

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

Civil No.)

JOHN-HOWARD (“ALEX”))
ALEXANDER, a/k/a HOWARD)
IRA SMALL, individually and d/b/a)
the AWARE GROUP, FREEDOM TRUST)
GROUP, and INTERNATIONAL)
BUSINESS SYSTEMS,)
)
)
Defendant.)

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Nature of Action

1. This is a civil action brought by the United States of America under §§ 7402 and 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) to enjoin defendant John Howard Alexander (“Alexander”), a/k/a Howard Ira Small, both individually and doing business as the Aware Group, International Business Systems, and the Freedom Trust Group, or any other name, and all those in active concert or participation with him, from engaging in conduct subject to penalty under I.R.C. §§ 6700 and 6701, including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that the defendant knows or has reason to know is false as to any material matter; and from engaging in any other conduct that is subject to penalty under any provision of the Internal Revenue Code or that

substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Authorization

2. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7402(a) and 7408.

3. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, under the provisions of I.R.C. §§ 7402 and 7408.

Defendant

4. John Howard Alexander, also known as Howard Ira Small, resides in Greenville, South Carolina.

5. Alexander conducted business through the Aware Group and the Freedom Trust Group, located at 2435 East North Street, Suite 136 and Suite 105, Greenville, South Carolina 98055.

Facts Common to Defendant's Tax-Fraud Schemes

6. Beginning in at least 1996, Alexander promoted several tax-fraud schemes through the Aware Group, Freedom Trust Group and International Business Systems.

7. In 1997, Alexander married Heather Ferguson, who became co-director of the Aware Group and helped Alexander form International Business Systems ("IBS"). IBS was incorporated in the Caribbean Island of Nevis and was used to receive payments for membership fees and products that Alexander and Ferguson sold.

8. The schemes that Aware Group, Alexander, and Ferguson marketed included the “U.S.-source,” “reliance,” and “redemption” tax-fraud schemes. The Aware Group, Ferguson, and Alexander also instructed customers on methods to use sham trusts to conceal assets in order to evade IRS collection efforts. The Aware Group marketed these tax-fraud schemes as part of memberships sold for between \$295 and \$2,495.

9. On April 29, 2004, Alexander and Ferguson divorced. As part of the Final Decree of Divorce, Alexander agreed to retire as the director of the Aware Group. Ferguson retained ownership over the Aware Group, but was required to make payments to Alexander related to the sale of cd/audiotapes of seminars conducted by Alexander. The decree further provided that Alexander retained ownership of Aware Group’s trust-related products, which were then sold by him through the Freedom Trust Group.

10. Ferguson and Alexander were the sole promoters and salesmen of the tax-fraud scheme sold by the Aware Group.

11. On December 1, 2004, Alexander modified his agreement with Ferguson. As part of the modified agreement, Ferguson, for a fee of \$75 per hour, managed the websites through which Alexander sold tax-fraud schemes through the Freedom Trust Group, and Alexander relinquished any right to payments from the Aware Group.

12. Through the Freedom Trust Group website, Alexander continues to promote and sell the same materials he sold as the director of the Aware Group, changing only the names of the products.

The “U.S.-Source” Tax-Fraud Scheme Promoted by Defendant through the Aware Group and Freedom Trust Group

13. As part of the “U.S.-source” tax-fraud scheme, Defendant falsely advised customers that income from sources within the United States is not subject to federal income tax payment or reporting requirements. Defendant falsely advised customers that U.S. citizens are “non-resident aliens” or “sovereign State citizens” and are not required to pay taxes or file returns reporting taxes on income earned while working in the United States. As part of the U.S.-source tax-fraud scheme, Defendant sold to customers a document titled “Confidential Report on Taxable Income,” part of a cd-series provided by Aware Group. The “Confidential Report on Taxable Income” falsely states, *inter alia*, that:

a. “The strict limits of federal power imposed by the Constitution prohibited Congress from imposing a tax on the income[] of United States citizens who live and work exclusively in the 50 states.”

b. “taxable ‘sources’ [of income] apply only to those engaged in international or foreign commerce, but do not apply to United States citizens living and working exclusively within the United States.”

c. “the ‘specific sources’ of income subject to the income tax” are “list[ed] in 26 C.F.R. § 1.861-8(f)(1).”

