

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 04-CV-253-TCK-PJC
)	
RICHARD M. BLACKSTOCK,)	
)	
Defendant.)	

**REPORT AND RECOMMENDATION
GRANTING MOTION FOR PERMANENT INJUNCTION**

Plaintiff United States of America (“the Government”) seeks a permanent injunction against Defendant Richard M. Blackstock (“Blackstock”) alleging Blackstock has engaged in an abusive tax scheme in violation of the internal revenue laws. Pursuant to 28 U.S.C. § 636(b)(1)(B), the District Court has referred to the undersigned for Report and Recommendation the Government’s Motion for Permanent Injunction. [Dkt. # 15].

A hearing was held before the undersigned on December 9, 2004; however, Defendant failed to appear. [Dkt. # 18]. The parties were invited to submit additional evidence and briefing. Thereafter, the Government submitted its brief in support of the Motion for Permanent Injunction, including affidavits in support thereof. [Dkt. # 19]. Specifically, the Government has submitted the following affidavits: (1) Cindy Allan, registered pseudonym of an Internal Revenue Service Agent based in Portland, Oregon, who participated in the Blackstock investigation; (2) Barbara Cantrell, paralegal with the U.S. Department of Justice; Paul Dzierzanowski, IRS agent based in Tulsa; and, (4) Martin M. Shoemaker, trial attorney with the Tax Division of the Department of Justice.

On January 28, 2005, Blackstock submitted his “Petition for Writ of Habeas Corpus by

One of the People Re Permanent Injunction Order.”¹ [Dkt. # 22].

After reviewing the evidence submitted herein, the undersigned makes the following Findings of Fact and Conclusions of Law. Contemporaneously herewith, the undersigned recommends that the Government’s Motion for Permanent Injunction be **GRANTED**.

Background

Plaintiff United States of America filed this action on March 29, 2004, seeking a permanent injunction against Defendant Richard M. Blackstock for promoting and selling an abusive tax scheme. [Dkt. # 1]. The Complaint for Permanent Injunction and Other Relief (“Complaint”) was served upon Defendant. Return of Service was executed and filed on April 22, 2004. [Dkt. # 4]. On April 20, 2004 Defendant responded to the Complaint with a motion raising a jurisdictional challenge. [Dkt. # 2]. This motion was set for hearing on July 20, 2004 [Dkt. # 7]. Defendant’s jurisdictional challenge was heard on August 4, 2004, but Defendant failed to appear. [Dkt. # 9]. Thereafter, the undersigned issued a Report and Recommendation that Blackstock’s motion be denied. [Dkt. # 13]. Defendant made no objection to the Report and Recommendation; accordingly, it was adopted by the District Court on November 10, 2004. [Dkt. # 14].

¹ The Petition re-urges jurisdictional challenges similar to those that the Court has previously rejected. For example, Defendant contends that this Court lacks jurisdiction over him because he is “a People (sic) of the United States of America” but not a citizen of the United States or Oklahoma [Petition at ¶ 1]. This is the same argument he tendered in his previous jurisdictional challenge. [Dkt. # 2]. There Defendant contended he now owes his allegiance “to the foreign state known as California republic.” [Dkt. # 2, ¶ 6]. However, elsewhere in that document Defendant stated his “place of abode is in the Oklahoma republic” and his “domicile of choice” is Tulsa County. [Dkt. #2, ¶¶ 6-11]. The Petition does not address the substantive issues before the Court on the Motion for Permanent Injunction, and Blackstock offered no evidence to rebut, refute or respond to the Government’s record evidence.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Findings of Fact

1. This Court has jurisdiction over the parties and subject matter of this case. 26 U.S.C. §§ 7402, 7408. 28 U.S.C. §§ 1340, 1345. *See* Report and Recommendation of August 6, 2004 [Dkt. # 13] (adopted by Order filed November 10, 2004 [Dkt. # 14]).

