

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. 5:12-cv-00482
)
FCRE, INC., FAST CASH REFUND)
EXPRESS ELECTRONIC TAX SERVICES,)
LLC, PETE ESCALANTE GUTIERREZ)
and JEANETTE GUTIERREZ,)
individually, and doing business as)
FAST CASH REFUND EXPRESS)
ELECTRONIC TAX SERVICES, LLC,)
FAST CASH REFUND EXPRESS and)
FAST CASH REFUND EXPRESS)
ELECTRONIC SERVICES,)
)
Defendants.)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America seeks a permanent injunction against FCRE, Inc., Fast Cash Refund Express Electronic Tax Services, LLC, Pete Gutierrez and Jeanette Gutierrez, individually, and doing business as Fast Cash Refund Express Electronic Tax Services, LLC, Fast Cash Refund Express, Fast Cash Refund Express Electronic Services, and FCRE, Inc., (collectively, “Defendants”), permanently barring them from further acting as federal tax return preparers.

The Defendants, who are professional tax return preparers, improperly reduce their clients’ reported tax liabilities by, *inter alia*, claiming false and exaggerated personal deductions, business deductions, educational and energy tax credits, and other tax credits to which their clients are not entitled.

Jurisdiction and Venue

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. (26 U.S.C.) §§ 7402, 7407 and 7408.

2. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and I.R.C. §§ 7402(a), 7407, and 7408.

3. This is a civil action brought by the United States under I.R.C. §§ 7402(a), 7407, and 7408 to enjoin Defendants, and anyone in active concert or participation with them, from:

- a. further acting as federal tax return preparers;
- b. assisting in the preparation of federal tax returns that they know or should know will result in the understatement of any tax liability or the overstatement of a federal tax refund;
- c. organizing or selling plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;
- d. understating taxpayers' liabilities as prohibited by I.R.C. § 6694;
- e. failing to comply with the due diligence requirements for claiming earned income tax credits under I.R.C. § 6695(g);
- f. preparing and/or filing federal tax returns and other documents as prohibited by I.R.C. § 6701;
- g. engaging in any other activity subject to a penalty under I.R.C. §§ 6694, 6695, 6700, or 6701;
- h. engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme; and
- i. representing anyone before the IRS.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial portion of the activities occurred within this district, and all Defendants reside or have their principal place of business within this district.

Defendants

5. Defendants prepare federal tax returns and other tax-related forms for compensation in and around San Antonio, Texas.

6. Defendants Pete Escalante Gutierrez (“Pete Gutierrez”) and Jeanette Gutierrez, reside in San Antonio, Texas. They are married and may collectively be referred to as “Mr. and Mrs. Gutierrez.”

7. FCRE, Inc. is a Texas corporation that was created in June 2011. On information and belief Pete and Jeanette Gutierrez are directors and they have commenced operating their tax return preparation business under the name FCRE, Inc. On information and belief its principal place of business is in San Antonio, Texas, and it may be served by serving its registered agent Pete Gutierrez at 8035 Culebra Rd., Suite 105, San Antonio, Texas 78251.

8. Pete Gutierrez stated to the Internal Revenue Service that his tax return preparation business was named Fast Cash Refund Express Electronic Tax Services, LLC., Fast Cash Refund Express and Fast Cash Refund Express Electronic Services are believed to be assumed names of Pete Gutierrez. To the extent such entities exist and may be named a party, they can be served by serving Pete Gutierrez.

9. The United States is seeking to enjoin the tax return preparation business or businesses owned or operated by Pete Gutierrez and Jeanette Gutierrez. This includes enjoining Pete Gutierrez, Jeanette Gutierrez, FCRE, Inc., Fast Cash Refund Express Electronic Tax Services,

LLC, Fast Cash Refund Express, Fast Cash Refund Express Electronic Services (the “Defendants”) or any other tax return preparation business owned and/or operated by Pete Gutierrez and Jeanette Gutierrez.

