

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

10
CLOSED

FILED

UNITED STATES)
)
Plaintiff,)
)
v.)
)
RICHARD HARAKA, a/k/a)
RICK BRYAN, d/b/a TAXGATE,)
)
Defendant.)

MAR 28 2003

Civil No. 02-5340 (JAP) AT 0:30 M
WILLIAM T. WALSH, CLERK

ENTERED
ON
THE DOCKET

MAR 31 2003

ORDER OF PERMANENT INJUNCTION

WILLIAM T. WALSH, CLERK
By *Sh* (Deputy Clerk)

Plaintiff, the United States, has filed a Complaint for Permanent Injunction against the defendant, Richard Haraka, a/k/a Rick Bryan d/b/a Taxgate. Haraka does not admit the allegations of the complaint, except that he admits that the Court has jurisdiction over him and over the subject matter of this action. By his Consent, which has been previously filed, Haraka waives the entry of findings of fact and conclusions of law, and consents to the entry of this Permanent Injunction.

A. The Court has jurisdiction over this action under 28 U.S.C. Sections 1340 and 1345, and under 26 U.S.C. Sections 7402 and 7408.

B. The Court finds that Haraka has neither admitted nor denied the United States' allegations that Haraka is subject to penalty under 26 U.S.C. Sections 6700 and 6701.

C. It is hereby ORDERED that Richard Haraka, a/k/a Rick Bryan d/b/a Taxgate, and, in addition, his associates, senior members, purported "tax experts," representatives and other affiliates, and all others in active concert or participation with him who receive actual notice of

this Order, are permanently restrained and enjoined from directly or indirectly:

1. Organizing, promoting, marketing, or selling (or assisting therein) any tax shelter, plan, or arrangement known as the "Section 861 argument" or any other abusive tax shelter, plan, or arrangement that advises or encourages taxpayers to attempt to evade the assessment or collection of their correct federal taxes;
2. 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, any statement they know or have reason to know is false or fraudulent as to any material matter;
3. Engaging in any conduct subject to penalty under IRC § 6701, *i.e.*, assisting others in the preparation of any tax returns, forms or any 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. Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by the reason of participating in such tax plans or arrangements;
5. Instructing or advising taxpayers to understate their federal tax liabilities; and
6. Engaging in any conduct that unlawfully interferes with the administration and enforcement of the internal revenue laws, including, but not limited to, any unlawful interference with the assessment and collection of federal taxes.

D. It is further ORDERED that Haraka shall contact by electronic mail, within 10 days

days of the date of this Order, at Haraka's expense:

1. all persons to whom he gave, sold, or distributed, or caused any other person to give, sell or distribute, any materials espousing or relating to the Section 861 argument, "third-party contracting" arrangements, or similar shelters, plans, or arrangements;
2. all persons for whom Haraka prepared or assisted in preparing any federal or state income tax returns or tax-related documents; and
3. all persons who contacted Haraka or Taxgate regarding the schemes marketed through the Taxgate website (in correspondence, verbally (including but not limited to telephonically), or through electronic means);

and shall provide each of those persons with a copy of this permanent injunction.

E. It is further **ORDERED** that Haraka shall immediately, upon entry of this order, use best efforts to determine the mailing addresses and telephone numbers for all of the following:

1. all persons to whom he gave, sold, or distributed, or caused any other person to give, sell or distribute, any materials espousing or relating to the Section 861 argument, "third-party contracting" arrangements, or similar shelters, plans or arrangements;
2. all persons for whom Haraka prepared or assisted in preparing any federal or state income tax returns or tax-related documents; and
3. all persons who contacted Haraka or Taxgate regarding the schemes marketed through the Taxgate website (in correspondence, verbally (including but not

limited to telephonically), or through electronic means).

Haraka shall then mail to the United States by first class mail and via electronic mail within 30 days of the date of this order all information in his possession evidencing the mailing, e-mail addresses and telephone numbers of any of the persons described in this paragraph 'D.'

F. It is further **ORDERED** that Haraka shall contact, in writing by email and first class mail, within 120 days of the date of this Order, at Haraka's expense, all persons who sold, marketed or assisted in the sale of marketing of the Section 861 Argument, "third-party contracting" arrangements, or any other similar plan, arrangement, or scheme on behalf of Taxgate and provide those persons with a copy of the Court's order of permanent injunction.

G. It is further **ORDERED** that Haraka shall file a declaration under penalty of perjury stating that he has complied with the requirements set forth under paragraphs 'D,' 'E' and 'F' above, and including a list of all persons to whom Haraka has sent the required Order and memorandum. Haraka shall file this declaration within 31 days of the date of this Order.

