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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
PRESCOTT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELIZABETH A. GARDNER and  
FREDRIC A. GARDNER, each  
individually and d/b/a BETHEL  
ARAM MINISTRIES,

Defendants.

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Case No. CV05-3073-PCT-EHC

**ORDER OF  
PERMANENT INJUNCTION**

The United States seeks a permanent injunction against the defendants, Elizabeth A. Gardner and Fredric A. Gardner, each individually and doing business as Bethel Aram Ministries or through any other entity, from promoting an alleged tax-fraud scheme, namely, their corporation sole program. Having reviewed the record in this case, including the parties’ motions for summary judgment and supporting papers, the Court makes the following findings of fact and conclusions of law and enters this permanent injunction against the defendants.<sup>1</sup>

**Findings of Fact**

Defendants Elizabeth A. Gardner and Fredric A. Gardner reside in Dewey, Arizona, and are married to each other. The Gardners market a program or arrangement involving the use of trusts, limited liability companies (“LLC”), and, primarily, an entity

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<sup>1</sup> To the extent any of the findings of fact is construed to be a conclusion of law, it is adopted as such. To the extent any of the conclusions of law is construed to be a finding of fact, it is adopted as such.

1 known as a “corporation sole.” The Gardners register the corporations sole and LLCs  
2 they establish with the State of Nevada.

3 The Gardners conduct their business and promote their programs through Bethel  
4 Aram Ministries. The Gardners are the founders of Bethel Aram Ministries and are its  
5 two pastors. They are two of the three persons on its Council of Elders. Bethel Aram’s  
6 third elder (David Bordon) has no role in the corporation sole/trust/LLC program. Half of  
7 Bethel’s income is derived from helping persons establish corporations sole.

8 Elizabeth’s own corporation sole is the overseer or administrator of Bethel Aram.  
9 Elizabeth has the final say on Bethel Aram’s affairs. When dealing with Bethel Aram  
10 Ministries, persons or customers communicate only with the Gardners. The Gardners’  
11 residence is titled under Bethel Aram Ministries, and Bethel pays all of the Gardners’  
12 personal bills. Bethel Aram and the Gardners also share phone numbers.

13 The Gardners’ website focuses on the purported differences between a 26 U.S.C. §  
14 501(c)(3) corporation and a corporation sole. Elizabeth gives educational speeches on the  
15 differences between them. The Gardners tell customers that the corporations sole they  
16 establish do not have to qualify under 26 U.S.C. § 501(C)(3) in order to enjoy tax-exempt  
17 status. The Gardners falsely state that a person can make donations to the person’s  
18 corporation sole and then deduct the donation on his or her federal income tax return.

19 The Gardners advise persons for whom they have established a corporation sole to  
20 title their homes under the corporation sole. The Gardners state that this offers property  
21 tax relief and provides protection from “probate systems, liens, creditors, and judgments.”

22 The Gardners advertise that a customer who has a corporation sole can assign his  
23 income to the entity and thereby transform taxable individual income into nontaxable  
24 income of the corporation sole. For instance, the Gardners advise persons who have a  
25 corporation sole and also earn income through independent businesses to form an LLC  
26 and operate the business through the LLC. The Gardners state that a trust should be  
27 created to serve as the “majority member” of the LLC, with the individual businessman  
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1 holding a minority interest although serving as the LLC's "managing member." They tell  
2 persons that the business income can then be passed through to the trust, which then can  
3 donate the income to the businessman's corporation sole. According to the Gardners, the  
4 funds are transferred tax free. This results in the businessman channeling business  
5 income into a purportedly tax-exempt corporation sole.

6 In an example given by Elizabeth at a public speaking event, Elizabeth states that  
7 if a businessman follows the advice given above and operates a business through an LLC,  
8 in which he has a 10% interest and a trust has a 90% interest, then whatever income is  
9 earned by the business will be distributed to the individual (10%) and to the trust (90%).  
10 Thus, if the business earns \$100,000 of business income, \$10,000 will go to the individual  
11 and \$90,000 to the trust. Elizabeth states that the individual can donate 50% (or \$5,000)  
12 of his share to his corporation sole and the trust can donate all of its share (\$90,000) to the  
13 corporation sole. The end result, according to Elizabeth in her presentation, is that the  
14 individual is only taxed on \$5,000 and the remaining income (\$95,000) is assigned to the  
15 corporation sole tax free.

