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1. [United States v. Molen, 2006 U.S. Dist. LEXIS 77246](#)

Client/Matter: -None-

Search Terms: "International Bill of Exchange" and "Legal Tender"

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United States v. Molen

United States District Court for the Eastern District of California, Sacramento Division

October 11, 2006, Decided ; October 12, 2006, Filed

Civil No. 03-1531 DFL GGH

Reporter

2006 U.S. Dist. LEXIS 77246 *; 98 A.F.T.R.2d (RIA) 7361

UNITED STATES OF AMERICA, Plaintiff, v. JAMES O. MOLEN & SANDRA L. MOLEN, d/b/a TOUCH OF CLASS FLORIST, Defendants.

Subsequent History: Findings of fact/conclusions of law at [United States v. Molen, 2007 U.S. Dist. LEXIS 91425 \(E.D. Cal., Dec. 4, 2007\)](#)

Prior History: [United States v. Molen, 2003 U.S. Dist. LEXIS 23529 \(E.D. Cal., 2003\)](#)

Core Terms

taxes, wages, employees, court order, social security, injunction, medicare, withhold, unemployment tax, doing business, reporting, accruing, enjoined, returns, entity

Case Summary

Procedural Posture

Plaintiff, the United States of America, filed a civil enforcement action against defendant business owners. The United States moved for entry of a permanent injunction.

Overview

For at least four years, the business owners, who owned and operated a business that had multiple employees, failed to report any liability for federal FICA taxes on their quarterly Internal Revenue Service (IRS) forms, and failed to withhold and pay over FICA taxes owed, failed to reporting fully and pay over their unemployment tax liabilities, and provided inaccurate I.R.S. Forms W-2 to their employees. The business owners based their refusal to meet those legal obligations on patently frivolous arguments. Their ongoing violations were harming the United States and the business owners'

employees. Further, the "**International Bill of Exchange**" the business owners submitted to the IRS in purported payment of taxes did not constitute valid **legal tender** and did not decrease their tax liability as they claimed. The business owners were interfering with the administration of the internal revenue laws and were violating numerous internal revenue laws, and a permanent injunction under [26 U.S.C.S. § 7402\(a\)](#) was necessary and appropriate for the enforcement of the internal revenue laws.

Outcome

The court issued its findings of fact and conclusions of law and entered a permanent injunction that, essentially, required the business owners to comply with internal revenue laws governing employers and taxpayers.

LexisNexis® Headnotes

Tax Law > ... > Administration > Place & Time for Filing Returns > General Overview

Tax Law > Federal Income Tax Computation > Gross Income

Tax Law > Federal Income Tax Computation > Taxable Income

HN1 Administration, Place & Time for Filing Returns

The United States Court of Appeals for the Seventh Circuit has found "no longer merely frivolous" but "frivolous squared" arguments by tax protesters that only residents of Washington, D.C., and other federal enclaves are subject to the federal tax laws because they

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alone are citizens of the United States and that wages are not income because they are compensation for working rather than a pure economic rent.

Civil Procedure > ... > Subject Matter
Jurisdiction > Federal Questions > General
Overview

Tax Law > Federal Tax Administration &
Procedures > General Overview

[HN2](#) Subject Matter Jurisdiction, Federal Questions

The United States Court of Appeals for the Tenth Circuit has found "silly" and "frivolous" a defendant's argument that the United States District Court for the Western District of Oklahoma did not have jurisdiction to enforce federal tax laws and that federal jurisdiction only extended to the District of Columbia, United States territorial possessions, and ceded territories.

Counsel: [*1] For USA, Plaintiff: Anne Norris Graham, U.S. Department of Justice, Tax Division, Washington, DC.; Jacqueline Camille Brown, United States Department of Justice, Washington, DC.; McGregor William Scott, United States Attorney, Sacramento, CA.; Seth G. Heald, U.S. Department of Justice, Office of Special Litigation Tax Division, Washington DC.

For James O Molen, Sandra L Molen, Doing business as Touch of Class Florist, Defendants, Pro se, Chico, CA.

Judges: DAVID F. LEVI, United States District Judge.

