

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.
	)	
BAKER FUNERAL HOME, LTD.	)	
2008 North Broad Street	)	
Philadelphia, PA 19121	)	
	)	
VINCE BAKER	)	
7101 Wayne Ave.	)	
Philadelphia, PA 19119	)	
	)	
Defendants.	)	

**UNITED STATES’ MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR PRELIMINARY INJUNCTION**

The United States has moved for a preliminary injunction to end Baker Funeral’s continued failure to timely file its tax returns and pay its federal tax liabilities. Baker Funeral now owes over \$800,000. Without an injunction, Baker Funeral will continue to flout its legal obligations, and thus encourage other taxpayers to disregard the federal tax laws.

**BACKGROUND**

**1. Baker Funeral has a long history of violating the federal tax laws.**

Baker Funeral is a funeral home that has operated in Philadelphia as a corporation since 1975. (Declaration of Marvena Lewis, ¶ 7.) Vince Baker took over the business from his father in approximately 1997, and has owned and operated Baker Funeral since that time. (Decl. Lewis at ¶ 8.)

Baker Funeral's flagrant violation of the internal revenue laws began in 1995. (Decl. Lewis at ¶ 9.) At that time, Baker Funeral became delinquent in both its filing of federal employment tax returns and paying the taxes due. (Decl. Lewis at ¶ 9.) When Vince Baker took over the business in 1997, he did not bring Baker Funeral into compliance with Baker Funeral's filing or payment requirements, nor did he maintain compliance going forward. (Decl. Lewis at ¶ 10.) These violations of the internal revenue laws have continued up to the present. (Decl. Lewis at ¶ 10.) Indeed, since at least 1995, Baker Funeral has filed all required quarterly employment tax returns months late, and has failed to make voluntary payments of the outstanding federal tax liabilities. (Decl. Lewis at ¶ 9.) The only payments received by the Internal Revenue Service resulted from the Service's administrative collection activities, which are described below. (Decl. Lewis at ¶ 11.)

As of August 1, 2011 Baker Funeral owes over \$800,000 in federal tax liabilities, plus penalties, interest, and statutory additions accruing thereafter according to law. (Decl. Lewis at ¶ 12.) These outstanding liabilities consist of employment tax liabilities and civil penalties. (Decl. Lewis at ¶ 13, 14.) Baker Funeral's outstanding employment tax liabilities begin with the fourth quarterly period in 2002, and include nearly all periods up to the present quarter.<sup>1</sup> (Decl. Lewis at ¶ 13.) The outstanding employment liabilities total \$667,937 as of August 1, 2011, plus interest and statutory additions

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<sup>1</sup>The periods during that time frame that are not outstanding were satisfied as a result of the Service's enforcement actions. (Decl. Lewis at ¶ 12.)

accruing thereafter according to law. (Decl. Lewis at ¶ 13.) Additionally, Baker Funeral intentionally failed to file Internal Revenue Service Form W-2 Wage and Tax Statements regarding its employees for tax years 2005, 2006, and 2007; thus, it also owes civil penalties which were assessed against it in accordance with 26 U.S.C. § 6721 in the amount of \$145,720 as of August 1, 2011, plus interest and statutory additions accruing thereafter according to law. (Decl. Lewis at ¶ 14.)

**2. The Service's extensive efforts to collect Baker Funeral's outstanding liabilities and to bring Baker Funeral into compliance have been unsuccessful.**

The Service has made exhaustive administrative attempts to collect the unpaid liabilities and bring Baker Funeral into compliance with the internal revenue laws. (Decl. Lewis at ¶ 15-25.) In 1999, the Internal Revenue Service first assigned a revenue officer to collect Baker Funeral's unpaid tax liabilities and encourage voluntary compliance.<sup>2</sup> (Decl. Lewis at ¶ 15.) Internal Revenue Service revenue officers have utilized all of the collection tools in the Service's arsenal to reduce Baker Funeral's federal tax liabilities and bring Baker Funeral into compliance, yet to no avail: Baker Funeral still has outstanding liabilities in the amount of \$813,657 as of August 1, 2011, and continues its failure to comply with the internal revenue laws by pyramiding its

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<sup>2</sup>Over the lengthy history of Baker Funeral's noncompliance, several revenue officers have been assigned to this role. The current revenue officer and the declarant, Marvena Lewis, was assigned to this case in May 2007. (Decl. Lewis at ¶ 6.)

unpaid employment taxes.<sup>3</sup> (Decl. Lewis at ¶ 16, 25.)

