

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	C/A No. 3:09-537-JFA
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Winston Able, individually, and doing)	
business as Reclaim Services,)	
)	
Defendant.)	
_____)	

The government filed this action seeking a permanent injunction against the defendant, Winston Able, to enjoin him from engaging in various activities the government contends violate federal tax statutes pursuant to Internal Revenue Code §§ 7402, 7407, and 7408.

Because the defendant was proceeding without counsel, this action was referred to United States Magistrate Judge Paige J. Gossett for a recommendation to the court.¹

Before the Magistrate Judge, the Clerk entered default against the defendant pursuant to Rule 55(a) of the Federal Rules of Civil Procedure because, although the defendant had “appeared” within the meaning of Rule 55, he had failed to properly plead or otherwise defend against this action despite being give several opportunities to do so. The government

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

then moved for a default judgment and the Magistrate Judge then undertook an examination to determine whether well-pleaded allegations of the complaint establish that the government is entitled to the injunctive relief it seeks in this action.

In a thorough and comprehensive Report and Recommendation, the Magistrate Judge finds that the well-pleaded allegations entitle the government to injunctive relief. Accordingly, the Magistrate Judge recommends that a default judgment for the government be entered and that a comprehensive injunction be granted to the government.

The defendant was apprised of his right to file objections to the Report and Recommendation which was entered on the docket. Instead of filing objections, the defendant has filed a series of documents that in no way address the legal issues presented in this case. The defendant has filed a “Due Presentment Under Notary Seal” naming as the respondent, the United States District Court, and informing the court that it will be held in default if it fails to file an answer. He has also filed a “Termination and Reappointment of Trustee by Affidavit;” an “Administrative Notice” (which apparently is an attempt to have the court enter into a contract wherein the court agrees, among other things, to pay “\$20 million in gold coins for each count on the charging sheet”); and other documents that can charitably be called non-responsive to the Report and Recommendation.

For the foregoing reasons, the court adopts the Report and Recommendation in whole. To the extent any of the pleadings filed by the defendant can be construed as objections to the Report, they are all overruled.

It is therefore ordered that the government's motion for default judgment be granted and that a permanent injunction be entered, against defendant Able, both individually and doing business as Reclaim Services as follows:

A. Pursuant to I.R.C. §§ 7402 and 7407, Winston Able and his representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with them, are permanently enjoined from directly or indirectly;

(1) Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any other person or entity;

(2) Filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040 or Forms 1099 for himself or others, including the notarization or signing of certificates of service or other similar documents in connection with the frivolous tax returns;

(3) Giving tax advice or assistance to anyone for compensation;

(4) Engaging in any other activity subject to penalty under the Internal Revenue Code; and

(5) Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

B. Pursuant to I.R.C. §§ 7402 and 7408, Able is permanently enjoined from directly or indirectly through representatives, agents, servants, employees, and anyone in active concert or participation with him by means of false, deceptive, or misleading commercial speech:

- (1) Organizing or selling tax shelters, plans or arrangements that advise or assist taxpayers to attempt to evade the assessment or collection of such taxpayers' correct federal tax;
- (2) Engaging in any other activity subject to penalty under I.R.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludability of income or any other tax benefit by participating in the plan that he knows or has reason to know is false or fraudulent as to any material matter;
- (3) Engaging in any activity subject to penalty under I.R.C. § 6701; and
- (4) Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or encourages taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the use of the "zero income" tax return and false Forms 1099-OID based on the false claims that:
 - i. Taxpayers can name the Secretary of the Treasury as their fiduciary and/or can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099-OID, bonded promissory notes, sights drafts or other documents;
 - ii. Taxpayers can issue false Forms 1099-OID to a creditor and report the amount on the false Form 1099 as income taxes withheld on their behalf;
 - iii. Taxpayers can use the Uniform Commercial Code to "accept for value" a document dealing with a debt and can stamp a

document with “accept for value” or similar wording to satisfy that debt including a tax debt;

- iv. Taxpayers have a secret account with the Treasury Department which they can use to pay their debts or which they can draw on for refunds through a process that is often called “redemption” or “commercial redemption”; and
- v. Taxpayers may become “private citizens,” which entitles them to tax refunds in excess of what those taxpayers may actually be entitled to under law;

C. Pursuant to I.R.C. § 7402, Able is permanently enjoined from preparing his own federal income tax returns claiming false income tax withholding and refunds based on amounts shown in false Forms 1099-OID issued to his creditors;

D. Pursuant to I.R.C. § 7402, Able is permanently enjoined from filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040 or Forms 1099 for himself or others, including the notarization or signing of certificates of service or similar documents in connection with the frivolous tax returns;

E. Pursuant to I.R.C. § 7402, Able must contact by mail (and also by e-mail, if an address is known) all persons who have purchased any products, services or advice associated with the false or fraudulent tax scheme described in this order and inform those persons of this court’s findings concerning the falsity of Winston Able’s prior representations and attach a copy of this order. Able must mail the copies within 45 days of the date of this order and within 10 days thereafter must file with

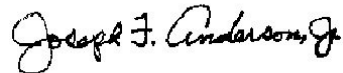
the court a sworn certificate stating that he has complied with this requirement. The mailings shall include a cover letter in a form either agreed to by counsel for the United States or approved by the court, and shall not include any other documents or enclosures;

F. Pursuant to I.R.C. § 7402, Able is required to provide to the United States a list of all persons who have purchased any products, services or advice from him in the past three years; and

G. The government is authorized to conduct full post-judgment discovery to monitor Winston Able's compliance with this injunction.

IT IS SO ORDERED.

June 14, 2010
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge