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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 RODNEY G. BOURG and)
 CYNTHIA M. BOURG,)
)
 Defendants.)

LORETTA G. WHYTE
CLERK

Civil Action No

~~06-6830~~

SECT. N MAG 2

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America, for its Complaint, alleges and avers the following:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and by §§ 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) ("I.R.C.").
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.
3. This action is brought at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury. This action is commenced at the direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402, 7407, and 7408.

Defendants

4. Defendant Rodney G. Bourg is a natural person who resides within this judicial district.

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5. Defendant Cynthia M. Bourg is a natural person who resides within this judicial district.

6. Defendant Rodney G. Bourg is a federal income tax return preparer, within the meaning of I.R.C. § 7701(a)(36). Defendant Rodney G. Bourg works for a partnership doing business as Tax Prep and having its principal place of business on Lorraine Park Street in Houma, Louisiana. In that capacity, Defendant Rodney G. Bourg prepares and files with the Internal Revenue Service Forms 1040 (individual income tax returns) and Forms 1040X (administrative claims for tax refund).

7. Defendant Cynthia M. Bourg is a federal income tax return preparer, within the meaning of I.R.C. § 7701(a)(36). Defendant Cynthia M. Bourg also works for the above-described partnership known as Tax Prep, and in that capacity, she prepares and files with the Internal Revenue Service Forms 1040 (individual income tax returns) and Forms 1040X (administrative claims for tax refund). Defendant Cynthia M. Bourg is also the majority owner of a limited liability company known as R.C. Holdings, LLC. R.C. Holdings, LLC is the controlling partner of Tax Prep.

Facts Common to All Counts

8. Each defendant has prepared and filed, or assisted in preparing and filing, federal income tax returns for customers who work as mariners, fishermen, merchant seamen, ferry workers, and similar jobs aboard their employers' vessels. Each defendant has prepared for such customers, or assisted in preparing for such customers, federal income tax returns that contained inflated or overstated expense deductions for meals and incidental expenses ("M&IE per diem expenses"), in that excessive or overstated M&IE per diem expense amounts were claimed as

deductions even where the customer's employer provided meals and any necessary lodging at no cost to the employee. The deductions claimed exceeded the allowable deduction by at least \$30.00 per day.

9. The excessive deductions to which reference is made in paragraph 8 above are improper, and are not supported by the Internal Revenue Code or other law.

10. At least 150 income tax returns or tax refund claims that Defendants prepared or assisted in preparing since January 1, 2001, contained improper deductions, as described in paragraph 8 above. Based on available information, the Internal Revenue Service estimates that the aggregate tax loss resulting from such improper deductions exceeds the sum of \$180,000.

11. Defendants knew, or should have known, that the amounts of the deductions claimed were not allowable or authorized by the Internal Revenue Code or any other law. Defendants thus have prepared, or assisted in preparing, tax returns or refund claims that Defendants knew, or should have known, understated the claimant's tax liability, and that Defendants knew, or should have known, were unrealistic or frivolous.

12. The understatements of tax liability reflected on such returns or amended returns are due, at least in material part, to the assertion of a position that had no realistic possibility of being sustained.

13. Returns containing overstated deductions in the aforesaid circumstances, or similar purported mariner business expense claims, interfere with the proper administration and enforcement of the internal revenue laws.

14. Defendants' conduct results in irreparable harm to the United States, for which the United States has no adequate remedy at law. Specifically:

- a. Defendants' conduct, unless enjoined, is likely to cause the United States to expend significant resources to locate and process tax returns and refund claims containing frivolous claims, and to assess and collect proper tax liabilities and penalties.
- b. If not enjoined, Defendants' actions will continue to sow confusion about the tax laws, by causing taxpayers to believe, falsely, that the United States Government is allowing a tax deduction or refund in an amount that exceeds that allowable by law.
- c. Defendants' actions require the Internal Revenue Service to devote resources to processing a substantial volume of false and fraudulent returns and claims for tax refund, thereby reducing the level of service that the agency can provide to other taxpayers.

Count I
(Injunction under I.R.C. § 7407)

15. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 14.

16. I.R.C. § 7407 authorizes the Court to enjoin an income tax return preparer if, *inter alia*, the Court finds that the return preparer has engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, and that injunctive relief is appropriate to prevent the recurrence of the conduct.

17. I.R.C. § 6694 imposes penalties on income tax return preparers who prepare returns that contain frivolous positions, or who willfully understate the tax liability of another

person.

18. Defendant Rodney G. Bourg, an income tax return preparer, and Defendant Cynthia M. Bourg, an income tax return preparer, have engaged in conduct subject to the I.R.C. § 6694 penalty because the inflated or overstated amounts claimed as deductions on returns that each prepared constitute a frivolous position, with no realistic possibility of being sustained on the merits, and because each defendant willfully prepared or assisted in preparing returns that understated the tax liabilities of other persons.

19. I.R.C. § 7407 also authorizes the Court to enjoin an income tax return preparer if the Court finds (i) that the return preparer has engaged in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws and (ii) that injunctive relief is appropriate to prevent a recurrence of the conduct.

20. Defendant Rodney G. Bourg and Defendant Cynthia M. Bourg engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws by, among other things, filing false and fictitious returns or amended returns that contained fictitious tax deductions.

