UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-8816-CIV-MARRA

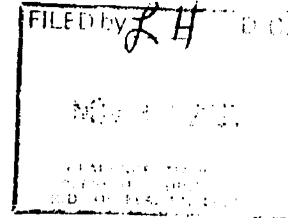
UNITED STATES OF AMERICA,

Plaintiff,

v.

LOUIS W. RATFIELD and
LWR FINANCIAL SERVICES TRUST,

Defendants.



ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
ORDER DENYING DEFENDANTS' MOTIONS

THIS CAUSE is before the Court upon the United States of America's Motion for Summary Judgment [DE 34], the Defendants' Motion for Summary Judgment [DE 65], and Defendants' Demand for Proof Jurisdiction [DE 75]. The Court has carefully considered the entire record in this case, and is otherwise fully advised in the premises.

I. BACKGROUND

The United States of America ("Government" or "Plaintiff") filed this action against the defendants, Louis W. Ratfield and LWR Financial Services Trust, ("Defendants") seeking a permanent injunction prohibiting the Defendants from: (1) organizing and/or promoting an alleged abusive tax shelter; and (2) acting as federal income tax return preparers. Plaintiff's complaint asserts three separate claims under 26 U.S.C. §§ 7408, 7407, and 7402(a), respectively, for which an injunction should issue. Plaintiff's complaint also seeks a monetary penalty pursuant to 26 U.S.C. §§ 6694, 6695 and 6701. In general, Plaintiff's complaint alleges that Defendants promoted and sold "pure" or "common-law" trusts to enable taxpayers to

understate substantially their income.

A hearing was held on August 12, 2002, before the prior assigned United States District Judge, Wilkie D. Ferguson, Jr., on the Plaintiff's Motion for Preliminary Injunction. The Court granted the motion and issued a preliminary injunction September 27, 2002 [DE 64]. The United States has moved for summary judgment on the issue of its entitlement to a permanent injunction, and defendants have filed their responses thereto. In addition to the materials submitted in support of and against the Government's motion for summary judgment, the Court has reviewed the transcript of the hearing on the motion for preliminary injunction and the exhibits received in evidence at the hearing as permitted by Fed.R.Civ.P. 65(a)(2). Transcript [DE 77]; Government's Summary Judgment Exhibits at DE's 35-46. Defendants have filed their own motion for summary judgment, as well as a separate filing challenging this Court's jurisdiction. This Court held a status conference in this case after transfer of the case to the undersigned, during which counsel for both sides agreed that the case can be resolved on the cross-motions for summary judgment [DE 73].

II. DISCUSSION

A. Summary Judgment Standard

The Court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The stringent burden of establishing the absence of a genuine issue of material fact lies with the moving party. Celotex Corp. v. Catrett, 477 U.S. 317, 323(1986). The Court should not grant summary judgment unless it is clear that a trial is

unnecessary, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986), and any doubts in this regard should be resolved against the moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

The movant "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp., 477 U.S. at 323. To discharge this burden, the movant must point out to the Court that there is an absence of evidence to support the nonmoving party's case. Id. at 325.

After the movant has met its burden under Rule 56(c), the burden of production shifts and the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electronic Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). According to the plain language of Fed. R. Civ. P. 56(e), the non-moving party "may not rest upon the mere allegations or denials of the adverse party's pleadings," but instead must come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 587.

Essentially, so long as the non-moving party has had an ample opportunity to conduct discovery, it must come forward with affirmative evidence to support its claim. Anderson, 477 U.S. at 257. "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be a sufficient showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990). If the evidence advanced by the non-moving party "is merely colorable, or is not significantly probative, then summary judgment may be granted." Anderson, 477 U.S. 242, 249-50.

B. Findings of Fact[1]

1. At the commencement of this action, Ratfield resided at 4526 Hunting Trail, West Palm Beach, Florida, within the jurisdiction of this Court. Complaint, ¶4; Answer and Affirmative Defenses (Doc. #3), ¶3.

2. LWR Financial Services Trust (LWR), also known as LWR Financial Services, is Ratfield's sole proprietorship and purports to be a "business trust." LWR was established pursuant to a "Declaration and Contract of Trust" executed on or about November 28, 1996 by and between Robbie J. Self, James T. Mullane and Gregory D. Garrison. Ratfield is the "General Manager" of LWR. At the commencement of this action, LWR had its principal office at 7318 Lake Worth Road, Lake Worth, Florida, within the jurisdiction of this Court. Complaint, ¶5; Answer and Affirmative Defenses, ¶4. LWR employs approximately nine people in its Lake Worth, Florida office, including Adam Jacobs and Sandra Perry.

<u>Summary of the Tax Shelter Promotion Sought to be Enjoined</u>

3. Defendants Ratfield and LWR market trust arrangements which purportedly involve transferring individual taxpayers' businesses to "pure" or "common law" trusts created by defendants. After the taxpayer's business supposedly has been transferred to one of defendants' trusts, the income and expenses of the taxpayer's business are reported on a Schedule C (Profit or Loss from Business) attached to a U.S. Income Tax Return for Estates and Trusts (Form 1041)

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[1] Because this case is not only before the Court upon cross-motions for summary judgment but also for final consideration of the request for a permanent injunction, the findings of fact and reasons for granting the Plaintiff's motion are set forth in accordance with Rules 52(a) and 65(d) of the Federal Rules of Civil Procedure. The Court notes that the facts of this case are generally not in dispute. For this reason, upon review of the record, the Court has adopted most of the Plaintiff's proposed findings of fact.

prepared by Ratfield for the trust.

4. The net profit from the taxpayer's business is reported as the "business income" of the trust, and eliminated by the "Other deductions not subject to the 2% floor" claimed on line 15a of the Form 1041. A statement prepared by Ratfield and attached to the Form 1041 itemizes the allegedly improper deductions claimed on line 15a. Those deductions include (but are not limited to) the "Trust Headquarters" (the individual taxpayer's nondeductible personal living expenses, such as groceries, utility bills and mortgage principal payments); "medical" (the individual taxpayer's nondeductible medical bills); "pension" (the individual taxpayer's contributions to a private pension plan); and "insurance" (the individual taxpayer's disability and life insurance premiums).

5. The federal income and self-employment tax liabilities of the individual taxpayers who purchased a trust from Ratfield, according to Plaintiff, are artificially reduced by employing the trust purchaser as the "General Manager" of the trust, which pays the individual taxpayer a yearly salary of approximately $12,000 in lieu of the income which he or she previously received from the business. In this fashion, defendants' trust arrangements allegedly result in a significant understatement of the individual taxpayers' federal tax liabilities.

6. The individual taxpayers' relationship (as the "Exchanger") to his or her property does not change before or after the formation of the trust. Although trust beneficiaries are named (usually children of the "General Manager"), no economic interest in the business or property purportedly transferred to the trust passes to them.

7. Ratfield's customers use all of their purported trust properties as their own, and have sole signature authority and control over the bank accounts of the trusts. The personal living

expenses of the taxpayers who purchase trusts from Ratfield are then deducted by the trusts on line 15a of the U.S. Income Tax Return for Estates and Trusts (Form 1041), along with all of the costs for maintaining the individual taxpayers' personal residence.

8. If a client of Ratfield does not have any suitable individuals to designate as the "trustee" of his or her trust, Ratfield provides trustees. The "trustees" furnished by Ratfield - usually Robbie J. Self, Kathleen R. Lewis, Adam Jacobs or Sandra Perry - play no role in the management of the "trusts" created by Ratfield for his customers, according to the Government's filings in this case and the testimony of Sandra Perry and Adam Jacobs. See Transcript of Preliminary Injunction Hearing at pp. 63, 107-08 [DE 77] (hereinafter, "Transcript").

Ratfield's Employment with the Internal Revenue Service

9. Ratfield was employed by the Internal Revenue Service from December 8, 1969 to December 14, 1973 as an economist for the Assistant Commissioner (Planning & Research), Statistics Division, Operations Branch, Methods and Procedure Section, and later as a statistician in the same division and branch until December 30, 1977. Declaration of IRS Revenue Agent Patricia L. Grimes ("Grimes decl.") (Doc. #18), ¶31.

10. Ratfield told Agent Grimes on August 31, 2000 that he has worked in the tax area since January 4, 1978. Ratfield operated a sole proprietorship from 1978 to 1996, when he first began to operate as a business trust. Ratfield admitted to Agent Grimes that he has over a thousand total clients, with approximately 300 in Cape Cod, Massachusetts. Those clients (according to Ratfield) reside in seventeen (17) states. Grimes decl., ¶34.

Ratfield's Statements in "The Constitutional Common Law Trust"

11. LWR's brochure states that Ratfield spent two years researching the legal and ethical

aspects of common-law trusts, and identifies him with a book called The Constitutional Common-Law Trust. This book states (on page 173) that Ratfield is "[a]n accountant who specializes in Common-Law Trusts." Grimes Decl., ¶35; Declaration of IRS Revenue Agent Beth Cohen ("Cohen decl.") (Doc. #20) and Exhibit 4 thereto. Ratfield co-authored The Constitutional Common-Law Trust with James Mathers, who is credited on the first page with having written the book. Ratfield is the "LR" acknowledged in the beginning of The Constitutional Common-Law Trust.