H. It is further **ORDERED** that Haraka shall post this Court's Order of Permanent Injunction beginning at the top of the Taxgate website home page (www.taxgate.com) in 12-point type or larger within 10 days of the date of this Order, for a period of not less than one year. Haraka shall bear all expenses associated with posting the Court's order and maintaining the website during that period.

I. It is further **ORDERED** that Haraka shall, within 15 days of the date of this Order, produce to counsel for the United States Department of Justice, all records in his possession, custody, or control or to which he has access that identify:

(1) the persons to whom he or any of his associates, senior members, purported "tax

experts,” representatives or other affiliates gave or sold or otherwise provided, directly or indirectly, any materials related to the Section 861 Argument, “third-party contracting” arrangements, and any other similar plan, arrangement, or scheme;

(2) any persons to whom he or any of his associates, senior members, purported “tax experts,” representatives or other affiliates provided materials which may have been used to hinder or delay the assessment or collection of taxes;

(3) all persons who assisted in preparing or selling materials sent to Taxgate clients or potential clients;

(4) all individuals or entities for whom Haraka or his associates, senior members, purported “tax experts,” representatives or other affiliates prepared or assisted in preparing any tax-related documents, including without limitation, claims for refund or tax returns,

(5) all persons who purchased or used any other tax shelter, plan, or arrangement in which Haraka has been involved;

(6) all persons who at any time have held themselves out as Taxgate “senior members,” “associates” or “tax experts”; and

(7) all persons who sold, marketed or assisted in selling or marketing the Section 861 argument, or any other similar plan, arrangement or scheme in collaboration with or in connection with any affiliation with Taxgate.

J. It is further ORDERED that Haraka shall submit to a deposition upon oral examination, so that the United States can inquire regarding the nature and extent of Taxgate's schemes, the identity and location of all persons who at any time have organized or assisted in the organization of Taxgate, the identity and location of all persons who at any time have sold or assisted in the sale of any interest in any of Taxgate's shelters, plans and arrangements, the identity and location of all persons who at any time have prepared or assisted in the preparation of documents calculated to understate federal tax liabilities, the identity and location of all persons who at any time have assisted other persons who have used baseless arguments and materials to hinder or delay the assessment and collection of federal taxes, the identity and location of all persons who at any time have employed any of Taxgate's shelters, plans and arrangements, the identity and location of all persons who at any time have been Taxgate members, associates, senior members, representatives, agents or other affiliates, the identity and location of all persons who at any time have used Taxgate materials (including documents) which understate such persons' federal tax liabilities, and the identity and location of all persons who at any time have employed any of Taxgate's arguments and materials which may hinder or delay the assessment and collection of federal taxes. In so stating, however, Haraka may raise the Fifth Amendment's privilege against self-incrimination in response to the Government's questions without violating this order. If necessary, the Court will determine whether Haraka is permitted to avail himself of the privilege after a record has been made in deposition.

K. It is further ORDERED that the United States may, without further order of this Court, conduct discovery under the Federal Rules of Civil Procedure to monitor compliance with this injunction.

L. Further, the Court ORDERS that Haraka, and, in addition, his associates, senior members, purported "tax experts," representatives or other affiliates, and any other persons in active concert or participation with Haraka who receive actual notice of this Order, are enjoined from destroying, hiding, dissipating, or altering any documents, including electronic records, that relate in any way to this lawsuit, Taxgate, and/or Taxgate or Haraka's clients.

M. This Court shall retain jurisdiction over this action for the purpose of implementing and enforcing this Permanent Injunction.

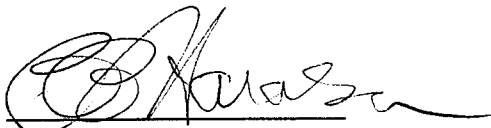
J The case is closed.

Approved by:

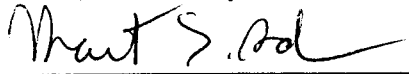
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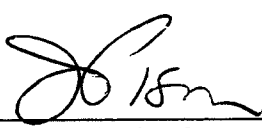
Richard Haraka
338 Grove Street
Clifton, New Jersey



Martin S. Goldman, Esq.
Harkavy, Goldman, Goldman & Caprio
1140 Bloomfield Avenue, Suite 106
West Caldwell, NJ 07006-7126

It is so ORDERED.

Dated: 3/27/03



United States District Court Judge