The Service's revenue officers have attempted to elicit voluntary compliance from Baker Funeral by directly contacting Baker Funeral and Vince Baker, and have made repeated requests for delinquent tax returns and payments. (Decl. Lewis at ¶ 17.) However, Baker Funeral and its owner, Vince Baker, have refused to timely file the required tax returns. (Decl. Lewis at ¶ 17.) Nor was the Service successful in getting Baker Funeral and Vince Baker to pay Baker Funeral's delinquent taxes voluntarily. (Decl. Lewis at ¶ 18.)

Consequently, the Service has also attempted to collect administratively. (Decl. Lewis at ¶ 19-25.) For instance, the Service has issued hundreds of tax levies to Baker Funeral's known bank accounts, accounts receivables, and numerous other sources. (Decl. Lewis at ¶ 19.) However, these levies have yielded minimal payments because Baker Funeral consistently switches banking institutions upon issuance of a levy, to place Baker Funeral's assets out of the Service's reach. (Decl. Lewis at ¶ 19.) The Service must then expend significant time and resources to locate Baker Funeral's new banking institutions, making the issuance of levies ineffective. (Decl. Lewis at ¶ 19.)

The Service has also investigated the collection potential of Baker Funeral's corporate assets, but Baker Funeral owns little property and has few business assets. (Decl. Lewis at ¶ 20.) The business assets are valued at approximately \$30,000. (Decl.

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<sup>3</sup>"Pyramiding" of federal tax liabilities occurs when a taxpayer continues to incur additional tax liabilities on top of prior delinquent accounts, which themselves continue to grow over time through the accrual of interest and penalties.

Lewis at ¶ 20.) Nonetheless, the Service planned to seize Baker Funeral's business property to diminish Baker Funeral's outstanding liabilities. (Decl. Lewis at ¶ 20.) After meeting with Vince Baker numerous times to attempt to bring Baker Funeral into compliance, without success, the Service obtained a writ of entry and coordinated with state officials to seize Baker Funeral's business assets on February 2, 2010. (Decl. Lewis at ¶ 20.) Internal Revenue Service employees, along with state law enforcement personnel, a coroner, and others, appeared on February 2 to seize the business property. (Decl. Lewis at ¶ 20.) As the Service began the seizure, Vince Baker tendered a partial payment of the outstanding liabilities, thereby halting the seizure. (Decl. Lewis at ¶ 20.) Scheduling another seizure of the business property is both impracticable and useless, as the seizure of the minimally valued business assets requires extensive Government resources, and will not make a sizeable dent in Baker Funeral's liabilities. (Decl. Lewis at ¶ 20.)

The Service then attempted to collect Baker Funeral's unpaid liabilities from Vince Baker by assessing trust fund recovery penalties against him as a responsible officer of Baker Funeral. (Decl. Lewis at ¶ 21.) The Service first assessed a trust fund recovery penalty against Vince Baker in 2004; the Service has made several trust fund recovery penalty assessments against him since then. (Decl. Lewis at ¶ 21.)

In addition to issuing levies to Vince Baker's known bank accounts, the Service attempted to collect the outstanding liabilities by seizing the real property owned by Vince Baker. (Decl. Lewis at ¶ 22, 23.) Vince Baker owns the real property at the

business location, and the Service seized the real property on two occasions to reduce the outstanding liabilities. (Decl. Lewis at ¶ 22, 23.)

First, the Service seized the real property on November 16, 2009 and scheduled a public auction. (Decl. Lewis at ¶ 23.) Forty-five minutes before the public auction, Vince Baker appeared to pay in full the trust fund recovery penalties assessed against him. (Decl. Lewis at ¶ 23.)

Baker Funeral and Vince Baker continued their pattern of noncompliance, however, and another trust fund recovery penalty assessment was made against Vince Baker to aid in the collection of the outstanding employment tax liabilities. (Decl. Lewis at ¶ 24.) The Service seized the real property again on March 17, 2011. (Decl. Lewis at ¶ 24.) After the seizure, Vince Baker exercised his right of redemption, and paid in full the trust fund recovery penalties assessed against him. (Decl. Lewis at ¶ 24.)

