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U.S. DISTRICT COURT  
NORTHERN DIST. OF TX.  
FORT WORTH DIVISION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

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CLERK OF COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

MARLENE MITCHELL; )

TIMOTHY MITCHELL; and )

PREMIER TRUST SOLUTIONS, a )

purported trust, )

Defendants. )

**4-04CV-312-Y**

Civil Case No. \_\_\_\_\_

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, United States of America, for its Complaint states as follows:

**Nature of Action**

1. This action for injunctive relief is brought at the request of the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to §§ 7402 and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (I.R.C.).

2. The United States is bringing this action to permanently enjoin defendants Marlene Mitchell, Timothy Mitchell, Premier Trust Services, and any other entities through which they do business from:

(a) selling, organizing, or assisting in the organization of abusive trust arrangements, or other plans or arrangements that, through false or fraudulent statements, advise or encourage taxpayers to attempt to evade the assessment or collection of their federal tax;

(b) engaging in any activity subject to penalty under section 6700 of the Internal Revenue Code (26 U.S.C.) (I.R.C.);

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

### **Jurisdiction**

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and by I.R.C. §§ 7402 and 7408.

### **Defendants**

4. Defendant Marlene Mitchell resides at 1402 Cliffwood Drive, Euless, Texas 76040.

5. Defendant Timothy Mitchell resides at 1402 Cliffwood Drive, Euless, Texas 76040.

6. Defendant Premier Trust Solutions, a purported trust, is an entity through which the Mitchells have promoted their abusive trust scheme. Premier Trust Solutions has a mailing address of 2220 Airport Freeway, Suite 440-15, Bedford, Texas 75040.

### **Defendants' Activities**

7. Defendants Marlene and Timothy Mitchell are a married couple who promote an abusive trust scheme designed to help their customers evade federal income, gift, estate, and self-employment taxes.

8. Though the defendants' trust programs are ostensibly designed for "Christian stewardship," the trusts in fact are designed and used to hide income and assets from the IRS and take improper tax deductions.

9. Marlene Mitchell entered the abusive-trust business in 1996, selling abusive trusts for National Trust Services (NTS), an abusive-trust marketing organization.

10. In 1997 Marlene Mitchell severed ties with NTS, and she and her husband Timothy Mitchell began marketing their own abusive-trust scheme, similar to that of NTS, through an entity called “Premier Trust Solutions.”

11. One of NTS’s founders, Roderick A. Prescott, has been permanently enjoined from organizing, promoting, marketing or selling abusive trusts like those promoted by Marlene Mitchell while working for NTS and through her own Premier Trust Solutions. *See United States v. Roderick A. Prescott, et al.*, Civ. No. 02-CV-0692 (L) (USDC SD CA).

12. The Mitchells promote their scheme by giving free seminars in which Marlene Mitchell introduces attendees to the trust program. At these initial seminars, Marlene Mitchell gives a presentation showing attendees how—through her trust program—persons can arrange all of their personal affairs in trusts and thereby supposedly obtain tax benefits not available to individuals.

13. After Marlene Mitchell presents the free seminar, the defendants sell (for \$12,000) a package on how to use the trust program to obtain its purported tax benefits. The package includes the seminar notebook, along with 20 hours of private consulting with the Mitchells and a year of “update classes.” Annual fees of \$1,000 are charged for additional consulting and classes after the first year.

14. The classes attended by scheme participants after they have attended the initial seminar and paid the \$12,000 fee include classes on how to set up your own trusts and how to create a paper trail that creates the appearance of economic substance for transactions that are in fact economically meaningless.

15. One of the classes that the defendants offer to purchasers of the trust scheme is a presentation in which Marlene Mitchell gives a misleading interpretation of IRS Notice 97-4, a notice that describes several types of trusts that the IRS has determined are abusive.

16. The defendants advise their customers to conceal income and assets from the IRS, improperly reduce or eliminate federal income taxes by taking improper deductions, and stop paying federal employment taxes. Specifically the defendants falsely and fraudulently advise customers and potential customers that:

- The federal income tax system is a “voluntary system” which persons are not required to participate in;
- The only persons who need file federal income tax returns are government employees and persons who have contracts with the government;
- Persons can set up a system of complex trusts including a “business trust,” a “family trust,” a “charitable trust,” and “unit trusts” that can be legally used to hide income and assets from the IRS. Specifically, customers are taught how to transfer personal income to the business trust, distribute all income not eliminated by the business trust’s purported schedule C expenses to the family trust, which then uses the money to pay for non-deductible personal expenses such as utilities and home improvements on the personal residence. These personal expenses are then wrongfully deducted as business expenses of the family trust. Customers are told that they can avoid tax on any remaining income by transferring it to a purported charitable trust or distributing it to children in lower tax brackets;
- All expenses associated with maintaining and operating a family home become deductible business expenses if the home is transferred to the family trust;
- Funneling money through the business trust and the family trust and into the “charitable trust” will allow customers to deduct “100 percent of every penny [they] make”;
- Persons can avoid paying capital gains tax on property by transferring the property to the charitable trust and having the trust sell the property tax free. The cash received upon the sale of the property is then transferred out of the charitable trust to an “investment trust” where the individuals now have full control of it;
- Persons can avoid federal income tax by transferring their personal income to the business trust, because the trust is now supposedly earning money rather than the individual;
- Persons can avoid federal self-employment tax by transferring all income to the business trust, because the trust is now earning money rather than the individual.

17. The trust packages promoted by the Mitchells are a typical abusive-trust promotion in which the customers are taught to “assign” their personal income and assets to a sham trust, have the trust cover all personal expenditures, and then claim all of those personal expenses as income tax deductions. In fact, however, “[i]t is fundamental to our income tax regime that personal consumption expenditures—food, clothing, travel,

education, entertainment—do not generate income tax deductions unless they are somehow inextricably linked to the production of income.” *Schultz v. Commissioner*, 686 F.2d 490, 492-93 (7th Cir. 1982).

18. The defendants’ trust devices are transparent shams, attempt to turn non-deductible personal expenses into deductible expenses. If the trust devices worked, their customers would, “unlike the rest of us, make all their consumptive expenditures with pre-tax dollars.” *See id.*

19. The Mitchells were close associates of Charles Chung, who provided accounting services including tax return preparation for the Mitchells’ customers.

20. Chung set up trusts for the Mitchells’ customers and prepared tax returns for them, based on the trust scheme, that claimed deductions not allowable by law. Chung has been enjoined from preparing tax returns reflecting such abusive trust arrangements. *See United States v. Charles R. Chung*, Civ. No. 03-203(K) (J) (USDC ND OK).

**Count I:  
Injunction under I.R.C. § 7408 for promoting an abusive tax shelter  
and aiding and abetting understatements of tax liability**

21. The United States incorporates by reference the allegations in paragraphs 1 through 20.

22. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under I.R.C. §§ 6700 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

23. I.R.C. § 6700 penalizes any person who organizes or sells a plan or arrangement and makes in connection therewith a statement regarding the allowability of any deduction or credit, excludibility of income, or the securing of any other tax benefit

that the person knows or has reason to know is false or fraudulent as to any material matter.

24. Defendants organize and sell an abusive-trust tax scheme. In organizing and selling their abusive-trust scheme, defendants make false and fraudulent statements regarding the tax benefits available to customers who use their abusive trusts.

Defendants know or have reason to know that these statements are false and fraudulent statements within the meaning of I.R.C. § 6700.

25. If they are not enjoined, defendants are likely to continue to organize and sell abusive tax schemes.

26. The United States is entitled to an injunction under I.R.C. § 7408 to prevent defendants from engaging in conduct subject to penalty under I.R.C. §§ 6700.

**Count II**  
**Injunction under I.R.C. 7402(a) for Unlawful Interference**  
**with Enforcement of the Internal Revenue Laws**

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. I.R.C. § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

29. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

30. Defendants' conduct results in irreparable harm to the United States.

Defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

31. If defendants are not enjoined, they are likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws.

32. While the United States will suffer irreparable injury if the defendants are not enjoined, the defendants will not be harmed by being compelled to obey the law.