12. Ratfield wrote the letter which appears on pages 141 and 142 of The Constitutional Common-Law Trust. This letter states in pertinent part that:

- "With your self-employment business wrapped in an Irrevocable Common-Law Trust and a Pure Holding Trust, you have opened the door to numerous tax savings."

- "The Common-Law Trust method follows contract law of the United States, leaving behind all the rules and regulations that the Federal, State and Local governments impose on all other forms of business. Consequently, this form of business protects all of the trust's decisions from inspection by all levels of government for tax reasons, as the trust form of business is strictly for the benefit of the beneficiaries."

- "The Irrevocable Common-Law Trust is the day-to-day workings of the business. The Trustees have the ability to contract with a person to act as General Manager, giving him the responsibility of the day-to-day procedures. All of the basic and assigned responsibilities will be included in the contract. What better person could there be to become General Manager than the person who has the knowledge and experience of running this business (*You*)."

- "It is normal to pay the General Manager a smaller contractual wage, because many of his personal expenses become expenses for the Irrevocable Common-Law Trust. Through contractual waging, the General Manager is responsible for his own individual tax structure, which can save him a large portion of his tax dollars. The saved Social Security tax dollars should be used to enhance his retirement plan."

- "The Holding Trust actually 'holds' all of the assets previously owned by your business, as well as the assets you will acquire in the future. The assets included can be (but are not limited to) the machinery, equipment, office furniture and fixtures, vehicles, buildings, residences, as well as stocks, bonds, and any other assets of value. As the assets grow, you may consider the need to form other Holding Trusts to accommodate these assets, and to further protect them from lawsuits."

- "The Holding Trust can lease any and all of these assets to the Irrevocable Common-Law Trust through formal written contracts. An example would be when the Holding Trust contracts with the General Manager to provide the upkeep and maintenance of the trust headquarters in exchange for living in the residence whereby all the expenses of the residence become expenses of the Holding Trust and are deducted from the income of the Holding Trust. It is also possible for the Holding Trust to purchase life and health insurance policies, investment plans and retirement plans for the beneficiaries of the trust.

- Remember, unless the IRS Codes tell you NOT to do something, you can do it. Most everything can become deductible to the trusts. Be imaginative!

Grimes Decl., ¶38; Government Hearing Exhibit 1.[2]

13. The foregoing statements are also repeated in the "The Constitutional Common-Law Trust – LWR Financial Services Informational Packet" written by the defendants. Government Hearing Exhibit 48.

14. <u>The Constitutional Common-Law Trust</u> ("CCLT") makes the following false or fraudulent statements with regards to the tax benefits or advantages of contractual business trusts:

- "If you could organize life into a business, you'd at least, get the tax deductions for the expenses incurred in being alive. . . When you organize living into a Common-Law Trust, whatever you require to accomplish the process of living could be tax deductions to that business. And,

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[2] "Government Hearing Exhibit" refers to the exhibits received into evidence by Judge Ferguson at the hearing held on the United States' Motion for Preliminary Injunction on August 12, 2002.

you would deduct all of the expenses that you have in continuing to be alive." (CCLT, p. 12)

- Exchanging assets into a trust for Capital Units has no taxable results. (CCLT, p. 98)

- "A home-owning trust may contract with you, in exchange for free rent, to be caretaker of 'its' homes and trust headquarters. The trust can depreciate the home and furnishings, and gain more deductions. All utilities, improvements, upkeep and insurance are expenses to the trust." (CCLT, p. 69)

- "One purpose of trusts is the health, welfare and well-being of its beneficiaries. It may provide insurance, educational benefits, health care, dental care, some clothing and food (if you are on call to the Common-Law Trust for 24 hours a day). All these items are deductible expenses." (CCLT, p. 69)

- "The trust can place any or all employees under contract, and will not be required to make any contributions to Social Security in relation to their pay." (CCLT, p. 67)

- With the use of the Common-Law Trust through income splitting, payment of living expenses with pre-tax dollars, and payment of a minimum salary to the prior business owner the trust increases their purchasing power by 45% and saves them $7,527 in social security tax and $10-15,000 in income taxes. (CCLT, p. 27) and

- The business trust can pay and deduct the health, life, retirement and property insurance, vehicle, travel and transportation expenses, educational expenses, food, house and upkeep, clothes of the taxpayer and his family. (CCLT, pp. 27, 62 and 69)

Grimes Decl., ¶39.

The IRS Examinations of LWR Financial Services Trust and Ratfield

15. The IRS conducted an examination of the U.S. income tax returns for the LWR Financial Services Trust that Ratfield prepared for the years 1997, 1998 and 1999. Grimes Decl.,

¶4.

16. The "Declaration and Contract of Trust" for LWR (Government Hearing Exhibit 2) and its associated documents are typical of the "pure" or "common law" trusts created by Ratfield for his customers. These "pure" or "common law" trusts (which Ratfield also refers to as "business trusts") are actually abusive tax shelters, plans or arrangements that advise or encourage taxpayers to unlawfully understate their own tax liability in a number of ways. Grimes Decl., ¶5, and Exhibit 8 thereto; Government Hearing Exhibit 2.

17. Despite the creation of trust documents, LWR is a sham trust. LWR lacks economic and legal reality because the trust instrument (the "Declaration and Contract of Trust" and associated documents printed out by Ratfield on his computer) gives the General Manager - Ratfield - absolute and sole authority to determine what shall constitute principal and earnings of the trust, as well as the authority to determine if and when distributions shall be made to the beneficiary. Essentially, the General Manager has absolute power to manage the trust as he deems fit. Grimes decl., ¶¶8 and 43.

18. Attached to each of LWR's 1997-1999 Form 1041 tax returns (that Ratfield prepared) are two or more IRS Schedule C (Profit or Loss from Business) forms. The income and expenses reported on the Schedule C attached to LWR's 1997 - 1999 tax returns are the same income and expenses that would have appeared on the Schedule C of Ratfield's own 1997 - 1999 tax returns had no trust been formed. Grimes decl., ¶11; Government Hearing Exhibits 3-5.

19. On the two Schedule C forms attached to LWR's 1997 tax return, the trust reported gross income of approximately $1.5 million and a net profit of approximately $83,000 from Ratfield's tax accounting and other businesses. Grimes decl., ¶12; Government Exhibit 3.

20. As a result of its examination of LWR's1997 Form 1041 income tax return and Ratfield's Form 1040 tax return for the same year, the IRS determined that Ratfield – not LWR – received taxable income of approximately $1 million. Grimes decl., ¶13; Government Hearing Exhibits 3 and 12.

21. The IRS examination of Ratfield and LWR's 1998 tax returns yielded the same results. On the two Schedule C (Profit or Loss from Business) forms attached to LWR's1998 Form 1041 income tax return, the trust reported gross income of approximately $1.7 million and a net profit of approximately $279,000 from Ratfield's tax accounting and other businesses. Grimes decl., ¶14; Government Hearing Exhibit 4.

22. As a result of its examination of LWR's 1998 Form 1041 income tax return and Ratfield's 1998 Form 1040 tax return, the IRS determined that Ratfield not LWR – received taxable income of approximately $1.3 million in 1998. Grimes decl., ¶15; Government Hearing Exhibits 4 and 12.

23. The $1 million of taxable income for 1997 and $1.3 million of taxable income for 1998 is properly attributed to Ratfield, and not to the LWR. LWR is a sham for federal income tax purposes. There was no change in Ratfield's economic position before or after the creation of this trust, and Ratfield's relationship to the source of the income in this case was the same after the trust was created as it was before the trust was created. Ratfield, at all times, retained control over the income received by the trust, and is therefore properly taxed on the receipt of that income. Grimes decl., ¶16; Government Hearing Exhibit 12.

24. The total income reported on LWR's 1997 and 1998 Form 1041 income tax returns was eliminated entirely by the deductions claimed on line 15a ("Other deductions not subject to the

2% floor") of the 1997 and 1998 Forms 1041. Grimes decl., ¶17; Government Hearing Exhibits 3 and 4.

25. When Agent Grimes requested that the taxpayer provide the Internal Revenue Service with information and documents substantiating these claimed deductions, Ratfield initially refused to provide the requested information. Ratfield told Agent Grimes that the expense items reported on line 15a of the Forms 1041 filed by LWR represented expenses allowable under contract law, and that he was not required to provide the IRS with the information which substantiated those deductions until the IRS could show that a statutory agency could look at a contract law deduction. However, Ratfield subsequently provided Agent Grimes with a summary report of his income and expenses for 1997 and 1998 which showed that he had claimed deductions for nondeductible personal living expenses and expenditures such as his (1) homeowner's association fees; (2) car loan installment payments; (3) credit card bills; (4) life, medical and casualty insurance; (5) mortgage payments (principal); (6) utility, water and cable bills; and (7) loan repayments. Grimes decl., ¶20.

26. The deductions claimed by LWR on line 15a of its 1997 and 1998 Form 1041 income tax returns were disallowed in their entirety. Since the trust was disregarded for federal income tax purposes, the deductions claimed by the trust on line 15a were treated as though they were incurred by Ratfield during the 1997 and 1998 taxable years. Grimes decl., ¶21; Government Hearing Exhibit 12.