Scheduling additional seizures of the real property will be fruitless, as the Service will be required to conduct extensive preparations, and it is clear that the threat of the seizures has not brought Vince Baker into voluntary compliance with respect to either timely filing the employment tax returns or timely making payments of the employment tax liabilities. (Decl. Lewis at ¶ 24.)

Because of Baker Funeral's continued refusal to pay taxes and timely file its tax returns, the Service sent Baker Funeral and Vince Baker IRS Letter 903 on March 3, 2010. (Decl. Lewis at ¶ 25.) The IRS letter advised them to comply with payment/deposit rules for employment taxes, and warned them of possible civil and criminal penalties

should their noncompliance continue. (Decl. Lewis at ¶ 25.) Despite the Service's warning, Baker Funeral has continued to refuse to timely file its tax returns or pay its federal tax liabilities. (Decl. Lewis at ¶ 25.)

**3. Baker Funeral's flagrant violations will continue absent a Court order.**

Baker Funeral's payment and filing history is inexcusable. The Service has expended substantial resources in an unsuccessful attempt to bring Baker Funeral and Vince Baker into compliance with their federal tax obligations. ( Decl. Lewis at ¶ 6.) As described above, conventional collection actions are inadequate to eliminate Baker Funeral's outstanding liabilities and prevent Baker Funeral from further pyramiding its employment taxes. (Decl. Lewis at ¶ 26.) Moreover, given the defendants' past actions, it is unreasonable to expect that defendants will ever timely file Baker Funeral's tax returns and pay its federal tax liabilities. (Decl. Lewis at ¶ 27.) Absent an injunction, Baker Funeral's disregard for the internal revenue laws will likely continue, causing irreparable harm to the Government through the loss of federal tax revenues. (Decl. Lewis at ¶ 28.) Furthermore, Baker Funeral's blatant noncompliance may encourage other businesses to follow suit and interfere with the enforcement of the internal revenue laws. (Decl. Lewis at ¶ 29.)

**ARGUMENT**

**I. A preliminary injunction is "necessary or appropriate for the enforcement of the internal revenue laws."**

Section 7402(a) of the Internal Revenue Code authorizes district courts to enter injunctive relief in favor of the United States when "necessary or appropriate for the

enforcement of the internal revenue laws.” 26 U.S.C. § 7402(a). Congress’s intent in enacting section 7402 was to provide district courts with a “full arsenal of powers to compel compliance with the internal revenue laws.” *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957); *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986), *aff’d*, 827 F.2d 1144 (7<sup>th</sup> Cir. 1987).

Because “§ 7402(a) sets forth the requirements for injunctive relief, the United States need only meet those criteria, not the traditional equitable factors, for a court to issue a permanent injunction under this section.” *United States v. Stoll*, 2005 WL 1763617 at 8 n.6 (W.D. Wash. 2005); *United States v. Thompson*, 395 F. Supp. 2d 941, 945 (E.D. Cal. 2005); *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) (traditional equitable requirements not required for injunction under 26 U.S.C. § 7408); *see also In re Dow Corning Corp.*, 280 F.3d 648, 657-58 (6th Cir. 2002); *E.E.O.C. v. Cosmair, Inc.*, 821 F.2d 1085, 1090 (5th Cir. 1987); *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982). Also, for violations relating to federal employment taxes, the United States need not show the employer acted in bad faith. Instead, the United States must only show that the employer failed to pay employment tax liabilities and/or failed to file employment tax returns. *Fifty Below Sales & Marketing v. United States*, No. 05-1380, 2006 WL 1228890, at \*4 (D. Minn. 2006).

An injunction should be issued under section 7402(a) if the “defendant is reasonably likely to violate the federal tax laws again.” *United States v. Thompson*, 395 F.Supp.2d 941, 945, 946 (E.D.Cal. 2005). Evidence that the defendants have knowingly



violated the tax laws in the past demonstrates that an injunction is “necessary or appropriate” under the statute. *Id.* at 946. Many courts have applied section 7402(a) to enjoin employers from continuing to pyramid employment taxes and failing to file employment tax returns. *E.g.*, *United States v. Wilson*, 2009 WL 1465878 (E.D. Ky. 2009); *United States v. Sifuentes*, 2005 WL 3627339 (W.D. Tex. 2005); *Thompson*, 395 F. Supp.2d 941 (E.D. Cal. 2005); *United States v. Colorado Mufflers Unlimited*, 2007 WL 987459 (D. Colo. 2007).

