



1 The Government responded with a counterclaim seeking a judgment in  
2 favor of the Government and against Kassel in the amount of  
3 \$29,633.00 plus interest and costs. See Answer at 8.

4 On April 2, 3, and 4, 2007, a bench trial was held before this  
5 Court. Having considered the evidence presented by Kassel and the  
6 Government, the Court hereby FINDS in favor of the Government and  
7 against Kassel in the amount of \$29,633.00 plus costs and interest  
8 accrued at the statutory rate since the date of the Penalty's  
9 assessment.

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11 **II. PRELIMINARY FINDINGS**

- 12 1. Kassel is an enrolled agent licensed to represent customers  
13 before the Internal Revenue Service.
- 14 2. From late 1999 through December 2000, Kassel worked with  
15 Renaissance, The Tax People (TTP), an organization based in  
16 Topeka, Kansas.
- 17 3. In 1999 and 2000, Kassel worked with TTP part-time and  
18 continued to operate his own business. Kassel spent a larger  
19 percentage of his time in 2000 doing TTP work.
- 20 4. TTP developed and sold various packages promoting strategies  
21 by which customers could reduce their claimed tax liabilities  
22 by taking advantage of tax deductions and other tax benefits  
23 related to the operation of a home-based business ("HBB"). In  
24 1999 and 2000, TTP primarily sold the Tax Relief System (TRS),  
25 which included the TRS manual, audio cassettes, pamphlets, and  
26 other material that advised customers on deductions for their  
27 federal income taxes and other tax benefits.

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1 5. TTP sold TRS's through a multi-level marketing system whereby  
2 TTP customers became Independent Marketing Associates (IMAs)  
3 who sold TRS's to other customers. The overwhelming majority  
4 of TTP customers were also IMAs. While some TTP customers had  
5 a pre-existing HBB before purchasing a TRS, most did not.

6 6. IMAs often sponsored presentations for prospective customers,  
7 during which the IMAs presented information about the TRS and  
8 the tax benefits customers could enjoy by purchasing a TRS.

9 7. In 1999 and 2000, TTP paid Kassel a total of \$29,633.00 for  
10 his work for the company.

11 8. In October 2000, TTP and its founder were sued by the State of  
12 Kansas in the District Court of Shawnee County for committing  
13 deceptive acts and practices in violation of the Kansas  
14 Consumer Protection Act. The court issued a temporary  
15 injunction barring TTP and its founder from marketing products  
16 and services to new customers and imposed restrictions on  
17 business activities with existing customers.

18 9. In December 2000, Kassel ended his affiliation with TTP.

19 10. On or about August 5, 2005, the IRS sent proper notice to  
20 Kassel of the assessment in the amount of \$29,633.00 The IRS  
21 has made a demand for such payment. Kassel has not paid the  
22 entirety of the assessed penalty.

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25 **III. APPLICABLE LAW**

26 A. Merits

27 1. Section 6700

1 The Government assessed Kassel the Penalty for his violation  
2 of 26 U.S.C. §6700(a)(1)(B) in combination with §6700(a)(2)(A).  
3 The Government therefore was required to show: 1) Kassel  
4 "participate[d] (directly or indirectly) in the sale of any  
5 interest in an entity or plan or arrangement referred to in  
6 subparagraph (A)";<sup>1</sup> and 2) Kassel "ma[d]e or furnishe[d] or  
7 cause[d] another to make or furnish (in connection with such  
8 organization or sale)" 3) "a statement with respect to the  
9 allowability of any deduction or credit, the excludability of any  
10 income, or securing any other tax benefit by reason of holding any  
11 interest in the entity or participating in the plan or arrangement"  
12 4) "which the person knows or has reason to know is false or  
13 fraudulent as to any material matter."

14 2. Section 162

15 Relevant for our purposes is 26 U.S.C. §162 regarding the  
16 deductability of business expenses:

17 (a) In general.--There shall be allowed as a deduction  
18 all the ordinary and necessary expenses paid or incurred  
19 during the taxable year in carrying on any trade or  
20 business, including--  
21 (1) a reasonable allowance for salaries or other  
22 compensation for personal services actually rendered;  
23 (2) traveling expenses (including amounts expended for  
24 meals and lodging other than amounts which are lavish or  
extravagant under the circumstances) while away from home  
in the pursuit of trade and business; and  
(3) rentals or other payments required to be made as a  
condition to the continued use or possession, for  
purposes of the trade or business, of property to which  
the taxpayer has not taken or is not taking title or in  
which he has no equity.

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26 <sup>1</sup> Subparagraph (A) refers to "a partnership or other entity, .  
27 . . . any investment plan or arrangement, or . . . any other plan or  
arrangement." 26 U.S.C. §6700(a)(1)(A).