10. In addition, Pete Gutierrez owns or controls at least two other Corporations, Gutierrez P. Enterprises, Limited Liability Company and GP Auto Sales, Inc. The United States is seeking to enjoin Pete or Jeanette Gutierrez from owning, operating, controlling or being involved in any other tax preparation business, including any such business operated through corporations such as Gutierrez P. Enterprises, Limited Liability Company and GP Auto Sales, Inc.

11. The United States may seek to enjoin additional currently unnamed tax return preparers who have worked for the tax return preparation business or businesses owned or operated by Pete Gutierrez and Jeanette Gutierrez.

The Facts

12. Pete Gutierrez has prepared tax returns for others since 1997.

13. Jeanette Gutierrez has prepared tax returns for others for more than six years.

14. In addition to preparing tax returns, Pete and Jeanette Gutierrez own and operate a tax return preparation business.

15. Mr. and Mrs. Gutierrez have reported in the past the income and expenses of their tax return preparation business under the name Fast Cash Refund Express Electronic Tax Services, LLC. In June 2011 they had formed FCRE Inc. On information and belief they are now using FCRE Inc. to report the tax liabilities of their tax return preparation business to the Internal Revenue Service. On information and belief they operate their tax return preparation business under assumed names of Fast Cash Refund Express Electronic Tax Services, LLC, Fast Cash Refund Express, Fast Cash

Refund Express Electronic Services. Collectively the tax return preparation business will be referred to as “Fast Cash.”

16. Pete Gutierrez is the manager of Fast Cash. Jeanette Gutierrez assists Pete Gutierrez in managing Fast Cash. Both are directors of FCRE, Inc. They supervise and are responsible for the returns prepared by Fast Cash.

17. Fast Cash has been active for more than ten (10) years. Fast Cash has numerous offices in and around San Antonio, Texas. The number of offices and employees vary each year. On January 10, 2010, Fast Cash had ten (10) offices. A recent look at its website lists eleven (11) offices. On information and belief most offices had approximately 4-5 employees and a manager.

18. On information and belief its principal office is located at 8035 Culabra Road, Suite 105, San Antonio, Texas.

19. Mr. and Mrs. Gutierrez are responsible for the supervision, training and education of the tax return preparers working for Fast Cash. Both also prepare tax returns for Fast Cash.

20. Most returns are started by tax return preparers or other employees working for Fast Cash. At some point in the preparation of a return, if Pete Gutierrez was available, the tax return preparers working for Fast Cash routinely offered the Fast Cash clients an opportunity to have Pete Gutierrez finalize their return. Although Pete Gutierrez’ name would not appear as the tax return preparer on the return, he met with the clients, completed their return, printed a copy of the return and gave the copy to the client.

21. In 2010, after auditing returns Defendants prepared for clients for 2005, 2006 and 2007, the IRS determined that 58 of the 58 returns selected for examination (*i.e.*, 100%) understated their clients’ tax liabilities.

22. As a result, the Internal Revenue Service selected over 800 returns prepared by Defendants for 2008, 2009, and 2010 for examination. IRS records show Fast Cash Refund Express prepared 6,590 returns in 2008; 7,465 returns in 2009 and 8,687 returns in 2010.

23. At least 500 returns have been examined. The examination of four (4) of the returns resulted in more money being owed to the taxpayers than on the original returns prepared by Fast Cash. Fifteen (15) of the examined returns resulted in no changes or only minimal changes to the tax liability shown on the return. The remaining returns resulted in the taxpayers owing additional tax to the United States totaling over \$2,000,000.

24. The examinations show that Defendants have prepared, aided, assisted and/or advised in the preparation of tax returns of other persons, knowing that the returns will be filed, and the returns would result in the understatement of the other person's tax liability.

