

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, DAYTON

MADISON AVENUE PHARMACY, INC.)
640 N. Fountain Ave.)
Springfield, OH 44504)

Plaintiffs,)

ERIC JUERGENS)
1108 Xenia Ave.)
Yellow Springs, OH 45387)

v.)

UNITED STATES OF AMERICA)
c/o Kenneth L. Parker, U.S. Attorney)
303 Marconi Blvd., Suite 200)
Columbus, OH 43215)

and)

c/o Merrick Garland, Attorney General)
Department of Justice)
950 Pennsylvania Ave., N.W.)
Washington D.C. 20530)

and)

c/o Charles P. Rettig, Commissioner)
of Internal Revenue Service)
Internal Revenue Service)
1111 Constitution Ave., N.W.)
Washington D.C. 20224)

Defendant.

CASE NO.:

JUDGE:

COMPLAINT

(Jury Demand Endorsed Hereon)

Now come Plaintiffs, Madison Avenue Pharmacy, Inc. and Eric Juergens (“Plaintiffs”), and for their Complaint, hereby state as follows:

SUMMARY OF THE CASE

1. This Complaint has its roots in a matter recently decided by the United States Court of Appeals for the Sixth Circuit: *Mann Construction, Inc. et al v. United States of America et al*, Case No. 21-1500 (the “*Mann* Litigation”).

2. In 2021, the Internal Revenue Service (“IRS”) imposed penalties on Plaintiffs Madison Avenue Pharmacy, Inc. and Eric Juergens for failing to disclose their participation in a Death Benefit Trust/Restricted Property Trust (“DBT/RPT”), that the IRS unilaterally determined was the “same as or substantially similar” to a certain transaction it had identified in Notice 2007-83 as an alleged listed transaction. The DBT/RPT transaction at issue in this case is virtually identical in all material respects to the transaction at issue in the *Mann* Litigation.

3. On March 3, 2022, the United States Court of Appeals for the Sixth Circuit set aside Notice 2007-83. In a unanimous decision authored by Chief Judge Sutton, the Sixth Circuit held that “the IRS’s process for issuing Notice 2007-83 did not satisfy the notice-and-comment procedures for promulgating legislative rules under the APA.” *Mann Constr., Inc. v. United States*, 6th Cir. No. 21-1500, 2022 U.S. App. LEXIS 5668, at *19 (Mar. 3, 2022). Based on the Sixth Circuit’s ruling on this singular issue, the Sixth Circuit was not required to and did not address any other issues raised by the plaintiffs therein on appeal.

4. In light of the Sixth Circuit’s controlling decision in *Mann Constr., Inc.* setting aside Notice 2007-83, Plaintiffs, also residents within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, are likewise entitled to a refund of penalties they paid or were

subject to pursuant to Notice 2007-83 as a result of the *Mann* Litigation decision “setting aside” the Notice.

5. Defendant must refund the § 6707A penalties Plaintiff Madison Avenue Pharmacy, Inc. paid for years 2014, 2015, 2016 and 2017, and further cease the unauthorized collection of further penalties imposed on both Plaintiffs pursuant to the invalidated Notice 2007-83.

PARTIES, JURISDICTION AND VENUE

6. Madison Avenue Pharmacy, Inc. (“MAP”) is an Ohio corporation with its principal place of business at the address stated in the caption of this Complaint.

7. Eric Juergens (“Juergens”), at all times relevant to this Complaint, was the President and sole shareholder of MAP. Juergens is a resident of the state of Ohio, with his address as stated in the caption of this Complaint.

8. The Defendant is the United States of America.

9. The IRS is a bureau of the Treasury Department, an administrative agency of the United States of America.

10. On or about December 11, 2020, the IRS sent MAP a Notice of Penalty Charge imposing penalties in the amount of \$10,000.00 under § 6707A for each of the years 2013-2016. MAP paid the penalty for 2013-2016 on or about December 17, 2020.

11. On or about January 26, 2021, MAP filed a Form 843 for years 2013, 2014, 2015, and 2016 requesting refunds of the IRC § 6707A penalties for each of those years. As of the date of filing this Complaint, six months have elapsed since requesting a refund.

12. The jurisdiction of this Court is based upon the provisions of 28 U.S.C. § 1346(a)(1) and 5 U.S.C. § 702.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1402(a)(1).

BACKGROUND AND FACTS

Notice 2007-83

14. On or about November 5, 2007, the IRS issued Notice 2007-83 entitled “Abusive Trust Arrangements Utilizing Cash Value Life Insurance Policies Purportedly to Provide Welfare Benefits” (the “Notice”).

15. The IRS issued the Notice pursuant to IRC § 6707(c)(2), which the IRS erroneously believed granted it authority to specifically identify “Listed Transactions” without following the APA’s notice-and-comment requirements.

16. The IRC provides that all parties participating in a transaction that is the same as or substantially similar to the transactions described in the Notice are required to report or disclose their participation in such transaction. The Regulations state that such disclosure is to be made by filing a Form 8886.

17. The failure to file the Form 8886 results in penalties under § 6707A. For individuals, this penalty is 75% of the decrease in tax shown on the return as a result of engaging in the transaction, and for an S corporation, which MAP is, the IRS imposes a \$10,000 penalty.

Assessment of the 6707A Penalty

18. On or about December 14, 2018, the IRS issued a proposed adjustment to MAP’s Form 1120S disallowing deductions for contributions to an “employee benefit program” for the years 2013-2015. On or about August 21, 2019, the IRS issued a proposed adjustment to MAP’s Form 1120S disallowing deductions for contributions to an “employee benefit program” for the years 2016-2017. The disallowed deductions related to the contributions MAP made to the Death Benefit Trust in each year 2013-2017.

19. The proposed disallowed deductions on the Form 1120S resulted in an increase in income (and tax) to Juergens as the sole shareholder of MAP. This alleged increase in tax was the basis by which the IRS proposed the § 6707A penalty of \$10,000 on MAP in each year 2013-2017.

20. The alleged increase in tax was the basis upon which the IRS computed and proposes a § 6707A penalty on Juergens in each of the years 2013-2017. In addition to the § 6707A penalty imposed in 2013, Juergens was assessed § 6707A penalties in 2014-2017 as follows: \$22,297.50 (2014); \$31,869.00 (2015); \$9,836.25 (2016); and \$16,653.00 (2017)

21. MAP and Juergens timely appealed the proposed income tax changes, and Juergens filed a Petition with the United States Tax Court.

22. Despite the IRS not even knowing if MAP improperly deducted contributions to the “employee benefits program,” the IRS issued proposed assessments to both Juergens and MAP for § 6707A penalties for tax years 2013-2017 on the basis that MAP and Juergens engaged in an allegedly abusive transaction identified by the Notice.

23. MAP and Juergens each timely appealed the proposed assessments of the § 6707A penalties, but the penalties were upheld on appeal.

24. The IRS claims that MAP and Juergens were required to, but failed to, file Form 8886 for Tax Years 2013-2017 and has assessed § 6707A penalties as a result thereof.

25. MAP paid the § 6707A penalty for 2013-2016 on or about December 17, 2020 and filed a Form 843 requesting a refund of such amount. This refund is the same refund that was at issue in the *Mann* Litigation. Juergens has not paid or filed a refund claim for the § 6707A penalty imposed on him personally as of the date of this Complaint; nonetheless, Juergens remains subject to the unlawful penalty imposed as a result of the IRS’s improper reliance on the invalid Notice

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