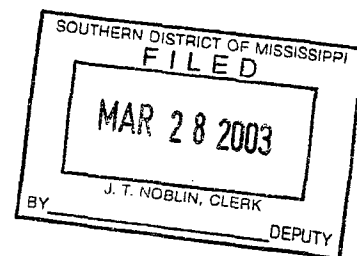


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



UNITED STATES OF AMERICA

PLAINTIFF

vs.

CIVIL NO. 3:02-CV-209WS

ANDREW L. WILEY

DEFENDANT

ORDER GRANTING DEFAULT JUDGMENT AND PERMANENT INJUNCTION

Before the court is the motion of the United States of America for default judgment pursuant to Rule 55(b)¹ of the Federal Rules of Civil Procedure for the defendant's failure to file an answer or other responsive pleading to the complaint. The United States of America also asks the court to impose a permanent injunction against the defendant Andrew L. Wiley pursuant to Title 26 U.S.C. § 7402² and Title 26 U.S.C. § 7407.³ This court, having reviewed the complaint, the submissions, and the evidence

¹Rule 55(b) of the Federal Rules of Civil Procedure provides in pertinent part that a judgment by default may be entered: (1) **By the Clerk**. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person; or (2) **By the Court**. In all other cases the party entitled to a judgment by default shall apply to the court therefor;"

²Title 26 U.S.C. § 7402(a) provides that "the district courts of the United States shall have jurisdiction to issue *orders of injunction* and to render such judgments as may be necessary or appropriate to enforce the internal revenue laws"

³Title 26 U.S.C. § 7407(a) provides that, "(a) Authority to seek injunction -- A civil action in the name of the United States to enjoin any person who is an income tax return preparer

and argument presented both on May 28, 2002, and on March 25, 2003, finds that the motion for default judgment and the motion for a permanent injunction are well taken and should be granted.

On May 28, 2002, this court directed that the *pro se* defendant Andrew L. Wiley was preliminarily enjoined from preparing any more tax returns from that day forward until further notice from the court. In a separate Memorandum Opinion and Order⁴ dated March 28, 2003, of the same style and number of the instant matter, namely United States of America v. Andrew L. Wiley, Civil Action No. 3:02-cv-209WS, this court subsequently granted the United States a preliminary injunction which enjoined the defendant Andrew L. Wiley from preparing or assisting in preparing tax returns, amended returns, and/or other documents to be submitted to the Internal Revenue Service claiming or supporting claims for refunds based on fabricated tax credits for taxes paid as second-class citizens, reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds. The court also enjoined Wiley from providing any samples of returns, amended returns, and/or other documents to third parties to be copied and submitted to the Internal Revenue Service claiming or

from further engaging in any conduct described in subsection (b) or from further acting as an income tax return preparer may be commenced at the request of the Secretary. Any action under this section shall be brought in the District Court of the United States for the district in which the income tax preparer resides or has his principal place of business or in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such income tax preparer or any taxpayer.”

⁴As above-stated, this permanent injunction follows this court's issuance of a temporary injunction against defendant Andrew L. Wiley. In that earlier Memorandum Opinion and Order, this court discussed in detail the facts and law which form the backdrop of this litigation. Thus, this court encourages the reader to review that document along with the instant one.

supporting claims for refunds based on fabricated tax credits for taxes paid as second-class citizens, reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds; and/or inciting others not to cooperate with federal officers engaged in the enforcement of the internal revenue laws. Finally, this court's Order granting preliminary injunctive relief prohibited Wiley from placing any advertisements claiming that African Americans citizens are entitled to a tax credit for taxes paid as second-class citizens, or for reparations for slavery or segregation, a black tax credit, or any comparable frivolous grounds.

The United States served Wiley with a summons and complaint on March 6, 2002. On April 8, 2002, Wiley filed a motion to dismiss which this court denied on May 21, 2002. On that same date, this court ordered Wiley to answer the complaint on or before June 5, 2002. Wiley never complied and the Clerk of the Court entered default on October 21, 2002, pursuant to Rule 55(a)⁵ of the Federal Rules of Civil Procedure.

On March 25, 2003, the United States brought the above styled and numbered cause for hearing on the motions for default judgment and for a permanent injunction. The United States announced to the court that its motion for default judgment was based on Wiley's failure to answer the complaint as he was directed by the court. Additionally, the United States presented four witnesses and their tax returns for 2001 and 2002 in support of the motion for permanent injunctive relief. These witnesses were: Effie Williams, retired, who did not state her prior occupation; Marie Randle, a

⁵Rule 55(a) of the Federal Rules of Civil Procedure provides that, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default."

retired institutional cook; William C. Benson, a disabled former construction worker; and Beatrice Wilkerson who stated that she had a bachelors degree in education. The United States also called Rae Therrell with the Internal Revenue Service who vouched for the authenticity of these witnesses' tax returns. The four witnesses each identified his or her tax return and testified that the return was prepared by the defendant Andrew L. Wiley. Significantly, these witnesses established that Wiley prepared their respective returns in August and September of 2002, a time well after this court's pronouncement of a preliminary injunction which prohibited Wiley from preparing tax returns.

Inasmuch as the plaintiff failed to answer the complaint as he was directed to do, this court finds the motion of the United States for default judgment to be well taken and the same shall be granted.

