



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

vs.

Civil Action No. 02-cv-209WS

ANDREW L. WILEY

DEFENDANT

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE is before the court on the motion of the United States of America, plaintiff herein, for a preliminary injunction. Plaintiff seeks this injunctive relief under the auspices of Title 26 U.S.C. § 7402.¹ By its motion, the United States of America asks this court to enjoin the *pro se* defendant, Andrew L. Wiley, from preparing, or assisting others in preparing, federal income tax returns for African Americans seeking a tax rebate of \$43,209.00 for historical "taxation without proper representation." Charging that Wiley's "tax rebate" has no office in the Internal Revenue Code and charging that Wiley has been disdainful of the government's prior efforts to persuade him to desist in this conduct, the government now pursues this drastic relief. This court has jurisdiction over the subject

¹Title 26 U.S.C. § 7402(a) provides that, "the district courts of the United States shall have jurisdiction to issue *orders of injunction* and to render such judgments as may be necessary or appropriate to enforce the internal revenue laws"

matter of this case pursuant to Title 28 U.S.C. § 1340², Title 28 U.S.C. § 1345³, and Title 26 U.S.C. §§ 7402⁴ and 7407⁵ of the Internal Revenue Code. Congress expressly has vested authority in the district courts to enjoin persons from acting as income tax preparers in Title 26 U.S.C. § 7402(a) (see footnote 4). Section 7402(a) of the Code provides that the district courts of the United States shall have jurisdiction to issue orders of injunction and to render such judgments as may be necessary or appropriate to enforce the internal revenue laws. The statute also authorizes the fashioning of any appropriate remedy without enumerating the ways in which the revenue laws may be violated or their intent thwarted. *United States v. Bailey*, 789 F.Supp. 788, 811 (N.D. Tex.

²Title 28 U.S.C. § 1340 provides that, “[t]he district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.”

³Title 28 U.S.C. § 1345 provides that, “[e]xcept as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.”

⁴Title 26 U.S.C. § 7402(a) provides in pertinent part that, “[t]he district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, ... and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

⁵Title 26 U.S.C. § 7407(a) provides that, “(a) Authority to seek injunction -- A civil action in the name of the United States to enjoin any person who is an income tax return preparer from further engaging in any conduct described in subsection (b) or from further acting as an income tax return preparer may be commenced at the request of the Secretary. Any action under this section shall be brought in the District Court of the United States for the district in which the income tax preparer resides or has his principal place of business or in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such income tax preparer or any taxpayer.”

1992), citing *Brody v. United States*, 243 F.2d 378, 384 (1st Cir.), *cert. denied*, 354 U.S. 923, 77 S.Ct. 1384, 1 L.Ed.2d 1438 (1957), and *United States v. First Nat'l City Bank*, 568 F.2d 853, 855-56 (2d Cir. 1977) (noting that § 7402 is a "broad statutory mandate," and declining to construe that mandate restrictively). The court, having considered the submissions of the parties and having conducted an evidentiary hearing on the motion on a previous day, concludes over the opposition of Andrew L. Wiley, the defendant herein, that the motion should be granted and that preliminary injunction should issue for the reasons set forth herein and as stated at the hearing.⁶

Findings of Fact

Seven witnesses testified at the hearing on this matter on the motion of the United States of America for a preliminary injunction. The United States of America called Bruce Hill of the Holmes County Herald newspaper; Ray Thurrell, an Internal Revenue Service Agent; Lynn Wade, an Internal Revenue Service Agent; L.C. Russell of Lexington, Mississippi; McArthur Gypson of Pickens, Mississippi; Helen Rowland and the defendant Andrew Wiley, *pro se* defendant, called adversely. From the evidence presented at the evidentiary hearing, this court finds the following facts.

⁶Immediately following the hearing, the court announced its findings and stated that it would submit a written opinion later.

