

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CIVIL NO. 05-00555 HG-KSC
)
Plaintiff,)
)
v.) Stipulated Final Judgment
)
JAMES SCOTT SPARKMAN,)
individually and doing)
business as "MERCURY SOLAR")
and "HAWAII ENVIRONMENTAL)
HOLDINGS"; and THE POWER)
CHANGE COMPANY, LLC,)
)
Defendants.)

STIPULATED FINAL JUDGMENT OF PERMANENT INJUNCTION

Plaintiff, the United States of America, has filed a Complaint for Permanent Injunction and Other Relief in this matter against Defendants James Scott Sparkman (individually and doing business as Mercury Solar and Hawaii Environmental Holdings) and The Power Change Company, LLC. The Complaint alleges that Defendants have promoted abusive tax shelters, have aided in the understatement of tax liability, and have interfered with the enforcement of the internal revenue laws. The Defendants deny all of the allegations in the Complaint. The parties have agreed to settle this case in accordance with the terms of this Stipulated Final Judgment.

Defendants admit that this Court has jurisdiction over them and over the subject matter of this action.

Defendants consent to the entry, without further notice, of

this Stipulated Final Judgment of Permanent Injunction.

Defendants waive the entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure and 26 U.S.C. § 7408.

Defendants waive any right they may have to appeal from the Stipulated Final Judgment of Permanent Injunction.

Defendants state that they enter into this Stipulated Final Judgment of Permanent Injunction voluntarily.

Defendants agree that this Court shall retain jurisdiction over them for the purpose of implementing and enforcing the Stipulated Final Judgment.

Defendants acknowledge that entry of this Stipulated Final Judgment neither precludes the Internal Revenue Service from assessing taxes, interest, or penalties against them for asserted violations of the Internal Revenue Code, nor precludes Defendants from contesting such taxes, interest, or penalties.

NOW, THEREFORE, it is accordingly, ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over this action pursuant to §§ 1340 and 1345 of Title 28 of the United States Code, and §§ 7402 and 7408 of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code").

2. Defendants, individually and doing business as any entity, and any officers, agents, servants, employees, and

persons in active concert or participation with them who receive actual notice of this order are permanently enjoined from

(a) marketing or selling any type of trust or interest in a trust.

(b) selling or organizing any corporation, limited liability company, business entity, or other plan or arrangement which advocates or facilitates non-compliance with the federal tax laws.

(c) advising, counseling, or instructing any person that energy tax credits under I.R.C. § 48 and/or depreciation deductions or expenses under I.R.C. § 167 and/or § 179 can be used on a federal individual tax return to offset active income.

(d) advising, counseling, assisting, or instructing anyone in connection with the preparation of a federal tax return, or making any representations concerning the availability or amount of any federal tax credits, expenses, or deductions in conjunction with the sale, lease, or rental of solar equipment, services, energy, or products. Notwithstanding this paragraph [2d], Defendants may engage in the conduct described in paragraphs 6a through 6c of this Final Judgment. Additionally, nothing in this paragraph bars Defendants from issuing accurate Forms W-2, 1099, or K-1 where required by law and in compliance with the Internal Revenue Code and Regulations.

(e) engaging in an activity subject to penalty under

I.R.C. § 6700, including organizing or selling a plan or other arrangement and in connection therewith making or furnishing a statement with respect to the allowability of any deduction or credit or the securing of any other tax benefit which Defendants know or have reason to know is false or fraudulent as to any material matter.

(f) engaging in an activity subject to penalty under I.R.C. § 6701, including aiding, assisting, or advising with respect to the preparation of any portion of a return or other document knowing that such document would, if used, result in an understatement of the liability for tax of another person.

(g) engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701 or any other penalty provision of the Internal Revenue Code.

(h) engaging in any other conduct that substantially interferes with the enforcement of the internal revenue laws.

3. Defendants shall contact by mail all persons described in paragraph 16 of the Complaint to whom they (Sparkman, The Power Change Company, LLC, Hawaii Environmental Solar, and/or Mercury Solar) have sold solar energy systems and send those persons a copy of this Stipulated Final Judgment of Permanent Injunction, and certify to the Court within thirty days of entry of this Order that they have complied with this provision.

4. Defendants shall provide to counsel for the United

States a list of everyone described in paragraph 16 of the Complaint to whom they (Sparkman, The Power Change Company, LLC, Hawaii Environmental Solar, and/or Mercury Solar) have sold solar energy systems, and certify to the Court within thirty days of entry of this Order that they have complied with this provision. This list shall include each person's name, address, telephone number, and the year(s) in which the systems were sold to each such person. Additionally, the list shall include all e-mail addresses and social security numbers known by Defendants.

5. The United States is permitted to engage in post-judgment discovery to monitor compliance with this permanent injunction.

6. Defendants may do the following:

a. inform customers who purchase qualified photovoltaic property, qualified fuel cell property, or qualified solar water heating property for the customers' own residential use about the existence of a federal residential energy efficient property credit. Additionally, defendants may mention the existence and potential amount of the residential energy efficient property credit in their marketing and sales presentations, and may distribute any unaltered, non-obsolete IRS publications regarding the credit. This credit is currently codified in § 25D of the Internal Revenue Code. Defendants' information, marketing, and sales presentations regarding the federal residential energy

efficient property credit must be accurate descriptions of the current state of the law. Thus, should Congress alter, repeal, or not renew the credit, Defendants are responsible for providing this current information.

b. inform business customers (but not "Participants" as described in paragraphs 16 and 17 of the Complaint) who purchase solar energy equipment for use by the business on the business's own property about the federal energy credit in § 48 of the Internal Revenue Code and about the possible business expense or depreciation deduction in § 167 or § 179 of the Internal Revenue Code. Additionally, defendants may mention the existence and potential amount of the federal energy credit and depreciation expense or deduction in their marketing and sales presentations, and may distribute any unaltered, non-obsolete IRS publications regarding §§ 48, 167 or 179. Defendants' information, marketing, and sales presentations regarding the federal tax consequences of a business's purchase (for use by the business on the business's own property) of solar energy equipment must be accurate descriptions of the current state of the law. Thus, should Congress alter, repeal, or not renew the credit/depreciation/expense, Defendants are responsible for providing this current information.

c. inform any customer who purchases solar energy products to consult a tax professional about the federal tax consequences

of their purchase. Defendants, however, shall not refer a customer, directly or indirectly, to any particular professional tax advisor for purposes of consultation or instruction on these matters. Furthermore, Defendants shall not contact, directly or indirectly, a professional tax advisor to have them communicate with a customer to discuss these matters.

7. This Court shall retain jurisdiction of this action for the purpose of implementing and enforcing this Stipulated Final Judgment and all additional decrees and orders necessary and appropriate for the public interest.

SO ORDERED this 30th day of October, 2006.



/s/ Helen Gillmor
Chief United States District Judge

Civil No. 05-00555 HG-KSC; United States v. Sparkman, et al.
STIPULATED FINAL JUDGMENT

Consented to by:

Dated: 9/25/06

/s/ Paul J. Sulla

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Dated: 10/23/06

/s/ James Scott Sparkman

James Scott Sparkman

Dated: 10/26/06

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