Opinion by: DAVID F. LEVI

Opinion

ORDER OF PERMANENT INJUNCTION

Upon motion by plaintiff, the United States of America, the court makes the following findings of fact and conclusions of law and enters this permanent injunction:

Findings of Fact

Based on the evidence and the parties' arguments, the court finds as follows:

1. Defendants James O. Molen and Sandra L. Molen, doing business as Touch of Class Florist, routinely employ several people and pay them wages and other compensation.

2. As employers, the Molens must file quarterly IRS Form 941 federal employment tax returns reporting employee wages and their employment tax liability, file yearly IRS Form 940 federal unemployment [*2] tax returns reporting unemployment tax liability, and must withhold income and FICA (Federal Income Contribution Act) taxes from employees' wages and pay those taxes to the IRS.

3. The Molens are failing to report any liability for federal FICA taxes on their quarterly IRS Forms 941. The Molens are failing to withhold and pay over FICA taxes owed. The Molens are not fully reporting or paying over their unemployment tax liabilities.

4. The Molens have submitted false amended Forms 941 for all four quarters of 2004 and 2005, incorrectly reporting that they have paid no wages subject to social security or medicare taxes.

5. The Molens are not submitting their required IRS Forms 940 and 941 by the required deadlines. The Molens are not making timely Form 941 tax deposits.

6. The Molens provide their employees false IRS Forms W-2 and fail to report social security and Medicare wages and taxes.

7. The Molens' base their refusal to meet these legal obligations on the patently frivolous arguments that: (1) the compensation they pay employees do not constitute wages; and (2) federal courts cannot enforce federal tax laws outside of the District of Columbia. Both arguments have been rejected [*3] by numerous courts. See, e.g., [United States v. Cooper](#), 170 F.3d 691, 691, 170 F.3d 980 (7th Cir. 1999) (finding [HN1](#)) "no longer merely frivolous" but "frivolous squared" arguments by tax protesters that "only residents of Washington, D.C., and other federal enclaves are subject to the federal tax laws because they alone are citizens of the United States and that wages are not income because they are compensation for working rather than a pure economic rent"); [United States v. Collins](#), 920 F.2d 619, 629 (10th Cir. 1999) ([HN2](#)) finding "silly" and "frivolous" defendant's argument that the United States District Court for the Western District of Oklahoma did not have jurisdiction to enforce federal tax laws and that federal jurisdiction only extended to the District of Columbia, United States territorial possessions, and ceded

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territories).

8. The Molens have accrued a total outstanding employment tax liability of \$ 142,458.96.¹

[*4] 9. The "*International Bill of Exchange*" that the Molens submitted to the IRS in July 2005 in purported payment of taxes does not constitute valid *legal tender* and does not decrease the Molens' tax liability as they claimed.

Conclusions of Law

The court finds that the Molens are interfering with the administration of the internal revenue laws. They are currently violating numerous internal revenue laws by: a) failing to withhold Social Security and Medicare taxes, which together constitute FICA taxes, from their employees' wages as required by *I.R.C. § 3102*, b) failing to pay the employer's share of FICA taxes as required by *I.R.C. § 3111*, c) failing to fully pay FUTA (Federal Unemployment Tax Act) taxes due pursuant to *I.R.C. § 3301*, d) failing to file accurate IRS Forms 941 and 940 as required by *I.R.C. § 6011*, e) and failing to file accurate W-2 wage and tax information statements for each employee and to issue each employee a copy of his or her statement as required by *I.R.C. § 6041*. They have violated *I.R.C. § 3402* in past years **[*5]** by failing to withhold income taxes from employees' wages. The United States has suffered harm from the Molens' continuously accruing tax debt, and is likely to suffer irreparable harm if the Molens are not enjoined now. Further, the Molens' employees are also harmed and placed at risk by the Molens' failures to comply with the tax laws and their legal obligations as employers. Accordingly, the court finds that a permanent injunction under *I.R.C. § 7402(a)* is necessary and appropriate for the enforcement of the internal revenue laws. The Molens' misconduct also harms their employees.