The defendant *pro se* Andrew L. Wiley resides at 15689 North Jackson Street in Durant, Mississippi 39063. Wiley conducts his return-preparing business as a sole proprietorship out of his home. According to the Internal Revenue Service, Wiley received a bachelors degree in accounting from Alcorn College in 1951, and a masters degree in business administration from the University of Minnesota in 1953. After receiving his masters degree, says the Internal Revenue Service, Wiley worked for the United States Department of State, Agency for International Development, from November 20, 1965, until his retirement on December 31, 1988. At the time he retired, says the Internal Revenue Service, Wiley held the position of Auditor-in-Charge. The Internal Revenue Service says that Wiley began preparing tax returns sometime after his retirement.

A number of people for whom Wiley prepares tax returns have little or no education. On the tax returns he prepares, he enters "\$43,209" in the line for "other payments." For individuals who have filed a previous return with the Internal Revenue Service claiming this amount, Wiley computes an additional amount as interest on the \$43,209 for inclusion on subsequent returns. When he adds interest to the amount claimed, he prepares and attaches to the tax return a form with his interest computations.

In addition, Wiley attaches to the returns he prepares a Lexis/Nexis printout of an *Essence* magazine article from April 1993 titled "Forty Acres and a Mule,"⁷ byline by L.G. Sherrod, a journalist and economics consultant in New York. That article is set out below:

1. There should be no doubt in our minds about whether the U.S. government owes us reparations -- our "40 acres and a mule," plus interest. It does, and we need to be clear about why. Making reparations is a well-established principle of international law. It generally involves payment by one nation for damages and harm it causes to people of another. No question, massive damages and harm have been inflicted on us since 1619, when we first hit these shores.

2. Congress tried to atone in 1866, when the Radical Republicans passed a law requiring that Confederate property be confiscated to provide 40 acres of land and a mule to the 4 million former slaves left at the end of the Civil War with no education, no homes, no land and no money. However, this bill was vetoed by Andrew Johnson, who became president after Abraham Lincoln was assassinated.

3. Since then the United States has consistently and arrogantly ignored the claim for payment of reparations to the descendants of the millions of slaves who were forced to work without pay for 246 years. Today our 40 acres and a mule are estimated by scholars to be valued between \$ 300 billion and \$ 500 billion.

⁷Some scholars maintain that the origin of the promise "Forty Acres and a Mule" is a consequence of the January, 1865, Special Field Order 15 of General William T. Sherman which set aside the Sea Islands off the Georgia coast and a portion of the South Carolina low-country rice fields for the exclusive settlement of freed people. During his bloody march through the South, General Sherman liberated thousands of slaves. Once freed, to Sherman's chagrin, the newly freed slaves clung to their rescuers, creating problems for Sherman's Army. So, by his Special Field Order, Sherman decreed that each family would receive forty acres of land and the loan of mules from the Army. Pursuant to his Special Field Order, Sherman settled some 40,000 freed people on 400,000 acres of "Sherman land." In 1866, however, at the direction of President Andrew Johnson, the United States Government evicted tens of thousands of these freed people who had settled on the lands in Georgia, South Carolina, as well as the lands in southeastern Virginia and southern Louisiana. African-Americans felt betrayed. Additionally, the newly freed slave felt betrayed when the Freedmen's Bureau Act of 1865 which specifically required that abandoned land be leased for three years in forty-acre lots, with an option to buy, went unrealized. John Mack Faragher, Mari Jo Buhle, Daniel Czitrom, Susan H. Armitage, *Out of Many, A History of the American People*, 3rd ed. Vol. II, pp. 485 and 495, Prentiss Hall 2000.

4. We must demand compensation for the outrageous economic violence perpetrated on us during slavery. We must move on collecting the tax owed to us as a result of the "separate but equal" policy, which made racial discrimination the law of the land. Although the Supreme Court's ruling reduced us to second-class citizens, we did not get any tax breaks to offset the loss of our basic rights and constitutional privileges.

5. The government also owes African-Americans a tax rebate for the 60 years of segregation and Jim Crow that followed slavery. Although we were consigned by law to second-class citizenship then, we were still forced to pay first-class taxes and poll taxes -- on property, purchases, income and a host of other transactions.