1 26 U.S.C. §162; see Indopco, Inc. v. Comm'r of Revenue, 503 U.S.  
2 79, 85 (1992) (interpreting Section 162). The Supreme Court has  
3 clarified that in order for an activity to qualify as a "trade or  
4 business" under Section 162, "the taxpayer must be involved in the  
5 activity with continuity and regularity and . . . the taxpayer's  
6 primary purpose of engaging in the activity must be for income or  
7 profit." Comm'r of Internal Revenue v. Groetzinger, 480 U.S. 23,  
8 35 (1987).

9 B. Penalty

10 Section 6700, as unamended, provides for the calculation of  
11 penalties for violation of §6700(a) in the following manner: Such  
12 a violator "shall pay, with respect to each activity described in  
13 paragraph (1), a penalty equal to the \$1,000 or, if the person  
14 establishes that it is lesser, 100 percent of the gross income  
15 derived (or to be derived) by such person from such activity. For  
16 the purposes of the preceding sentence, activities described in  
17 paragraph (1)(A) with respect to each entity or arrangement shall  
18 be treated as a separate activity and participation in each sale  
19 described in paragraph (1)(B) shall be so treated." 26 U.S.C.  
20 §6700(a)(2000)(amended 2004). In other words, once Kassel's  
21 liability under Section 6700 was established, Kassel was subject to  
22 a \$1,000.00 penalty for each time he participated (directly or  
23 indirectly) in a sale of a TRS, unless Kassel proved that the  
24 amount he earned as a result of that participation was less than  
25 that total.

26 The parties did not dispute that Kassel earned \$29,633.00 for  
27 his work with TTP, and Kassel was assessed a penalty in that

1 amount. Thus, the Government bore the burden of proving that  
2 Kassel (directly or indirectly) participated over thirty times in  
3 the sale of a TRS.

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5 **IV. FINAL FINDINGS OF FACT & CONCLUSIONS OF LAW**

6 1. The following statements contained within TTP materials were  
7 false:

8 a. As to deductibility of certain expenses:

9 i. Profit Motive: While TTP materials, in places,  
10 discussed the necessity of a profit motive, more  
11 prominent and frequent in the materials were  
12 examples which were completely inconsistent with a  
13 profit motive: for example, claiming \$29,980.00 in  
14 HBB deductions on the same return where only  
15 \$2,000.00 in HBB income is reported.

16 ii. Exclusive Use Rule: TTP materials claim that the  
17 exclusive use rule can be "eliminate[d]" through  
18 strategies such as spreading TTP materials around  
19 one's domicile, thereby making the entire cost of  
20 the domicile deductible.

21 iii. Hiring Children: TTP materials advise that one's  
22 children can be "hired" and paid up to \$4,400 a  
23 piece, thereby "convert[ing] the former expense of  
24 children's allowance to tax deductible wages  
25 without paying any payroll taxes." But the  
26 materials do not make clear that the children must  
27 actually perform work on behalf of the HBB, and the

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work they perform has to be an ordinary and necessary component of the HBB. Similarly, once "hired," the TTP materials suggest that one's children can be provided with up to \$5,250.00 in untaxable educational assistance. But again the materials do not qualify this with the qualification that doing so must be an ordinary and necessary component of the HBB.

iv. Always Selling Theory of Deductions: TTP materials suggest that as long as one is constantly promoting one's HBB, for example, at church, at the grocery store, at one's primary place of work, and on vacation, the expenses associated with these activities are deductible. As a result, the materials claim that one hundred percent of the expenses related to one's car can become deductible. However, the materials do not make clear that the expenses associated with such expenses must be ordinary and necessary. What's more, the Court finds that constantly promoting one's HBB on unrelated trips does not convert these activities into the conduct of business and trade under Section 162.

- b. And other tax benefits:
  - i. TTP materials claim that additional exemptions can be claimed on one's W-4 in order to gain an

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"instant pay raise." The result is not an instant pay raise, but rather a reduction in the withholding amount and corollary increase in take-home pay. What's more, doing so without a legitimate basis is fraudulent.

ii. TTP materials guaranteed at least \$5,000.00 in tax savings for anyone who followed the TRS. Even assuming the problems with the deductions propounded by the TRS discussed above did not exist, such a guarantee is false in light of the inherent differences in each person's tax situation.