16 Another version of this example is found in Elizabeth's book titled "Corporation  
17 Sole vs. 501(c)(3) Corporation." In this book, the Gardners contend "a benefit of the  
18 corporation sole is its ability to support the ministry with income earned outside the  
19 ministry by the corporation sole office and at the same time drastically reduce your  
20 income taxes."

21 In fact, however, it is not proper to "assign" income from an individual taxpayer to  
22 a corporation sole (or a trust) without first paying the federal taxes on the income. *See*  
23 *Pflueger v. Commissioner*, 840 F.2d 1379, 1381 (7th Cir. 1988). It is well-settled that a  
24 taxpayer must include compensation from personal services in his gross income even  
25 though by assignment the taxpayer has attempted to divert collection of that income to  
26 another. *Helvering v. Eubank*, 311 U.S. 122 (1940); *Lucas v. Earl*, 281 U.S. 111 (1930).  
27 This result is the same whether the assignment occurs before or after the income is  
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1 earned. An assignment of income by a taxpayer is plainly ineffective to shift his tax  
2 liability. *Lucas v. Earl*, 281 U.S. at 114-15; *United States v. Newell*, 239 F.3d 917,  
3 919-20 (7th Cir. 2001). The Gardners' statements that a person can assign his income to  
4 a corporation sole (through the use of an LLC and trust), even if it is established for a  
5 religious purpose, and not owe federal income tax on it are false and fraudulent.

6 In addition, a taxpayer cannot deduct "contributions" he makes to even a  
7 legitimate religious organization or other charity which that the taxpayer owns and  
8 controls. Code § 170(c)(2)(C); *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1101-  
9 1102 (9th Cir. 2000); Rev. Rul. 78-232, 1978-1 C.B. 69. The Gardners' assertions to the  
10 contrary (*i.e.*, that a person is entitled to a deduction for donations made to that person's  
11 corporation sole) are untrue and unsupported by the law. Likewise, a person cannot  
12 donate his income to a corporation sole and have the entity pay his personal expenses  
13 (*e.g.*, house maintenance) tax free.

14 The Gardners' promotional literature lists the following purported benefits of the  
15 corporation sole program:

- 16 • No tax return filing requirements of any kind.
- 17 • The government is unable to interfere in any way and the corporation sole is  
18 not subject to any government agency, including the IRS.
- 19 • The corporation sole has complete immunity from disclosure to the  
20 government.
- 21 • The corporation sole is only subject to the "private government" of those  
22 who create it.
- 23 • There are no withholding or self-employment taxes; and all workers are no  
24 longer classified as employees, but instead as ministers of the corporation  
25 sole.
- 26 • The corporations sole can do and operate as any individual can.

27 The Gardners tell customers that if the IRS makes inquiries "to notify them that  
28 you are a corporation sole. This will end their inquiry." The statements made by the  
Gardners with respect to the so-called tax benefits of a corporation sole are false.

1 As explained in an IRS Revenue Ruling, ordinarily, a “‘corporation sole’ is a  
2 corporate form authorized under certain state laws to enable bona fide religious leaders to  
3 hold property and conduct business for the benefit of a religious entity.” Rev. Rul. 2004-  
4 27, 2004-12 I.R.B. 625; Bryan A. Garner, *A Dictionary of Modern Usage Legal Usage*,  
5 225 (2d ed. 1995) (a corporation sole is a succession of persons holding an ecclesiastical  
6 or monarchical office). This helps ensure the continuation of ownership of the church’s  
7 property, though the property may be held in the name of the titular head. A corporation  
8 sole may own property and enter into contracts, but only for the purposes of the religious  
9 entity and not for the incorporator’s personal benefit. Rev. Rul. 2004-27, 2004-12 I.R.B.  
10 625. The Gardners’ statements to their customers twist the concept of what a true  
11 corporation sole is and the purpose it serves. A taxpayer cannot avoid federal income tax  
12 responsibilities by forming a corporation sole (or a trust or LLC) and nominally  
13 transferring his assets and assigning his income to that entity. A taxpayer conducting his  
14 financial affairs through the subterfuge of the corporation sole form does not free himself  
15 from his federal tax obligations.

16 Furthermore, the corporation sole is not meant to be used for passing property to a  
17 corporation sole founder’s heirs tax free. Property of the corporation sole is supposed to  
18 pass to the corporation sole’s successors to further benefit the religious entity. Rev. Rul.  
19 2004-27, 2004-12 I.R.B. 625. The Gardners realize this but circumvent this requirement  
20 by advising persons (the corporation sole founders or officeholders) to form a trust and  
21 have the corporation sole donate its property to the trust upon the founder’s death. The  
22 trust’s beneficiaries are the founder’s heirs. This gets around the corporation sole’s  
23 alleged purpose of ensuring continuity of ownership of property dedicated to the benefit  
24 of a religious organization.