27. Since the LWR failed to substantiate the deductibility of the items claimed on line 15a of its 1997 and 1998 income tax returns (Forms 1041), and the information and documents obtained by the Internal Revenue Service as part of its examination of those returns indicated that

the claimed line 15a deductions consisted of Ratfield's non-deductible personal or living expenses, those line 15a deductions were disallowed. Grimes decl., ¶23.

Ratfield sells "pure" or "common law" trusts to other taxpayers

28. Ratfield prepared and sold "trusts" that were virtually identical to his own "LWR Financial Services Trust" to numerous other individuals living in Florida and throughout the United States. At the hearing on the motion for preliminary injunction, the Government presented evidence that the following individuals had purchased "trusts" from the defendants:

(A) Raphael ("Ray") Levy ("U.S. Benefit Services Trust" and "First R & R Trust");

(B) Ronalee Levy Orlick ("M&M Associates Irrevocable Trust");

(C) Robert B. Rabeck ("Regency Heritage Trust" and "United Fidelity Trust");

(D) Adam Jacobs and Sandra Perry ("Superior Management Consultants Trust");

(E) Steven J. Oshinsky ("RAM Capital Management Trust"); and

(F) Richard J. Porcelli ("A.J. Madison Investment Group Trust").

The "trusts" described above were in all major respects identical to the "LWR Financial Services Trust" which Ratfield created for himself, and operated in the same manner. Government Hearing Exhibits 13, 23, 26, 35, 36, 49, 57 and 95.

29. Ratfield has in fact sold over 100 trust packages to individual taxpayers. The basic cost of the trust packages was initially $2,995 in 1997, $3,500 in 1998 and $5,995 in 2000. Additional fees were charged by Ratfield and/or LWR for each holding trust in excess of five, for the use of Ratfield's professional settlor and trustees, and for preparation of federal income tax returns for the trust and the individual taxpayer who purchased the trust.

30. Ratfield promotes the purported transfer of individual taxpayers' personal and

business assets into a series of trusts which he has referred to as "pure" trusts, "common-law" trusts, "Constitutional" trusts and/or Massachusetts trusts. These trusts are established by Ratfield's securing an Employer Identification Number (EIN) from the Internal Revenue Service and filling out a standard form (called the "Declaration and Contract of Trust") maintained on Ratfield's computer.

31. A "business trust" is then created for the individual taxpayer's principal business activity to operate the business and make a profit. The assets of the business are exchanged for "Certificates of Capital Units" of "indeterminate value." The previous business owner then contracts with the trust he has purchased from Ratfield to be the "General Manager" of the trust for about $12,000 per year.

32. As previously discussed, the individual taxpayers' relationship (as the "Exchanger") to his or her property does not change before or after the formation of the trust. Although beneficiaries are named (usually children of the "General Manager"), no economic interest in the business or property purportedly transferred to the trust passes to them.

33. Additionally, as was mentioned previously, Ratfield's customers use all of their purported trust properties as their own, and have sole signature authority and control over the bank accounts of the trusts. The personal living expenses of the taxpayers or the expenses of the small businesses who purchase trusts from Ratfield are then deducted by the trusts on line 15a of the U.S. Income Tax Return for Estates and Trusts (Form 1041), along with all of the costs for maintaining the individual taxpayers' personal residence. The tax deductions claimed on line 15a of the Form 1041 entirely eliminate the trust's income tax liability. <u>See</u> Testimony of Sandra Perry, Transcript at pp. 106-107.

34. False statements about the tax benefits of the trust arrangements which are promoted, organized and sold by Ratfield include the following:

(a) Self-employed persons can reduce or eliminate their income and self-employment taxes by placing their business into a business trust and by paying the "General Manager" a yearly salary of about $12,000 (which results in the understatement of that individual's federal tax liability, and qualifies him or her, in several cases, for Earned Income Tax Credits or income tax refunds);

(b) The taxpayer's personal property and assets can be exchanged, tax-free, for "Capital Units" of the trust(s) created by Ratfield;

(c) Tax deductions can be properly claimed by the trust for the depreciation of the taxpayer's personal residence, furnishings and other property of the individual taxpayer;

(d) The individual taxpayer's personal residence can somehow be converted into a "trust headquarters," thus enabling the trust created by Ratfield to claim tax deductions for routine maintenance, utilities, repairs, and home furnishings owned or incurred by the individual taxpayer; and

(e) Tax deductions can be claimed for life insurance, disability insurance, medical expenses, educational expenses, pension contributions, food, clothing and other personal expenses of the grantor/exchanger (usually the person who purchased the trust from Ratfield).

35. Up until late in 2002, Ratfield has prepared U.S. Income Tax Returns for Estates and Trusts (Forms 1041) for at least 153 different trust entities. Additionally, Ratfield has prepared at least 252 federal income tax returns, in multiple years, for trust entities. Government Exhibit 11.

36. None of the 89 U.S. Income Tax Returns for Estates and Trusts (Forms 1041) prepared by Ratfield for various trust entities report that a trust had taxable income in any taxable year. Testimony of Adam Jacobs, Transcript at p. 69-70.

37. The loss to the Treasury of the United States, in the form of lost federal income and self-employment tax revenue, from the abusive tax shelter promoted by Ratfield and LWR, is at

least $6, 452, 094. Government Exhibit 12

38. Ratfield has refused to cooperate on a number of occasions with the Internal Revenue Service in the examination of the U.S. Income Tax Returns for Estates and Trusts (Forms 1041) which he has prepared for his customers, *i.e.*, those individual taxpayers who purchased trusts from him and/or LWR. Similarly, he has also refused to cooperate, for the most part, with the IRS in the examination of the U.S. Individual Income Tax Returns (Form 1040) for those individual taxpayers who purchased trusts from him. Specific examples of his efforts to obstruct the Internal Revenue Service include, but are not limited to, the following:

(a) Challenges to IRS authority to examine trust income tax returns (Forms 1041).

In his return to an Order to Show Cause entered in the summons enforcement proceeding entitled *United States of America v. Louis W. Ratfield,* Case No. 01-1522-CIV-Seitz/Garber (USDC S.D. Fla.), Ratfield repeatedly questioned the authority of IRS Revenue Agent Steven Smiler to conduct an examination of the federal income tax return filed by the Guaya Equitable Trust (which Ratfield had created). Ratfield has also orally informed other revenue agents that the IRS has no authority to examine the Form 1041 income tax returns prepared by him for the trusts which he has sold.

(b) Refusing to provide documents and information requested by the IRS.

In a letter dated December 28, 2000, written by Ratfield to IRS Revenue Agent Robert M. Akins, Ratfield refused to provide the IRS with a copy of the trust instrument for the Maday Management Trust. With respect to Revenue Agent Grimes' examination of the 1997-1999 U.S. Income Tax Returns for Estates and Trusts (Forms 1041) for the LWR Financial Services Trust, Ratfield repeatedly stated that he would not provide her with any records to substantiate the deductions claimed by LWR on line 15a of its Forms 1041. Additionally, Ratfield declined to provide Revenue Agent Grimes with copies of bank records for bank accounts in his name or that of LWR.

(c) Refusing to provide the IRS with lists of clients for whom Ratfield has prepared returns.

On July 6, 1999, Ratfield initially refused to provide Revenue Agent Grimes with a list of clients for whom he had prepared federal tax returns, claiming that it would

be contrary to the confidentiality provisions of the trust instruments which he had prepared for his clients. Additionally, on two subsequent occasions (August 31, 2000 and September 13, 2000), Ratfield again refused to comply with her requests for his client list. On September 25, 2000, Ratfield provided Revenue Agent Grimes with a portion of the general ledger for LWR Financial Services Trust in which the names of his clients had been redacted. Ratfield's refusal to provide the IRS with a list of the clients for whom he or LWR has prepared federal tax returns has substantially hindered the ability of the IRS to detect the identities of the individuals who purchased trusts from him, and to audit their federal income tax returns (Forms 1040) inasmuch as the tax returns filed by the trusts (Forms 1041) do not disclose the identity of the "general manager" (usually the purchaser of the trust).

C. Conclusions of Law

Jurisdiction

39. Defendants' opposition to the Government's motion for summary judgment and their own motion for summary judgment are both based upon an assertion that this Court lacks jurisdiction over these violations of the income tax code. Defendants' jurisdictional arguments, often repeated with slight variations throughout Defendants' filings in this case, are a collection of distortions of case law and statutes that have been repeatedly rejected by federal courts in the United States.[3] The Defendants' arguments, though voluminous, attempt to assert the following: 1) The United States Code, in particular the Internal Revenue Code, is not law that applies to citizens of a state, but only applies within federal government territory, such as the District of Columbia; 2) This Court, though titled a "District Court," is not a "district court of the United States" as defined by Congress; 3) The Internal Revenue Service has no authority to police the use of common-law trusts, or to license tax preparers; and 4) The "income" generated by Ratfield's clients using the trusts he created is not the kind of income taxable by the income tax. The Court

[3] It is not clear whether these filings were submitted by Ratfield's counsel, Gerald D'Ambrosio, as Louis Ratfield himself signed the filings [DE 65, 75, and 79].

notes that many of Defendants' argument have been rejected by other courts. See U.S. v. Schiff, 269 F.Supp.2d 1262, 1268 (D. Nev. 2003) (cases cited therein).