25. Defendants "willful or reckless conduct" and taking "unrealistic positions" on tax returns Defendants prepared for 2005 thru 2010 resulted in understatements of Fast Cash Clients tax liabilities. Such conduct include preparing returns that, *inter alia*, deducted non-existing and unsubstantiated **Health Savings Accounts** contributions with little or no discussions with clients; that deducted non-existing and unsubstantiated **tuition and fees** or **claimed non-existing and unsubstantiated educational credits** taken with little or no discussions with clients; that deducted non-existing or unsubstantiated or personal expenses as **business expenses or unreimbursed employee business expenses**; such as deductions for use of personal vehicles and cell phones, taken with little or no discussions with clients; that claimed non-existing and unsubstantiated energy credits with little or no discussion with clients; and that deducted non-existing and unsubstantiated charitable deductions with little or no discussion with clients.

26. Defendants routinely deduct non existing Health Savings Accounts contributions on returns they prepares for clients, typically with little or no substantiation and/or no consultation with their clients. In almost all, if not all cases, such accounts never existed. Defendants willfully and/or recklessly took the deduction without ascertaining whether or not the clients claimed to have a Health Savings Account, made payments or claimed to have made payments into such a Health Savings Account in the amount claimed or in a different amount, or even if the client qualified for a Health Savings Account.

27. Defendants routinely deduct improper tuition and fees on returns they prepare for clients, frequently with little or no substantiation and/or no consultation with their clients. Defendants willfully and/or recklessly fail to ascertain whether or not the clients had any tuition or fees, the amount of such fees if any tuition or fees were paid, or that the tuition or fees paid qualify for a tuition and fee deduction.

28. Defendants routinely claim improper education credits on returns they prepare for clients, typically with little or no substantiation and/or consultation with the clients. Defendants willfully and/or recklessly fail to ascertain whether or not the clients had paid any qualifying payments or if they qualified for an education credit or have any substantiation that such payments were made.

29. Defendants routinely deducts improper personal travel-related costs as deductible business expenses or unreimbursed employee business expenses on returns they prepare for clients, typically with little or no substantiation and/or no consultation with their clients. Defendants willfully or recklessly deduct personal miles as business miles. Defendants willfully and/or

recklessly fail to ascertain whether or not the clients qualify to deduct automobile expenses or other personal expenses or have maintained adequate proof that the expenses being claimed by Fast Cash were incurred or deductible

30. In addition to claiming improper business expense deductions or unreimbursed employee business expenses for unsubstantiated business travel, Defendants prepare returns that improperly deduct other non-qualifying business expenses or unreimbursed business expenses, typically with little or no substantiation and/or no consultation with their clients.

31. Defendants routinely deduct non-existing or unsubstantiated charitable contributions on returns they claim for their clients with little or no substantiation and/or no consultation with their clients. Defendants willfully and recklessly deduct more charitable contributions than donated by their clients.

32. Defendants routinely claim non-existing and or exaggerated energy credits on returns they prepare for clients, typically with little or no substantiation and/or no consultation with their clients. Defendants willfully and/or recklessly fail to ascertain the amount of any proper credit, whether or not the clients qualify for the credit or have maintained adequate proof that the expense was actually incurred.

33. Defendants routinely assist their clients being audited by the Internal Revenue Service in preparing documents to be given to the Internal Revenue Service in support of deductions taken by Defendants on the client's return that are materially false or that take positions that Defendants know is not sustainable. Defendants routinely have clients prepare mileage logs after the client is being audited by the IRS, that take personal miles, not business miles, knowing or recklessly not knowing, that such miles are not deductible.

34. The following returns are examples of returns prepared by the employees of Fast Cash, under the supervision and control of Pete Gutierrez and Jeanette Gutierrez:

A. Mr. and Mrs. Bretando, Jr. Fast Cash Refund Express preparer Rachel Salina prepared 2009 federal income tax returns for Ruben and Angela Bretando, Jr. The return claimed false unreimbursed employee business expense deductions and education credits. The total tax deficiency was \$5,830.

