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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 03:06-cv-5383-JSW
)	
v.)	
)	<u>ORDER</u>
WILLIAM J. KENNEDY, individually and)	
d/b/a AMERICAN LEGAL SERVICES and the)	
EAR OF MALCHUS,)	
)	
Defendant.)	
_____)	

PRELIMINARY 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 preliminary injunction.

Standards for Preliminary Injunction

In order to obtain a preliminary injunction pursuant to 26 U.S.C. (Internal Revenue Code, I.R.C.) § 7408, the United States must show that (1) defendant engaged in conduct subject to penalty under § 6700; and (2) injunctive relief is appropriate to prevent the recurrence of such conduct.

In order to obtain a preliminary injunction pursuant to I.R.C. § 7402, the United States

1 must show that the following four factors weigh in favor of granting a preliminary injunction
2 against defendant: (1) there is a likelihood of irreparable injury to the United States as a result of
3 the conduct complained of; (2) there is a likelihood of little or no harm to defendant if the
4 temporary injunctive relief is granted; (3) there is a likelihood that the United States will prevail
5 on the merits; and (4) an injunction will serve the public interest.

The following factual findings are not meant to be binding, but rather represent those facts this Court finds probable that the parties can prove at trial. See *Sierra On-Line, Inc. v.*

Findings of Fact

6
7 Based on the evidence submitted, the Court finds as follows: *Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir 1984)

- 8 (1) Defendant William J. Kennedy, individually and through his associated entities
9 the Ear of Malchus and American Legal Services, markets a program or
10 arrangement known as a "corporation sole" as a mechanism to help participants
11 evade reporting and paying federal income taxes, as well to conceal assets and
12 thereby evade estate taxes and IRS collection efforts. He charges customers
13 \$25,000 to purchase his corporation-sole program.
- 14 (2) Kennedy markets the corporation sole program through word of mouth, in
15 personal meetings with customers, and on his website.
- 16 (3) Kennedy falsely tells customers that his corporations sole provide significant tax
17 advantages and can eliminate or reduce customers' federal tax liabilities. He
18 advises customers that they can treat their corporations sole as a purported church
19 with no tax-filing or tax-paying requirement, and yet can control and use the
20 assets and income of the corporation sole for their own personal benefit.
- 21 (4) Kennedy falsely advises participants that corporations sole that are used for the
22 participants' personal benefit are tax-exempt, do not need to file tax returns of any
23 kind, and do not need to keep records.
- 24 (5) Kennedy falsely advertises that customers who have a corporation sole can assign
25 their income to the entity and thereby transform taxable individual income into
26 nontaxable income of the corporation sole. He also falsely advertises that his
27 corporation sole scheme can legally eliminate his customers' debts.
- 28 (6) Kennedy falsely states that a corporation sole can be engaged in any occupation,
business or profession, and that all earnings therefrom are tax-exempt, and that no
tax return need be filed.
- (7) Kennedy falsely instructs customers that his corporations sole do not have to
qualify under I.R.C. § 501(c)(3) in order to enjoy tax-exempt status.
- (8) The effect of Kennedy's corporation-sole promotion is that participants live in the
same residence and operate the same business as they did before joining the
program. Under Kennedy's program, participants' living expenses are paid from
the participants' earnings—just as before the corporation sole was created.
Participants receive the full benefit of, and have full control over, all corporation-

1 sole funds. The only substantive change in the participants' regular business and
2 lifestyle activities is the purported benefit of no taxation.

3 (9) The corporations sole that Kennedy markets are operated for the benefit of the
4 owner, are devoid of economic substance and are shams for federal tax purposes.
The program constitutes an improper assignment of income and a fraudulent
5 transfer of assets.

6 (10) Kennedy knew or should have known that his representations regarding the
7 corporation sole program, and the tax benefits to be derived from participation in
8 his scheme are false because: (1) the corporation sole program is frivolous on its
9 face, (2) there are numerous judicial decisions rejecting the corporation sole
10 scheme and enjoining promoters of this program, (3) the IRS has issued numerous
11 public documents explaining the invalidity of the corporation sole program,
12 (4) Kennedy was a customer of Joseph O. Saladino who was enjoined from
13 promoting the corporation sole program in 2005, (5) one of Kennedy's customers
14 filed a complaint against him alleging that his corporation sole program was
15 fraudulent, and (6) Kennedy holds himself out as an expert in tax law.

16 (11) Kennedy interferes with the administration of the internal revenue laws by
17 attempting to block IRS examination and collection efforts by instructing
18 customers to assign assets to their corporations sole and telling them that they can
19 ignore requests for information from the IRS.

20 (12) Kennedy has continued to promote his corporation sole tax-fraud scheme even
21 after learning that he was under IRS investigation.

22 (13) Absent this preliminary injunction, Kennedy will continue to promote the
23 corporation sole tax-fraud scheme.