25 Corporations sole are recognized under the laws of some states. For example,  
26 Nevada, where the Gardners register their corporations sole, recognizes the corporation  
27 sole as an entity which may be established “for acquiring, holding or disposing of church  
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1 or religious society property for the benefit of religion, for works of charity, and for  
2 public worship []." Nev. Rev. Stat. 84.010. Whatever its purpose under state law,  
3 however, the corporation sole does not receive special status under the federal tax laws  
4 unless the requirements of IRC § 501(c)(3) are met. There is no law that supports the  
5 notion that a corporation sole can be used to reduce or eliminate an individual's federal  
6 tax liability. *See* Rev. Rul. 2004-27.

7 The Gardners market their program through conferences, phone calls, booklets and  
8 on the Internet, including at their website [www.corpsole.org](http://www.corpsole.org). The Gardners' website was  
9 started by the Gardners about four years ago and is devoted to promoting their  
10 corporation sole program.

11 According to the defendants' website, Elizabeth Gardner is a certified paralegal  
12 specializing in contracts, business organizations, litigation and trial practice. She is the  
13 author of several books, including *Corporation Sole vs. 501(c)(3) Corporation* and *How*  
14 *to Protect Everything You Own in this Life and After*. Elizabeth says she has attended a  
15 Bible college and an Internet school. She claims she has obtained a doctorate in theology,  
16 and a degree from the Arizona Paralegal Institute.

17 Also according to their website, Fredric Gardner is a certified estate planner,  
18 financial planner and accountant. Other material states that Fredric has "special training  
19 in Business and Charitable Planning and will help you form your Canon Law Trust."  
20 Fredric attended Kent State University. The Gardners are experienced business persons  
21 in that they are the former owners and operators of a bookstore. They have the  
22 educational and business background to know that the statements they make in  
23 connection with the so-called tax benefits of their program are false.

24 Fredric has a role in the corporation sole program but mainly concentrates on the  
25 trust and LLC portion of the program. Elizabeth handles most of the corporation sole  
26 program.

1 Elizabeth claims to have learned about corporations sole and tax issues through  
2 self-study. She has authored a book on the differences between a § 501(c)(3) corporation  
3 and a corporation sole. Fredric learned about corporations sole while assisting Elizabeth  
4 in her “research.”

5 The suggested “donation” that the Gardners charge customers for a corporation  
6 sole is \$1,200. The suggested donation for a trust is \$800 and that for an LLC is \$500.  
7 The Gardners have organized or set up more than 300 corporations sole for individuals  
8 located throughout the United States. They have established about ten LLCs.

9 The IRS has notified the Gardners that it is investigating their program. Elizabeth  
10 is aware of the legal problems faced by other corporation sole promoters. Nonetheless,  
11 the Gardners’ program continues.

12 The corporation sole program has been identified in the IRS’s annual consumer  
13 alert of fraudulent tax schemes that taxpayers are urged to avoid. *See*  
14 <http://www.irs.gov/newsroom/article/0,,id=136337,00.html>. (The corporation sole scam  
15 has dropped off the more recent “dirty dozen” lists because the IRS has “noticed less  
16 activity in [this] scam[] over the past year following court cases against a number of  
17 promoters.” <http://www.irs.gov/newsroom/article/0,,id=154293,00.html>. *See also* “IRS  
18 Warns of ‘Corporation Sole’ Tax Scam,” IRS News Release, IR-2004-42 (Mar. 29,  
19 2004); Rev. Rul. 2004-29, 2004-1 C.B. 627, Rev. Rul. 2004-27, 2004-1 C.B. 625.)

### 20 **Conclusions of Law**

21 Section 7408 of the Internal Revenue Code (26 U.S.C.; the “Code”) authorizes a  
22 court to enjoin persons who have engaged in conduct subject to penalty under Code  
23 § 6700 from engaging in further such conduct or any other conduct subject to penalty  
24 under the Code if the Court finds that injunctive relief is appropriate to prevent recurrence  
25 of the conduct.