40. Defendants' jurisdictional arguments have been rejected for nearly one hundred years, and the Court will not address each variation of the arguments set forth repeatedly by Defendants. All such arguments are based upon statements taken out of context. For example, Defendants argue that the income tax only applies to "excise" taxes. This argument appears based upon the reasoning of the United States Supreme Court in Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 517-519 (1921). In Smietanka, the Court merely applied the definition of "income" in the Corporation Excise Tax Act of 1909 to the Income Tax Acts of 1913, 1916 and 1917. This decision did not limit the scope of the income tax in any way.[4]

41. As for Defendants' reliance on Mookini v. United States, 303 U.S. 201, 205 (1938), regarding Article III courts versus legislative territorial courts, the Court stated that "'District Courts of the United States' . . . describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States." It is clear from the preceding paragraph that the territorial courts were those federal courts in Alaska, Hawaii,[5] Puerto Rico, [Panama] Canal Zone. Mookini, 303 U.S. at 204. There is no dispute that this Court is a District Court of the United States, pursuant to Article III of the Constitution. Thus, this Court has jurisdiction to hear this case, alleging

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[4] This decision also rejected the argument that only business "profits" are income, and not capital gains made by an individual not otherwise involved in a business. 255 U.S. at 520.

[5] Alaska and Hawaii did not become states until after this decision.

violations of the United States Code.[6]

42. With regard to the particular trust creation activity sought to be enjoined by the Government, other federal courts have found substantially similar common-law trust schemes to be subject to an injunction. See United States v. Buttorff, 761 F.2d 1056, (5th Cir. 1985); United States v. Fisher, 2004 WL 489822 (N.D.Tex. Jan. 26, 2004), 93 A.F.T.R.2d 2004-774. The only difference between the schemes described in these cases and the present case is that Defendants' trusts involved small businesses, rather than individuals. Thus, rather than simply putting personal property into a trust, Defendants' trusts also included business property. However, this factual distinction has no legal significance. It is a long standing principle of tax law that the form of the trust or scheme does not matter. See Audano v. United States, 428 F.2d 251, 257 (5th Cir. 1970).[7] Each taxpayer, whether an individual or a corporate entity, is responsible for paying taxes on his or its income.

Ratfield Promoted Abusive Tax Shelters and Prepared Tax Returns that Understated the Income Tax Liabilities of his Customers[8]

43. 26 U.S.C. § 7408(a) provides that the United States may commence an action in a

[6] The Court also rejects Defendants' frivolous argument that only certain Titles of the United States Code are "positive" law, and others, including the Internal Revenue Code, Title 26, are somehow not properly enacted laws of the United States.

[7] The decisions of the United States Court of Appeals for the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the circuit. Bonner v. Pritchard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

[8] As noted above, other than jurisdictional arguments, Defendants do not appear to dispute the nature of their conduct. Thus, the following legal conclusions applying the tax laws to Defendants' conduct are largely taken from the Government's proposed conclusions of law.

district court to enjoin any person from engaging in conduct subject to penalty under IRC[9] §§ 6700 and 6701. A district court has authority to grant such relief under Section 7408(b) if it finds –

> (1) that the person has engaged in any conduct subject to penalty under section 6700 . . . or section 6701 . . ., and
>
> (2) that injunctive relief is appropriate to prevent recurrence of such conduct[.]

44. IRC § 6700, which is captioned "Promoting Abusive Tax Shelters, Etc.," in turn, provides a penalty for false or fraudulent statements by those who organize, promote or sell "a partnership or other entity," "an investment plan or arrangement," or "any other plan or arrangement." Any person who makes or furnishes a statement about the tax consequences of participating which he knows, or has reason to know, has engaged in conduct subject to a monetary penalty under IRC § 6700(a)(2)(A). See, *e.g.* United States v. White, 769 F.2d 511, 514-15 (8th Cir. 1985); Buttorff, 761 F.2d at 1059-63; United States v. Savoie, 594 F. Supp. 678, 680-82 (W.D. La. 1984).

45. In this case, with respect to the Government's motion for summary judgment, the inquiries indicated by IRC § 7408(a) are: (1) whether defendants engaged in conduct subject to penalty under IRC § 6700 by making false or fraudulent statements about the federal tax laws which they knew or should have known to be false; (2) whether defendants engaged in conduct subject to penalty under IRC § 6701 by preparing tax returns or other documents which understated the federal income tax liabilities of their customers; and (3) whether injunctive relief is warranted to protect such conduct from continuing.

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[9] "IRC" refers to the Internal Revenue Code, which is codified at Title 26 of the United States Code. Therefore, references to "26 U.S.C." will be identified as "IRC."

46. Since IRC § 7408 expressly provides for an injunction, the traditional guidelines for equitable relief do not have to be established for an injunction to issue. United States v. Estate Preservation Services, 202 F.3d 1093, 1098 (9th Cir. 2002); White, 769 F.2d at 515; Buttorff, 761 F.2d at 1059 ("When an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose").

Defendants engaged in conduct subject to penalty under IRC § 6700

47. To obtain an injunction preventing Ratfield and LWR from promoting an abusive tax shelter, the Government must establish the following by a preponderance of the evidence: (1) the defendants organized or sold, or assisted in the organization or sale of, an entity, plan, or arrangement; (2) they made or caused to be made false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) they knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements were material; and (5) an injunction was necessary to prevent recurrence of this conduct. IRC §§ 6700(a), 6703 and 7408(b); Estate Preservation Services, 202 F.3d at 1098

Defendants sold and organized a plan or arrangement

48. IRC § 6700, by its terms, applies to "(ii) any investment plan or arrangement, or (iii) any other plan or arrangement." IRC § 6700(a)(1)(A).

49. As the "LWR Financial Services Informational Packet" makes plain, Defendants organized and sold an entity, plan or arrangement within the meaning of IRC § 6700(a). They sell

"pure" or "common-law" trusts, and furnish false statements with respect to the tax benefits available to those who purchase such trusts, *i.e.*, the false statements contained in defendants' brochures and "Informational Packages," the book entitled The Constitutional Common Law Trust, and the trust instruments themselves (which sold for amounts up to $5,995.00).

50. The trust package consists of (1) "Consulting through completion of worksheet"; (2) a "Business Trust including Legal Citations and References"; and (3) "Four (4) Holding Trusts through mortgage/deed preparation." Additional Holding Trusts may be purchased for $300.00. LWR also offers the services of its staff as "professional Settlor[s] and Trustees" for "$100 per Trustee, per year."

51. As discussed above, Ratfield has sold over 100 trusts for prices which ranged from $2,995 in 1997 to $5,995 in 2000. See ¶¶ 28-29, *supra*.

52. Ratfield explains how his tax avoidance scheme works in The Constitutional Common-Law Trust, which he co-authored with James Mathers. See ¶ 12, *supra*.

53. Ratfield promotes the transfer of individual taxpayers' personal and business assets into a series of trusts which he has referred to as "pure," "common-law," "Constitutional," and/or "Massachusetts" trusts. See ¶¶ 30-32, *supra*.

Defendants made false or fraudulent statements regarding tax benefits

54. In Buttorff, 761 F.2d at 1059, the court held that "[s]ection 6700 penalizes any person who makes statements regarding the tax benefits of an arrangement organized or sold by him which he knows or has reason to know are false or fraudulent as to any material matter." The Constitutional Common-Law Trust ("CCLT"), co-authored by Ratfield, makes false or fraudulent statements with regards to the tax benefits or advantages of "contractual business trusts." See

¶ 12, *supra.*

55. Slightly reworded versions of these false or fraudulent statements appear in the trust instruments (the "Declaration[s] and Contract[s] of Trust") which defendants prepare for their customers.[10] Such statements include (but are not limited to) the following:

- "The initial exchange of the business into the trust for a certificate IS NOT A TAXABLE EVENT" (p. 12);
- "Returning to our concern regarding the relationship of the previous owner [of the business], what relationship should he have to the trust? The best way to avoid any tie to the trust is for the previous owner to be HIRED BACK AS GENERAL MANAGER OF THE BUSINESS TRUST. In that way he still has a direct hands-on relationship with the affairs of the business, but he is not the owner, rather he is CONTRACTED as a manager, and has merely be DELGATED the responsibility which he previously assumed as president or owner" (p. 12);
- What better or more logical choice for general manager exists than the previous owner of the business? What business is it of anyone's if that manager deliberately planned to exchange his business in the hopes that those two trustees would indeed hire him back as a general manager? So what it the previous owner drops his personal salary from, say, $57,600.00 a year to $12,000.00 a year as a contracted General Manager? The IRS may be quite upset that they can no longer tax that businessman at the higher rate, but he always retains his right to so arrange his affairs such that his taxes shall be as low as possible" (p. 12);
- "Of course this article cannot hope to present all the many different ways in which a business trust may organize it's affairs to reduce liability and taxes. There is an almost infinite number of variations on the basic theme. But the principle is simply to separate and pass on liability until the consequences become watered-down through the very process of distribution" (p. 14);
- "Any hard-working businessman has a great deal of personal expenses. We all have insurance policies, mortgage payments, automobile loan

[10] Adam Jacobs, a former employee of Defendants, also testified at the preliminary injunction hearing that Mr. Ratfield promised lowered estate and income taxes to prospective customers. Transcript, p. 59-60.

payments, and perhaps even private school tuition or college expenses for our children. Must we give all that up when we reduce our personal income to a level where the taxes become bearable? Not at all. What is needed is a more imaginative solution to the problem of personal expenses. Our family financial affairs are really very similar to a business, with the exception that there usually isn't very much profit, and in many cases the expenses soon outstrip the income. If it is a business, in a sense, why should we voluntarily permit our personal family financial affairs to be penalized by the IRS by having more restrictions on deductions provided for those family expenses than would a regular business which incurs the same expenses? It just doesn't seem fair. In fact it is not necessary. Let an irrevocable business trust take on those responsibilities. Sally can be the beneficiary, and therefore her college tuition or insurance policy premiums are legitimate business expenses of the business trust" (p. 14).

