

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

| | | |
|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil No. CV-05-1251 |
| |) | |
| NICHOLAS P. MAGALHAES, |) | |
| |) | |
| Defendant. |) | |

FINAL JUDGMENT OF PERMANENT INJUNCTION

Plaintiff, the United States of America, has filed a Complaint for Permanent Injunction against defendant Nicholas P. Magalhaes.

Magalhaes does not admit the allegations in the Complaint, except that he admits that the Court has jurisdiction over him and over the subject matter of this action.

Magalhaes waives the entry of findings of fact and conclusions of law under Federal Rule of Civil Procedure 52 and Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7402(a) and 7408.

Magalhaes consents to entry of this Final Judgment of Permanent Injunction without admitting that grounds exist for imposition of an injunction.

Magalhaes enters into this Final Judgment of Permanent Injunction voluntarily and waives any right he may have to appeal from it.

Magalhaes consents to entry of this Final Judgment of Permanent Injunction without further notice and agrees that this Court shall retain jurisdiction over him for the purpose of implementing and enforcing this Final Judgment of Permanent Injunction.

The Court accordingly **ORDERS, ADJUDGES, AND DECREES** that:

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a) and 7408.

2. The Court finds that the purported VEBA and welfare benefit plans promoted by Magalhaes violate various provisions of the Internal Revenue Code, including §§ 162, 404, 419, 419A, 419A(f)(6), and 501(c)(9).

3. The Court finds that Magalhaes has consented to the entry of this injunction.

4. It is further **ORDERED** that Magalhaes, individually and doing business 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, is permanently enjoined and restrained from, directly or indirectly:

- (a) Organizing, promoting, marketing, or selling any tax plan, shelter, or arrangement that advises, encourages, or assists taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (b) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by the reason of participating in any tax plan, shelter, or arrangement;
- (c) Organizing, promoting, marketing, or selling tax plans, shelters, or arrangements that falsely purport to qualify as VEBAs under I.R.C. § 501(c)(9) or as ten-or-more employer welfare benefit plans under I.R.C. § 419A(f)(6);

- (d) Receiving fees, commissions, or other compensation from any purported VEBA or ten-or-more employer welfare benefit plan;
- (e) Engaging in any other activity subject to penalty under I.R.C. § 6700;
- (f) Advising or assisting anyone to attempt to conceal activities from the IRS or otherwise obstruct IRS investigations; and
- (g) Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

5. It is further ORDERED pursuant to I.R.C. § 7402(a) and Treasury Regulation (26 C.F.R.) § 301.6112-1 that Magalhaes produce to counsel for the United States a list of the employers and other individuals participating in his abusive tax plans and any records in his possession or to which he has access identifying by name, taxpayer-identification number, address, and telephone number all individuals and entities who participated in his plans or who sold or brokered his plans to others;

6. It is further ORDERED that Magalhaes fulfill the requirements of paragraph 5 within 11 days of the entry of this judgment and file a certificate of compliance with the requirements of paragraph 5 within 12 days of the entry of this judgment.

7. It is further ORDERED that the United States is permitted to engage in post-judgment discovery to ensure compliance with this permanent injunction.

8. It is further ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and enforcing this Final Judgment of Permanent Injunction.

There being no just reason for delay, the Clerk is directed to enter this Final Judgment of

Permanent Injunction forthwith.

SO ORDERED this 18th day of MAY, 2005.

Central Islip, NY

|s| JOANNA SEYBERT

Joanna Seybert
United States District Judge

Consented to and Agreed:

Nicholas P. Magalhaes
Nicholas P. Magalhaes
Defendant

Nicholas Plato, Esq.
Nicholas Plato, Esq.
Attorney for Nicholas P. Magalhaes

ROSLYNN MAUSKOPF
United States Attorney

ANNE NORRIS GRAHAM (AG8213)
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 353-4384
Fax: (202) 514-6770