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U.S. DIST. COURT  
MIDDLE DIST. OF LA.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

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UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAMES E. ROSAMOND, Individually )  
and d/b/a/ TAXES DONE RITE, )  
 )  
Defendant. )

SIGN \_\_\_\_\_  
by DEPUTY CLERK

CIVIL ACTION NO. 04-863-D-M3  
JUDGE BRADY  
MAGISTRATE JUDGE DALBY

**FINAL JUDGMENT OF PERMANENT INJUNCTION**

The plaintiff United States of America filed its Complaint for Permanent Injunction under sections 7407 and 7402 of the Internal Revenue Code (26 U.S.C.) on December 6, 2004, seeking a permanent injunction barring the defendant, James E. Rosamond, individually and d/b/a Taxes Done Rite, from acting as an income tax return preparer. Rosamond was personally served with process on December 30, 2004, and his default was entered by the Clerk on February 11, 2005, when Rosamond failed to answer the complaint or otherwise appear in this action.

The United States has moved for the entry of a default judgment against the defendant pursuant to Federal Rule of Civil Procedure 55(b)(2). Because Rosamond has defaulted, he is deemed to have admitted all allegations of fact that are contained in the complaint. A review of the plaintiff's motion and complaint shows that the motion is due to be granted. In accordance with Federal Rule of Civil Procedure 65(d), the findings of fact and reasons for the entry of a permanent injunction against the defendant, James E. Rosamond, individually and d/b/a Taxes Done Rite, are set forth below.

### I. STANDARDS FOR PERMANENT INJUNCTION

To obtain an injunction under section 7407, the United States must show: (1) that the defendant is an “income tax return preparer” within the meaning of Internal Revenue Code section 7701(a)(36); (2) that he engaged in conduct described in section 7407(b)(1)(A)-(D); and (3) that injunctive relief is appropriate to prevent the recurrence of such conduct. 26 U.S.C. § 7407(b); United States v. Ernst & Whinney, 735 F.2d 1296, 1303 (11th Cir. 1984), cert. denied, 470 U.S. 1050 (1985); United States v. Savoie, 594 F. Supp. 678, 683 (W.D. La. 1984); United States v. Franchi, 756 F. Supp. 889, 891 (W.D. Pa. 1991). Further, the United States may obtain an injunction preventing the defendant from acting as an income tax return preparer if it shows that the defendant has “continually or repeatedly” engaged in any of the prohibited conduct described in section 7407(b)(1)(A)-(D) and that “an injunction prohibiting such conduct would not be sufficient to prevent such person’s interference with the proper administration” of the internal revenue laws. 26 U.S.C. § 7407(b).

The United States also has sought an injunction against Rosamond under Internal Revenue Code section 7402. An injunction under that provision is appropriate where the United States shows: (1) the likelihood of continuing irreparable injury to the United States; (2) the harm to the United States without the injunction outweighs any harm to the defendant if a permanent injunction is entered; (3) success on the merits of the case; and (4) the public interest favors the entry of a permanent injunction. United States v. Buttorff, 761 F.2d 1056, 1059 n.3 (5th Cir. 1985); Forest Park II v. Hadley, 336 F.3d 724, 731 (8th Cir. 2003).

## II. FINDINGS OF FACT

1. The defendant James E. Rosamond resides at 32273 Highway 1036, Holden, Louisiana 70744, within this judicial district, and operates Taxes Done Rite, an unincorporated business, from that same address.
2. Rosamond was properly served with a summons and a copy of the complaint filed in this civil action on December 30, 2004.
3. Rosamond has not answered the complaint or appeared in this action. His default was entered by the Clerk of this Court on February 11, 2005.
4. Rosamond, doing business as Taxes Done Rite, has been preparing federal income tax returns since at least 1999.
5. Rosamond achieves unlawful refunds for his customers by fraudulently offsetting his customers' taxable income with fictitious or inflated deductions reported on Schedule A. Examples of fraudulent items that Rosamond and Taxes Done Rite place on customers' federal income taxes include:
  - a. Fictitious or inflated medical and/or dental expenses;
  - b. Fictitious or inflated charitable contributions;
  - c. Fictitious or inflated unreimbursed employee business expenses;
  - d. Fictitious or inflated "miscellaneous" deductions.
6. Rosamond fabricates deduction amounts, for which his customers have no, or only partial, substantiation.
7. Rosamond misleads his customers into believing that he is a former IRS employee with special knowledge of available deductions that is not readily available to the general public.