In this case, an injunction is necessary and appropriate for the enforcement of the internal revenue laws because Baker Funeral and Vince Baker have violated numerous provisions of the internal revenue laws and regulations on a continuing basis for the past fifteen years. The Internal Revenue Code (26 U.S.C.) and the Treasury Regulations (26 C.F.R.) require employers to withhold federal income and FICA taxes from their employees’ wages and to deposit those amounts, in addition to their own FICA and FUTA contributions, with appropriate financial institutions for payment to the United States. 26 U.S.C. §§ 3102, 3402, 3111, 3301. Employers also must file quarterly employment tax returns (Form 941) and annual FUTA tax returns (Form 940). 26 U.S.C. §§ 6011(a), 6041, 6071; 26 C.F.R. § 31.6071(a)-1. Baker Funeral and Vince Baker, as the corporation’s responsible officer, have failed to meet these obligations since 1996: they have failed to timely file employment tax returns and have incurred federal tax liabilities of over \$830,000 due to their failure to make any voluntary payments of their outstanding liabilities.

Baker Funeral and Vince Baker's wrongful conduct and persistent pyramiding of their federal tax liabilities continues to result in significant and increasing financial loss to the United States. An injunction is therefore "necessary or appropriate for the enforcement of the internal revenue laws" under 26 U.S.C. § 7402(a). *See, e.g., Wilson*, 2009 WL 1465878, at 2 ("Because defendants continue to pyramid their tax liabilities and their continued violation of the internal revenue laws is likely, an injunction is 'necessary or appropriate for the enforcement of the internal revenue laws' and therefore appropriate under U.S.C. § 7402(a).").

**II. The United States also satisfies the requirements for injunctive relief under the traditional equitable factors.**

While the Court need not consider the traditional equitable factors in this case, the United States meets the requirements for injunctive relief under the traditional equitable standards as well. Under the traditional rules of equity, the following four factors are considered when determining whether to issue a preliminary injunction: (1) the likelihood of success on the merits; (2) whether the Government would suffer irreparable injury without the injunction; (3) whether the injunction would cause substantial harm to the defendants; and (4) the effect on the public interest. *Winter v. Natural Resources Defense Council*, 129 S.Ct. 365, 374 (2008); *see also Allegheny Energy, Inc. v. DQE, Inc.*, 171 F.3d 153, 158 (3d Cir. 1999). The United States meets all four equitable requirements, and therefore, a preliminary injunction should be issued against Baker Funeral and Vince Baker.

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**A. The United States has a strong likelihood of success on the merits.**

The United States can demonstrate a strong likelihood of success on the merits by showing the defendants' "history of non-compliance with the federal tax laws. . . . *Sifuentes*, 2005 WL 3627339 at \*6. Baker Funeral has failed to timely comply with its federal tax obligations for over fifteen years. Baker Funeral has ignored its legal obligations to timely file federal tax returns and pay its federal tax liabilities, and has amassed outstanding tax liabilities of over \$800,000. Baker Funeral continues its flagrant violations of the internal revenue laws to this day. This pattern of noncompliance shows that the United States has a strong likelihood of success on the merits.

**B. Absent an injunction, the United States will suffer irreparable injury and has no adequate remedy at law.**

The United States will suffer irreparable injury in the form of lost tax revenues if Baker Funeral is allowed to continue its pattern of noncompliance, as the Government has no legal remedy to prevent further pyramiding and to collect the outstanding liabilities. When an employer fails to pay its employment taxes, the United States loses not only the employer's FICA and FUTA tax contributions, but also the employees' FICA and federal income tax payments that are withheld from the employees' wages. The Government allows employees to claim a credit for the withheld portions, even if the employer never pays over those withheld taxes to the United States. *See* 26 U.S.C. §§ 1462, 3102(a); *Gephart v. United States*, 818 F.2d 469, 473 (6th Cir. 1987). That money is

then lost forever to the United States. An employer's failure to pay its employment taxes, which results in lost tax revenue, is evidence of irreparable harm to the United States. *See Wilson*, 2009 WL 1465878, \*2 (failure to pay employment taxes is evidence of irreparable harm); *Sifuentes*, 2005 WL 3627339 at \*5; *see Fifty Below Sales & Marketing*, 2006 WL 1228890 at \*3; *United States v. Molen*, 2006 WL 2927486 at \*2 (E.D. Cal. 2006).