- One of the biggest savings that becomes immediately recognized with an irrevocable business arrangement is that the high FICA tax is dramatically reduced. For example if the previous [business] owner was making $57,600.00 a year he would pay a whopping $8,812.00 in FICA taxes. After being contracted by the trust (note, he is an independent contractor, not an employee of the trust) he only makes $12,000.00 a year as opposed to his previous $12,000 salary, and so he is only liable for a personal FICA tax of $1,836.00, a much more manageable figure. That creates an immediate savings of $5,140.00!" (p. 14-15).

56. The statements made by defendants in their trust documents, brochures and promotional material regarding the tax benefits of "pure" or "common-law" trusts are false or fraudulent, and may therefore be enjoined. See Estate Preservation Services, 202 F.3d at 1101.

The "pure" or "common-law" trusts promoted by defendants are sham trusts

57. Ratfield and LWR falsely represent that the individual taxpayer and his or her trust are separate taxable entities. However, "[i]t is a central tenet of tax law that tax liability depends on the substance not the form of a transaction." Greene v. United States, 13 F.3d 577, 581 (2d Cir. 1994).

58. The "pure" or "common-law" trusts which Defendants have sold since 1997 are sham trusts because they were created solely for the illegal purposes of (1) understating the individual taxpayers' income, thereby substantially (and illegally) reducing the taxpayers' federal income and self-employment tax liabilities; and (2) claiming sizeable deductions for personal expenditures and living expenses to which the individual taxpayers were not entitled. Nothing changed, from the standpoint of the economic realities of the situation, after the individual taxpayers purportedly transferred their businesses to their trusts. See United States v. Smith, 657 F. Supp. 646, 654 (W.D. La. 1986) ("the creation of a trust scheme which converts the family's personal activities into trust activities, with family expenses becoming expenses of trust administration, is a mere sham which cannot be considered to be valid"), *aff'd*, 814 F.2d 1086 (5th Cir. 1987); Estate Preservation Services, 202 F.3d at 1101.

59. Since the trusts were shams, they cannot be recognized as separate entities apart from the taxpayers who purchased them for federal income tax purposes. See Holman v. United States, 728 F.2d 462 (10th Cir. 1984) (assignment of income and grantor trust provisions applied to hold trusts mere shams for tax avoidance purposes); Hansen v. Commissioner, 696 F.2d 1232 (9th Cir. 1983) (same); Schulz v. Commissioner, 686 F.2d 490 (7th Cir. 1982) (same); Vnuk v. Commissioner, 621 F.2d 1318 (8th Cir. 1980) (same).

60. If the trusts were not shams, they were grantor trusts. Under the grantor trust provisions of the Internal Revenue Code (IRC §§ 671-679), the grantors of a trust are treated as owning the trust property. Under IRC § 674, the grantor is treated as owning any portion of a trust, where, as here, the beneficial enjoyment of its corpus or income is subject to a power of disposition exercisable by the grantor without the approval or consent of any adverse party.

61. An adverse party is any person who has a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. IRC § 672(a).

62. That each trust sold by defendants purportedly had independent "trustees," as well as a non-related trust "settlor," does not alter this conclusion. To be sure, a grantor is not treated as owning the trust property when his beneficial enjoyment of the trust corpus or income is subject to the control of an independent trustee. IRC § 674(c). But, as noted above, it is well settled that the incidence of taxation depends on the substance of the transaction, not its form. See, *e.g.*, Minnesota Tea Co. v. Helvering, 302 U.S. 609, 613 (1938); Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945); Greene, 13 F.3d at 581.

63. In Audano, 428 F.2d at 256-57, the "independent trustees" of the family trusts--the taxpayer's lawyer and accountant--did not follow the strict principles of a fiduciary in the management of property. 428 F.2d at 258. Among other things, they failed to determine whether certain rentals were fair or whether higher rentals could have been obtained elsewhere and did not attempt to obtain the execution of a written lease from the medical partnership. Because "there never existed the normal relationship that develops when an independent trust is created," the trust was not recognized for tax purposes and the rental payments to the trust were taxable income to the doctor. Id.

64. As in Audano, the "trustees" in the present case were not independent in reality. Instead, the trusts were subject to the dominion and control of the individual taxpayer (as the "General Manager" of his or her trust).

65. These professional "trustees" had nothing to do with the underlying individual

taxpayer or the operation of his or her business.

66. Because the trustees of Ratfield's "pure" trusts are not really independent, the trusts violated the grantor trust provisions in substance, if not in form, and the individual taxpayers who purchased the trusts from defendants are liable for the taxes on the businesses' taxable income pursuant to IRC § 671.

67. Under IRC § 671, trust income, deductions, and credits are attributable to grantors who are treated as the trust owners. Audano, supra. See also Buttorff, 761 F.2d at 1061 (trust violated grantor trust provisions in substance, though not in form, when grantor's wife was the "independent trustee"); Schulz, 686 F.2d at 495 (". . . despite efforts to skirt the grantor trust provisions by careful draftsmanship, these trusts in substance, if not in form, violate the statute"); Zmuda v. Commissioner, 731 F.2d 1417 (9th Cir. 1984); Holman v. United States, 728 F.2d at 464-65.

68. Defendants therefore made false statements in telling their customers that their trusts will be recognized as separate entities for tax purposes.

The income earned by the individual taxpayers is taxable to them, and not to the trusts sold by the defendants in this action

69. Ratfield and LWR falsely represent to their customers that individual taxpayers can transfer their businesses to trusts and thereby reduce their federal income tax liabilities by reducing their taxable income to $12,000 as the "General Managers" of the trusts. However, it is well established that a person who earns economic gain is taxable thereon, and the burden of the tax may not be avoided by "arrangement[s] by which the fruits are attributed to a different tree from that on which they grew." Lucas v. Earl, 281 U.S. 111, 115 (1930). See United States v. Basye, 410 U.S. 441, 450 (1973) ("The principle of Lucas v. Earl, that he who earns income may not

avoid taxation through anticipatory arrangements no matter how clever or subtle, has been repeatedly invoked by this Court as a cornerstone of our graduated income system."); Helvering v. Horst, 311 U.S. 112, 115-17 (1940) (taxpayer, who owned interest-bearing bonds, detached the interest coupons and gave them to his son before the coupons matured. The Supreme Court held that the gift of the unmatured interest coupons was an assignment of income and that the subsequent interest payments were taxable to the taxpayer).

The trusts cannot deduct the personal living expenses of their purchasers

70. Ratfield and LWR also falsely represent that the trusts can claim tax deductions for utilities, repairs, and depreciation on the theory that the "General Manager" of the trust (the individual taxpayer) is on duty "24 hours a day" so the trust may deduct all of the manager's personal living expenses as ordinary and necessary business expenses.

71. One of the fundamental provisions of the Internal Revenue Code is that personal living expenses are nondeductible. IRC § 262(a) provides, "Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses." See Estate Preservation Services, 202 F.3d at 1101; Grimes v. United States, 806 F.2d 1451, 1453 (9th Cir. 1986); Neal v. Commissioner, 681 F.2d 1157, 1158 (9th Cir. 1982).

72. The nondeductibility of personal expenditures is so fundamental to our income tax system that it takes precedence over the deductibility of ordinary and necessary business expenses (IRC § 162(a)), if there is a conflict between these two provisions. IRC § 161; Christey v. United States, 841 F.2d 809, 814 n.2 (8th Cir. 1988), *cert. denied,* 489 U.S. 1016 (1989); Sharon v. Commissioner, 66 TC 515, 522-23 (1976), *aff'd,* 591 F.2d 1273 (9th Cir. 1978), *cert. denied,*

442 U.S. 941 (1979).

73. In Buttorff, 761 F.2d at 1057-58, a case similar to the present case, the Fifth Circuit upheld the district court's finding that the representation that the trust could deduct such personal expenditures was fraudulent. *Accord* Schulz v. Commissioner, 686 F.2d at 492 (court refused to allow a family trust to deduct, as "expenses of administration," the cost of maintaining and operating the family car and home). *Cf.* Hanson v. Commissioner, *supra* (husband's transfer of the family residence to a family trust lacked economic substance).