B. Mr. and Mrs. Buchanan. Fast Cash Refund Express preparer Margot Escobedo's name is listed as the preparer on the 2009 federal income tax returns for Daniel and Melissa Buchanan. During the examination of the return Mr. and Mrs. Buchanan stated that Pete Gutierrez prepared the return and that they do not know why the return included a Health Savings Account, charitable deductions of \$1,502, uniform costs of \$988, education expenses of \$2,000 and milage for business purposes of \$9,438. During the examination Mr. and Mrs. Buchanan discussed the misstatements on the return with Fast Cash and were advised to create substantiation to give to the Internal Revenue Service. The total tax deficiency was \$5,665.

C. Mr. and Mrs. Carrizales. Fast Cash preparer Margot Escobedo's name is listed as the preparer of Mr. and Mrs. Carrizales' 2008 return. Fast Case preparer Viola Ramirez's name is listed as the preparer of Mr. and Mrs. Carrizales 2009 return. The returns falsely claimed Health Savings accounts, unreimbursed business expenses, education (2008 and 2009) and residential energy (2009) credits. The tax deficiencies totaled \$4,434 (2008) and \$5,314 (2009).

D. Mr. and Mrs. Degollado. Fast Cash employee Rachel Salinas prepared Mr. Degollado's 2009 federal income tax return. The return claimed Health Savings Accounts, unreimbursed business

expense and education credits the taxpayers could not substantiate. The total tax deficiency was \$2,210.

E. Mr. Gallegos. Mr. Gallegos, a graphic designer, had his 2009 federal income tax return prepared by Fast Cash. Fast Cash preparer Rachel Salina initially prepared Mr. and Mrs. Gallegos' federal income tax return for 2009, but Mr. Gutierrez met with Mr. and Mrs. Gallegos and finalized the return. The return claimed Health Savings Account, Schedule C business expenses and educational credit that could not be substantiated. Mr. Gallegos states that the preparer made it up. The total tax deficiency was \$2,767.

F. Mr. and Mrs. Hill. Fast Cash preparer Giselle Perez prepared Mr. and Mrs. Hill's federal income tax return for 2009. On information and belief, after the return was prepared, it was reviewed by Mr. Gutierrez. The return claimed Health Savings Account, Schedule C business expenses and education credits that could not be substantiated. Mr. and Mrs. Hill state the preparer made up the deductions and credits. The total tax deficiency was \$4,276.

G. Ms. Martinez. Ms. Martinez had her 2008, 2009 and 2010 federal income tax returns prepared at Fast Cash. Patty Rivera prepared the 2008 return, Margot Escondido prepared her 2009 return, and Andrea Samudio prepared her 2010 return. The returns contained Health Savings Account deductions, tuition and fee deductions, unreimbursed employee business expense deductions, education credits and residential energy credits, none of which could be substantiated. Ms. Martinez denies she ever told Fast Cash she had such deductions. The tax deficiencies totaled \$3,916 (2008), \$4,821 (2009) and \$5,404 (2010).

H. Ms. Nolasco. Fast Cash preparer Jaclyn Basaldua's name is on Ms. Nolasco's 2009 federal income tax return but she met with Pete Gutierrez, who finalized her return. Her return took

unsubstantiated unreimbursed business expenses and education credits that Ms. Nolasco states she never told Fast Cash she had in the case of the education credits or never told them the items taken or the amounts shown on the return for business expenses. The total tax deficiency was \$3,164.

I. Ms. Rios. Fast Cash employee Margot Escobedo and Gissel Perez prepared Ms. Rios' 2008 and 2009 federal income tax returns. The returns took deductions for Health Savings Accounts, tuition and fees, unreimbursed employee business expenses and education credit that could not be substantiated. The tax deficiencies totaled \$1,050 (2008) and \$3,152 (2009).

J. Mr. and Mrs. Robles. Fast Cash employees Jaclyn Basaldua and Viola Ramirez prepared the Robles' 2008 and 2009 federal income tax returns. The returns had unsubstantiated Health Savings Account deductions, tuition and fee deductions, unreimbursed business expenses, residential energy credits and education credits. The tax deficiencies totaled \$4,146 (2008) and \$5,965 (2009).