26 Code § 6700 imposes a penalty on any person who organizes or participates in the  
27 sale of a plan or arrangement and in connection therewith makes a statement with respect  
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1 to the allowability of any deduction or credit, the excludability of any income, or the  
2 securing of any tax benefit by participating in the plan or arrangement that the person  
3 knows or has reason to know is false or fraudulent as to any material matter.

4         Based on the evidence presented by the parties, the Court finds that the defendants  
5 are engaging in conduct in violation of Code § 6700. The defendants make material  
6 statements regarding the tax benefits of their program that they know or have reason to  
7 know are false or fraudulent. Injunctive relief is appropriate to prevent the recurrence of  
8 that conduct. The harm caused by the Gardners is grave. Their customers have been  
9 harmed by the program because they have paid defendants significant sums to establish  
10 legal entities that are worthless with regard to tax benefits. The United States is harmed  
11 because defendants' customers who follow their advice are not paying the correct amount  
12 of taxes to the United States Treasury. The public is harmed because the IRS is forced to  
13 devote its resources to identifying and attempting to recover revenue lost as a result of the  
14 defendants' program.

15         The extent of the defendants' participation in the abusive program is broad. The  
16 Gardners promote themselves as knowledgeable about the program. They are attempting  
17 to wrench tax statutes out of context to encourage a willful misreading of the law. The  
18 conduct is recurrent and they have never renounced the promised tax aspects of their  
19 program despite ample notice that they are wrong. Absent an injunction there is no  
20 indication that the Gardners will cease engaging in violations of the tax code.

21 Accordingly, the Court finds that the defendants should be permanently enjoined under  
22 Code § 7408.

23         Code § 7402(a) authorizes a court to issue injunctions as may be necessary or  
24 appropriate for the enforcement of the internal revenue laws. The Court further finds that  
25 the defendants have engaged in conduct that interferes with the enforcement of the  
26 internal revenue laws, and that injunctive relief against the defendants, and any business  
27 or entity through which they operate, and anyone acting in concert with them, is  
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1 appropriate to prevent the recurrence of that conduct pursuant to the Court's powers  
2 under Code § 7402(a).

3 Accordingly,

4 Based on the foregoing findings and for good cause shown,

5 **IT IS ORDERED granting** the United States' Motion for Summary Judgment  
6 (Dkt. 36) and **denying** Defendants' Motion for Summary Judgment (Dkt. 41).

7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:**

8 1. The defendants, Elizabeth A. Gardner and Fredric A. Gardner, individually and  
9 doing business as any entity, and their representatives, agents, servants, employees,  
10 attorneys, and those persons in active concert or participation with him, are permanently  
11 enjoined from, directly or indirectly:

- 12 (a) Organizing, promoting, marketing, or selling corporations sole or any tax  
13 shelter, plan or arrangement, that advises, assists, or encourages taxpayers  
14 to attempt to violate the internal revenue laws or unlawfully evade the  
15 assessment or collection of their federal tax liabilities;
- 16 (b) Making false or fraudulent statements about the allowability of any  
17 deduction or credit, the excludability of any income, or the securing of any  
18 tax benefit by the reason of participating in such tax shelters, plans or  
19 arrangements;
- 20 (c) Encouraging, instructing, advising or assisting others to violate the tax laws,  
21 including to evade the payment of taxes; and
- 22 (d) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, *i.e.*, by  
23 making or furnishing, in connection with the organization or sale of a  
24 shelter, plan, or arrangement, a statement the defendants know or have  
25 reason to know to be false or fraudulent as to any material matter under the  
26 federal tax laws.

27 2. The defendants, at their own expense, are to take the following action and file  
28 with the Court a certificate of compliance stating that they have done so within 20 days of  
entry of this injunction order:

- (a) Serve on the United States a 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 their programs,  
including their corporation sole program;
- (b) Provide a copy of this injunction order to each individual who has  
purchased their programs, including their corporation sole program;

1 (c) Remove from their websites, including [www.corpsole.org](http://www.corpsole.org), all false  
2 commercial speech and materials designed to incite others to imminently  
3 violate the law, to display prominently at the top of the first page of those  
4 websites a complete copy of this injunction order, and to maintain the  
5 websites for one year with a complete copy of the injunction order so  
6 displayed throughout that time;

7 3. The United States shall be permitted to engage in post-judgment discovery to  
8 monitor compliance with this injunction order.

9 4. The Court shall retain jurisdiction over this action for purposes of implementing  
10 and enforcing this Final Judgment.

11 DATED this 21<sup>st</sup> day of March, 2008.

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14 Earl H. Carroll  
15 United States District Judge  
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