74. Similarly, defendants also falsely represented that the trust could deduct the individual taxpayer's medical expenses (or the medical expenses of his dependents) to the extent that they exceeded 2% of the trust's adjusted gross income. Medical expenses are deductible only "to the extent that such expenses exceed 7.5 percent of adjusted gross income." IRC § 213(a).

75. Although IRC § 213 deals with itemized deductions for individuals, the taxable income of a trust is computed in the same manner as that of an individual, except as otherwise provided in Part I of Subchapter J of the Code. IRC § 641(b). Part I does not otherwise deal with medical expenses. Thus, even if a trust could in some situations deduct medical expenses of an individual, these expenses would be subject to the 7.5% limitation of IRC § 213(a).

Ratfield knew or had reason to know that his statements were false or fraudulent

76. The next step under IRC § 6700(a)(2)(A) is to determine whether Ratfield "knew or had reason to know" that his false statements concerning the ability of his customers to understate their income and claim tax deductions for their personal living expenses (through the trusts which they purchased) were false or fraudulent.

77. The United States is not required to establish that defendants acted with subjective

bad faith, *i.e.*, to show that defendants actually knew, at the time they sold the trusts that the trust instruments (the so-called "Declaration and Contract of Trust") and related documents contained false and fraudulent statement concerning the availability of tax benefits or the requirements of the internal revenue laws. See Estate Preservation Services, 202 F.3d at 1102.

78. In enacting IRC § 6700, Congress recognized that its provisions would be unworkable if liability was premised solely on a showing that the promoter or seller of a tax shelter knew that the statements made or furnished by him were false or fraudulent. Thus, Congress expressly provided in IRC § 6700(a)(2)(A) that a promoter or seller is subject to penalty under IRC § 6700 if he "knows or has reason to know" that the statements made or furnished by him are false or fraudulent.

79. It is undisputed that Ratfield worked for the Internal Revenue Service for more than nine years between 1968 and 1977. Moreover, he has been active in the field of federal taxation and has prepared federal income tax returns since 1978. Ratfield clearly has reason to know that the representations contained in the trust documents which he sells are false or fraudulent as a result of: (1) the multitude of prior decisions holding such trusts to be invalid as shams (Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945)); and (2) his extensive background in federal taxation and experience as a tax return preparer. United States v. White, 769 F.2d at 515 ("appellant knew or had reason to know [his representation about the allowance of a deduction or exclusion of income] were false or fraudulent because such representations had been consistently rejected by the courts"); United States v. Buttorff, 761 F.2d at 1062. See United States v. Kaun, 827 F.2d 1144, 1149 (7th Cir. 1987) (employing "knew or should have known to be false" standard to find violation of Section 6700); United States v. Campbell, 897 F.2d 1317, 1322 (5th Cir. 1990)

(same).

80. Every court which has had the occasion to address this issue has ruled that income is taxed to the person or entity that in fact earns the income. The Supreme Court first announced this rule in 1930 in Lucas v. Earl, *supra*, and has often repeated it. See, *e.g.* United States v. Basye, 410 U.S. at 450 ("The principle of Lucas v. Earl, that he who earns income may not avoid taxation through anticipatory arrangements no matter how clever or subtle . . . stands today as a cornerstone of our graduated income tax system."); Commissioner v. Culbertson, 337 U.S. 733, 739-40 (1949) (citing "the first principle of income taxation: that income must be taxed to him who earns it.").

81. Ratfield's trusts violate the first principle of income taxation by assigning the income earned by his customers to their trusts and improperly reducing the trust purchaser's income to approximately $12,000 a year. His representations that such arrangements are perfectly legal, therefore, subject him to penalty under IRC § 6700.

82. The same is true with respect to the claiming of tax deductions for non-deductible personal living expenses such as private school tuition, home maintenance, utilities, and the like. Ratfield's representations that such expenses may be legitimately claimed by the trusts which he sells also constitutes a knowing violation of IRC § 6700 in light of the ban imposed on such deductions under IRC § 262.

83. In Estate Preservation Services, the Ninth Circuit held that factors relevant to determining whether a particular promoter possesses the requisite scienter to violate IRC § 6700 include: (1) the extent of the promoter's reliance upon knowledgeable professionals; (2) the promoter's level of sophistication and education; and (3) the promoter's familiarity with tax

matters. Id., 202 F.3d at 1103.

84. Even when these factors are considered, it is evident that Ratfield knew or has good reason to know that his representations were false or fraudulent. First, Ratfield portrays himself as an expert on trusts in his brochures and book. Second, Ratfield graduated from college and worked for the Internal Revenue Service from 1969 to 1977. As shown by his extensive writings on federal income taxation and by the fact that he has worked in the area of federal taxes for more than twenty years, Ratfield is quite familiar with tax matters. Indeed, since 1978 Ratfield has operated an accounting business which involves preparing federal tax returns (LWR Financial Services), and, by his own admission, has had over a thousand clients.

85. Altogether, the foregoing indicia are more than sufficient to establish that Ratfield knew or had reason to know that his representations concerning the potential tax savings from the trusts which he sold for prices ranging from $2,995 to $5,995 were false or fraudulent. In United States v. Raymond, 78 F. Supp.2d 856 (E.D. Wis. 1999), *aff'd*, 228 F.3d 804 (7th Cir. 2000), *cert. denied*, 533 U.S. 902 (2001), the District Court found that Raymond, a self-employed roofer and unsuccessful political candidate, knew or should have known that the "De-Taxing America Program" which he sold contained false statements. 78 F. Supp.2d at 882. By comparison, Ratfield, a former nine-year IRS employee with a college degree and more than twenty years' experience in accounting and tax return preparation, clearly knew or should have known that his representations about the purported benefits of his "pure" or "common-law" trusts were false.

Ratfield's false or fraudulent statements were material

86. As to the next element of a IRC § 6700 violation, the opinion of the District Court in United States v. Smith, *supra*, is instructive:

> Section 6700 is violated by engaging in the sale of any investment plan by furnishing statements which the person knows or has reason to know are false or fraudulent as to *any material matter.* In proving materiality here, the government need not demonstrate that a purchasing taxpayer has relied on the purported misrepresentations. Rather, "a matter is considered material to the arrangement 'if it would have a substantial impact on the decision making process of a reasonably prudent investor.'"

Smith, 657 F. Supp. at 655, citing Buttorff, 761 F.2d at 1062, and S. Rep. No. 97-494, 97th Cong. 2d Sess. 267 (1982), reported in 1982 U.S. Code Cong. & Admin. News 781, 1015.

87. The false representations contained in Ratfield's trust documents, promotional materials and The Constitutional Common-Law Trust were "material" because, as explained in United States v. White, 769 F.2d at 515, "[t]he taxpayers who have been or are now being audited by the IRS or are involved in litigation because they relied upon [Ratfield's representations] should certainly have been informed about their complete lack of merit." Accord Estate Preservation Services, 38 F. Supp.2d at 857.

88. The representations made by Ratfield concerning the legality of reducing federal income taxes through the creation of "common-law" or "pure" trusts clearly would affect the decision-making process of a trust purchaser, as the representations indicated that. Accordingly, each false representation by Ratfield alone is sufficient to support an action for an injunction under IRC § 7408.

An Injunction Is Appropriate and Necessary to Prevent Future Violations of Section 6700

89. When a defendant is found to have engaged in conduct subject to penalty under IRC § 6700, injunctive relief is available under IRC § 7408(a) if it "is appropriate to prevent the recurrence of such conduct." In making this determination, the traditional equity requirements need not be met. White, 769 F.2d at 515; Buttorff, 761 F.2d at 1059.

90. In providing a specific injunctive remedy under IRC § 7408 for conduct violating IRC § 6700, Congress has already taken the traditional equity factors into consideration. See Buttorff, 563 F. Supp. at 455 (discussing standards for granting injunction under Section 7408).

91. That injunctive relief is necessary in the present case is amply supported by the evidence presented through the Declarations and testimony of IRS Revenue Agents Grimes, Swilley, Wade, Cohen, Messina and Reid.

92. The United States, as a result of defendants' sales of "pure" or "common-law" trusts, has suffered a loss of tax revenues as a result of the substantial understatements of taxable income by trust purchasers on their own income tax returns after reporting gross income of only $12,000 as the "General Managers" of their "pure" trusts.

93. Additionally, the Internal Revenue Service has been obliged to undertake examinations of all of the federal income tax returns filed by the trusts which Ratfield sold, as well as the individual income tax returns filed by the trust purchasers. The examination of those returns is administratively burdensome to the Internal Revenue Service, as seen by the number of hours which the Internal Revenue Service has been obliged to devote to auditing returns prepared by Ratfield. *See* Grimes Decl., ¶28 (242 hours spent auditing returns prepared by Ratfield); Swilley Decl., ¶27 (850 hours); Wade Decl., ¶24 (200 hours). See Savoie, 594 F. Supp. at 682 (denying injunctive relief would cause irreparable harm to Government where tax forms filed by promoter's customers "necessitate examinations and audits which deplete available manpower.").

94. Moreover, with regard to whether defendants are likely to continue violating IRC § 6700, the Defendants are "fundamentally opposed to the existing tax structure and that [their] position[s] [have] not changed over time." Buttorff, 563 F. Supp. at 455.