2. Blackstock is a promoter of the Freedom & Privacy Committee (“FPC”) – an abusive tax promotion as described below. FPC is registered as a nonprofit corporation with the State of Washington. FPC’s headquarters are located in Palmdale, CA. [Declaration of Cindy Allan (“Allan”), ¶ 4] Blackstock is a national director for FPC. [Allan, ¶ 11].

3. Joseph O. Saladino is the founder and owner of FPC. FPC and its network of promoters, including Blackstock, conspire to circumvent the federal tax laws by marketing and selling their abusive tax program. [Allan, ¶ 5].

4. The FPC tax promotion involves a multi-level marketing organization that promotes several tax evasion packages. These packages include a “corporation sole” package and a “claim of right” package. Both of these packages are identified in the IRS’s annual consumer alert of tax scams that taxpayers are urged to avoid. [Allan, ¶ 6].

5. The FPC tax program is marketed nationwide in conference calls, seminars, and through Internet websites, including the FPC website www.freedomcommittee.com. Blackstock has his own personalized web page link to FPC’s website, www.freedomcommittee.com/5567/5567. [Allan, ¶ 9].

6. Membership in the FPC organization costs \$200, with a \$100 annual renewal fee. FPC advertises that membership “can eliminate your personal income taxes” and permits

participants to “operate a business tax free and still enjoy limited liabilities.” [Allan, ¶ 12].

7. FPC participants or purchasers are encouraged to become subpromoters in order to further market the tax scheme. Subpromoters market the scheme and receive commissions for successful sales. [Allan, ¶ 7]. Subpromoters also receive their own Internet web page, which is linked directly to the FPC main website. [Allan, ¶ 9].

8. The FPC promotion has more than 700 participants located in nearly every state, as well as Canada, the United Kingdom and the Virgin Islands. [Allan, ¶ 13]. Over 50 participants in these abusive programs have been traced directly to Blackstock. [Declaration of Paula Dzierzanowski (“Dzierzanowski”), ¶¶ 5, 7].

The Corporation Sole Package

9. Blackstock markets an arrangement known as a “corporation sole” as a means to evade the reporting and payment of federal income taxes, as well as a means to conceal assets and thereby evade estate and inheritance taxes and IRS collection efforts. [Allan, ¶ 14].

10. Blackstock charges customers \$2,295 for the corporation sole package. [Allan, ¶ 15].

11. After receiving a customer’s application and payment, Blackstock instructs participants how to form a corporation sole, including how to conceal assets and taxable income by transferring assets and income to their corporations sole. [Allan, ¶ 16].

12. Blackstock falsely advises participants that they can treat their corporations sole as a “church” with no tax return filing requirement, and yet can control and use the assets and income of the corporation sole for their own personal benefit. [Allan, ¶ 18].

13. Blackstock falsely advises participants that corporations sole that are used for the participants’ personal benefit are tax exempt, do not need to file tax returns of any kind, and do

not need to keep records. Blackstock falsely states that a corporation sole's church status cannot be challenged by the Government. [Allan, ¶ 19].

14. Blackstock falsely states that participants can make donations to their corporations sole and then deduct the donations on the participants' federal income tax returns, in the event returns are filed. [Allan, ¶ 20].

15. Blackstock falsely advises that a participant who becomes the "minister" or "overseer" of the corporation sole and takes a vow of poverty, can assign his income to the corporation sole and thereby transform taxable individual income into nontaxable income of the corporation sole. [Allan, ¶ 21].

16. Blackstock 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 return need be filed. [Allan, ¶ 22].

17. Blackstock also falsely advises that if the participant's residence or real estate is titled in the name of the corporation sole, then the individual can use and maintain it as a tax-exempt parsonage, and that the corporation sole can provide the participant housing or a housing allowance that is tax exempt. [Allan, ¶ 23].

18. Blackstock touts participation in the corporation sole program as a mechanism that enables participants to drop out of the federal tax system entirely. [Allan, ¶ 17].