14. As part of the scheme, Defendant prepared and sold a document titled “Affidavit: Certificate of Citizenship” for customers to file in their state of residence. Defendant falsely advertised that, by filing the document, customers were “sovereign State citizens” who are not subject to income tax filing requirements. The document falsely states that the named individual is a “non-resident alien outside both general and tangential venue and jurisdiction of Title 26,

USC” because the federal United States is allegedly limited to “District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa.”

15. As part of the scheme, Defendant sold customers a document demanding the statutory authority for taxing “sovereign State citizens,” which Defendant told customers to send to the IRS. Defendant falsely advised customers that the IRS’s failure to respond would result in an implied agreement between the customer and the IRS that the false statements regarding the tax laws are correct, and would release the individual from any obligation to file income tax returns or pay taxes.

The “Reliance” Tax-Fraud Scheme Promoted by Defendant through the Aware Group and Freedom Trust Group

16. Defendant also promoted a “Reliance Defense” tax-fraud scheme as part of a cd-series sold to customers. The Reliance Defense package contains several false statements regarding the federal income tax, including, *inter alia*, that:

a. U.S. citizens can “relinquish” their Social Security numbers and are no longer obligated to file tax returns, pay income taxes, or perform other duties imposed by the Internal Revenue Code.

b. American nationals, or “sovereign State citizens,” are not required to pay or report income taxes.

c. American nationals, or “sovereign State citizens,” have no “contractual nexus” with the United States and are not required to file tax returns or pay income taxes on wages.

d. The U.S. Supreme Court ruled that the 16th Amendment created no new power of taxation and did not amend or change the constitutional limits that forbid any direct taxation on individuals. Thus, Defendant falsely advised that the current laws relating to income tax,

Social Security, and related taxes, have never applied to anyone other than appointed and elected government officials or employees.

e. Individuals can immunize their property from tax liens by applying for “land patents.”

17. As part of the scheme, Defendant falsely advised customers that they can justify their failure to file income tax returns by purchasing “Reliance Defense Letters,” which contain fraudulent tax arguments. As part of the Reliance Defense tax-fraud scheme, Defendant sold customers a list of purported professionals who would provide written opinion letters for fees ranging between \$50-150 per letter. The “Reliance Defense Contact” letters, advocating the false statements stated in paragraph 16, and sold by Defendant include:

a. A letter from William Conklin, purporting to be a tax expert and paralegal, which falsely advises that income tax reporting requirements are “voluntary,” and not required.

b. An opinion letter from Guy Curtis, a Nebraska attorney, which erroneously states that the income tax does not apply to wages.

c. An opinion letter from Thomas Price, purporting to be a former magistrate judge, stating that the federal income tax is voluntary.

d. An opinion letter from Eduardo Rivera, a California attorney who was enjoined from preparing similar letters, *United States v. Rivera*, 2003 U.S. Dist. LEXIS 15823 (C.D. Cal. July 23, 2003), falsely stating that the income tax does not apply to wages.

e. An opinion letter from John “Judge” Rizzo, a former municipal court judge who pled guilty to felony charges of willfully aiding and assisting in the preparation of false

income tax returns (*United States v. Rizzo*, Case No. 2:03-cr-00345-ROS (D. Ariz.)). The letter falsely states that individuals are not liable for income tax payment and reporting requirements.

18. As part of the scheme, Defendant sold customers a document, containing frivolous arguments similar those in the letter sold as part of the “U.S.-source” scheme, which Defendant told customers to send to the IRS. Defendant falsely advised customers that if the IRS did not respond, it had impliedly agreed that the frivolous arguments are correct and that the individual is no longer obligated to file income tax returns. Defendant advised customers that these documents provided a “reliance defense” to potential criminal tax charges asserted against the customers.

