UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

UNITED STATES' BRIEF IN OPPOSITION TO
MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT

On December 17, 2007, this Court issued its Memorandum Opinion (Doc. 106) granting summary judgment to the United States 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 never ratified. The Permanent Injunction (Doc. 116) was entered on January 10, 2008.

On or about February 14, 2008, the Internal Revenue Service served an administrative summons on Benson in order to ascertain the identities of the purchasers of his "Reliance Defense Package" and "16th Amendment Reliance Package." Benson argues that the IRS violated the permanent injunction by serving the summons, and has moved for an order requiring the Government to show cause why it should not be held in contempt. Because the United States did not violate a Court Order that set forth, in detail, an unequivocal command from this Court, Benson's motion for an order to show cause should be denied.

ARGUMENT

THE INTERNAL REVENUE SERVICE DID NOT VIOLATE THE PERMANENT INJUNCTION BY SERVING THE SUMMONS

A. Introduction

Congress has conferred upon the Secretary of the Treasury the responsibility to determine tax liability, and has given the Secretary broad authority to conduct investigations for that purpose.[1] The Commissioner of Internal Revenue, as the Secretary's delegate, is charged with the duty to make inquiries, determinations, and assessments of all taxes imposed by the Internal Revenue Code, and to collect such taxes.[2]

The summons power is the means that Congress has provided to enable the Commissioner to discharge these investigative and collection responsibilities. Section 7602 of the Code authorizes the Commissioner, "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, [or] determining the liability of any person for any internal revenue tax, . . . [t]o examine any books, papers, records or other data which may be relevant or material to such inquiry" and to summon any person to appear and produce such documents and to give relevant testimony. The courts consistently have held that Section 7602 gives the IRS expansive information-gathering authority in order to facilitate effective tax investigations.[3] Moreover, the Supreme Court has "consistently construed congressional intent to require that if the summons authority claimed [under Section 7602] is necessary for the

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[1] *See* I.R.C. § 7602.

[2] *See Donaldson v. United States*, 400 U.S. 517, 523-524 (1971); *see also* IRC §§ 6201(a), 6301, and 7601.

[3] *See Church of Scientology v. United States*, 506 U.S. 9, 10 n.2 (1992); *United States v. Arthur Young & Co.*, 465 U.S. 805, 813-15 (1984).

effective performance of congressionally imposed responsibilities to enforce the tax Code, that authority should be upheld absent express statutory prohibition or substantial countervailing policies."[4]

The power of the IRS to summon the books, papers, records and other data under IRC § 7602 is separate and distinct from the authority given to the district courts under IRC § 7402(a) "to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica,* orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary for or appropriate for the enforcement of the internal revenue laws." The second sentence of IRC § 7402(a) explicitly states that "[t]he remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws."

B. The IRS administrative summons does not violate the terms of the permanent injunction

Defendant's motion for an order requiring the United States to show cause why it should not be held in contempt does not state whether defendant believes the Government should be held in civil or criminal contempt. Assuming, for the purposes of responding to defendant's motion, that it refers to civil contempt, it is well established that "[a] court's civil contempt power rests in its inherent limited authority to enforce compliance with court orders and ensure judicial proceedings are conducted in an orderly manner."[5]

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[4] *United States v. Euge*, 444 U.S. 707, 711 (1980).

[5] *Jones v. Lincoln Elec. Co.,* 188 F.3d 709, 737 (7th Cir. 1999).

For a party to be held in civil contempt, that party must have violated an order or decree that "set[s] forth in specific detail an unequivocal command."[6] The party asserting the violation of a court order has the burden of proving the violation by clear and convincing evidence.[7]

"To be enforceable, an injunction must be 'specific in terms' and 'describe in reasonable detail . . . the act or acts sought to be restrained.'"[8] Benson argues, unconvincingly, that "[t]he administrative summons requires Benson to produce to the Internal Revenue Service the identical documentation that the Court held the Internal Revenue Service was precluded from obtaining."[9] Nothing in the Permanent Injunction (Doc. 116) entered on January 10, 2008, precludes or forbids the Commissioner of Internal Revenue from serving an administrative summons on Benson under IRC § 7602 to obtain the identities of his customers for the purpose of determining his liability for IRC § 6700 penalties. While it is true that this Court declined, in the Memorandum Opinion entered in this action on December 17, 2007, to require the defendant to turn over his customer list as part of a permanent injunction to be issued subsequently under IRC § 7402(a), there is nothing in the Memorandum Opinion that expressly precludes or forbids the IRS from obtaining the same information by another method. Put another way, there is no "unequivocal command" to the United States in the Memorandum Opinion entered in this case.

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[6] *Linc. Elec.,* 188 F.3d at 738; *see United States v. Dowell,* 257 F.3d 694, 699 (7th Cir. 2001).

[7] *Dowell,* 257 F.3d at 699. The "clear and convincing" standard is a "greater burden of proof than "preponderance of the evidence." *Hernandez v. O'Malley,* 98 F.3d 293, 295 (7th Cir. 1996).

[8] *Federal Trade Commission v. Cleverlink Trading Ltd.*, 519 F. Supp.2d 784, 797 (N.D. Ill. 2007) (quoting Fed. R. Civ. P. 65(d)).

[9] Motion for Order to Show Cause re Contempt (Doc. 147), ¶8 at 3.

Benson's claim that the Government was precluded from seeking the identities of his customers by any other means rests on his erroneous reading of the Memorandum Opinion.[10] In this regard, the Memorandum Opinion (Doc. 106 at 20) provides, in pertinent part, that "[t]he request by the Government for the customer list is beyond the scope of Benson's wrongdoing in the instant action, and absent a compelling reason given by the Government for its disclosure, the request cannot be granted" (emphasis added). In declining to order Benson to turn over his customer list, as part of an injunction under IRC § 7402(a), this Court was careful to limit its determination that the United States was not entitled to the customer list to the present civil action. That the Court based its ruling, in this regard, on its finding that "the Government has not shown that the request for the customer list is appropriate injunctive relief in light of the claims and allegations in this case" (Doc. 106 at 18) reinforces this conclusion.

Lastly, the undisputed fact that the IRS sought to obtain the identities of Benson's customers through an administrative summons under IRC § 7602 also militates strongly against any finding that the United States violated any of the orders entered by the Court in the present case. By its terms, the "remedies" provided in IRC § 7402(a) "are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise" to enforce the internal revenue laws.[11] Consequently, an injunction under IRC § 7402(a) which

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[10] As we assert above, the Memorandum Opinion does not restrain the United States from serving an administrative summons on Benson because it does not specifically set forth, with respect to the United States, any "act or acts sought to be restrained" within the meaning of Rule 65 of the Federal Rules of Civil Procedure. Only the Permanent Injunction entered by the Court on January 10, 2008 (Doc. 116) specifically restrains the defendant from promoting, selling and organizing his "Reliance Defense Package" and "16th Amendment Reliance Package," among other things.

[11] IRC § 7402(a).

does not require the subject to turn over a customer list to the IRS cannot be raised as a bar to the issuance of an administrative summons under IRC § 7602 for the same information.

CONCLUSION

For the foregoing reasons, the defendant's Motion for Order to Show Cause re Contempt (Doc. 147) should be denied.

Respectfully submitted this 22nd day of February, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2008, I electronically filed the foregoing **UNITED STATES' BRIEF IN OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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