6. All we got for our tax dollars were whites-only public facilities; political disenfranchisement; segregated and inferior schools; ghetto housing; barriers to employment, occupations and business ownership; inequity in income -- in a nutshell, poverty, permanent inequality, and the economic and social marginality we experience today.

7. Germany paid billions in reparations to European countries after its defeat in World War I and was forced to pay billions more in reparations to Israel for killing millions of Jews during World War II. Japan and the smaller Axis powers also had to pay reparations after World War II. The U.S. government has paid reparations to several Native-American groups for numerous land frauds. More recently, Iraq was assessed billions in reparations for invading Kuwait.

8. In 1988 Congress approved \$ 20,000 apiece to approximately 60,000 Japanese-Americans who were evacuated, relocated or interned in concentration camps during World War II. But despite this, the reparations bill drafted by Congressman John Conyers, Jr. (D - Mich.) -- which merely calls for establishing a committee to study the impact of slavery on African-Americans and recommend remedies -- can't even get to the House floor for a vote!

9. We need to bombard Congress with letters, petitions and phone calls demanding not only our long-overdue reparations, but reparations to sub-Saharan African countries as well, which can best be paid in the form of forgiveness of the outstanding debt obligations that have crippled their economies.

10. We can empower ourselves and "collect" the delinquent tax rebate, now estimated by The People's Institute for Economics (PIE), a New York-based economics research group, to be a \$ 43,209 per household. However, since de facto racial discrimination continues to function as a hidden Black tax, it ought to be deductible. So when income-tax time rolls around, on line 59 of form 1040 -- which asks you to list "other payments" -- simply enter \$ 43,209 in "Black taxes" and compute accordingly.

11. GRAPHIC: Picture, 'The U.S. owes us 40 acres and a mule, but all we got were whites-only facilities, poverty and inequality.' SUSAN STAVA

Wiley has added to the printout of the article a new paragraph, which he numbers "12." This paragraph, authored by Wiley, states:

12. This claim is not about "reparations", rather, it is about a tax rebate resulting from the Supreme Court's ruling that reduced African-Americans to second-class citizens. However, the African-Americans paid the same taxes as the first-class citizens; in other words, "taxation without proper representation". The U.S. Government should have established tax provisions for the first-class citizens and another for the second-class citizens. The \$43,209.00 is a delinquent tax rebate that America owes African-Americans.

Wiley, thus, contends that these claims are for a tax rebate due African Americans based on their paying federal income taxes at first-class citizen rates when they were second-class citizens.

When queried by this court on the origin of the *Essence* magazine article and its contents, Wiley displayed surprising ignorance. He knew nothing about the author and nothing about The People's Institute for Economics (PIE), the alleged New York based economics research group which came up with the \$43,209 figure. He was clueless how this group arrived at the precise figure of \$43,209. Frankly, all he was sure about was

that African-Americans had been relegated to second-class citizenship⁸ and that the United States government owes African-Americans a tax rebate.

Wiley has not presented to this court, however, any citation to the Internal Revenue Code authorizing such a tax rebate. Indeed, no provision of the Internal Revenue Code provides for any tax credit of the sort claimed by Wiley. Claims for refund based on fabricated tax credits for taxes paid as second-class citizens, reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds have no basis in law.

Wiley knows that his fabricated tax credit will result in an understatement of tax liability. The Internal Revenue Service has repeatedly advised Wiley that his claims would be denied. Wiley was notified in writing by the Internal Revenue Service on June 25, 1996, January 1, 1999, and November 23, 1999, that claims on his own personal tax returns for \$43,209 would be denied. Further, others who claim Wiley's fabricated credit have advised Wiley of the denial of their claims and, in turn, Wiley has provided them with a standard response to submit to the Internal Revenue Service. Additionally, the instructions for Internal Revenue Service Form 1040 regarding the "other payments" line, as well as the Form 1040 itself, reference only tax credits from Form 2439 (notice to shareholder of undistributed long-term capital gains) relating to regulated investment

