

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

-v-

RODGER S. THOMAS, SR.,

Defendant.

Case No. 3:14-cv-318

Judge Thomas M. Rose

**AMENDED¹ ENTRY AND ORDER GRANTING THE UNITED STATES'
MOTION FOR DEFAULT JUDGMENT (Doc. #6) AND PERMANENTLY
ENJOINING RODGER S. THOMAS SR. AS MORE FULLY DESCRIBED
BELOW**

Now before the Court is a Motion for Default Judgment brought by Plaintiff United States of America. (Doc. #6.) Defendant Rodger S. Thomas, Sr. ("Thomas"), has not filed a responsive pleading and has been adjudged in default by the Clerk of Courts. (Doc. # 5.)

Fed. R. Civ. P. 55 authorizes the Court to enter a default judgment against a party that is adjudged in default. Thomas is in default, so this Court may enter default judgment against him.

For purposes of a default judgment, the well-pled allegations in the complaint regarding liability are deemed true. *Au Bon Pain Corp. v. Arctect, Inc.*, 653 F.2d 61, 65 (6th Cir. 1981). However, a default judgment does not automatically establish the liability claimed by the non-defaulting party unless the amount is certain. *PT (Persero) Merpati Nusantara Airlines v. Thirdstone Aircraft Leasing Group*, 246 F.R.D. 17 (D.D.C. 2007). The amount of damages remains to be proved unless the amount is liquidated or susceptible of mathematical

¹Entry and Order is amended to reflect correct spelling of Mr. Thomas's first name.

computation. *Flaks v. Koegel*, 504 F.2d 702, 707 (2d Cir. 1974). Finally, for the issuance of an injunction, the traditional requirements for equitable relief need not be satisfied if the injunction is authorized by statute. *United States v. Gleason*, 432 F.3d 678, 682 (6th Cir. 2005); *United States v. Ernst & Whinney*, 735 F.2d 1296, 1298 (11th Cir. 1984).

The United States makes the following well-pled allegations regarding liability in its Complaint for Preliminary and Permanent Injunction:

Thomas was an income tax preparer within the meaning of IRC 7701(a)(36);

Thomas failed or refused to sign the returns that he prepared, failed to furnish a Preparer Tax Identification Number (“PTIN”), and destroyed all records he maintained in connection with his return preparation business;

Thomas created fictitious Schedule C business losses for his customers who then filed the fictitious Schedule Cs;

Thomas created fictitious Schedule A itemized deductions for his customers who then filed the fictitious Schedule As;

Thomas prepared false Forms 2441 to claim fictitious child and dependent care expenses for his customers who then filed the false Form 2441s;

Thomas prepared false Forms 1096 and 1099 MISC to inflate his customer’s income and maximize their Earned Income Tax Credits (“EITC”) which were filed by the relevant customers; and

Thomas filed false Forms 1040 for customers and deposited funds into his personal bank account.

In accordance with Rule 55, these well-pled factual allegations are deemed true.

IRC 7407(b)(1)(A) and (D) provide for injunctive relief when a tax return preparer has engaged in conduct subject to penalty under IRC §§ 6694 and 6695. Section 6694 penalizes the understatement of a taxpayer’s liability based upon unrealistic, frivolous and reckless positions. Various parts of Section 6695 make illegal the failure of an income tax return preparer to sign

returns, the failure of an income tax preparer to furnish his or her PTIN, the failure of an income tax preparer to retain a list or copy of the returns prepared and the deposit of customer' refunds into the income tax preparer's personal bank account.

Based upon the well-pled factual allegations, Thomas was an income tax preparer who engaged in conduct prohibited by IRS 6694 and 6695. He therefore, may be enjoined for such conduct.

IRC § 7408 provides for injunctive relief to enjoin those who have engaged in conduct subject to penalty under IRC § 6701. Section 6701 imposes a penalty on those who aid in the preparation of any portion of a return or other document, who knows the portion of the document will be used in connection with any material matter under the Internal Revenue laws, and who knows the portion of the document, if used, would result in understating another person's tax liabilities.

Based upon the well-pled factual allegations, Thomas engaged in conduct prohibited by Section 6701. He, therefore, may be enjoined for such conduct.

IRC § 7402 provides for injunctive relief as may be necessary or appropriate for the enforcement of the Internal Revenue laws. IRC § 6676 prohibits the filing of erroneous claims for refund or credit.

Based upon the well-pled factual allegations, and, as a result of Thomas's conduct, Thomas's customers failed to file proper tax returns, thus violating Section 6676. It may, therefore, be necessary, to enjoin Thomas's conduct to further the enforcement of the Internal Revenue laws.

It is accordingly **ORDERED, ADJUDGED, and DECREED** that:

Rodger S. Thomas, Sr., is permanently enjoined from engaging in further conduct that violates IRC §§ 6694 and 6695;

Rodger S. Thomas, Sr., is permanently enjoined from engaging in further conduct that violates IRC § 6701;

Rodger S. Thomas, Sr., is permanently enjoined from engaging in further conduct that substantially interferes with the proper administration of the Internal Revenue laws;

Rodger S. Thomas, Sr., is, within fifteen (15) days of the entry of this Permanent Injunction, to contact by United States mail, all persons for whom he has prepared a federal tax return or claim for refund since January 1, 2006, to inform them of this Court's findings herein. Also, Thomas is to enclose a copy of the permanent injunction issued against him in this matter;

The United States is authorized to engage in post-judgment discovery to monitor Thomas's compliance with the terms of this Permanent Injunction; and

The Court retains jurisdiction over this civil action for the purpose of enforcing the terms of the Permanent Injunction.

DONE and ORDERED in Dayton, Ohio this Seventeenth Day of February, 2015.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record