He also misleads his customers into believing that the commercially available tax preparation software that he uses, known as Tax Act, was provided to him by the IRS. Rosamond uses features of the Tax Act software to mislead his customers into believing that their returns will not be subject to audit.

8. Rosamond charges his customers a percentage, usually approximately four percent, of the amount of refund that he reports due on the customers' tax returns.

9. Rosamond has been preparing federal income tax returns under the business name Taxes Done Rite since at least 1999.

10. Rosamond is aware that income tax deductions must be substantiated. For example, some customers who have claimed excessive Schedule A medical expenses have contacted Rosamond for advice after learning that they would be subject to an IRS audit. Rosamond has advised those customers to send substantiation to the IRS if the customers have incurred the medical expenses, but, if they have not incurred the claimed expenses, to state that payment was made in cash and that they did not keep receipts.

11. Rosamond prepared at least 1,294 original tax returns that were processed by the IRS in 2002 and 2003. Of that total, 341 returns were processed in 2002, and 953 returns were processed in 2003. The IRS has examined at least 29 of those returns, and all required audit adjustments that increased the tax owed because of the frivolous positions described above. The average audit adjustment for the 29 examined federal income tax returns resulted in increased tax owed of \$4,101.00 per return. Assuming that examination of all returns that Rosamond prepared would yield similar increases in tax, the understated tax liability resulting

from Rosamond's acts for the 1,294 original returns that were processed in 2002 and 2003 would result in a tax loss of \$5,306,694.00.

12. The IRS also has identified at least 585 amended tax returns prepared by Rosamond for prior tax years that were processed by the IRS in 2002 and 2003. Of that total, 243 amended returns were processed in 2002, and 342 amended returns were processed in 2003. The IRS has examined at least 22 of those amended returns, and all of the refunds requested on each of those returns were found not to be owed to the taxpayers because of the frivolous positions described above. Assuming that examination of all amended returns that Rosamond prepared would similarly show that the entirety of the refunds requested were not owed, the understated tax liability resulting from Rosamond's acts for the 585 identified amended returns that were processed in 2002 and 2003 would be \$1,413,906.00.

13. Combining original and amended returns, the total understated tax liability caused by Rosamond's improper return preparation services is estimated at \$6,720,600.00 (\$5,306,694.00 + \$1,413,906.00).

14. Rosamond continued to prepare federal income tax returns for the 2003 tax year.

### III. REASONS FOR ENTRY OF PERMANENT INJUNCTION

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).

2. A default judgment is properly entered against a defendant who, like Rosamond, fails to answer, plead, or otherwise defend in a civil action. See Fed. R. Civ. P. 55.

3. As the United States has sought injunctive relief in this case, its claim is not for a sum certain or for a sum which can by computation be made certain. Accordingly, the Clerk may

not enter judgment in this action under Federal Rule of Civil Procedure 55(b)(1). Any judgment must be entered by the Court under Federal Rule of Civil Procedure 55(b)(2).

4. As a person who prepares income tax returns for compensation, Rosamond is an “income tax return preparer” within the meaning of Internal Revenue Code sections 7407 and 7701(a)(36).

5. Rosamond has continually and repeatedly engaged in conduct subject to penalty under Internal Revenue Code section 6694(b) by preparing federal income tax returns that understate his customers’ federal income tax liabilities. Rosamond willfully understated his customers’ tax liabilities by fabricating or inflating their tax deductions on at least 29 original income tax returns and on at least 22 amended returns that were examined by the IRS.

6. Rosamond also continually and repeatedly engaged in conduct subject to penalty under section 6694(a) when he prepared tax returns that asserted frivolous positions that did not have a realistic possibility of being sustained on the merits. Claiming entirely fabricated or, at the very least, overstated deductions is a frivolous position. Rosamond knew or should have known that there was no realistic possibility of fabricated or inflated tax deductions being sustained on the merits if the returns that he prepared were examined by the IRS.