Additionally, this court finds that the motion of the United States for permanent injunctive relief is well taken and the same should be granted based on the following authority. Section 7407(b) of the Internal Revenue Code relied on by the United States provides as follows: (b) Adjudication and decrees. -- In any action under subsection (a), if the court finds --

(1) that an income tax return preparer has --

(A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,

(B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax return preparer,

(C) guaranteed the payment of any tax refund or the allowance of any tax credit, or

(D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, and

(2) that injunctive relief is appropriate to prevent the recurrence of such conduct, the court may enjoin such person from further engaging in such conduct. ...

Previously, this court concluded that the United States had presented evidence sufficient to show that preliminary injunctive relief pursuant to Title 26 U.S.C. § 7407(b) was appropriate in this case. Now, the United States has shown that defendant Wiley contumaciously has defied this court's prior directive by continuing to prepare tax returns, and in a manner previously prohibited by this court. The United States now asks for an Order permanently enjoining the defendant in accordance with the following:

A. Pursuant to Section 7407 of the Internal Revenue Code, Defendant and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, are prohibited from preparing federal-income-tax returns, amended returns, and other related documents and forms for others.

B. Pursuant to Sections 7402, 7407, and 7408 of the Internal Revenue Code, Defendant and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, are prohibiting from directly or indirectly;

i. Engaging in any conduct subject to penalty under IRC § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;

ii. Engaging in any conduct subject to penalty under IRC § 6695, *i.e.*, failing to turn a complete and accurate list of clients, with taxpayer identification numbers, to the IRS on request or a copy of all tax returns he prepared;

iii. Engaging in any conduct subject to penalty under IRC § 6701, *i.e.*, preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which he know will (if so used) result in the understatement of income tax liability;

iv. Acting as an income-tax-return preparer; and

v. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws.

C. Defendant and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him are prohibited from preparing or assisting in preparing any return, amended return, or other document to be filed with the IRS claiming a tax credit or refund for reparations for slavery, segregation, separate-but-equal laws, treatment as a second-class citizen, taxes paid as a second-class citizen, or any other comparable grounds, as well as any other fabricated tax credit or refund.

D. Pursuant to § 7402 of the Internal Revenue Code, Defendant is ordered to produce to the Government's attorney of record in this case a list of all persons, including names, addresses, phone numbers and social security numbers, for whom Defendant prepared or assisted in the preparation of tax returns for the last three years.

E. Pursuant to § 7402 of the Internal Revenue Code, Defendant is ordered to contact the people described below for whom Defendant has phone numbers and/or addresses. Defendant must contact:

- (1) all persons to whom Defendant gave, sold, or distributed any materials espousing or related to a tax credit or refund for reparations for slavery, segregation, separate-but-equal laws, treatment as a second-class citizen, taxes paid as a second-class citizen, or any other comparable grounds, as well as any other fabricated tax credit or refund;
- (2) all persons for whom Defendant prepared or assisted in preparing any federal income tax returns or tax-related documents; and
- (3) all persons who contacted Defendant regarding a tax credit or refund for reparations for slavery, segregation, separate-but-equal laws, treatment as a second-class citizen, taxes paid as a second-class citizen, or any other comparable grounds, as well as any other fabricated tax credit or refund (in correspondence, by personal or telephone conversations, or through electronic means)

and inform those persons that the Internal Revenue Code does not provide for a tax credit or refund for reparations for slavery, segregation, separate-but-equal laws, treatment as a second-class citizen, taxes paid as a second-class citizen or any other comparable grounds; the falsity of the tax returns prepared on those persons' behalf; the possibility of the imposition of frivolous-return penalties against them; the possibility that the United States may seek to recover any erroneous payment they may have received; and the fact that a permanent injunction has been entered against Defendant.

F. Defendant must place the advertisement attached hereto in the local newspaper, *The Holmes County Herald*, Holmes County, Mississippi. The ad is to run for one day, be placed as a retail advertisement and not a classified advertisement, and be at least 4 column inches.

G. Defendant shall certify to the Court within 21 days that he has complied with paragraphs D, E and F.

H. The Court shall retain jurisdiction over this case to compel compliance with this injunction.

I. The Government may, after application to this court for good cause shown, engage in discovery, pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, after the entry of the injunction to monitor compliance with the injunction.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the motion of the United States for a default judgment is well taken and it is hereby granted. Furthermore, this court finds all the above provisions recommended by the United States for the requested permanent injunction to be well taken. Thus, the court hereby orders that the defendant Andrew L. Wiley is hereby permanently enjoined in accordance with these recommendations.

SO ORDERED AND ADJUDGED, this the 28th day of
March, 2003.



UNITED STATES DISTRICT JUDGE

Civil Action No. 3:02-cv-209WS
Order Granting Default Judgment and Permanent Injunction

ADVERTISEMENT

A Message From **Andrew Wiley** of Durant, Mississippi

This message is to all individuals for whom I have prepared tax refund claims for taxes paid as a second-class citizen; all persons to whom I may have given materials about such tax refund claims; and all individuals with whom I may have discussed such tax refund claims.

On _____, the United States District Court for the Southern District of Mississippi entered an injunction against me prohibiting me from acting as an income-tax-return preparer and from preparing or assisting in preparing any return, amended return or other document to be filed with the IRS claiming a tax credit or refund for reparations for slavery, segregation, separate-but-equal laws, treatment as a second-class citizen, taxes paid as a second-class citizen, or any other comparable grounds

The tax returns I prepared claiming these tax credits are false. There is no such tax credit or refund for taxes paid as a second-class citizen. If you file tax returns claiming such false tax credits you may have a penalty imposed against you for filing a frivolous return. Any refund you may receive because of such a false tax credit is erroneous and the United States may seek to recover that money.