19. Promotional literature gives the following description of the program's so-called benefits:

Corporation sole can be responsible to provide for all your needs (i.e., shelter, food, transportation, clothing, medical, etc.). This occurs by first conveying all that you own and all future earning to corporation sole. You make a record vow of poverty. This lets the world know that you are now a pauper and own nothing. If you work outside corporation sole, you do so on behalf of the corporation sole. None of these earnings are taxable because they are paid directly to the

corporation sole. These payments are made without deductions, diminishments or taxes of any kind.

[Allan, ¶ 24].

20. Blackstock's statements about the tax benefits associated with the corporations sole are false and fraudulent. [Allan, ¶¶ 18-27, 30-32].

21. The effect of Blackstock's corporation sole promotion is that the participant lives in the same residence and operates the same business activity, as he did prior to joining the program. All living expenses of the participant and his family are paid from compensation earned from the business activity, the same as it was prior to the creation of the corporation sole. The participant receives the full benefit of, and has full control over, all corporation sole funds. The only substantive change in the participants' regular business and lifestyle activities is the alleged benefit of no taxation. [Allan, ¶ 25].

22. The corporations sole that Blackstock markets are not operated for any church purpose, are devoid of economic substance and are shams for federal tax purposes. [Allan, ¶ 26]. The program constitutes an improper assignment of income and a fraudulent transfer of assets from the participant to the corporation sole entity. [Allan, ¶ 27].

The Claim of Right Package

23. The claim of right promotion involves filing frivolous income tax returns or claims for refund purportedly relying on 26 U.S.C. §§ 183, 212 or 1341 of the Internal Revenue Code. [Allan, ¶ 28].

24. The cost of the claim of right package to participants is \$1,095 for the first year and \$250 for additional years, plus 25% of each refund above the first \$1,000 received. [Allan, ¶ 29].

25. Blackstock falsely asserts that taxpayers have an alleged common-law and

constitutional right to exclude from taxation all compensation for personal services or labor rendered. [Allan, ¶ 28].

26. Blackstock falsely states that IRC §§ 183, 212 or 1341 codifies this so-called common-law or constitutional right and entitles participants to take a deduction in the amount of compensation earned, which in most cases eliminates a participant's tax liability. Blackstock states that this can be done by claiming an itemized deduction to offset wages reported on W-2 forms, or by taking a Schedule C deduction to offset any net income from self-employment. [Allan, ¶ 30].

27. Blackstock falsely states that participants in the claim of right scheme are able to recover all of their withheld income and social security taxes, and also to eliminate any self-employment tax. [Allan, ¶ 31].

28. Blackstock falsely advertises that the claim of right program is in compliance with the Internal Revenue Code. [Allan, ¶ 32].

29. Blackstock also markets his own corporation sole and claim of right programs independent of his affiliation with FPC. [Dzierzanowski, ¶ 3].

30. Both the corporation sole and the claim of right programs are identified in the IRS's annual consumer alert of tax scams. [Allan, ¶ 6].

31. Blackstock's programs result in harm to his customers because the customers pay Blackstock significant sums of money to establish worthless legal entities or to prepare erroneous tax returns. [Dzierzanowski, ¶ 4]. The United States is harmed because Blackstock's customers are not paying the appropriate share of taxes to the United States Treasury. [Dzierzanowski, ¶ 8]. Also, the public is harmed because the IRS is forced to devote some of its limited resources to identifying and attempting to recover revenue lost as a result of Blackstock's

schemes, thereby reducing the level of service that the IRS can give to other taxpayers.

32. Blackstock has substantially interfered with the administration and enforcement of the nation's tax laws. Participation in Blackstock's abusive program results in customers failing to file federal income tax returns, failing to file proper and accurate returns, and/or failing to pay their federal tax liabilities. [Dzierzanowski, ¶¶ 4-9]. This results in irreparable harm to the United States.

33. Blackstock's corporation sole and claim of right programs are frivolous and without merit. Blackstock knew or should have known that his representations regarding the tax benefits of the programs are false or fraudulent. Furthermore, Blackstock aids in or assists in the preparation of federal tax returns or claims for refund that he knows, if used, would result in an understatement of tax liability. [Dzierzanowski, ¶¶ 4-7].