The “Redemption” Tax-Fraud Scheme Promoted by Defendant through the Aware Group and Freedom Trust Group

19. Defendant also promoted a “Redemption” tax-fraud scheme as part of a cd-series sold to customers. The Redemption package falsely states, *inter alia*, that: The United States Government is a corporation that created a fictional “strawman” of all U.S. citizens. Defendant falsely advises customers that tax debts are not owed by the individual, but by the “fictional strawman” with the same name created by the Government.

20. As part of the scheme, Defendant falsely advised customers that by filing income tax returns in past years, they impliedly entered a contract assuming the debts of the “strawman.”

21. As part of the scheme, Defendant falsely advised that customers can “redeem” their identity and revoke an “implied” contractual requirement to pay the “strawman’s” income taxes, by filing with federal or state agencies U.C.C. documents, that are prepared by Defendant. As part of the scheme, Defendant advised customers that, after “redeeming” their identity, they are no longer required to file returns or pay taxes.

22. As part of the scheme, Defendant falsely stated that the purported implied contract extends to Social Security tax requirements. In order to help customers evade federal employment taxes, Defendant prepared and sold to customers documents purporting to “relinquish” Social Security numbers, after which the customer is purportedly no longer obligated to pay employment taxes or have income taxes withheld by employers.

23. As part of the scheme, Defendant falsely advertised that the purported implied contract extends to federal courts. Defendant prepared and sold to customers documents purporting to permit them to legally refuse with impunity to obey any summons or other directive from federal courts.

The Asset Concealment Schemes Promoted by Defendant through the Aware Group and Freedom Trust Group

24. As part of the U.S.-source, Reliance, and Redemption tax-fraud schemes and to help customers evade the federal income tax payment requirements, Defendant advised customers to:

a. Conceal assets by stop using bank accounts. As part of the scheme, Defendant advised customers to deal only in cash or postal money order so that the IRS can neither compute nor collect the proper amount of tax due.

b. Conceal income from the IRS by not filing tax returns so that the IRS cannot identify the customer’s amount or source of income.

c. Conceal income and property by developing a series of multi-layered offshore trusts “to create a diversion of paperwork and closed doors for an outsider trying to pry into your affairs.” As part of this scheme, Defendant instructed customers controlling the trusts to record liens in the name of the trust against their personal property in excess of the amount of any tax liability, in order to fraudulently thwart IRS collection efforts.

Defendant's "Pure Trust" Tax-Fraud Scheme

25. Alexander also markets a program or arrangement known as a "pure trust" as a tax dodge to enable participants to evade reporting and paying federal income taxes, as well to conceal assets.

26. Alexander markets the program through word of mouth, in personal meetings with customers, and through his websites. He charges customers \$2,495 to purchase his "pure trust" package.

27. Alexander falsely states that the "pure trust" products he sells 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.

28. Alexander advertises the following purported benefits of the "pure trust" tax-fraud scheme:

- customers can legally generate income without any reporting requirements;
- customers can protect assets from unnecessary government interference and taxation; and
- customers' pure trusts can be used to hold all their property (including homes, automobiles and RV's) and protect it from liens, levies, seizures and confiscation from events arising as a result of their personal actions.

29. Alexander's statements about the tax benefits associated with the "pure trusts" are false or fraudulent.

30. The effect of Alexander's "pure trust" promotion is that participants live in the same residence and operate the same business, as they did before joining the program. Under the

scheme, participants' living expenses are paid from the participants' earnings just as they were before creating the "pure trust." Participants receive the full benefit of, and have full control over, all trust funds. The only substantive change in the participants' regular business and lifestyle activities is the purported benefit of no taxation.

31. The "pure trusts" that Alexander markets are operated for the benefit of the owner, are devoid of economic substance and are shams for federal tax purposes. The program constitutes an improper assignment of income and a fraudulent transfer of assets.

**Defendant's Knowledge of the Falsity
of the Tax Benefits of His Tax-Fraud Schemes**

32. Alexander held himself out as a tax expert by participating in tax-law-related seminars, and therefore he knew or should have known that tax-fraud schemes promoted by the Aware Group and Freedom Trust Group were unlawful.

