UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM J. BENSON, individually and d/b/a Constitutional Research Associates, Defendant.	)	Case No. 04 C 7403 Judge Filip

MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT

The United States has moved for summary judgment on its claim for a permanent injunction barring the defendant, William J. Benson, from promoting or selling his "Reliance Defense Package" and "16th Amendment Reliance Package," which promote the bogus argument that taxpayers are not required to file income tax returns or pay federal taxes because the Sixteenth Amendment was not properly ratified.

Benson falsely claims that the "Reliance Defense Package" gives his customers "the education and choice toward not filing an income tax return," and that "the IRS has steadfastly refused to prosecute any person standing on [the defense that the Sixteenth Amendment was not properly ratified]." Because the United States has met all the statutory requirements imposed by IRC §§ 7408 and 7402, summary judgment should be entered in its favor in this action, and a permanent injunction should issue under Rule 65 of the Federal Rules of Civil Procedure prohibiting Benson from promoting his tax-fraud scheme.

QUESTIONS PRESENTED

1. William J. Benson sells "Reliance Defense Packages" and "16th Amendment Reliance Packages," which are based on the false argument that taxpayers are not required to file tax returns or pay federal taxes because the Sixteenth Amendment to the Constitution was never properly ratified. Benson fraudulently claims that customers who purchase his products are shielded from criminal prosecution for violating the internal revenue laws. These "Reliance" packages are abusive tax shelters under IRC § 6700. Because Benson has engaged in conduct subject to penalty under IRC § 6700, and is likely to continue to do so in the future in the absence of an injunction, should he be permanently enjoined from promoting his scheme under IRC § 7408?

2. By promoting abusive tax schemes (the "Reliance Defense Packages" and "16th Amendment Reliance Package"), Benson has engaged in fraudulent conduct that substantially interferes with the proper administration of the internal revenue laws. Benson's conduct has caused substantial revenue loss to the United States, and will require the IRS to expend considerable resources to audit the tax returns of his customers. Is the Government entitled to permanent injunctive relief under IRC § 7402?

ARGUMENT

I. DEFENDANT'S "RELIANCE DEFENSE PACKAGE" IS AN ABUSIVE TAX SCHEME THAT SHOULD BE ENJOINED

A. Introduction

Section 7408(a) provides that the United States may commence an action in a district court to enjoin any person from engaging in conduct subject to penalty under IRC §§ 6700 and 6701. A district court has authority to grant such relief, if it finds (IRC § 7408(b)) --

> (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[.]

Section 6700 provides a penalty against any person who, in connection with organizing or selling "a partnership or other entity," "an investment plan or arrangement," or "any other plan or arrangement," makes or furnishes a statement about the tax consequences of participating which he knows, or has reason to know, is false or fraudulent as to any material matter, *See, e.g. United States v. White*, 769 F.2d 511, 514-15 (8th Cir. 1985); *United States v. Buttorff*, 761 F.2d 1056, 1059-63 (5th Cir. 1985); *United States v. Savoie*, 594 F. Supp. 678, 680-82 (W.D. La. 1984).

Although the legislative history shows that IRC §§ 6700 and 7408 were enacted to give the Internal Revenue Service more effective tools to deal with "the growing phenomenon of abusive tax shelters," S. Rep. No. 97-494, 97th Cong., 2d Sess. at 266 (1982 U.S. Code Cong. & Ad. News 781, 1014), these statutes do not apply only to typical "investment" tax shelters. Rather, Congress intended those sections to apply to "abusive tax shelters and *other abusive tax*

avoidance schemes." S. Rep. No. 97-494, *supra* at 266 (emphasis added). *See United States v. White*, 769 F.2d at 515; *United States v. Buttorff*, 761 F.2d at 1063; *United States v. Savoie*, 594 F. Supp. at 680.

In this case, with respect to the Government's motion for summary judgment, the inquiries indicated by IRC § 7408(a) are: (1) whether Benson engaged in conduct subject to penalty under IRC § 6700 by making false or fraudulent statements about the federal tax laws which he knew or had reason to know were false or fraudulent; and (2) whether injunctive relief is warranted to protect such conduct from continuing. Because IRC § 7408 expressly provides for an injunction, the traditional guidelines for equitable relief do not have to be established. *United States v. White*, 769 F.2d at 515; *United States v. 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"); *United States v. Schiff*, 269 F. Supp.2d 1262, 1265 (D. Nev. 2003), *aff'd*, 379 F.3d 621 (9th Cir. 2004).