⁸Perhaps the Supreme Court decision to which Wiley refers as having bestowed second-class citizenship on African-Americans was the 1857 Dred Scott decision. Of course, in the Spring of 1866, Congress passed the landmark civil rights bill which bestowed full citizenship on African-Americans and overturned the Dred Scott decision. Faragher, Buhle, Czitrom, Armitage, *Out of Many, A History of the American People*, 3rd ed. Vol. II, p. 488. Under the law, then, African-Americans were entitled to the enjoyment of first-class citizen privileges, even though racial discrimination and prejudice continued.

companies and real estate investment trusts and tax credits from Form 4136 (credit for federal tax paid on fuels). Wiley readily acknowledges that his fabricated credit has nothing to do with regulated investment companies, real estate investment trusts, or fuel tax credits.

Nevertheless, Wiley has prepared and assisted in the preparation of numerous tax returns claiming this fabricated tax credit since at least the 1995 tax filing season. He counsels individuals when they receive denial letters from the Internal Revenue Service and provides them with prepared responses. And, Wiley provides the *Essence* magazine article with his additional paragraph 12 on request. The Internal Revenue Service says in its complaint that it repeatedly informed Wiley, beginning as early as June of 1996, that refund claims based on reparations for slavery or segregation are frivolous. The Internal Revenue Service says that it issued several public notices, the first in 1994, warning taxpayers of the falsity of the reparations credits. The Internal Revenue Service also says that it has even issued erroneous refunds to some taxpayers because it failed to recognize that the returns claim the frivolous reparations credits. The Internal Revenue Service notes that Wiley prepared at least three of the returns claiming the illegal credit which resulted in erroneous refunds being paid to his clients. Moreover, the Internal Revenue Service believes Wiley has prepared or assisted in the preparation of as many as 3,910 additional returns which claim refunds amounting to \$168,000,000.00 based on taxpayer claims for the illegal reparation credit.

Wiley says he does not charge for his services, the Internal Revenue Service notes that he has charged clients \$60.00 to prepare returns, and that he once agreed to take a \$600.00 fee from a client who received one of the erroneous refunds.

Wiley prepared L.C. Russell's 1997 federal tax return. Wiley included "\$43,209" in the "other payments" line. Russell received from the Internal Revenue Service an erroneous refund based on this claim. Russell testified that it was he who paid Wiley \$600 when Russell received the check from the Internal Revenue Service.

Helen Rowland with the Internal Revenue Service in Memphis conducted a review of 1999 tax returns, searching for returns with claims for \$43,209 filed with the Internal Revenue Service which had one or both of these attributes:

- * the same attached Lexis/Nexis printout of the *Essence* magazine article with the same numbering on the paragraphs and Wiley's additional paragraph 12,
- * the taxpayer's residence was in Cruger, Durant, Goodman, Lexington, Pickens, Sallis, or Tchula, Mississippi.

Rowland detected approximately 4,500 returns for the 1999 tax year which satisfied these criteria.

On December 14, 2000, Wiley asked Bruce Hill, publisher of the *Holmes County Herald*, to publish an article entitled "African Americans Beware of Scams" in the *Herald*. Hill refused to publish Wiley's submission as an article, but offered Wiley the option of placing an advertisement in the paper. Wiley paid \$33 for an advertisement that read:

AFRICAN-AMERICANS BEWARE OF SCAMS!!