34. The U.S. District Court for the Central District of California has entered a permanent injunction against Blackstock's associate, Joseph Saladino. *United States v. Joseph O. Saladino, individually and dba Freedom & Privacy Committee*, Case No. CV04-02100 FMC (JWJx) (C.D. CA January 20, 2005). The facts presented in the instant case are virtually the same as those in the *Saladino* case.

35. The United States' Complaint for Permanent Injunction and Other Relief was filed on March 29, 2004. Service of the summons and complaint was made on Blackstock on April 18, 2004. Blackstock has not filed a proper answer and has failed to appear at the two hearings held in this case.

Conclusions of Law

1. In order to obtain a permanent injunction pursuant to IRC § 7408, the United

States must show (1) that defendant engaged in conduct subject to penalty under either IRC §6700 or §6701; and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct. The Court may issue an injunction under IRC § 7402 “as may be necessary or appropriate for the enforcement of the internal revenue laws.” IRC § 7402(a).

2. IRC § 6700 imposes a penalty on any person who organizes or sells a plan or arrangement and in so doing makes “a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit” by participating in the plan or arrangement that the person “knows or has reason to know is false or fraudulent as to any material matter.” IRC §6700(a).

3. IRC § 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows or has reason to believe will be used in connection with a material matter arising under the internal revenue laws, and that the person knows would result in an understatement of tax liability.

4. Blackstock has organized or assisted in the organization of, or has participated directly or indirectly in selling, abusive corporation sole and claim of right programs.

5. In organizing and selling the corporation sole and claim of right schemes, Blackstock has made statements regarding the tax benefits associated with participation in the scheme that he has reason to know are false or fraudulent as to material matters within the meaning of IRC § 6700.

6. Blackstock has aided or advised with respect to the preparation of tax returns or other documents, knowing (or having reason to believe) that such documents would be used in connection with a material matter arising under the internal revenue laws.

7. Blackstock knew that the documents, if so used, would result in understating the

participants' tax liability.

8. Based upon the factual findings set forth above and the evidence presented in the affidavits supporting the Government's Motion, the Court concludes that Blackstock has engaged and is engaging in conduct violative of IRC §§ 6700 & 6701. The Court further concludes that injunctive relief is appropriate to prevent the recurrence of that conduct.

9. The Court also concludes that Blackstock has engaged and is engaging in conduct that interferes with the enforcement of the Internal Revenue laws, and that the United States and the public will suffer irreparable harm absent a permanent injunction.

10. Based on the evidence and Blackstock's filings herein, Blackstock's position is frivolous and the United States has prevailed on the merits. Furthermore, the public interest will be best served by granting a permanent injunction.

11. Furthermore, it is evident that Blackstock will continue to violate the Internal Revenue Code absent an injunction and that the United States does not have an adequate remedy at law to stop his abusive tax schemes.

12. An injunction banning Blackstock from promoting his fraudulent corporation sole and claim of right programs will not infringe on his right to free speech. Marketing and selling tax-evasion instructions and programs may be enjoined consistent with the First Amendment. The injunction prohibits only fraudulent conduct. *United States v. Estate Preservation Servs.*, 202 F.3d 1093, 1106 (9th Cir. 2000).

13. Numerous courts have applied the illegal-conduct and commercial-speech doctrines to Congress' regulation of tax-evasion products and have determined that speech incorporated into those products is *not* protected by the First Amendment and can properly be penalized under 26 U.S.C. § 6700 and enjoined under 26 U.S.C. § 7408. *See, e.g., United States*

v. Schiff, 379 F.3d 621, 630-31 (9th Cir. 2004); *Estate Preservation*, 202 F. 3d at 1106; *United States v. Raymond*, 228 F.3d 804, 815-16 (7th Cir.), *cert. denied*, 533 U.S. 902 (2001); *United States v. Kaun*, 827 F.2d 1144, 1152-53 (7th Cir. 1987); *United States v. Smith*, 657 F. Supp. 646, 657-60 (W.D. La. 1986), *aff'd per curiam*, 814 F.2d 1086 (5th Cir. 1987); *United States v. White*, 769 F.2d 511, 516-517 (8th Cir. 1985); *Abdo v. United States*, 234 F. Supp. 2d 553, 567-568 (M.D.N.C. 2002), *aff'd mem.*, 63 Fed. Appx. 163 (4th Cir.), *cert. denied*, 540 U.S. 1120 (2004); *National Commodity & Barter Ass'n v. United States*, 843 F. Supp. 655, 666 (D. Colo. 1993), *aff'd mem.*, 42 F.3d 1406 (10th Cir. 1994), *cert. denied*, 516 U.S. 807 (1995).