B. Benson should be enjoined from engaging in conduct which is subject to penalty under § 6700

To obtain an injunction preventing Benson from promoting an abusive tax shelter such as the "Reliance Defense Package" and the "16th Amendment Reliance Package," the Government must establish by a preponderance of the evidence that: (1) the defendant organized or sold, or assisted in the organization or sale of, an entity, plan or arrangement; (2) he made or caused to be made false or fraudulent statements concerning the tax benefits to be derived from the entity,

plan, or arrangement; (3) he knew or had reason to know the statements were false or fraudulent; (4) the false or fraudulent statements were material; and (5) an injunction is necessary to prevent recurrence of this conduct. IRC §§ 6700(a), 6703 and 7408(b); *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000), *cert. den.*, 533 U.S. 902 (2001);*United States v. Estate Preservation Services*, 202 F.3d 1093, 1098 (9th Cir. 2000). Defendant's "Reliance Defense Package" and "16th Amendment Reliance Package" are, to put it mildly, abusive tax avoidance schemes.

1. Benson organized and sold a plan or arrangement

Section 6700 applies to "(ii) any investment plan or arrangement, or (iii) any other plan or arrangement." IRC § 6700(a)(1)(A). As the advertisements on the websites www.thelawthatneverwas.com and www.thefreeenterprisesociety.com make plain, Benson sells a plan or arrangement within the meaning of IRC § 6700(a). The sale of materials that falsely tells customers that they are not required to file income tax returns and pay federal taxes, and that falsely tells them they are receiving a legal defense to not filing returns or paying tax, is a "plan or arrangement" under IRC § 6700(a)(1)(A). *See United States v. Raymond*, 228 F.3d at 811-12 ("De-Taxing America Program," which encouraged purchasers to take steps to avoid federal income taxation, was tax shelter within the meaning of IRC § 6700(a)(1)(A)).

Benson's materials apparently focus on the Supreme Court's holding in *Cheek v. United States*, 498 U.S. 192, 202-03 (1991). In that criminal tax-evasion case, the Court held that a defendant's good-faith belief that he is not violating the tax laws negates the statutory willfulness requirement, whether or not that good-faith belief is objectively reasonable. Courts

have recognized that a "good faith reliance" defense is essentially a claim that the defendant did not act willfully. *United States v. Chavin,* 316 F.3d 666, 670 (7th Cir. 2002). The language in Benson's letters to purchasers of the Reliance Defense Package and 16th Amendment Reliance Package crudely mimics the opinion in *Cheek,* as seen in the following excerpt:

> It is insanely unrealistic for someone like **Ronald K. Doyle Sr.** to believe that he would be required to file any forms with any state taxing agency or the Federal Government, when the 16th Amendment to the U.S. Constitution is an absolute complete total fraud as proven by **The Law That Never Was** Volume I and in excess of 17,000 documents, etc. that **Ronald K. Doyle Sr. relies on as his STATE OF MIND, FRAME OF MIND RELIANCE, AND BELIEF.**"

The rationale behind the subjective standard in *Cheek, supra,* is to avoid criminalizing unwitting violations of the complicated and extensive tax laws. *United States v. Bishop,* 291 F.3d 1100, 1106 (9th Cir. 2002). Benson is, in essence, marketing and selling a criminal defense. He is peddling his package of materials for exorbitant fees, falsely promising, in effect, that it is a Get-Out-of-Jail-Free card.

2. In selling his reliance defense plan, Benson makes false or fraudulent statements regarding tax benefits

In *United States v. 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." *Accord United States v. Raymond,* 228 F.3d at 811; *United States v. Kaun,* 827 F.2d 1144, 1147 (7th Cir. 1981). Benson's Reliance Defense Package and 16th Amendment Reliance Package each make false or fraudulent statements about the validity of the Sixteenth

Amendment and the legal requirements imposed on taxpayers to file income tax returns and pay federal taxes. Benson's deliberate misrepresentations concerning the Sixteenth Amendment also induce customers to purchase his products by promising them, in effect, that they are legally privileged to ignore the filing requirements of the internal revenue laws because they have supposedly relied on his argument that the Sixteenth Amendment was not ratified in failing to file their returns or pay their taxes.