95. This conclusion is easily discerned from a fair reading of Ratfield's statements in The Constitutional Common-Law Trust and elsewhere. Ratfield claims that the Internal Revenue Service cannot examine a tax return filed by one of his "pure" or "common-law" trusts, and that his trusts are outside the scope of the jurisdiction of the IRS.

96. Ratfield has refused to comply with legitimate requests for the names of trust purchasers and individuals for whom he prepared tax returns, and has even questioned the authority of IRS Revenue Agents to examine the trust tax returns (Forms 1041) which he prepared.

97. After he was notified by the Internal Revenue Service on August 17, 2000 that "[w]e are considering possible action under [IRC §§ 6700 and 7408] relating to penalties and an injunction action for promoting abusive tax shelters," Ratfield wrote to IRS Revenue Agent Grimes on January 18, 2001 to state (among other things) that "[t]he trust is a separate entity not connected to an individual" and "[t]he trust does not work within nor contain any income from any of the twelve original categories of taxable income producing industries."

98. Ratfield has never acknowledged the wrongfulness of his actions in selling trusts which lead their purchasers to understate their income and claim (through the trust tax return) tax deductions for non-deductible personal living expenses.

99. There is no indication that defendants intend to abandon their profitable business of selling bogus trusts which contain false representations about the internal revenue laws, and preparing income tax returns for those trusts (and their purchasers) which understate income and illegally claim deductions to which the purchasers are not entitled. Indeed, there is evidence to show that Ratfield has entered into agreements with other promoters to sell his "pure" or "common-law" trusts. See Reid Decl., ¶¶13-16.

100. Finally, with respect to Ratfield, who owns and operates LWR Financial Services in Lake Worth Florida, his occupation as an accountant and tax return preparer clearly places him in a position where future violations of IRC § 6700 are inevitable. His former employment with the Internal Revenue Service is likely to give added weight and credibility to his false assertions concerning the legality of "pure" or "common-law" trusts.

101. Ratfield represents a true threat to the tax revenues of the United States not only because he sells bogus trusts, but because he sells trusts <u>and</u> prepares federal income tax returns based upon those bogus trusts which understate the purchasers' tax liabilities. Under these circumstances, an injunction under IRC § 7408 is clearly appropriate.

<u>Injunctive Relief Under Code Section 7402(a) is Necessary to Prevent Defendants from Engaging in Activities that Interfere with the Enforcement of the Internal Revenue Laws</u>

102. In addition to IRC § 7408, IRC § 7402(a) gives the district courts power to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws. <u>United States v. Ernst & Whinney</u>, 735 F.2d 1296, 1300 (11th Cir. 1984), *cert. denied*, 470 U.S. 1050 (1985). Here, Defendants' activities interfere with the administration of the internal revenue laws, and equitable relief is appropriate under Section 7402(a) because defendants' activities will cause the Government irreparable injury and its remedies at law are inadequate.

103. As previously discussed, Defendants provided false and fraudulent tax advice through their sales of trust instruments and preparation of federal income tax returns which resulted in substantial understatements of their customers' federal tax liabilities.

104. Defendants' preparation of tax returns (Forms 1040 and 1041) which understate the individual taxpayers' federal income and self-employment tax liabilities (as well as claiming

manifestly improper tax deductions for individual taxpayers' personal living expenses) impedes tax administration because "the forms necessitate examinations and audits which deplete available tax-enforcement manpower." Savoie, 594 F. Supp. at 682; See ¶ 93, *supra*.

105. Additionally, the Government has no adequate remedy at law for combating the unlawful elements of the defendants' tax avoidance schemes. Other remedies available to the Government involve actions against each individual taxpayer who follows the advice given by Ratfield in The Constitutional Common-Law Trust and his promotional materials. The pursuit of such individual remedies would require the expenditure of substantial amounts of the limited resources of the IRS and necessarily would not be as effective as enjoining the Defendants' promotion and sale of the trusts in the first instance.

106. If left unchecked, defendants' activities will result in substantial irreparable harm to the Government through the loss of revenues and interference with the proper administration of the revenue laws. Nothing in the record developed in this case indicates that defendants will voluntarily confine their tax advice to stay within the bounds of the law. Indeed, defendants have never acknowledged during their regular contact with the Internal Revenue Service that any of their tax beliefs are false or fraudulent.

107. Injunctive relief under IRC § 7402(a) is therefore necessary and appropriate to prevent defendants from continuing to disrupt the federal tax system.

The Injunction Sought Against Ratfield as an
Income Tax Return Preparer Under IRC § 7407

108. IRC § 7407(a) authorizes the Government to bring an injunction action to enjoin a tax return preparer from "further engaging in any conduct described in subsection (b) . . . ." Subsection (b), in turn, provides that if a court finds that a return preparer such as Ratfield has

engaged in any of four categories of improper conduct, and "that injunctive relief is appropriate to prevent the recurrence of such conduct, the court may enjoin such person from engaging in such conduct."

109. The four categories of improper conduct which form a basis for an injunction under Section 7407 are where a return preparer has:

> (A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,
>
> (B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax return preparer,
>
> (C) guaranteed the payment of any tax refund, or the allowance of any tax credit, or
>
> (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws . . .

IRC § 7407(b)(A) - (D).

110. IRC § 7407(b) further provides that where an injunction against specific improper conduct would be ineffective, the court may simply enjoin the person from acting as a return preparer.

111. As with IRC § 7408, *supra,* all the Government needs to show to be entitled to an injunction under IRC § 7407 is that the statutory prerequisites have been met. Under IRC § 7407, all that the United States must establish by a preponderance of the evidence in order to obtain an injunction is: (1) that the Defendants, Ratfield and LWR, are "return preparers" within the meaning of IRC § 7701(a)(36) of the Code; (2) that Defendants engaged in conduct described in IRC § 7407(b); and (3) that injunctive relief is appropriate to prevent the recurrence of such

conduct. United States v. Franchi, 756 F. Supp. 889, 891 (W.D. Pa. 1991).

112. As described above, Defendants have repeatedly engaged in conduct subject to penalty under both IRC §§ 6694 and 6695, and have also engaged in fraudulent and deceptive conduct which has substantially interfered with the proper administration of the internal revenue laws. An injunction is not only appropriate, but also necessary to prevent defendants from continuing to engage in such conduct.

Ratfield Has Engaged in Conduct Subject to Penalty under IRC § 6701

113. IRC § 6701(a) imposes a penalty on "any person" who knowingly aids and abets in the understatement of the tax liability of another person on a tax return, claim for refund, or other document. IRC § 6701(a) provides, in pertinent part, that–

> (a) IMPOSITION OF PENALTY. - Any person -
>
> (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,
>
> (2) who knows (or has reason to believe) that such portion will be used in connection with any material arising under the internal revenue laws, and
>
> (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under subsection (b).

IRC § 6701(a).

114. In the present case, the evidence establishes that Ratfield aided, assisted, procured or advised in the preparation of purported trust instruments and federal income tax returns (Forms 1041 and 1040) with the knowledge that those documents would be used to understate the correct

federal income tax liabilities of trust purchasers.

115. As Ratfield's trust documents candidly admit (on page 14 of the "Declaration and Contract of Trust"), the whole purpose of the "pure" or "common-law" trusts is to "water down," if not entirely eliminate, the trust purchaser's federal income tax liabilities by the creation of multiple trusts which would each offset a portion of those tax liabilities.

116. An essential part of the entire scheme is to provide documentation to convince the trust purchaser of the legality of assigning his or her income to a trust which could take deductions for the purchaser's personal living expenses. The purposed trust instruments (the so-called "Declarations and Contracts of Trust" and associated documents which together comprise the trust package) are necessary for the operation of the program.

117. To date, Ratfield's sale of trust packages and preparation of tax returns (Forms 1041 and 1040) have resulted in a loss of more than $6.4 million in tax revenues. This supports the conclusion that the purported trust instruments and tax returns were essential to the entire tax avoidance scheme. See Abdo v. United States Internal Revenue Service, 234 F. Supp.2d 553, 563-65 (M.D.N.C. 2002).

118. Given Ratfield's role as one of the co-authors of The Constitutional Common-Law Trust, his own admissions concerning his sale of trust packages and preparation of tax returns based upon those trusts, there are ample grounds to warrant findings by this Court that Ratfield advised and participated in the preparation of documents and returns knowing that they would be used by the trust purchasers to understate their income tax liabilities, and that he had engaged in conduct subject to penalty under IRC § 6701.

119. The amount of the penalty is $1,000 per document, limited to one penalty per

taxpayer per taxable period. IRC § 6701(b). The record before the Court indicates that 252 tax returns were filed by Defendants on behalf of various taxpayers in various years. Therefore, a penalty of $252,000 shall be imposed pursuant to IRC § 6701.

Defendants Have Engaged in Conduct Subject to Penalty under IRC § 6694

120. IRC § 7701(a)(36) of the Internal Revenue Code defines an "income tax return preparer" as a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any income tax return. Ratfield (who has prepared federal income tax returns since at least 1978) and his alter ego, LWR, who charged their clients fees ranging from $800 to $1,200 for preparing income tax returns (Forms 1040 and 1041), clearly qualify as income tax return preparers.