33. Alexander knew that by 2002 a customer had sued the Aware Group for the cost of the ineffective fraudulent tax arguments.

34. Alexander knew or should have known that John Rizzo, who wrote "Reliance Defense" letters for Defendant's customers, was indicted on April 2, 2003, and pled guilty on February 4, 2004, to felony charges of willfully aiding and assisting in the preparation of false income tax returns.

35. Alexander knew or should have known that a federal district court on July 18, 2003, enjoined Eduardo Rivera, who wrote "Reliance Defense" letters for Defendant's customers falsely stating that the income tax does not apply to wages, from preparing similar letters.

36. Alexander knew or should have known that on October 3, 2001, the Tax Court sanctioned a customer in the amount of \$25,000 for advancing frivolous arguments sold by Defendant.

37. Alexander knew or should have known that the employment tax evasion, trust misuse, and offshore transactions schemes he promotes are identified in the IRS's annual consumer alert of tax scams that taxpayers are urged to avoid. IRS information related to these scams is available at <http://www.irs.gov/newsroom/article/0,,id=154293,00.html>.

38. Alexander knew or should have known that federal courts have barred other individuals from promoting similar tax-fraud schemes. (*United States v. Ewell*, Case No. 1:04cv305 (January 25, 2005, S.D. Ohio)(barring promotion of "pure trust" tax-fraud scheme); (*United States v. Bell*, Case No. 1:cv-01-2159 (January 30, 2004, M.D. Pa.)(barring promotion of "U.S.-source" scheme). Those court orders are available at <http://www.usdoj.gov/tax/txdv05243.htm> and <http://www.usdoj.gov/tax/txdv04061.htm>.

Harm to the Government

39. The tax-fraud schemes promoted and marketed by Alexander through the Aware Group and the Freedom Trust Group harm the government by fraudulently reducing customers' reported tax liabilities. Based on the Aware Group's customer list, it is possible that more than 2,000 taxpayers have used Defendant's tax-fraud schemes to evade income taxes.

40. The Internal Revenue Service is harmed because it must dedicate some of its scarce resources to detecting and examining inaccurate returns filed by Aware Group and Freedom Trust Group customers, to file substitutes for returns for customers failing to file tax returns, and to attempt to recover unpaid taxes.

41. The IRS estimates that during 2001 the difference between the amount of taxes paid by U.S taxpayers, and the amount that should have been paid, equaled \$345 billion. *See* <http://www.irs.gov/newsroom/article/0,,id=154496,00.html>. Tax-fraud schemes such as those promoted by Defendant contribute to the under-reporting of taxes estimated in the report.

42. Based on a sample of Aware Group's customers who were audited, the IRS estimates that the tax loss resulting from Defendant's schemes may exceed \$48 million. Some of this revenue loss may never be recovered.

43. Defendant's background and extensive involvement in these elaborate tax-fraud schemes indicate that the misconduct described in this complaint or other similar misconduct is likely to recur unless he is permanently enjoined.

44. Alexander has promoted his abusive tax fraud schemes for at least the past ten years. Alexander has continued to promote his program despite having been notified that he is subject to an I.R.C. §§ 6700 and 7408 investigation. He has refused to cooperate in the investigation.

Count I: Injunction under I.R.C. § 7408 for violations of §§ 6700 & 6701

45. The United States incorporates by reference the allegations in paragraphs 1-44.

46. I.R.C. § 7408 authorizes a district court to enjoin any person from, *inter alia*, engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

47. Section 6700 penalizes any person who, in connection with organizing or participating in the sale of a plan or arrangement, makes or furnishes a statement regarding any tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

48. Section 6701 penalizes any person who prepares a document that he has reason to believe will be used in connection with any material matter arising under the internal revenue laws and who knows that the document, if so used, would result in an understatement of another person's tax liability.

49. Defendant organizes and sells plans that he falsely claims allow his customers legally to stop paying federal taxes and filing federal tax returns.