Prohibiting Benson's sales of Reliance Defense Packages and 16th Amendment Reliance Packages is consistent with the First Amendment. The First Amendment does not protect false commercial speech (including illegal tax advice), speech inciting others to break the law, or speech used as part of an illegal transaction. The permanent injunction requested in this case prohibits only unprotected speech. *See United States v. Bell*, ___ F.3d ___, 2005 WL 1620325 (3d Cir. July 12, 2005) at *4; *United States v. Schiff*, 379 F.3d 621, 626-628 (9th Cir. 2004); *United States v. Raymond*, 228 F.3d at 815-16; *United States v. Kaun*,827 F.2d at 1152-53.

The Supreme Court has held that "the State may ban commercial expression that is fraudulent or deceptive without further justification." *Edenfield v. Fane*, 507 U.S. 761, 768 (1993). Commercial speech includes selling tax advice. *Estate Preservation Services*, 202 F.3d at 1096 n.3, 1106. Consequently, Benson's advertisements and sales of his Reliance Defense Package and 16th Amendment Reliance Packages for $3,500 and $250, respectively, represent commercial speech that, because they are false, may be banned altogether. *See, e.g., Schiff* (enjoining book under IRC § 7408); *United States v. Raymond*, 228 F.3d at 815 (enjoining as "false or misleading commercial speech" advertisements and a three-volume book); *White*,

769 F.2d at 512, 516-17 (enjoining, as false "commercial speech" and speech used to promote "an illegal activity," "a cassette tape and written materials," including "detailed instructions" about "fraudulent means to evade to evade federal income taxes"). *See also NCBA/NCE v. United States*, 843 F. Supp. 655, 666 (D. Colo. 1993) (holding that materials containing false statements and advice about the federal tax laws was false commercial speech not protected by the First Amendment), *aff'd*, 42 F.3d 1406 (10th Cir. 1994).

3. Benson Knew or Had Reason to Know That His Statements were False or Fraudulent

The next step under IRC § 6700(a)(2)(A) is to determine whether Benson "knew or had reason to know" that his statements concerning the validity of the Sixteenth Amendment \ere false or fraudulent. The United States is not required to establish that Benson acted with subjective bad faith, *i.e.*, to show that he actually knew, at the time he organized and sold the Reliance Defense Package and 16th Amendment Reliance Package, that his "Reliance" letters and related materials contained false and fraudulent statement concerning the availability of tax benefits or the requirements of the internal revenue laws.[1]

Rather, it is sufficient (for the purpose of establishing defendant's violation of IRC § 6700) for the Government to show that Benson had reason to know, as a result of the uniform rejection by the federal courts of his and other arguments concerning the validity of the Sixteenth

[1] 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.

Amendment, that those representations were false or fraudulent. *United States v. White*, 769 F.2d at 515 ("appellant knew or had reason to know were false or fraudulent because such representations had been consistently rejected by the courts"); *accord United States v. Buttorff*, 761 F.2d at 1062. *See United States v. Kaun*, 827 F.2d at 1149 (employing "knew or should have known to be false" standard to find violation of IRC § 6700); *United States v. Campbell*, 897 F.2d 1317, 1322 (5th Cir. 1990) (same).

Benson had every reason to know his statements about the Sixteenth Amendment and the requirements of the internal revenue laws were false. It is well-settled law that the Sixteenth Amendment was properly ratified (*E.g.,United States v. Foster*, 789 F.2d 457, 462-63 (7th Cir. 1986); *United States v. Thomas*, 788 F.2d 1250, 1253-54 (7th Cir. 1987)). The Internal Revenue Code and the case law interpreting it leave no room to doubt that all citizens with more than minimal income are subject to the income tax laws.[2] *United States v. Sloan*, 939 F.2d 499, 500-01 (7th Cir. 1991). Moreover, every court that has considered Benson's particular arguments against the validity of the Sixteenth Amendment has rejected them outright. *Miller v. United States*, 868 F.2d 236, 240-41 (7th Cir. 1988); *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); *Foster, supra; Thomas, supra; Knoblauch v. Commissioner*, 749 F.2d 200 (5th Cir. 1984);