24 (14) If this injunction is not granted, the United States will suffer irreparable harm
25 because Kennedy advises his customers to not file returns, to file returns falsely
26 claiming no income, and to hide their income from the IRS in corporations sole.
27 Further, considerable government resources are spent reviewing and dealing with
28 the tax returns filed by Kennedy's customers. This injunction will prevent the
expenditure of some of those resources.

(15) This injunction is tailored to prevent Kennedy, and his associated entities from
causing further injury and from further violating the law. Thus, the threatened
injury to the United States outweighs any injury an injunction might cause to
defendant.

(16) The public is served by granting this injunction. This preliminary injunction will
help stem the spread of and protect the public from defendant's frivolous
arguments and fraudulent tax schemes.

To the extent that any of the factual findings above can also be construed as legal
conclusions, the factual findings shall also serve as conclusions of law.

1 **Conclusions of Law**

2 Based on the evidence presented by the United States, the Court finds that William J.
3 Kennedy, conducting business through the Ear of Malchus and American Legal Services are in
4 violation of I.R.C. § 6700. Accordingly, the Court finds that Kennedy and his associated entities
5 should be preliminarily enjoined under I.R.C. § 7408.

6 The Court finds that the United States has presented persuasive evidence that the United
7 States and the public will suffer irreparable harm in the absence of this preliminary injunction
8 and that Kennedy and his associated entities will suffer little, if any, harm if the preliminary
9 injunction is granted. The United States also has presented evidence and argument sufficient to
10 convince the Court that the United States has a high likelihood of success on the merits and that
11 Kennedy’s position is without merit. Further, the United States has presented credible evidence
12 and argument that shows the public interest will be served through granting this preliminary
13 injunction. Finally, the evidence presented shows that absent this injunction, Kennedy will
14 continue to violate 26 U.S.C. § 6700. Accordingly, the Court finds that Kennedy should also be
15 preliminarily enjoined under I.R.C. § 7402.

16 **Order**

17 Based on the foregoing factual findings and for good cause shown, the Court ORDERS
18 that defendant William J. Kennedy, d/b/a the Ear of Malchus and American Legal Services, and
19 his agents, servants, employees, attorneys, and those persons in active concert or participation
20 with him who receive actual notice of this Order are enjoined from:

- 21 (a) Organizing, promoting, marketing, or selling any plan or arrangement, including
22 his corporation sole program, that advises or assists taxpayers to attempt to
23 violate the internal revenue laws or unlawfully evade the assessment or collection
24 of their federal tax liabilities;
- 25 (b) Making false statements about the allowability of any deduction or credit, the
26 excludability of any income, or the securing of any tax benefit by the reason of
27 participating in any plan or arrangement, including the false statement that a
28 corporation sole can reduce or eliminate one’s federal income tax liabilities;
Engaging in conduct subject to penalty under Code § 6700, *i.e.*, by making or
furnishing, in connection with the organization or sale of a plan or arrangement, a

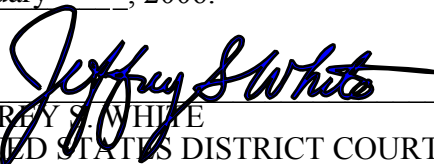
1 statement Kennedy knows or has reason to know to be false or fraudulent as to
2 any material matter under the federal tax laws; and

3 (c) Engaging in any other conduct that interferes with the administration or
4 enforcement of the internal revenue laws.

5 Further, the Court ORDERS that Kennedy, and his associated entities, provide a copy of
6 this preliminary injunction to all of his customers, by First Class Mail within ten days of the date
7 of this Order. Kennedy will bear the costs of providing the copy of the preliminary injunction to
8 his customers. Kennedy must file a sworn certificate of compliance, swearing that he has
9 complied with this portion of the Order, within ten days of the date of this Order.

10 Finally, the Court ORDERS the defendant and his representatives, agents, servants,
11 employees, attorneys, and those persons in active concert or participation with him: (1) to
12 remove from his website all abusive-tax-scheme promotional materials, false commercial
13 speech, and materials designed to incite others imminently to violate the law (including tax
14 laws); (2) to display prominently on the first page of his website a complete copy of this
15 Preliminary Injunction Order (in at least a 12-point font size) within 10 days of the date of this
16 Order; and (3) to maintain the purged website, with the Preliminary Injunction Order
17 prominently displayed, until such time as this Court orders otherwise. Defendant shall bear all
18 expenses associated with posting the Court's order and maintaining his website during this
19 period. Kennedy must file a sworn certificate of compliance swearing that he has complied with
20 this portion of the order, within ten days of the date of this Order.

21 SO ORDERED this 2nd day of February, ²⁰⁰⁷~~2006~~.

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23 _____
24 JEFFREY S. WHITE
25 UNITED STATES DISTRICT COURT JUDGE
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