Sometime in 1995, we started filing for a tax rebate of \$43,209.00 which represents taxes the African-Americans paid as second-class citizens. The Supreme Court's ruling reduced African-American to second-class citizens and

we remained second-class citizens from 1866 through 1965. We became first-class citizens after the civil right laws were passed. During this period of time, the African-Americans paid taxes at the same tax rates as the first-class citizens because of the U.S. Government did not set up two tax rates, one for the first-class citizens and another for the second-class citizens. Was this an oversight? We do not think so. If it were an oversight, the Department of the Treasury would not be going to all the trouble of calling it, reparation settlement, frivolous claims, etc. Individuals are presently receiving checks for the tax rebate of \$43,209.00 plus interest. There is a con-game in operation against individuals who have received the checks. The con-game is being operated by two individuals. They will harass you by calling you and telling you that you must return the money because the I.R.S. made a mistake. So please do not, do not believe them. The money is yours and the I.R.S. do (sic) not make such mistakes. So, please report all such calls to the Holmes County Sheriff Office - (662) 834-1511.

Reported By: Andrew L. Wiley
Phone No. (662) 653-6453

(Adv.)

Beginning in 1994, and again in 1996 and 2000, the Internal Revenue Service issued news releases advising the public that there is no tax credit for reparations for slavery and that such claims are being denied.

Substantial resources of the Internal Revenue Service are spent detecting and addressing frivolous returns, claims, and correspondence such as those prepared by Wiley or prepared with his assistance. In addition, if the Internal Revenue Service issues an erroneous refund based on these fabricated credits, then the Internal Revenue Service must devote resources to attempt to collect the erroneous refunds.

According to the government, Wiley is engaging in recurrent misbehavior. He refuses to acknowledge that no basis exists for his fabricated tax credit. Since he refuses to make any assurances against future violations, the government says it has no choice but to seek this drastic remedy.

Conclusions of Law

Injunctive relief is appropriate to prevent the recurrence of the conduct attributed to Mr. Wiley. As many as five factors are relevant to determining the appropriateness of injunctive relief: (1) the gravity of the harm caused by the offense; (2) the extent of the defendant's participation and his degree of scienter; (3) the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions; (4) the defendant's recognition of his own culpability; and (5) the sincerity of the defendant's assurances against future violations. *United States v. Raymond*, 228 F.3d 804, 813 (7th Cir. 2000); see also *Abdo v. Internal Revenue Service*, 176 F. Supp. 2d 495, 497 (M.D.N.C. 2001), applying a balance-of-hardships test to section 7407, (1) the likelihood of irreparable harm to the movant without the injunction; (2) the likelihood of harm to the non-movant with the injunction; (3) the movant's likelihood of success on the merits; and (4) the public interest, when determining whether to issue a preliminary injunction against a tax preparer.⁹

Section 7407(a) of the Internal Revenue Code provides authority for the Internal Revenue Service to seek an injunction. This section provides as follows:

⁹ In *United States v. Franchi*, 756 F.Supp. 889, 891 (W.D. Pa. 1991), the district court noted that, "[t]he legislative history of § 7407 is important for this court's analysis. For one reason there is a dearth of cases that have applied the statute, and secondly the intended application of the law can be gleaned from its background. In the examples cited by the Senate Finance Committee, both the scope and the duration of the injunction were tailored to meet the equities of the particular situation at hand. In order to issue an injunction pursuant to 28 U.S.C. § 7407, three prerequisites must be met: first, the defendant must be a tax preparer; second, the conduct complained of must fall within one of the four areas of proscribed conduct, § 7407(b)(1); and third, the court must find that an injunction is "appropriate to prevent the recurrence" of the proscribed conduct, § 7407(b)(2). *United States v. Ernst & Whinney*, 735 F.2d 1296, 1303 (11th Cir.1984)."

A civil action in the name of the United States to enjoin any person who is an income tax return preparer from further engaging in any conduct described in subsection (b) or from further acting as an income tax return preparer may be commenced at the request of the Secretary. Any action under this section shall be brought in the District Court of the United States for the district in which the income tax preparer resides or has his principal place of business or in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such income tax preparer or any taxpayer.

Section 7407(b) provides as follows: (b) Adjudication and decrees.-- In any action under subsection (a), if the court finds--

(1) that an income tax return preparer has--

(A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,

(B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax return preparer,

(C) guaranteed the payment of any tax refund or the allowance of any tax credit, or

(D) engaged in any other fraudulent or deceptive conduct which 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, the court may enjoin such person from further engaging in such conduct. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in subparagraphs (A) through (D) of this subsection and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as an income tax return preparer.