7. Rosamond misrepresented his experience and/or education as an income tax return preparer when he misled his customers into believing that he is a former IRS employee with special knowledge of available deductions that is not readily available to the general public and when he also misled his customers into believing that the commercially available tax preparation software that he uses, known as Tax Act, was provided to him by the IRS.

8. Rosamond also guaranteed to customers that he would get them tax refunds.

9. Because Rosamond (1) has continually and repeatedly engaged in willful and reckless conduct that is subject to penalty under Internal Revenue Code section 6694(a) and (b); (2) has misrepresented his experience and/or education as an income tax return preparer as described in section 7407(b)(1)(B); (3) has guaranteed the payment of tax refunds as described in section 7407(b)(1)(C); and (4) has engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, the Court finds that Rosamond should be permanently enjoined from acting as an income tax return preparer.

10. The United States and the public will suffer irreparable harm in the absence of a permanent injunction, and Rosamond will suffer little, if any, harm if the permanent injunction is granted.

11. The United States has prevailed on the merits of the issues raised in this civil action, and the public interest will be served through granting a permanent injunction.

12. The record shows that, absent a permanent injunction, Rosamond likely will continue to violate Internal Revenue Code section 6694 and otherwise engage in conduct that substantially interferes with the proper administration of the internal revenue laws. Accordingly, the Court finds that Rosamond also should be permanently enjoined from acting as an income tax return preparer under Internal Revenue Code section 7402.

#### IV. ORDER

Based on the foregoing factual findings and legal conclusions, and for good cause shown, the Court accordingly ORDERS, ADJUDGES, and DECREES that:

1. The defendant, individually and doing business under any other name or using any other entity, and anyone in active concert or participation with him, including any representative,

agent, servant, or employee, is permanently enjoined and restrained from, directly or indirectly, by the use of any means or instrumentalities:

- a. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;
- b. Providing any tax advice or services for compensation, including preparing returns, providing consultative services or representation of customers;
- c. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability;
- d. Misrepresenting his qualifications and experience as an income tax return preparer;
- e. Guaranteeing the payment of any tax refund or the allowance of any tax credit; and
- f. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns.

2. It is further ORDERED that the defendant, at his own expense, shall send by certified mail, return receipt requested, a copy of the final injunction entered against him in this action to each person for whom he, or anyone at his or her direction or in his employ, prepared federal income tax returns or any other federal tax forms after January 1, 1999.

3. It is further ORDERED that the defendant shall keep records of his compliance with the requirement of paragraph 2, above, which may be produced to the Court, if requested, or to the United States pursuant to paragraph 7, below.



4. It is further ORDERED that the defendant, and anyone who prepared tax returns at the direction of or in the employ of the defendant, shall turn over to the United States copies of all returns or claims for refund that they prepared for customers after January 1, 1999.

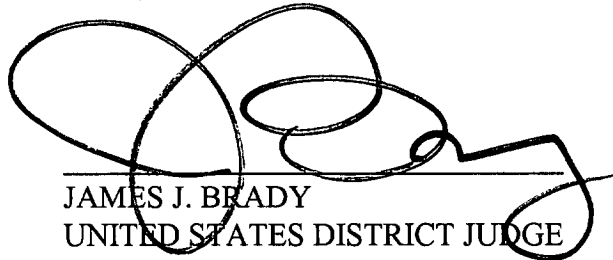
5. It is further ORDERED that the defendant, and anyone who prepared tax returns at the direction of or in the employ of the defendant, shall turn over to the United States a list with the name, address, telephone number, e-mail address (if known), and social security number or other taxpayer identification number of all customers for whom they prepared returns or claims for refund after January 1, 1999.

6. It is further ORDERED that the defendant, within forty-five days of entry of this final injunction, shall file a sworn statement with the Court evidencing his compliance with the requirements of paragraphs 2, 4 and 5, above.

7. It is further ORDERED that the United States may monitor the defendant's compliance with this injunction and may engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure.

8. It is further ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and enforcing this Final Judgment of Permanent Injunction.

DONE is Baton Rouge, Louisiana, this 19th day of APRIL at 10:55 AM, 2005.

  
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JAMES J. BRADY  
UNITED STATES DISTRICT JUDGE