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[2] The statutory duty to file income tax returns and pay income taxes is clear. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. Section 63 of the Code defines "taxable income" as gross income minus allowable deductions. Section 61 states that "gross income means all income from whatever source derived." Sections 6001 and 6011 provide that a person must keep records and file a tax return for any tax for which he or she is liable. Finally, IRC § 6012 provides that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. The duty to file income tax returns and pay federal income taxes therefore is "manifest on the face of the statutes." *United States v. Bowers*, 920 F.2d 220, 222 (4th Cir. 1990).

United States v. Wojtas, 611 F. Supp. 118 (N.D. Ill. 1985). As stated by the *Miller* Court:

> We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed.2d 493 (1916), and those specifically rejecting the argument advanced in [Benson's] *The Law That Never Was*, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure.

Miller v. United States, 868 F.2d at 241. *See United States v. Dunkel*, 927 F.2d 955, 955 (7th Cir. 1991) ("district judges may rebuff defenses based on erroneous constitutional beliefs (such as that the 16th Amendment was not properly ratified)").

Moreover, Benson – as a result of his criminal convictions for failure to file tax returns and tax evasion – has actual knowledge that the representations contained in the "Reliance Defense Package" that he sold were false or fraudulent. In the appeal taken from his first conviction, the Seventh Circuit squarely rejected his argument concerning the validity of the Sixteenth Amendment, holding that the issue was "beyond review."[3] *United States v. Benson*, 941 F.2d 598, 607 (7th Cir. 1991); *see United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (affirming Benson's subsequent convictions for tax crimes). Benson's criminal convictions not only belie his claim that the Sixteenth Amendment was not properly ratified, but also belie his representations that purchasers of his materials can reasonably rely on them to stop filing returns or paying taxes while escaping criminal punishment.

4. Benson's False or Fraudulent

[3] Benson has actual knowledge of the Seventh Circuit's opinion in *United States v. Benson*, 941 F.2d 590 (7th Cir. 1991), because a copy of that opinion is included in the "16th Amendment Reliance Defense Package" that he sells. *See* Ponzo Decl., Exhibit K at pp. 131-133.

Statements Were Material

To prove that a statement is material, it is not necessary to prove actual reliance. "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). *Accord United States v. Estate Preservation Services*, 38 F. Supp. 2d 856, 857 (E.D. Cal. 1998), *aff'd*, 202 F.3d 1093 (9th Cir. 2000). These representations would affect "the decision-making process of any reasonable investor." *United States v. Campbell*, 704 F. Supp. 715, 724 (N.D. Tex. 1988), *aff'd*, 897 F.2d 1317 (5th Cir. 1990).

Benson's false representations in the Reliance Defense Package and the 16th Amendment Reliance Package that the Sixteenth Amendment was a nullity and that individuals would not, accordingly, be required to file tax returns or pay income taxes are obviously "material" under this standard. Any remaining doubt on this point is dispelled by the examples of Ronald K. Doyle and the other taxpayers who purchased Benson's "Reliance Defense Package" and "16th Amendment Reliance Defense Package." Doyle's December 22, 2003 letter to the IRS repeats the language of Benson's October 8, 1999 letter to Doyle by stating that his "choice" to not file an income tax return was "**based** on my **state-of-mind, frame of mind, reliance** and **belief** that I am obeying the dictates of Constitutional Law" (emphasis original). Doyle, who told Judithe Howell and other IRS employees on December 22, 2003 that he was not required to file returns or pay income taxes because the Sixteenth Amendment had not been ratified, has not filed a

federal income tax return since 2000.

5. An Injunction is appropriate and necessary to prevent future violations of IRC § 6700

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. *United States v. White*, 769 F.2d at 515; *United States v. Buttorff*, 761 F.2d at 1059. 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 United States v. Buttorff*, 563 F. Supp. at 455 (discussing standards for granting injunction under Section 7408).