Count II

(Injunction under I.R.C. § 7408 for violations of I.R.C. § 6701)

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

22. I.R.C. § 7408 authorizes the Court to enjoin a person from engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701, if injunctive relief is appropriate to prevent recurrence of such conduct.

23. I.R.C. § 6701 imposes a penalty on any person who (i) aids, assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; (ii) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and (iii) who knows that such portion (if so used) would result in an understatement of the tax liability of another person.

24. Defendants Rodney G. Bourg and Cynthia M. Bourg have engaged in conduct subject to penalty under I.R.C. § 6701 by preparing or assisting in the preparation of documents that contained false and inaccurate amounts of deductions. Defendants knew or had reason to believe that the documents would be used in connection with material matters arising under the internal revenue laws. Defendants knew that, if so used, the documents would result in understatements of tax liabilities.

25. Injunctive relief is appropriate to prevent the recurrence of such conduct.

26. It is appropriate and necessary under the circumstances that the Court issue an injunction under I.R.C. § 7408, to prevent Defendants from engaging in conduct subject to penalty under I.R.C. § 6701.

Count III

(Unlawful Interference with the Enforcement of the Internal Revenue Laws, I.R.C. § 7402)

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

28. I.R.C. § 7402(a) authorizes federal district courts to issue injunctions as may be necessary or appropriate to enforce the internal revenue laws.

29. Defendants Rodney G. Bourg and Cynthia M. Bourg, through the conduct described above, engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. Defendants' conduct causes irreparable injury to the United States, and an injunction under I.R.C. § 7402(a) is necessary and appropriate.

WHEREFORE, the United States respectfully requests the following relief:

A. That the Court find that Defendant Rodney G. Bourg and Defendant Cynthia M. Bourg have repeatedly engaged in conduct subject to penalty under I.R.C. § 6694, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent recurrence of that conduct.

B. That the Court find that Defendant Rodney G. Bourg and Defendant Cynthia M. Bourg have repeatedly engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent recurrence of that conduct.

C. That the Court find that Defendants Rodney G. Bourg and Cynthia M. Bourg have engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent recurrence of that conduct.

D. That the Court find that Defendants Rodney G. Bourg and Cynthia M. Bourg have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent recurrence of that conduct, pursuant to the Court's inherent equity powers and I.R.C. § 7402(a).

E. That the Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting Defendant Rodney G. Bourg, individually, Defendant Cynthia M. Bourg, individually, and anyone in active concert or participation with either of them, including any

agent, servant, or employee, from directly or indirectly, by the use of any means or instrumentalities:

- (1) engaging in any conduct subject to penalty under I.R.C. § 6694, *i.e.*, preparing any part of a return, amended return, or claim for refund that includes an unrealistic or frivolous position, including, without limitation, a claim for deductions in amounts that are inflated or overstated;
- (2) assisting or aiding others to evade the payment of taxes or to prepare false or fraudulent federal income tax returns;
- (3) engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws.

F. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Defendants Rodney G. Bourg and Cynthia M. Bourg, individually, and anyone in active concert or participation with either of them, including any agent, servant, or employee, from directly or indirectly, by the use of any means or instrumentalities:

- (1) engaging in any conduct subject to penalty under I.R.C. § 6701, *i.e.*, preparing or assisting others in preparing any document (i) that is to be used in connection with any material matter arising under the internal revenue laws and (ii) that either Defendant or such other person knows will (if so used) result in understating the income tax liability of another person;
- (2) engaging in conduct that interferes with the administration or enforcement of the internal revenue laws, including preparing or assisting in preparing

any return, amended return, refund claim, or other document to be filed with the IRS claiming a credit or refund that includes an overstatement of the amount of the allowable deduction.

G. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Defendants, at their own expense, to contact, in writing –

all persons for whom either of them prepared or assisted in preparing any federal income tax return, amended return, or refund claim that contained excessive per diem employee expense deductions, excessive per diem business expense deductions, or excessive meal expense deductions, from January 1, 2001 through the present, and inform each such person of (i) the entry of Final Judgment in this case, (ii) the possibility of the imposition of penalties against them, and (iii) the possibility that the United States may seek to collect additional federal income taxes, penalties, and interest that they may owe.

H. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Defendants–

(1) to provide to counsel for the United States, within fourteen (14) days after entry of the Court’s order or judgment of injunction, a complete list of the persons for whom Defendants, or either of them, have prepared, or assisted in preparing, any federal income tax return, amended return, or refund claim containing or including deductions for per diem employee expenses or meal expenses that exceed the amount of deductible expenses allowed by the Internal Revenue Code, at any time from January 1, 2001 through

the present, such list to include for each such person the name, address, phone number, e-mail address, social security number or employer identification number, and the tax period(s) to which or for which such return, amended return, or refund claim relates;

- (2) to file with the Clerk of this Court, within twenty-one (21) days after entry of the Court's order or judgment of injunction a sworn certificate of compliance, stating that Defendants have complied with the foregoing directives.

I. That this Court order that the United States may engage in post-judgment discovery to ensure compliance with the permanent injunction; and

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

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

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