

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BAKER FUNERAL HOME, LTD.)
 2008 North Broad Street)
 Philadelphia, PA 19121)
)
 VINCE BAKER)
 7101 Wayne Ave.)
 Philadelphia, PA 19119)
)
 Defendants.)

No.

PRELIMINARY INJUNCTION

Upon motion by the plaintiff, the United States of America, the Court makes the following findings of fact and conclusions of law and enters this preliminary injunction.

Standards for Preliminary Injunction

In order to obtain a preliminary injunction under section 7402(a) of the Internal Revenue Code, the United States must show that an injunction is "necessary or appropriate for the enforcement of the internal revenue laws." 26 U.S.C. § 7402(a).

Alternatively, the court may issue a preliminary injunction based upon the traditional equity criteria of: (1) whether the United States has a likelihood of success on the merits; (2) whether the United States would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.

Findings of Fact

Based upon the evidence and the parties' arguments, the Court finds as follows:

1. Defendant Baker Funeral Home, Ltd. ("Baker Funeral") is a Pennsylvania corporation that has operated since 1975.
2. As owner and operator of Baker Funeral, defendant Vince Baker was responsible for Baker Funeral's federal tax operations.
3. Baker Funeral has failed to timely file its employment tax returns and failed to timely pay its employment tax liabilities since 1995.
4. Baker Funeral owes over \$800,000 in unpaid federal tax liabilities as of August 1, 2011, including penalties and interest that have accrued and will continue to accrue according to law.
5. Baker Funeral continues to incur new and additional federal employment tax liabilities even though it has failed to pay over to the United States taxes it owes for prior tax periods.
6. As Baker Funeral continues to pyramid its tax liabilities, its aggregate delinquent tax obligation to the United States continues to increase.
7. Beginning in 1999, the Internal Revenue Service has devoted a considerable amount of its resources to encourage Baker Funeral's voluntary compliance and to administratively collect its delinquent taxes.
8. The Service's collection efforts were largely unsuccessful, and Baker Funeral's federal tax liabilities continued to increase.

9. It is reasonably likely that Baker Funeral and Vince Baker will continue to pyramid federal tax liabilities in the future.
10. Further administrative collection efforts by the Service will not resolve Baker Funeral's large outstanding tax liability or stop Baker Funeral's continuing noncompliance with the internal revenue laws.

Conclusions of Law

11. Baker Funeral and Vince Baker ("Defendants") have interfered and are interfering with the administration of the internal revenue laws. They have violated and continue to violate 26 U.S.C. §§ 3102, 3111, 3301, 3402, 6011(a) & 6041 by failing to timely file their employment tax returns as required by law, and by failing to pay over to the Internal Revenue Service the full amounts of the federal employment taxes due and owing.
12. Because Baker Funeral continues to pyramid its tax liabilities and is likely to continue its violation of the internal revenue laws, a preliminary injunction is "necessary or appropriate for the enforcement of the internal revenue laws" and is therefore appropriate under 26 U.S.C. § 7402(a).
13. The United States is also entitled to injunctive relief under the traditional equitable principles.
14. The United States lacks an adequate remedy at law because the Defendants have evaded the United States' previous collection efforts and further collection efforts will not stop the Defendants' violations.

15. The United States will suffer irreparable harm without an injunction because the Defendants' ever-increasing federal tax liabilities of over \$800,000 may never be collected, which harms the nation's budget.
16. The injury to the United States outweighs any potential injury to the Defendants. Failing to enjoin the Defendants will permanently harm the national treasury and may encourage other businesses to follow suit, but an injunction will only require the Defendants to comply with their federal tax obligations and place them on a level playing field with other tax-paying businesses.
17. An injunction will also serve the public interest. The efficacy of the federal tax system relies on employers to voluntarily file correct tax returns and pay the taxes due. The Defendants' failure to do so undermines this system and gives them an unfair advantage over the competitors who comply with the law. Enjoining the Defendants will promote fair administration of the tax laws and fair competition among all taxpayers.

Security

18. The United States is not required to give security for an injunction under Federal Rule of Civil Procedure 65(c).

Order and Preliminary Injunction

19. The Court hereby ORDERS and issues this preliminary injunction as follows:
 - A. Baker Funeral and Vince Baker shall immediately cease violating Internal Revenue Code sections 3102, 3111, 3301, 3402, 6011(a) and

6041;

- B. Baker Funeral and Vince Baker are required to withhold and pay over to the Internal Revenue Service all employment and unemployment taxes required by law;
- C. Baker Funeral and Vince Baker shall timely make the federal tax deposits of (1) Form 941 payroll taxes (income and FICA taxes withheld from the employees' wages and the employer's share of FICA taxes), and (2) Form 940 unemployment (FUTA) tax, in an appropriate federal depository bank in accordance with the federal deposit regulations;
- D. Baker Funeral shall timely file all federal employment (Form 941) and unemployment (Form 940) tax returns and pay any balances due on those returns upon filing;
- E. Baker Funeral and Vince Baker shall be enjoined from paying other creditors and transferring, disbursing or assigning any money, property or assets until the required federal tax deposits have been fully made for the given tax period;
- F. Baker Funeral is enjoined from paying other creditors before paying its federal tax liabilities;
- F. Baker Funeral shall file all of its unfiled and past-due federal tax returns with the IRS within 60 days of the entry of this preliminary

injunction;

- G. Baker Funeral and Vince Baker shall notify the IRS within 10 business days if they or their representative, agent, employee, attorney, or anyone in active concert or participation with them begins to operate any new business enterprise, and shall identify the new business by its name, address, and employer identification number;
- H. Baker Funeral and Vince Baker shall post and keep posted in one or more conspicuous places on business premises of Baker Funeral, where notices to employees are customarily posted, a copy of this Court's findings and preliminary injunction;
- I. Baker Funeral and Vince Baker shall mail or otherwise deliver the proof of the Forms 941 and 940 federal tax deposit payments to Marvena Lewis, Revenue Officer, Internal Revenue Service, 600 Arch Street, Room 3256, Philadelphia, Pennsylvania, 19106, within 5 business days of their due date;

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J. If Baker Funeral or Vince Baker violate any part of this preliminary injunction, the Court may find the defendants to be in civil and/or criminal contempt;

It is so ORDERED this _____ day of _____, 2011.

UNITED STATES DISTRICT JUDGE