That injunctive relief is necessary in the present case is amply supported by the evidence presented through the Declarations of Paul Ponzo, Judithe Howell and Barbara Cantrell. In *United States v. Kaun, supra*, the Seventh Circuit looked to the analogous area of securities law to identify a number of factors pertinent to determining whether the granting of an injunction under IRC § 7408 is appropriate. Relevant factors include:

> [T]he gravity of the harm caused by the offense; the extent of the defendant's participation and his degree of scienter; the isolated or recurrent nature of his infraction and the likelihood that the defendant's customary business activities might again involve him in such transaction; the defendant's recognition of his own culpability; and the sincerity of his assurances against future violations.

United States v. Kaun, 827 F.2d at 1149 (quoting *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982)).

The United States, as a result of defendant's sales of "Reliance Defense Packages" and "16th Amendment Reliance Packages," has suffered a loss of tax revenues due to the purchasers' failure to file tax returns. Ronald Doyle, who turned over copies of Benson's Reliance Defense Package and 16th Amendment Reliance Package, stopped filing tax returns with the IRS in 2001. The other individuals identified in the Declaration of Paul Ponzo who sent portions of their Reliance Defense Packages to the IRS also stopped filing income tax returns and paying federal taxes. Defendant's promotion of the "Reliance Defense Package" has cost the U.S. Treasury lost tax revenues in amounts ranging from $242 to $235,000. Furthermore, the IRS has been obliged to undertake examinations of the federal income tax liabilities of Benson's customers, who have become non-filers. *See United States v. 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.").

More disturbing, from the standpoint of whether Benson is likely to continue violating IRC § 6700, is the fact that he is "fundamentally opposed to the existing tax structure and that [his] position [has] not changed over time." *United States v. Buttorff,* 563 F. Supp. at 455. This is easily discerned from Benson's website www.thelawthatneverwas.com, which contains the following language:

> After serving time in federal prison for not paying his United States income taxes, Bill Benson still does not pay income taxes and yet our federal government chooses not to arrest him. Why? Because now he can use this book, which he has written: 'THE LAW THAT NEVER WAS in his defense. To this day, Bill Benson proclaims, just as loudly, that he will not pay an unjust and corrupt federal income tax.

Despite the rejection of his constitutional theories by every court that has had the opportunity to review them, Benson still sells tax-advice materials falsely stating that the Sixteenth Amendment is invalid and that customers are not, accordingly, required to file tax returns or pay federal income taxes. Benson has never acknowledged the wrongfulness of his actions, and there is no indication that he intends to abandon his business of selling Reliance Defense Packages and 16th Amendment Reliance Packages. Finally, Benson's long-standing opposition to the Sixteenth Amendment and the IRS clearly places him in a position where future violations of IRC § 6700 are inevitable. Absent an injunction enforceable by the Court's contempt powers, he represents a true threat to the tax revenues of the United States and customers who purchase his materials. Under these circumstances, an injunction under IRC § 7408 is clearly appropriate.

C. Benson should also be enjoined under Section 7402(a)

Section 7402 of the Internal Revenue Code authorizes issuance of an injunction that is "necessary or appropriate for the enforcement of the internal revenue laws." This section pre-dates IRC §§ 6700, 6701, and 7408 and has long been used to halt tax-evasion schemes. In order to demonstrate the "Congressional intention to provide the 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)), IRC § 7402 "has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984); *see, e.g., United States v. Hart,* 701 F.2d 749 (8th Cir. 1983).

Equitable considerations weigh in favor of enjoining Benson under IRC § 7402(a). Assisting customers to stop filing, stop withholdings from their paychecks, create a false defense to tax crimes all fall within § 7402's broad language and would be subject to injunction under this section, without regard to a showing under §§ 6700 and 7408. Here, injunctive relief under IRC § 7402 is appropriate to prevent Benson's interference with tax enforcement. The equitable criteria for an injunction under IRC § 7402 are present: the likelihood of the movant's success on the merits and the relative balance of potential hardships to the plaintiff, defendant, and public.