14. Accordingly, the Court finds that Blackstock, and any business or entity through which he operates, and anyone acting in concert with him, should be permanently enjoined under IRC §§ 7408 and 7402(a).

ORDER

Based on the foregoing factual findings and for good cause shown, entry of a permanent injunction is appropriate. Therefore, it is hereby

ORDERED that Defendant Richard M. Blackstock, individually and doing business as any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, is permanently enjoined from directly or indirectly:

- (1) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including the corporation sole and claim of right programs;
- (2) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in such tax shelters, plans or arrangements;

- (3) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;
- (4) Engaging in conduct subject to penalty under IRC § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter;
- (5) Engaging in conduct subject to penalty under IRC § 6701, *i.e.*, preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;
- (6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service; and
- (7) Representing any persons or entities before the Internal Revenue Service in any manner, directly or indirectly.

Further, IT IS HEREBY ORDERED that Blackstock, at his own expense, contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased his abusive tax shelters, plans, arrangements or programs, including the corporation sole program and the claim of right program, and inform those individuals of the Court's findings concerning the falsity of the defendant's prior representations and provide a copy of this Permanent Injunction Order to those persons, and to file with the Court, within 15 days of the date of this Order, a certification that he has done so;

Further, IT IS HEREBY ORDERED that Blackstock and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, remove from their websites, including www.freedomcommittee.com/5567/5567, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on the first page of

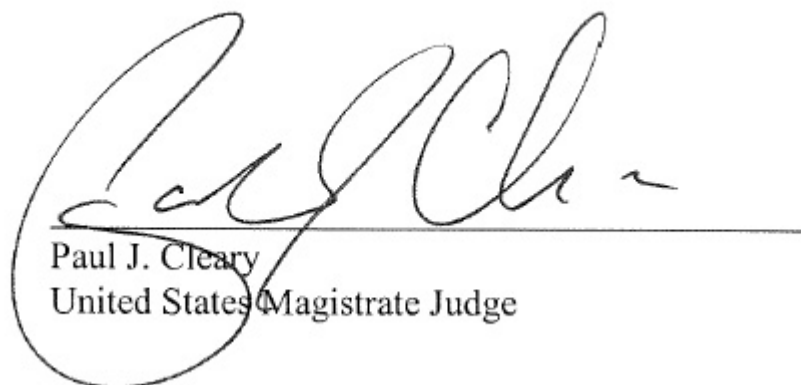
those websites a complete copy of this Order, and to maintain the websites, at their own expense, for one year with a complete copy of the Court's permanent injunction so displayed throughout that time; and to file with the Court, within 15 days of the date of this Order, a certification that he has done so;

Further, IT IS HEREBY ORDERED that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and

Further, IT IS HEREBY ORDERED that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing this Final Judgment.

The District Judge assigned to this case will conduct a de novo review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. As part of his/her review of the record, the District Judge will consider the parties' written objections to this Report and Recommendation. A party wishing to file objections to this Report and Recommendation must do so within ten days after being served with a copy of this Report and Recommendation. See 28 U.S.C. ' 636(b)(1) and Fed. R. Civ. P. 72(b). The failure to file written objections to this Report and Recommendation may bar the party failing to object from appealing any of the factual or legal findings in this Report and Recommendation that are accepted or adopted by the District Court. *See Moore v. United States*, 950 F.2d 656 (10th Cir. 1991); and *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

DATED this 11th day of February 2005.



Paul J. Cleary
United States Magistrate Judge