121. Under IRC § 6694(a), an income tax return preparer is liable for a penalty of $250 if any part of an understatement of tax liability on an income tax return is due to a position for which there was not a realistic possibility of being sustained on its merits (*i.e.*, an unrealistic position), and the position was not disclosed or was frivolous.

122. Under IRC § 6694(b), a preparer is liable for a $1,000 penalty if any part of any understatement is due to a willful attempt to understate the liability, or due to the preparer's reckless or intentional disregard of the rules or regulations.

123. The return preparer has the burden of proof with respect to the penalty imposed by IRC § 6694(a). Treas. Reg. § 1.6694-2(e) (located at 26 C.F.R.). This includes the issues of whether (1) the preparer knew or reasonably should have known that the position questioned by the IRS was taken on the return; (2) there is reasonable cause and good faith for the position; and (3) the position was adequately disclosed. *Id.*

124. With respect to the penalty imposed by IRC § 6694(b), the Government bears only the burden of proving that the preparer willfully attempted to understate the tax liability. Treas. Reg. § 1.6694-3(h). The preparer retains the burden of proof with regards to whether (1) he or she recklessly or intentionally disregarded a rule or regulation; (2) a position contrary to a regulation represents a good faith challenge to the validity of the regulation; and (3) disclosure was adequately made in accordance with Treas. Reg. § 1.6694-3(e). Treas. Reg. §§ 1.6694-3(h)(1)-(3).

125. Since Ratfield willfully understated his trust customers' federal income tax liabilities by reporting taxable income of only $12,000 on their individual income tax returns (despite their actually earning much more from the operation of their businesses), and by claiming tax deductions for his customers' personal living expenses and similarly non-deductible items on the trust returns which he prepared, he is liable for penalties under IRC § 6694(b).

126. For example, the individual taxpayer who purchased the "U.S. Benefits Services Trust" from Ratfield reported self-employment income of less than $20,000 in 1996 and in 1997, and, as a result, received Earned Income Tax Credits (as well as income tax refunds) for those taxable years. Upon examination of the 1997 U.S. Income Tax Return for Estates and Trusts (Form 1041) filed by U.S. Benefits Services Trust, the Internal Revenue Service Determined that the individual taxpayer actually received taxable income of approximately $1,000,000 in 1997. See Declaration of IRS Revenue Agent Phyllis A. Swilley, ¶¶13 and 23.

127. The purchaser of the "A.J. Madison Group Investment Trust" reported taxable income of less than $15,000 in 1998 and in 1999, and received Earned Income Tax Credits for those years (as well as tax refunds) based on federal tax returns prepared by Ratfield despite the fact that the trust purchaser received taxable income of $80,000 from the operation of his business.

128. At the very least, however, Ratfield took unrealistic positions on the tax returns which he prepared, and is therefore liable for the penalties imposed by IRC § 6694(a). See Abdo v. United States Internal Revenue Service, 234 F. Supp.2d at 558-60 (individual who prepared tax returns based on frivolous arguments violated IRC § 6694(a)).

129. Therefore, under IRC § 6694, the Court would impose a penalty of $252,000, calculated by multiplying 252 times $1,000. However, pursuant to IRC § 6701(f)(2), the Court cannot impose a penalty under both § 6694 and § 6701 for filing the same document.

Defendants Have Engaged in Conduct Subject to Penalty under IRC § 6695

130. IRC § 6107(b) requires tax return preparers such as Ratfield and LWR to retain a copy of every completed return and claim for refund of tax, or to maintain on a list the name and taxpayer identification number for every taxpayer for whom such return or claim was prepared. It also requires tax return preparers to make those copies of that list available for inspection upon request by the IRS. Abdo, 234 F. Supp.2d at 560.

131. IRC § 7407 authorizes the Government to bring an injunction action to enjoin a tax return preparer "from further engaging in any conduct . . . subject to penalty under Section 6695." In such an action, the tax return preparer bears the burden of proving that his failure to comply with IRC § 6107(b) was due to reasonable cause and was not due to willful neglect. United States v. Nordbrock, 38 F.3d 440, 444 (9th Cir. 1994).

132. In June of 1999, Revenue Agent Patricia L. Grimes was assigned to conduct an examination of the 1997 U.S. Income Tax Return for Estates and Trusts (Form 1041) filed by LWR Financial Services Trust (the defendant, LWR). The scope of her examination was subsequently expanded to include LWR's 1998 and 1999 federal income tax returns, as well as the

1997-1999 federal income tax returns filed by Ratfield himself.

133. As discussed in ¶ 38, supra, Ratfield has refused to cooperate on a number of occasions with the Internal Revenue Service in the examination of the income tax returns for the trusts and individual taxpayers for which he has prepared the returns. Ratfield's refusal to provide the IRS with a list of the clients for whom he or LWR has prepared federal tax returns has substantially hindered the ability of the IRS to detect the identities of all individuals who purchased trusts from him, and to audit their federal income tax returns (Forms 1040) inasmuch as the tax returns filed by the trusts (Forms 1041) do not disclose the identity of the "general manager."

134. As Judge Ferguson concluded in entering a preliminary injunction against him on September 27, 2002, Ratfield did not have the right to withhold the requested information from the IRS. IRC § 6107(b) plainly imposed upon Ratfield the obligation to produce to the IRS, upon request, a list of those for whom he prepared tax returns. Ratfield therefore engaged in conduct subject to penalty under IRC § 6695 and is permanently enjoined from continuing to do so.

Ratfield Is Permanently Enjoined from Acting as an Income Tax Return Preparer

135. An injunction barring an individual from preparing federal tax returns altogether is permitted only if the preparer "continually" or "repeatedly" engaged in conduct subject to penalty under IRC §§ 6694 or 6695. IRC § 7407(b).

136. Ratfield "continually" and "repeatedly" engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and should therefore be permanently enjoined from preparing federal tax returns.

137. In this case, the IRS requested Ratfield to produce a list of those for whom he prepared tax returns on July 6, 1999, August 31, 2000 and September 13, 2000. Up until at least

October 2002, Ratfield has refused to turn over a list of his clients to the Government. Ratfield, therefore, "repeatedly" engaged in conduct subject to penalty under IRC § 6695 when he declined or refused, on three separate occasions, to turn over a client list to the IRS.

138. Also, the two year period between from when the list was requested and the hearing held by Judge Ferguson on the Government's motion for preliminary injunction in August of 2002 in this case is more than enough to support a finding that Ratfield's violation of his duty under IRC § 6107(b) was "continual" in nature.

139. Ratfield has also "continually" and "repeatedly" engaged in conduct subject to penalty under IRC § 6694 since at least 1997. In United States v. Bailey, 789 F. Supp. 788 (N.D. Tex. 1992), the Court permanently enjoined the defendants from acting as tax return preparers under Section 7407 of the Internal Revenue Code where (1) defendants repeatedly engaged in conduct prohibited by IRC § 6694 by preparing a large number of returns over several years which understated their clients' tax liabilities; (2) defendants continued their pattern and practice of understating their clients' tax liabilities and showed no signs of voluntarily ceasing it; (3) defendants harmed their clients whose tax returns were audited, and who were required to pay back taxes with penalties and interest; (4) defendants gave every indication that they were likely to continue to engage in conduct subject to penalty under IRC § 6694 in the future; (5) defendants steadfastly denied that they had willfully understated their clients' tax liabilities and refused to recognize their own culpability; and (6) defendants gave no reasonable assurances that they would not continue to engage in conduct subject to penalty under IRC § 6694. Bailey, 789 F. Supp. at 816-818.

140. All these criteria apply to the present case. The Court accordingly finds that Ratfield

should be permanently enjoined from acting as a income tax return preparer.

141. By his own admission, Ratfield has prepared over 100 "pure" or "common-law" trusts, and the Internal Revenue Service has identified 153 different trust entities for which he prepared 252 Form 1041 returns.

142. The partial tax revenue loss occasioned by defendants' sales of trust packages and preparation of tax returns has been substantial.

143. Ratfield has not admitted his culpability in selling "pure" or "common-law" trusts (and preparing tax returns based upon those trusts), and shows no signs of voluntarily ceasing his sales of trusts and preparation of tax returns.

144. In summary, all of these facts show that Ratfield and LWR will not voluntarily cease their conduct which violates both IRC §§ 6694 and 6695. Nor can defendants give this Court any assurances that a more narrowly drawn injunction would suffice in this case. Accordingly, a permanent injunction shall issue prohibiting Ratfield from acting as a tax return preparer under IRC § 7407.

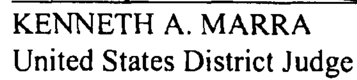
III. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The United States' Motion for Summary Judgment [DE 34] is hereby **GRANTED**;
2. The Defendants' Motion for Summary Judgment [DE 65] is hereby **DENIED**;
3. The Defendants' Demand for Proof Jurisdiction [DE 75-1] and Motion to Dismiss [DE 75-2] is hereby **DENIED**;
4. The Court will separately enter a permanent injunction under Fed.R.Civ.P. 65(a) barring Defendants from organizing, promoting and selling "pure" or "common-law" trusts, from

acting as federal income tax return preparers, and from engaging in the other abusive conduct described herein.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 30th day of November, 2004.



KENNETH A. MARRA
United States District Judge

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