

DOJ Attorney: Donna  
IRS Attorney: Ian  
PT: Physical therapist, Abby Post

Scene: Donna at DOJ calls Ian at the IRS to discuss PT's case.

#### PHONE RINGS

Ian: Hi, this Ian at the IRS.

Donna: Hi Ian, this is Donna from DOJ. I am in receipt of the employment tax injunction referral letter that you sent over to us about a week ago. I just wanted to talk to you about the case for a few minutes.

Ian: Oh, yes, of course. I am very excited to talk about the case because I am a recent Chief Counsel Honors Program hire and this was the first matter to which I was assigned.

Donna: Ah, well I am glad you are excited. I was calling because I need a little more information about the case to determine whether we should move forward with an injunction. Can you tell you a little bit about it?

Ian: Okay. Well, I think you should move forward because we are aware that the taxpayer, Abby, the PT, has not paid over withheld employment taxes or filed appropriate tax returns for a couple periods.....And let me tell you a little bit about Abby. She has her own PT practice and seems to be doing pretty well. We've looked into her assets and her husband just bought a Land Rover, and I saw all sorts of vacation photos to exotic destinations on her Facebook. They look like they are doing pretty well to me. The IRS has filed a Notice of Lien for the \$60,000 in delinquent employment tax obligations.

Donna: Looks like you've done your homework Ian. It was unclear to me how long Abby the PT has failed to comply with her employment tax obligations. Length of non-compliance is certainly a factor in whether a court will grant an injunction. We will need to show that PT's failure was not an isolated occurrence, but a pattern of failing to pay over withheld employment taxes. In other words, we need to show that Abby the PT has engaged in a persistent failure to comply with employment tax obligations and that the IRS has sought to effect voluntary compliance.

Ian: Okay. I will talk to my manager about whether we can provide information for other years.

Donna: It is important because a court will want to be convinced that, without an injunction, the taxpayer will continue to pyramid employment tax liabilities, fail

to pay over withheld taxes, fail to file employment tax returns, or fail to make required employment tax deposits.

Also, it does not appear that the amount of tax due is significant. Generally, employment tax injunction cases are brought when the amount of tax is significant.

Ian: Well, our administrative collection efforts have been fruitless, and it appears that Abby the PT will continue to refuse to pay, so I thought injunction would be the way to go. What do you think?

Donna: Well, there are definitely advantages to obtaining an injunction in these types of cases. Generally, there is a fair amount of flexibility in what you can ask the court to require of the taxpayer. For example, not only can you request that the court order the defendant to file employment tax returns, pay employment taxes, and make deposits, but you can also request that defendant be required to notify the government if they start a new business.

Ian: There is also the added benefit that a court retains jurisdiction to enforce the provisions of an injunction. So, if a taxpayer fails to live up to the terms of the injunction order, the taxpayer may be held in contempt. But what about transferring assets — I believe Abby the PT's accountant has been advising her on how to move assets to her husband in an attempt to put them beyond the reach of the IRS. When the IRS requested all correspondence between Abby and Mr. Pfiffer, they declined to produce the documents, citing IRC 7525 (which concerns with privilege between a tax practitioner and a taxpayer).

Donna: Well, as part of the injunction we could request that the court order that defendant be prohibited from transferring assets until after they satisfied their employment taxes. We could also compel the production of the documents over which Abby the PT has claimed the practitioner privilege. Hopefully we can get the Court to review these documents in camera and see that the privilege does not apply.

Alternately, if we decide to not go forward with any injunction, do you think there are any alternative remedies to consider here? This is a small amount of money.

Ian: Well, the IRS could file a notice of federal tax lien on the marital property held in Abby's husband's name. But, that could get tricky if the property is jointly held. We also do not have any indication that any property was transferred for the purpose of avoiding tax debt.

Donna: I heard something about HHS' authority to refuse to let tax-delinquent healthcare providers participate in the Medicare system. Would Abby be a healthcare provider that could be impacted?

Ian: Hmm. I have heard something about that as well, and know from my recent section 6103 training that there is provision in 6103 that permits disclosure of information to HHS. But, otherwise that is not really my area of expertise and I do not know much about it. I'll discuss that with my manager too. Great idea!

I also recall from training that a seriously delinquent taxpayer's passport may be revoked or denied, after the IRS refers the taxpayer to the State Department. Again, I am not too familiar with this but will discuss with my colleagues. That would definitely ruin Abby the PT's vacations. Thanks Donna.

Donna: Thank you, Ian. Good work.