50. In organizing and selling tax-fraud plans, Defendant made false or fraudulent statements regarding the excludibility of income and the securing of other tax benefits.

51. Defendant knows or has reason to know his promotional materials contain false or fraudulent statements within the meaning of I.R.C. § 6700.

52. Defendant prepared and sold to customers affidavits and other fraudulent documents within the meaning of I.R.C. § 6701, which he knew or had reason to believe would be used in connection with a material matter and, if so used, would fraudulently understate his customers' tax liabilities.

53. If he is not enjoined, Defendant is likely to continue to organize and sell tax-fraud plans and to assist in preparing documents understating his customers' tax liabilities.

Count II: Injunction Under I.R.C. § 7402

54. The United States incorporates by reference the allegations in paragraphs 1-53.

55. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

56. Defendant's conduct substantially interferes with the enforcement of the internal revenue laws by promoting tax-fraud plans that he falsely advises customers will permit the customers legally to stop paying federal tax and filing federal tax returns.

57. Defendant substantially interferes with the administration of the internal revenue laws by selling frivolous documents to obstruct IRS collection actions.

58. The United States is irreparably harmed by Defendant's tax-fraud plans because customers who follow his advice fail to pay federal taxes or fail to file federal tax returns, and obstruct IRS examination and collection efforts.

59. The United States is irreparably harmed by Defendant's interference with IRS examinations and collection activities because it impedes the IRS's discovery and recovery of unreported and unpaid taxes.

60. Unless Defendant is enjoined, the IRS will have to devote substantial time and resources to identify and recover lost revenue from his customers.

61. The public interest will be advanced by enjoining Defendant because an injunction will stop his illegal conduct and the harm it is causing.

62. In the absence of an injunction backed by the Court's contempt powers, Defendant is likely to continue to obstruct and interfere with the enforcement of the internal revenue laws.

WHEREFORE, plaintiff the United States of America respectfully prays for the following:

A. That the Court find that Defendant has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief under I.R.C. § 7408 is necessary and appropriate to prevent Defendant, and any business or entity through which he operates, and

anyone acting in concert with him, from further engaging in such conduct or any other conduct subject to penalty under the Internal Revenue Code;

B. That the Court find that Defendant has interfered with the enforcement of the internal revenue laws and that injunctive relief pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers is appropriate to prevent him, and any business or entity through which he operates, and anyone acting in concert with him, from further engaging in such conduct;

C. That this Court, pursuant to I.R.C. § 7408, enter a permanent injunction prohibiting Defendant, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

1. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that he knows or has reason to know is false or fraudulent as to any material matter;
2. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that he knows will, if used, result in an understatement of tax liability;
3. Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that he knows or has reason to know is false or fraudulent as to any material matter; and

4. Engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701 or any other penalty provision in the Internal Revenue Code;

D. That this Court, pursuant to I.R.C. §§ 7408 and 7402(a), enter a permanent injunction prohibiting Defendant, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

1. Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any other person;
2. Obstructing or advising or assisting anyone to obstruct IRS examinations, collections, or other IRS proceedings;
3. Advising anyone that they are not required to file federal tax returns or pay federal taxes;
4. Instructing, advising, or assisting anyone to stop withholding federal employment taxes from wages;
5. Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to incite others imminently to violate the internal revenue laws;
6. Organizing or selling any document purporting to enable a customer to discontinue paying federal tax;

7. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws; and
8. Misrepresenting the terms of this injunction.

E. That this Court, pursuant to I.R.C. § 7402(a), order Defendant to produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all Aware Group and Freedom Trust Group members and all persons and entities who have purchased Defendant's tax-fraud plans, arrangements, or materials;

F. That this Court, pursuant to I.R.C. § 7402(a), order Defendant and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, to remove from Defendant's website and those websites over which he has 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; to display prominently on the first page of those websites a complete copy of the permanent injunction; and to maintain those websites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time;

G. That this Court permit the United States to conduct post-judgment discovery to ensure defendant's compliance with the permanent injunction; and

H. That this Court grant the United States such other relief, including costs, as is just and equitable.

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s/ George J. Conits
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