The Government's exhibits present irrefutable evidence—often in the defendant's own words—that Benson has thwarted and undermined the administration of the internal revenue laws. Shutting down the sales of the Reliance Defense Package and the 16th Amendment Reliance Defense Package is appropriate for the enforcement of the internal revenue laws, as those tax-fraud schemes bilk money from Benson's customers and pave the way for them to become illegal non-filers. Therefore, the United States has a strong likelihood of prevailing on the merits. The United States has suffered and will continue to suffer irreparable injury if Benson is not enjoined. Because the defendant will not end his scheme unless forced to do so, the United States Treasury, funded by United States taxpayers, will continue to lose money as long as Benson is operating. Given the IRS's limited resources, identifying and recovering all lost revenue may be impossible. Benson's customers, by failing to file returns and pay taxes, monopolize scarce IRS resources.

In addition to the harm caused by his advice and services, Benson's schemes undermine public confidence in the federal tax system and aids and abets others to violate the internal

revenue laws. If Benson is not enjoined now, he will cause even greater damage to the United States. He cannot claim harm from the court order, since the order will end his current lawbreaking activity and therefore limit future civil and criminal sanctions. *See Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (finding that injunctions requiring people to follow the law do not cause hardship). Benson's First Amendment rights are preserved, because the proposed order parallels orders issued in other cases that bar the same categories of conduct—false commercial speech, aiding and abetting lawless action, and assisting others to violate the law. *See, e.g*, *Schiff*, 397 F.3d 621; *Kaun*, 633 F. Supp. 406, and *United States v. Buttorff*, 572 F.2d at 624 (upholding conviction for aiding and abetting filing false tax forms where speeches and explanations "go beyond mere advocacy" and incited people to violate federal tax laws). Finally, the public interest is clearly served by shutting down Hempfling's illegal tax-evasion scheme. *United States v. Lee*, 455 U.S. 252, 253 (1982) (noting that "the broad public interest in maintaining a sound tax system is of . . . a high order."). Indeed, it is difficult to imagine a more compelling case for an injunction than the instant case.

CONCLUSION

The United States has met all of the statutory requirements imposed by IRC §§ 6700, 7408 and 7402(a) for an injunction barring Benson from promoting, organizing or selling his Reliance Defense Packages and 16th Amendment Reliance Packages. Accordingly, the United States respectfully requests that a permanent injunction be entered against the defendant, William J. Benson, and all those in active concert or participation with him, enjoining them under IRC §§ 7402 and 7408 from:

(a) promoting, organizing or selling the "Reliance Defense Package" and/or "16th Amendment Reliance Package," which are abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;

(b) promoting, organizing or selling (or assisting therein) any other abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;

(c) making false statements about the excludability of any income, or the securing of any tax benefit by the reason of participating in such tax shelters, plans, or arrangements;

(d) engaging in any other activity subject to penalty under IRC § 6700; and

(e) engaging in other, similar conduct that substantially interferes with the proper administration of the internal revenue laws.

Further, and in addition to the above prohibition against engaging in conduct subject to penalty under IRC § 6700, the United States requests that any permanent injunction entered in this civil action order Benson to do the following:

(f) within 14 days of the entry of the permanent injunction, mail (by United States mail, and, if an e-mail address is known, by electronic mail) at his own expense a copy of the permanent injunction order to every customer who purchased the "Reliance Defense Package" and/or "16th Amendment Reliance Package";

(g) within 14 days of the entry of the permanent injunction, serve the United States with a list of customers who purchased a Reliance Defense Package and/or 16th Amendment Reliance Package from him which sets forth the customers' names, mailing addresses, e-mail addresses and social security numbers,

(h) within 10 days of the entry of the permanent injunction, remove from his website www.thelawthatneverwas.com all references to the Reliance Defense Package and/or 16th Amendment Reliance Package;

(i) post, in not less than 12-point type at the top of the first page of

www.thelawthatneverwas.com, a copy of the permanent injunction order entered in this case; and [4]

(j) file with the Court an affidavit detailing his compliance with the requirements set forth above in subparagraphs (f) through (j), above, within 30 days of the entry of the permanent injunction.

Respectfully submitted this 4th day of August, 2005.

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[4] Requiring Benson to post a copy of the permanent injunction on his commercial website and provide the Government with a list of customers who purchased his fraudulent tax products does not violate the First Amendment. *United States v. Schiff*, 379 F.3d 621, 630-31 (9th Cir. 2004) (upholding preliminary injunction requiring abusive tax shelter promoter to disclose his customer list and post a copy of the preliminary injunction on his website).