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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

United States,

Plaintiff,

v.

Martin A. Kapp,

Defendant.

NO. CV 06-2136 GPS (PJWx)

**JUDGMENT AND PERMANENT
INJUNCTION**

In light of this Court's grant of summary judgment for the Government, **IT IS
HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. Judgment is entered against Defendant, Martin Kapp.
2. The United States may recover its costs.
3. Defendant and his agent, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order are enjoined under 26 U.S.C. § 7407 from:
 - a. preparing or assisting in preparing any part of a return, amended return, or claim for refund asserting the position that mariners are entitled to tax deductions for meals that are provided to mariners without cost;
 - b. preparing or assisting others in preparing any document that is to be

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used in connection with any material matter arising under the internal revenue laws claiming that mariners are entitled to tax deductions for meals that are provided to them without cost;

c. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that any provision of the Internal Revenue Code permits mariners to claim tax deductions for meals that are provided to mariners without cost;

d. preparing income tax returns, or any portion of a return, that asserts or relies on the position that *Westling v. Commissioner*, 90 T.C.M. (CCH) 873 (2000) or *Johnson v. Commissioner*, 115 T.C. 210 (2000) permit mariners to claim tax deductions for meals that are provided to mariners without cost;

e. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that *Beech Trucking Co. v. Commissioner*, 118 T.C. 27 (2002) permits mariners to claim tax deductions for meals that are provided to mariners without cost;

f. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that 41 C.F.R. § 301-11.11.17 or any other portion of the Code of Federal Regulations permits mariners to claim tax deductions for meals that are provided to mariners without cost;

g. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that IRS Publication 17, 463, or any other IRS Publication permits mariners to claim tax deductions for meals that are provided to mariners without cost;

h. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that IRS Notice 95-50 or any other IRS Notice permits mariners to claim tax deductions for meals that are

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- provided to mariners without cost;
- i. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that IRS Revenue Procedure 89-67, 90-38, 90-60, 92-17, 93-21, 93-50, 94-77, 96-28, 96-64, 97-59, 98-64, 2000-9, 2000-39, 2001-47, 2002-63, 2003-80, 2004-60, 2005-10, 2005-67 or any other IRS Revenue Procedure permits mariners to claim tax deductions for meals that are provided to mariners without cost;
- j. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that 46 U.S.C. § 10303 permits mariners to claim tax deductions for meals that are provided to mariners without costs;
- k. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that *Tougher v. Commissioner*, 51 T.C. 737 (1969), *aff'd*, 441 F 2d 1148 (9th Cir. 1971) permits mariners to claim tax deductions for meals that are provided to mariners without cost;
- l. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that IRS employees have informed Defendant that mariners may tax deductions for meals that are provided to mariners without cost;
- m. preparing federal income tax returns, or any portion of a return, that asserts or relies on the position that mariners may claim tax deductions for meals that are provided to them without cost on the grounds that the meals are not "free" because they are taxable for state disability purposes, or are otherwise taxable under state law;
- n. representing customers in IRS audits, in the United States Tax Court, or otherwise defending or advocating the position that mariners are

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entitled to claim tax deductions for meals that are provided to mariners without cost; and

o. misrepresenting any of the terms of this Order.

4. Within twenty-one (21) days of this Order, Defendant shall provide a list of all persons or entities for whom he prepared returns (any portion of a return, amended returns, or refund claims), which assert or rely on the position that mariners may claim tax deductions for meals that were provided to them without cost. This list is to cover materials that were prepared at any time from January 1, 2000 to present. Defendant shall provide this list to counsel for the United States. For every person or entity that appears on the list, Defendant must state the name, contact information, social security number or employer identification number, and tax period(s) for which the returns, portions of returns, amended returns, or refund claims relate.

5. Within twenty-one (21) days of this Order, Defendant shall post a link to a complete copy of this Order at the top of the first page of the www.mkappcpa.com and www.sailortax.com websites, and any other websites Defendant uses to promote his return preparation business.¹ This link is to remain in place for one year and shall be prominently displayed and marked with the following explanatory language:

“A federal Court found that Martin Kapp incorrectly advised his clients to take an illegal tax deduction. This illegal deduction related to Mr. Kapp’s position that mariners could claim a deduction for meals that were provided to them without cost. The link below sets forth the terms of the injunction that prevents Mr. Kapp from promoting this illegal deduction in the future.”

1. In order to prevent fraudulent tax schemes, Courts often require the posting of injunctions on websites. See *United States v. Schiff*, 379 F.3d 621, 631 (9th Cir. 2004)

