

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

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Plaintiff,

v.

Civil No. 3:07-cv-01416-MO

JOHN D. FITZGERALD, NOREEN
McCAUSLAND, MARILYN DIAL,
MARTHA FARR SHARP, KAREN GRAY,
AMERICAN FAMILY ENTERPRISE, INC.,
and WORLD COMMUNITY CO-OP, INC.

Defendants.

ORDER FOR DEFAULT JUDGMENT OF PERMANENT INJUNCTION

This matter comes before the Court on the United States' Motion for Entry of Default Judgment. (Doc. # 27). Defendants John D. Fitzgerald, Noreen McCausland, Marilyn Dial, Martha Farr Sharp, Karen Gray, American Family Enterprise, Inc. and World Community Co-Op, Inc. were properly served and have failed to appear in this action. Entry of default was made against Fitzgerald, McCausland, Gray, American Family Enterprise, Inc., and World Community Co-Op, Inc. on January 24, 2008. (Doc. # 14). Entry of default was made against Dial and Sharp on March 19, 2008. (Doc. # 26).

Having considered the motion, the file, and the applicable law, the Court makes the following findings of fact and conclusions of law and enters this permanent injunction against John D. Fitzgerald, Noreen McCausland, Marilyn Dial, Martha Farr Sharp, Karen Gray, American Family Enterprise, Inc. and World Community Co-Op, Inc.

FINDINGS OF FACT

1. Through American Family Enterprise, Inc., John D. Fitzgerald, Noreen McCausland, Marilyn Dial, Martha Farr Sharp, and Karen Gray have engaged in conduct in this district subject to penalty under I.R.C. § 6700, and that interferes with the enforcement of the internal revenue laws.

2. American Family Enterprise, Inc. has engaged in conduct in this district subject to penalty under I.R.C. § 6700, and that interferes with the enforcement of the internal revenue laws. American Family Enterprise, Inc. is incorporated in the State of Oregon.

3. World Community Co-Op, Inc. has engaged in conduct in this district subject to penalty under I.R.C. § 6700, and that interferes with the enforcement of the internal revenue laws. World Community Co-Op, Inc. is incorporated in the State of Oregon.

4. Through American Family Enterprise, Inc., the defendants organize, promote, and market a fraudulent tax scheme involving sham nonprofit corporations in an attempt to fraudulently evade the reporting and payment of federal income taxes, and to thwart the Internal Revenue Service's (IRS) ability to collect their customers' unpaid federal tax liabilities.

5. Sham nonprofit corporations are entities created for purportedly religious and/or humanitarian reasons, but are instead, used to improperly shield income and assets from taxation. Taxpayers transfer their assets and income to these entities but retain control over those assets and income, while claiming that they are exempt from taxation.

6. Through American Family Enterprise, Inc., the defendants operate as a one stop shop to establish and perpetuate sham nonprofit corporations in Oregon. For an initial fee labeled as a "gift," the defendants prepare the necessary paperwork to incorporate these sham nonprofit

corporations in Oregon, to open bank accounts, and to apply for federal employer identification numbers.

7. One of the individual defendants, other associates, or World Community Co-Op, Inc. will serve as the registered agent in Oregon for the newly formed sham nonprofit corporations.

8. In return for an annual “gift,” the defendants will complete and file the necessary paperwork with the State of Oregon to perpetuate the sham nonprofit corporations.

9. The defendants promote that they will not use their customers’ names in the formation of the corporation with the State of Oregon or with the IRS.

10. The defendants promote that American Family Enterprise, Inc. will establish a “perpetual nonprofit, non-taxable corporation” in Oregon for its customers but then state that the entity will not have a tax-exempt designation pursuant to I.R.C. § 501(c)(3).

11. Ordinarily, nonprofit corporations must independently qualify for tax-exempt status and seek such recognition from the IRS. I.R.C. § 508(a); *but see* I.R.C. § 508(c)(1) (exceptions for churches and organizations which are not private foundations and whose gross receipts are not normally more than \$5,000 per year).

12. The defendants falsely advise their customers that they do not have to file federal tax returns or report income from businesses placed into the sham nonprofit corporations because the sham nonprofit corporations are exempt from taxation.

13. The defendants falsely tell their customers that they can deed their property to the sham nonprofit corporation to protect it from lawsuits and the IRS.

14. The defendants falsely tell their customers that they can transfer their assets to the sham nonprofit corporation to separate themselves from ownership but still retain control over

how to manage those assets.

15. Even if the defendants' customers are not required to seek IRS recognition, no nonprofit corporation, including churches, are tax exempt if net earnings inure to an individual's personal benefit. I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1(c)(2); *Church of Scientology v. Commissioner*, 823 F.3d 1310, 1316 (9th Cir. 1987).

16. The defendants falsely tell their customers that owners of the sham nonprofit corporations can escape federal tax reporting and record keeping requirements. The defendants falsely tell their customers that the sham nonprofit corporations are outside the jurisdiction of the IRS by virtue of the United States Constitution.

17. Nonprofit corporations, including religious and humanitarian organizations, are within the purview of the IRS and can face inquiry if their activities violate the internal revenue laws. I.R.C. § 501 *et. seq.* (defining tax exempt organizations), I.R.C. § 7611 (establishing procedures for church tax inquiries).

18. Despite notice that the IRS is investigating them, the defendants have promoted sham nonprofit corporations through American Family Enterprise, Inc. for the past fourteen years and continue to do so.

19. As recently as January 2007, the defendants employed a website to promote sham nonprofit corporations. The defendants direct visitors to the website who purchase products or apply for membership to send money orders to "AFE, Inc." at the registered address in Oregon for American Family Enterprise, Inc.