2. Kassel knew those statements were false. This was demonstrated by the following evidence:

a. In May 2000, Kassel sent two letters to TTP's outside counsel, Hugh Clemens, which described Kassel's problems with statements in TTP materials and by TTP personnel regarding inter alia:

- i. Unwarranted claiming of exemptions on W-4's and the characterization of the result as a "pay raise";
- ii. The necessity of a profit motive;
- iii. The hiring of one's children;
- iv. The guaranteed tax deductions;
- v. Deductions related to travel;

b. Kassel testified that:

- i. He had problems with information regarding deductions and other tax benefits in the TRS



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- manual;
- ii. He had problems with statements made by the principal author of the TRS manual, Thomas Steelman, in conference calls regarding deductions and other tax benefits related to the TRS;
- iii. He had problems with statements made in TRS materials that the exclusivity rule could be defeated by spreading TTP materials in every room;
- iv. He had problems with statements made by IMA's, at meetings, related to claiming exemptions on one's W-4;
- v. He had problems with the \$5,000 guarantee made by an IMA in a Fall 2000 opportunity meeting;
- vi. He had problems with the information in a TTP promotional video, "Take a Bite Out of Your Taxes," and on a TTP website regarding deductions and other tax benefits related the to TRS;
- vii. He had problems with the characterization of the increase in take-home pay which would result if exemptions on one's W-4 were increased as "an instant pay raise," and that doing so without a legitimate basis is "tax fraud"; and
- viii. That a profit motive was necessary in order for an activity to qualify as trade or business under Section 162.

- 3. Kassel also should have known these statements were false.
  - a. Notwithstanding his protestations that his tax expertise

1 was limited to collection and compromise issues, the  
2 following evidence demonstrated Kassel's broader  
3 expertise, including issues of deductibility and the  
4 claiming of exemptions on one's W-4:

- 5 i. The letters and emails described above which  
6 articulate his problems with TTP materials;
- 7 ii. Statements in Court about: what is a proper  
8 deduction and what is a proper way to calculate  
9 exemptions; and
- 10 iii. Generally holding himself out as a tax expert on  
11 his website, in his emails, and in his user group  
12 postings.

13 4. Kassel made or furnished this false information in the  
14 following ways:

- 15 a. Directly selling two TRS's;
- 16 b. Publishing claims that the information in TTP materials  
17 were "100% correct, legal, ethical, and moral";
- 18 c. Promoting the TRS on his website in a manner that  
19 included summaries of several of the false statements  
20 described above; and
- 21 d. Editing the TRS manual in which much of the false  
22 information described above was expressed.

23 5. And Kassel caused other persons to make or furnish this false  
24 information by:

- 25 a. Promoting the TRS by:
  - 26 i. Speaking in favor of the TRS at opportunity  
27 meetings;

- 1           ii.    Posting statements in favor of the TRS on internet  
2                    user groups;
- 3           iii.   Publishing statements in favor of the TRS on his  
4                    website;
- 5           iv.    Allowing his likeness and statements to be used in  
6                    TTP promotional materials; and
- 7           v.    Representing TTP at several IRS nationwide tax  
8                    forums.
- 9           b.    Exercising his authority over IMA's.  Though Kassel  
10                   protests that he had no authority over IMA's, evidence in  
11                   the form of his own communications with other members of  
12                   the TTP organization shows otherwise.
- 13   6.   Kassel directly participated in the sale of two TRS's.
- 14   7.   Kassel indirectly participated in the sale of other TRS's by:
- 15       a.    Speaking at opportunity meetings;
- 16       b.    Promoting the TRS through postings on user groups;
- 17       c.    Promoting the TRS through statements on his website;
- 18       d.    Promoting the TRS by allowing his likeness and statements  
19                   to be used in TTP promotional materials;
- 20       e.    Editing the TRS manual;
- 21       f.    Promoting the TRS by representing the TTP at IRS  
22                   nationwide tax forums;
- 23       g.    Becoming regional director of the TTP unit, Affiliated  
24                   Tax Professionals Network, in 2000;
- 25       h.    Representing a TTP customer in a meeting with the IRS  
26                   regarding the TRS;
- 27       i.    Hosting weekly conference call for TTP customers; and

1 j. Submitting edits for the TTP promotional video, "Take a  
2 Bite Out of Your Taxes."

3 8. Together these activities constitute over 30 instances of  
4 direct or indirect participation in the sale of a TRS.

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6 **V. CONCLUSION**

7 In conclusion, Kassel, directly or indirectly, participated  
8 over 30 times in the sale of a TRS, and made or furnished, or  
9 caused another person to make or furnish, false statements as to  
10 the allowability of various types of deductions and other tax  
11 benefits which Kassel knew, or should have known, were false.

12 Kassel, therefore, violated 26 U.S.C. §6700 and is subject to a  
13 penalty equal to \$29,633.00, the amount of gross income which  
14 Kassel earned through his participation in the sale of TRS's. A

15 Accordingly, the Court FINDS IN FAVOR OF DEFENDANT United  
16 States of America in the amount of \$29,633.00, plus interest and  
17 costs. The Government is ORDERED to submit a calculation of  
18 applicable interest within fifteen days of this order.

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20 IT IS SO ORDERED.

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22 Dated: April 12, 2007

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UNITED STATES DISTRICT JUDGE

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