letter to the IRS agent falsely accusing her of harassment and intimidation, violating the Fair Debt Collection Act, and issuing a fraudulent document to him, an IRS summons. The letter took the baseless position that congressional authorization for summonses is limited to cases involving taxes on cotton.

30. On information and belief, in addition to his affiliation with ARL, Rosile is working with or connected to other persons promoting frivolous § 861 arguments. For example, the § 861 argument has been promoted by Thurston Bell and his organization, the National Institute for Taxpayer Education ("NITE"), on Bell's website, www.nite.org. NITE is an organization that charges its members up to $195 per year for access to tax-related information, including the frivolous § 861 argument and other frivolous arguments.

31. Bell lists Affordable Accounting Tax Service, Rosile's former accounting and tax service

business, on Bell's website as a NITE member that "successfully" obtained a $14,256.65 refund of federal employment taxes based on Bell's version of the § 861 argument. In *United States v. Bell*, No. 1:CV:01-2159 (M.D. Pa. 2001), the United States has sued to enjoin Bell and NITE from promoting abusive tax schemes, including the § 861 argument.

32. The § 861 argument has been rejected summarily by every judge that has considered it, beginning as early as 1993 in *Solomon v. Commissioner*, 66 T.C.M. (CCH) 1201, 1993 WL 444615 (1993). The United States Tax Court reiterated its rejection of the § 861 argument in 1995 in *Aiello v. Commissioner*, TC Memo 1995-40, 69 T.C.M. (CCH) 1765, 1995 WL 33283 (1995), and last year in *Furniss v. Commissioner*, TC Memo 2001-137, 81 T.C.M. (CCH) 1741, 2001 WL 649000 (2001). In *Christopher v. Commissioner*, T.C. Mem. 2002-18, 2002 WL 71029 (Jan. 18, 2002), the Tax Court again rejected an argument that I.R.C. § 861 and accompanying Treasury regulations exclude from "gross income" all income earned within the United States, and sanctioned the taxpayer for presenting a frivolous argument. The Tax Court has sanctioned four taxpayers for asserting the position, imposing $5,000 penalties against taxpayers in *Solomon* and *Williams v. Commissioner*, 114 T.C. 136 (2000), and a $25,000 penalty against another taxpayer in *Madge v. Commissioner*, Tax Court Docket No. 01-1531. The Court of Appeals for the Eighth Circuit recently upheld the judgment, including the imposition of sanctions, against Darlow Madge in *Madge v. Commissioner*, 2001 WL 1414315 (8th Cir.). In a recent action, *United States v. Hearn*, No. 1:01 CV 3058 (N.D. Georgia, January 29, 2002), a return preparer was permanently enjoined from promoting the § 861 argument and preparing income tax returns again that include that or any other frivolous position.

33. Rosile's actions fall within IRC § 7407(b)(1)(A). The Court should enjoin him as requested below. Subparagraph (1)(A) authorizes courts to enjoin conduct subject to penalty under IRC §§ 6694 or 6695. Rosile's conduct is subject to penalty under IRC § 6694 because his preparation and filing of returns containing frivolous positions resulted in understatements of income tax liability on income tax returns filed by at least 188 taxpayers in 32 states, totaling an estimated $36 million potential revenue loss to the United States. Section 6694 imposes penalties on tax-return preparers who prepare returns on which there is an understatement of liability and where:

> (1) the understatement is due to a position for which there was not a realistic possibility of being sustained on the merits;
>
> (2) the preparer knew or should have known this position was unrealistic; and
>
> (3) either the position was not disclosed as provided in IRC § 6662(d)(2)(B)(ii) (requiring disclosure of relevant facts) or it was frivolous.

No rational person, much less a person once qualified as a certified public accountant, could interpret § 861 and the regulations promulgated thereunder to exclude from taxation all US-sourced wages and interest earned by US residents. The IRS has issued five public notices that show that the § 861 argument is frivolous. Rosile has continued to prepare returns based on this frivolous position. His actions are subject to penalty under IRC § 6694 and to injunction under IRC § 7407.

34. Through a summons served on Rosile the IRS requested that he produce a list of his clients. Tax-return preparers are required by IRC § 6107(b) to make a client list available for IRS inspection upon request. Section 6695(d) imposes a penalty on any person who violates IRC § 6107(b). Since Rosile violated IRC § 6107(b) and is subject to penalty under IRC § 6695(d), he is

therefore also subject to injunction under IRC § 7407(b)(1)(A). Rosile's refusal to provide his client list as required by IRC § 6107(b) has seriously impeded the IRS's ability to detect all returns prepared by Rosile that assert frivolous positions.

35. Rosile should be enjoined from acting as an income-tax-return preparer because of his pattern of continual and repeated assertion of the § 861 argument, even after being informed through IRS notices and court decisions that it is frivolous, and because he has continually and repeatedly engaged in other abusive conduct subject to penalty and to disciplinary action as described herein.

Count II

(Injunction under § 7408 for violations of §§ 6700 and 6701)

36. The United States incorporates herein as if fully restated, the allegations in paragraphs 1 through 35.

37. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC §§ 6700 or 6701 from engaging in further such conduct. In the relevant portion, IRC § 6700 imposes a penalty on any person who organizes (or assists in the organization of) any shelter, plan, or arrangement and makes or furnishes or causes another person to make or furnish (in connection with such organization) a statement regarding the excludibility of any income which the person knows or has reason to know is false or fraudulent as to any material matter. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return, who knows (or has reason to know) the portion will be used to assert a position under the internal revenue laws, and who knows the portion would result in an understatement in tax liability.