20. The defendants distribute promotional fliers for American Family Enterprise, Inc. and encourage promotion of the program through word of mouth and customer referrals.

21. The government is harmed as a result of this promotion because the defendants' customers fail to file proper income tax returns and pay taxes on income earned resulting in lost revenue to the government. In addition, the IRS incurs expense to conduct investigations and audits of the defendants' customers.

22. Because the defendants falsely advise their clients that corporate records need not be retained, the IRS faces further difficulties in conducting investigations.

23. The defendants' customers have been harmed by the promotion because they have paid significant sums to American Family Enterprise, Inc. to establish worthless legal entities and have been given erroneous tax advice that has led them to fail to file required income tax returns and to understate their tax liabilities.

CONCLUSIONS OF LAW

Rule 55 of the Federal Rules of Civil Procedure provides that where a party fails to plead or otherwise defend against a complaint, and after entry of default, default judgment may be entered against such a party. Where an entry of default has been entered, as it has here, the defendants are barred from contesting the truth of the facts alleged in the complaint, except allegations as to the amount of damages, as those alleged facts are deemed admitted. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Here, the United States seeks only the injunctive relief sought in the complaint.

The United States need only meet the criteria set forth in I.R.C. §§ 7402(a) and 7408 to merit injunctive relief without further meeting the traditional equitable factors for an injunction. *See United States v. Estate Pres. Servs.*, 202 F.3d 1093, 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”). Nonetheless, the requirements for the issuance of a permanent injunction are also met here. *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1107 (9th Cir. 2003); *United States v. Harkins*, 355 F. Supp. 2d 1175, 1181 (D. Or. 2004).

Based on the allegations pled in the complaint, the defendants are engaging in conduct subject to penalty under I.R.C. § 6700. The defendants sell an entity – sham nonprofit corporations – and in so doing, make numerous false and fraudulent statements as to the tax benefits of those entities. The defendants know or should know that their statements are false and fraudulent as the IRS has published a number of warnings that sham nonprofit entities are not a means to escape taxation. *See* I.R.S. News Release IR-2008-41 (Mar. 13, 2008) (IRS’s annual notice of popular tax schemes, noting that taxpayers continue to abuse purportedly nonprofit organizations to improperly shield income and assets from taxation); I.R.S. News Release IR-2007-37 (Feb. 20, 2007) (same); I.R.S. News Release IR-2006-25 (Feb. 7, 2006) (same). Moreover, the IRS informed the defendants that they were under investigation for peddling this scheme. The defendants’ false and fraudulent statements concern material tax matters. Thus, the defendants’ conduct is subject to penalty under I.R.C. § 6700. Accordingly, the Court finds that the defendants should be permanently enjoined under I.R.C. § 7408.

The Court further finds that the defendants are engaging in conduct subject to injunction under I.R.C. § 7402 and that the United States will suffer irreparable harm in the absence of an injunction. The public interest will be served through granting an injunction. Moreover, absent an injunction, the defendants will likely continue to violate I.R.C. § 6700 and to interfere with the enforcement and administration of the internal revenue laws. Accordingly, the Court finds

that an injunction under I.R.C. § 7402 is necessary and appropriate for the enforcement of the internal revenue laws.

ORDER

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

A. That pursuant to I.R.C. §§ 7402(a) and 7408, defendants John D. Fitzgerald, Noreen McCausland, Marilyn Dial, Martha Farr Sharp, Karen Gray, American Family Enterprise, Inc. and World Community Co-Op, Inc., and anyone acting in concert with them, are

PERMANENTLY ENJOINED, directly or indirectly, by use of any means or instrumentalities:

- (1) Organizing, promoting, marketing, or selling any plan or arrangement, including their nonprofit corporation program, that assists or advises customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (2) Engaging in conduct subject to penalty under I.R.C. § 6700, i.e., by making or furnishing, in connection with the organization or sale of a plan or arrangement, a statement about the securing of any tax benefit that the defendants know or have reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (3) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
- (4) Engaging in any activity subject to penalty under the Internal Revenue Code.

B. Pursuant to I.R.C. § 7402(a), that defendants within twenty days of entry of this

injunction serve upon plaintiff's counsel a complete list identifying (with names, mailing and e-mail addresses, phone numbers and social security and any other tax-identification numbers) all persons who have purchased an American Family Enterprise program, including its nonprofit corporation program, and to file with the Court a certification that they have done so;

C. Pursuant to I.R.C. § 7402(a), that defendants resign as the registered agents of any corporation purchased through American Family Enterprise, Inc., and to file with the Court within 20 days of the date this permanent injunction is entered, a certification that they have done so;


D. Pursuant to I.R.C. § 7402(a), that defendants contact by mail at their own expense, all individuals who have previously purchased an American Family Enterprise program, including its nonprofit corporation program, or any other tax plan or program in which the defendants have been involved either individually or through any business entity, and inform those individuals of the Court's findings concerning the falsity of the defendants' prior representations, the defendants' resignation as the registered agent for their customers' corporation, and attach a copy of this permanent injunction against the defendants, and to file with the Court, within 20 days of the date this permanent injunction is entered, a certification that they have done so; and

E. Pursuant to I.R.C. § 7402(a), that defendants remove from their websites and all other websites over which they have control, all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to incite others imminently to violate the internal revenue laws, and they shall display prominently on the first page of their websites (including all websites over which they have control) a complete copy of this permanent injunction for 1 year and to file with the Court, within 20 days of the date this

permanent injunction is entered, a certification that they have done so.

F. The United States shall be permitted to engage in post-injunction discovery to monitor defendants' compliance with this and any other order entered by this Court.

SO ORDERED this 10th of April 2008.



MICHAEL W. MOSMAN
UNITED STATES DISTRICT JUDGE

Presented by:

Dated: April 9, 2008

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