In this case, Baker Funeral has consistently refused to pay over its own FICA and FUTA tax contributions, as well as its employees' contributions, resulting in lost tax revenue for the United States. Despite extensive collection efforts, Baker Funeral's aggregate delinquent tax liability, including penalties and interest, is over \$800,000, and continues to increase. Unless enjoined, Baker Funeral and Vince Baker will continue to deprive the United States of its lawful tax revenues. Baker Funeral's failure to pay its federal employment taxes has already caused irreparable harm to the United States. *See Wilson*, 2009 WL 1465878, \*2; *Sifuentes*, 2005 WL 3627339 at \*5; *see Fifty Below Sales & Marketing*, 2006 WL 1228890 at \*3; *United States v. Molen*, 2006 WL 2927486 at \*2 (E.D. Cal. 2006).

Additionally, absent an injunction, the United States will be forced to spend substantial resources in a never-ending cycle of assessing and then attempting to collect past due taxes, creating irreparable future injury. The Service's fruitless attempts to bring Baker Funeral into compliance and collect its outstanding employment tax liabilities indicate that the usual legal remedies are insufficient. *See United States v. Molen*, 2003 WL 23190606, at \*4 (E.D. Cal. 2003). Accordingly, without an injunction, the

Government will suffer irreparable harm because the traditional collection tactics are inadequate.

**C. Issuance of an injunction would not cause substantial harm to the defendants.**

If an injunction is issued, the only impact upon Baker Funeral and Vince Baker will be that Baker Funeral will be required to timely file its tax returns and pay its liabilities. In short, the defendants will be required to obey the internal revenue laws. These obligations are imposed on every similarly situated employer in the United States. Requiring Baker Funeral to obey the internal revenue laws does not qualify as a cognizable "harm" and, in any event, does not outweigh the harm to the United States if an injunction were not issued. *See Wilson*, 2009 WL 1465878 at \*2; *Sifuentes*, 2005 WL 3627339 at \*6. Thus, an injunction in this case will not substantially harm the defendants.

**D. An injunction is in the public's interest.**

An injunction in this case will serve the public interest because it will thwart Baker Funeral's failure to timely file its tax returns and pay its tax liabilities, which will promote fair competition and bring added revenue to the government.

Baker Funeral's failure to pay employment taxes gives its business "an unfair advantage over competitions because he can obtain the same amount of labor for less total payroll cost." *Sifuentes*, 2005 WL 3627339 at \*6. In effect, Baker Funeral is forcing the public to subsidize its business. Thus, by failing to comply with the internal revenue laws, Baker Funeral undermines fairness to other taxpayers who dutifully

abide by the tax laws. Therefore, an injunction against Baker Funeral would be in the public interest because it would promote fair competition and prevent the public from involuntarily subsidizing this business.

Equally important, public policy demands prompt payment of its tax revenues because “taxes are the lifeblood of the government, their prompt and certain availability an imperious need.” *Bull v. United States*, 295 U.S. 247, 259 (1934). The defendants’ failure to pay tax results in lost revenue to the United States, thereby decreasing the United States’ funding of government objectives and programs in the public interest. *Wilson*, 2009 WL 1465878 at \*2. As such, an injunction requiring Baker Funeral to timely file its tax returns and to timely pay its liabilities serves the public interest.

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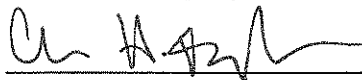
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## CONCLUSION

Baker Funeral has flagrantly disregarded its federal tax obligations for fifteen years. As demonstrated above, an injunction requiring Baker Funeral and Vince Baker to comply with the federal tax laws is necessary and appropriate for the enforcement of the internal revenue laws. For these reasons, the United States respectfully asks the Court to enter the attached preliminary injunction.

Dated: November 22, 2011

JOHN A. DiCICCO  
Principal Deputy Assistant Attorney General



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