Order

A. The court ORDERS that the Molens (individually and

doing business as Touch of Class Florist or under any other business name or using any other entity) and their representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with them, are enjoined from failing to timely withhold and pay over to the IRS all FICA taxes required by law, including taxes for social security and medicare, pursuant to *I.R.C. §§ 3102 and 3111*.

B. The court ORDERS that the Molens (individually and doing **[*6]** business as Touch of Class Florist or under any other business name or using any other entity) and their representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with them, are enjoined from failing to timely pay to the IRS all FUTA taxes required by law, pursuant to *I.R.C. § 3301*.

C. The court ORDERS that the Molens (individually and doing business as Touch of Class Florist or under any other business name or using any other entity) and their representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with them, are enjoined from failing to file accurate and timely IRS Forms 941 and 940 returns reporting applicable social security and medicare wages and taxes, as required by law, pursuant to *I.R.C. § 6011*.

D. The court ORDERS that the Molens (individually and doing business as Touch of Class Florist or under any other business name or using any other entity) and their representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with them, are enjoined from failing to file accurate Form W-2 wage and tax **[*7]** information statements for each employee, including accurate social security and medicare wages, and to issue each employee an accurate copy of his or her statement as required by *I.R.C. § 6041*.

E. The court ORDERS that the Molens file timely federal employment and unemployment tax returns, IRS Forms 940 and 941, with the IRS and, for a period of two years, send copies of such returns to counsel for the United States at the same time that they file the originals.

¹ The \$ 142,458.96 includes the Molens' Form 941 liability of \$ 133,224.95 for the years 2000 through 2004, including interest and penalties accruing through May 8, 2006, see IRS Transcripts (Doc. 97, 4th Delao Decl., Ex. 4), the Molens' Form 941 liability of \$ 3,720.89 for 2005 and the first two quarters of 2006, including interest and penalties accruing through September 4, 2006, see IRS Transcripts (Doc. 111,

Supplemental Br. in Supp. of Summ. J., Ex. 3), and the Molens' Form 940 liability of \$ 5,513.12 for 2000 through 2005, including interest and penalties accruing through September 4, 2006, see IRS Transcripts (Docs. 97 and 111). The total liability includes the \$ 30,698.03 erroneous refund the IRS issued in 2000 after the Molens filed false amended IRS Forms 941 for the years 1997 through 1999.

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F. The court ORDERS that, along with their quarterly Forms 941, the Molens send an updated list of current employees, their addresses, and their social security numbers to the IRS office at 1395 Ridgewood Drive, Suite 200, Chico, California 95973. If there is no change in the identity of their employees in any quarter, the Molens shall submit a statement so stating.

DAVID F. LEVI

United States District Judge

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G. The court ORDERS that the Molens provide all current and future employees, and anyone else who provides service for compensation at Touch of Class Florist, IRS Forms W-4 to elect the amount of income and FICA taxes withheld from their wages. The Molens are ORDERED to comply with any proper elections made on the IRS Forms W-4 when withholding [*8] income and FICA tax from employee wages or compensation.

H. The court ORDERS that, effective immediately, within five days of each Touch of Class payroll the Molens make all required employment tax deposits with their bank.

I. The court ORDERS that the Molens comply with the IRS summons issued to them on June 27, 2005, and otherwise provide all requested documents and testimony regarding their current income, assets, and liabilities for the IRS to prepare a collection information statement. The Molens are specifically ORDERED to provide documents and testimony regarding James Orbin Molen LTD., James Orbin Molen Limited Partnership, or any other entity in which they have any interest.

J. The Molens are ORDERED to meet with IRS revenue officer Charles Delao, or another designated representative of the IRS, within thirty (30) days of this order to produce the documents and testimony described above. If the Molens are unable to travel to the IRS office in Chico, California, they must appear and make their records available at another convenient location.

K. The court retains jurisdiction over defendants and this action for the purpose of enforcing this Permanent Injunction.

L. This [*9] injunction shall remain in effect for a period of five years. The five-year period is without prejudice to the Government's right to move to extend the period or to seek another injunction.

IT IS SO ORDERED.

Dated: 10/11/2006

/s/

CARLOS RYERSON