38. Rosile has engaged in conduct subject to penalty under IRC § 6700. Specifically, the documents, advice, and other services provided by Rosile constitute assisting in the organization of or organizing a plan or arrangement, in connection with which Rosile has made false or fraudulent statements regarding the excludibility of items from income. Rosile knew or had reason to know his statements were false or fraudulent. Therefore the United States is entitled to an injunction against Rosile under IRC § 7408, enjoining him from engaging in further conduct subject to penalty under IRC § 6700.

39. Rosile has also engaged in conduct subject to penalty under IRC § 6701. Specifically, Rosile has prepared tax returns for compensation and has assisted in the preparation of tax returns or other documents for other people that were intended to be used (and were in fact used) in connection with material matters arising under the internal revenue laws. These documents include tax returns and amended returns prepared by Rosile for at least 188 clients. Rosile also knew that these returns and other documents (if so used) would result in understatements of tax liabilities of these other persons. The United States is entitled to an injunction under IRC § 7408 to prevent Rosile from engaging in further conduct subject to penalty under IRC § 6701.

Count III

(Unlawful Interference with the Enforcement of the Internal Revenue Laws)

40. The United States incorporates herein as if fully restated, the allegations in paragraphs 1 through 39.

41. Rosile, through the conduct described above, has engaged in conduct that substantially

interferes with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court, Rosile is likely to continue to engage in such conduct. Rosile's conduct is causing irreparable injury to the United States, and the United States has no adequate remedy at law.

42. The United States is entitled to injunctive relief under IRC § 7402(a).

Appropriateness of Injunctive Relief

43. Unless enjoined by the Court, defendant Rosile is likely to continue to engage in the conduct described in paragraphs 1 through 42 of this complaint.

44. Rosile's conduct described in paragraphs 1 through 42 results in irreparable harm to the United States and the United States has no adequate remedy at law. Specifically:

a. Rosile's conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless he is enjoined the IRS will have to expend substantial time and resources to detect future returns based on bogus claims, and may be unable to detect all of them. If erroneous refunds are made and later detected, the Government will either lose those funds or have to expend substantial funds and resources to recover them. Based on past experience, the Government cannot expect to recover 100% of the erroneous refunds issued, and therefore the Government can expect a revenue loss if Rosile is allowed to continue filing income tax returns based on bogus claims;

b. The detection and audit of taxpayers who have used Rosile's scheme will place a serious burden on the IRS's resources and—to the extent erroneous-refund suits must be brought against taxpayers—on the resources of the federal judicial system; and

c. If Rosile is not enjoined, he likely will continue to engage in conduct subject to penalty under IRC §§ 6700, 6701, 6694, and 6695 that interferes with the enforcement of the internal revenue laws, thereby undermining the federal tax system.

WHEREFORE, the plaintiff United States prays for the following:

A. That the Court find that Rosile has continuously and repeatedly engaged in conduct subject

to penalty under IRC §§ 6694 and 6695, and that injunctive relief is appropriate under IRC § 7407 to prevent him and anyone acting in concert with him from acting as income-tax-return preparers;

B. That the Court find Rosile engaged in conduct subject to penalty under IRC §§ 6700 and 6701, and that injunctive relief is appropriate under IRC § 7408 to prevent him and anyone acting in concert with him from engaging in any further such conduct;

C. That the Court find that Rosile engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against him and anyone acting in concert with him is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and IRC § 7402(a);

D. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting Rosile from acting as an income-tax-return preparer;

E. That the Court, pursuant to IRC §§ 7402 and 7408, enter a permanent injunction prohibiting Rosile and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

(1) Organizing, promoting, marketing, or selling (or assisting therein) the tax shelter, plan, or arrangement known as "the § 861 argument" or any other abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;

(2) Further engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement they know or have reason to know is false or fraudulent as to any material matter;

(3) Further engaging in any conduct subject to penalty under IRC § 6701, *i.e.*, assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which they know will (if so used) result in the understatement of income tax liability;

(4) Further engaging in any conduct subject to penalty under IRC § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;

(5) Further engaging in any conduct subject to penalty under IRC § 6695, *i.e.*, failing to turn over a list of clients to the IRS upon request; and

(6) Further engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service;

F. That this Court, pursuant to IRC §§ 7402, 7407, and 7408, enter an injunction requiring Rosile to (1) send a copy of the Court's injunction, within 30 days of its entry, to all persons on whose behalf Rosile prepared and/or assisted in preparing any federal or state income tax returns or tax-related documents during the four years prior to entry of this injunction, and all persons affiliated in business with Rosile (including ARL and all persons working for or otherwise associated with it) during the same four-year period, and (2) file, within 60 days of entry of the injunction, a notice with the Court advising that he has done as directed and providing with the notice a list of the names and addresses of each person so notified;

G. That this Court, pursuant to IRC §§ 7402, 7207, and 7408, enter an injunction requiring Rosile to turn over to the United States all records in his possession or to which he has access, that identify (1) the persons to whom gave or sold, directly or indirectly, any materials related to the § 861 argument, (2) the persons who assisted in the marketing or preparation of materials used by

Rosile or written materials sent to potential clients, (3) all individuals or entities for whom Rosile and/or his associates prepared and/or assisted in the preparation of any tax-related documents, including claims for refund or tax returns, and (4) all individuals or entities who purchased and/or used any other tax shelter, plan, or arrangement in which Rosile has been involved.

H. For such other relief as the Court deems appropriate.

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