The evidence presented in the instant case and the documents filed in support of the United States' motion for injunctive relief establishes that Wiley has prepared income tax returns for compensation and is an "income tax return preparer" as that term is defined by Section 7701(a)(36)¹⁰ of the Internal Revenue Code. The evidence and argument presented to this court also shows that Wiley has engaged in conduct subject to penalty under Sections 6694(a)¹¹ and 6695¹² of the Internal Revenue Code. Moreover, the

¹⁰Section 7701(a)(36) provides that, "[t]he term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

¹¹Section 6694(a) states that if, "(1) any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits, (2) any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and (3) such position was not disclosed as provided in section 6662(d)(2)(B)(ii) or was frivolous, such person shall pay a penalty of \$250 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith."

¹²Title 26 U.S.C. § 6695 provides in pertinent part that, "(a)[a]ny person who is an income tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(a) with respect to such return or claim shall pay a penalty of \$50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed \$25,000.

(b) *Failure to sign return.*--Any person who is an income tax return preparer with respect to any return or claim for refund, who is required by regulations prescribed by the Secretary to sign such return or claim, and who fails to comply with such regulations with respect to such return or claim shall pay a penalty of \$50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed \$25,000.

(c) *Failure to furnish identifying number.*--Any person who is an income tax return preparer with respect to any return or claim for refund and who fails to comply with section 6109(a)(4) with respect to such return or claim shall pay a penalty of \$50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar

evidence shows that Wiley has engaged in what may at least be described as deceptive conduct which has interfered substantially with the proper administration of the Internal Revenue laws, fails to provide a list of his clients, and fails to sign all the returns he prepares.

Based on the evidence and argument, this court finds that the United States has presented the court with persuasive evidence that Wiley's position is frivolous and that the recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions, as are described by the United States in this lawsuit, justifies the issuance of injunctive relief. Additionally, the United States has shown the gravity of the harm caused by Wiley's conduct, and that Wiley has participated knowingly in this conduct. Wiley candidly has admitted that he prepared the claims in question, and any assurances he may make against future violations are questionable. Additionally, the United States has made a strong showing of likelihood of success on the merits, thereby justifying the imposition of an injunction under §§ 7402 and 7407 of the Internal Revenue Code. Finally, the evidence presented shows that absent this injunction, Andrew Wiley will continue to engage in behavior subject to injunction under §§ 7402 and 7407 of the Internal Revenue Code.

year shall not exceed \$25,000.

(d) *Failure to retain copy or list.*--Any person who is an income tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(b) with respect to such return or claim shall pay a penalty of \$50 for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed \$25,000.

Preliminary Injunction

IT IS, THEREFORE, ORDERED that, based on the court's finding that the prerequisites for issuance of a preliminary injunction are satisfied, Andrew Wiley and any persons acting in concert with him are prohibited from:

- a. preparing or assisting in preparing tax returns, amended returns, and/or other documents to be submitted to the Internal Revenue Service claiming or supporting claims for refunds based on fabricated tax credits for taxes paid as second-class citizens, reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds;
 - b. providing any samples of returns, amended returns, and/or other documents to third parties to be copied and submitted to the Internal Revenue Service claiming or supporting claims for refunds based on fabricated tax credits for taxes paid as second-class citizens, reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds;
 - c. inciting others not to cooperate with federal officers engaged in the enforcement of the internal revenue laws;
 - d. placing advertisements claiming that that is available to African Americans a tax credit for taxes paid as second-class citizens, or for reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds;
- engaging in any other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

THIS ORDER shall remain in effect until dissolved by this court.

SO ORDERED AND ADJUDGED, this the 28th day of

March, 2003.

Henry T. Wingate
UNITED STATES DISTRICT JUDGE

Civil Action No. 3:02-cv-209WS
Order Granting Preliminary Injunction