33. An injunction that stops defendants' illegal activity is in the public interest.

34. An injunction under § 7402(a) is necessary and appropriate.

35. Thus, the United States is entitled to injunctive relief under I.R.C. § 7402(a).

Wherefore the plaintiff United States requests the following relief:

A. That the Court find that defendants Marlene Mitchell, Timothy Mitchell, and Premier Trust Services, individually and together, have engaged in conduct subject to penalty under I.R.C. §§ 6700, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent defendants, any business entity through which any or all may operate, and anyone acting in concert with any or all of them, from engaging in further such conduct;

B. That the Court find that Marlene Mitchell, Timothy Mitchell, and Premier Trust Services, individually and together, have engaged in conduct that interferes with the internal revenue laws, and that injunctive relief against them, any business entity through which any or all of them operate, and anyone acting in concert with any or all of them, is appropriate to prevent the recurrence of that conduct pursuant to the Court's powers under I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7408 and 7402(a), enter a permanent injunction prohibiting Marlene Mitchell, Timothy Mitchell, and Premier Trust Services, individually, together and doing business as or through any entity, and anyone acting in concert with them, from directly or indirectly:

- (a) Organizing, promoting, or selling any 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;
- (b) Engaging in activity subject to penalty under I.R.C. § 6700, including selling, organizing or assisting in the organization of a trust, other entity, any investment plan or arrangement, or other plan or arrangement about which the defendants have made a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement that the defendants know or have reason to know is false or fraudulent as to a material matter;
- (c) Making false representations in connection with organizing, promoting, or selling any tax shelter, plan, or arrangement that:
  - The federal income tax system is a “voluntary system” that persons are not required to participate in;
  - The only persons who need file federal income tax returns are government employees and persons who have contracts with the government;
  - Persons can set up a system of complex trusts including a “business trust,” a “family trust,” a “charitable trust,” and “unit trusts” that can be legally used to hide income and assets from the IRS;
  - All expenses associated with maintaining and operating a family home become deductible business expenses if the home is transferred to a trust;
  - Funneling money through a “business trust” and “family trust” and into a “charitable

trust” will allow customers to deduct “100 percent of every penny [they] make”;

- Persons can avoid paying capital gains tax on property that has appreciated by transferring the property to the charitable trust and having the trust sell the property tax free. The cash received upon the sale of the property is then transferred out of the charitable trust to an “investment trust” where the individuals can now have full control of it;
- Persons can avoid federal income tax by transferring all personal income to the business trust, because the trust is now earning money rather than the individual;
- Persons can avoid federal self-employment tax by transferring all income to the business trust, because the trust is now earning money rather than the individual.

- (d) Selling or organizing any type of trust arrangements that advocate or assist in non-compliance with the income tax laws or tax evasion, misrepresent tax savings realized by using the arrangement, encourage the fraudulent characterization of personal expenses as business expenses, or conceal the receipt of income;
- (e) Engaging in any other activity subject to penalty under I.R.C. §§ 6700; and
- (f) Engaging in other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

E. That this Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction requiring defendants, within 30 days of the Court’s injunction order, to provide to the United States the names, addresses, and social security numbers or employer identification numbers of all persons and entities to whom they have given or sold, directly or indirectly, materials or information regarding the abusive-trust program described in this Complaint;

F. That this Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction requiring Marlene Mitchell, Timothy Mitchell, and Premier Trust Services to contact, by means of a letter to be approved by the Court, all persons to whom they have given or sold, directly or indirectly, the abusive tax program described in this Complaint, and inform them of the Court's findings concerning the falsity of defendants' representations, attaching a copy of the permanent injunction against defendants and their organizations, and to file with the Court, within thirty days of the date they are served with this injunction order, a certification that they have done so; H. That this Court order that the United States may engage in post-judgment discovery to ensure compliance with the permanent injunction;

I. That this Court shall retain jurisdiction over this action for purpose of implementing and enforcing the final judgment and all additional decrees and orders necessary and appropriate to the public interest; and

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

JANE J. BOYLE  
United States Attorney

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