K. Mr. and Mrs. Russell. Fast Cash employees Manuel Lopez, Idania Feliciano and Deborah Maldonado are shown as preparing the Russells' 2008, 2009 and 2010 returns but Pete Gutierrez finalized their returns. The returns claimed fraudulent Health Savings Accounts, unreimbursed employee business expense and residential energy credits that were taken on the returns without the knowledge of Mr. and Mrs. Russell. The tax deficiencies totaled \$1,249 (2008), \$2,381 (2009) and \$2,663 (2010).

L. Ms. Segovia. Ms. Segovia had her 2009 federal income tax return prepared by Fast Cash employee Giselle Perez. After the return was prepared she was asked to leave it for review by Pete Gutierrez. She had to come back later to sign the return. The return claimed Health Savings Account deductions, unreimbursed employee business expenses and education credits that she did not tell Fast Cash she had. When the return was under audit, she went back to Fast Cash and spoke

to Pete Gutierrez. His advice was to claim her son as a dependent during the exam. The total tax deficiency was \$3,460.

M. Ms. Stradley. Fast Cash prepared Ms. Stradley's 2008 and 2009 returns. Idania Feliciano prepared the 2008 return. Giselle Perez prepared the 2009 return. The returns contained unsubstantiated Health Savings Accounts, unreimbursed employee business expenses, education and residential energy credits. The tax deficiencies totaled \$3,074 (2008) and \$4,347 (2009).

N. Mr. and Mrs. Valenzeuela. Fast Cash employees Rachel Salinas and Andrea Samudio, prepared the Valenzeulas' 2009 and 2010 federal income tax returns. The returns claimed Health Savings Account (2009), unreimbursed employee business expenses, and residential energy credits that were not substantiated. The tax deficiencies totaled \$4,277 (2009) and \$2,511 (2010).

35. Examples of Returns Prepared by Pete Gutierrez:

A. Mr. and Mrs. Herrera (2008). Peter Gutierrez prepared Mr. and Mrs. Herrera's 2008 return that claimed charitable deductions, unreimbursed employee business expenses and energy credits that the taxpayers could not substantiate. The total tax deficiency was \$5,354. The return also claimed a \$1,200 Health Savings Account that the Herreras' were not asked to substantiate, but on information and belief the Health Savings Account did not exist. The total tax deficiency was \$2,721.

B. Mr. and Mrs. Avila (2009). Peter Gutierrez prepared Mr. and Mrs. Avila's 2009 return. The returns claimed a Health Savings Account, education credits, energy credits, charitable deductions and unreimbursed employee business expenses, that the taxpayers could not substantiate. The total tax deficiency was \$5,750.

C. Mr. and Mrs. Flores, Jr. (2009 and 2010). Peter Gutierrez prepared Mr. and Mrs. Flores, Jr. 2009 and 2010 returns. The 2009 return claimed a Health Savings Account, both returns claimed, education credits and business expenses that the taxpayers were unable to substantiate. The tax deficiency for 2008 was \$1,291. The tax deficiency for 2009 was \$1,254.

36. Examples of Returns Prepared by Jeanette Gutierrez:

A. Mr. Gonzalez (2008). Mrs. Gutierrez prepared Mr. Gonzalez's 2008 return. The return took substantial unreimbursed employee business expenses that the taxpayers did not try to substantiate as well as an unsubstantiated education credit. The total deficiency was \$2,838.

B. Mr. and Mrs. Yglesias (2008). Mrs. Gutierrez prepared Mr. and Mrs. Yglesias' 2008 return. The return took substantial unreimbursed employee business expenses that the taxpayers did not try to substantiate as well as an unsubstantiated education credit. The total deficiency was \$4,305.

C. Mr. Sanchez (2009). Mrs. Gutierrez prepared Mr. Sanchez's 2009 return. The return took substantial car and truck and other expenses that the taxpayer did not try to substantiate. The total deficiency was \$3,181.

D. Mr. Buitron (2010). Mrs. Gutierrez prepared Mr. Buitron's 2010 return. The 2010 return claimed various small deductions that could not be verified by the taxpayer, including car and truck expenses. In addition it claimed a refundable education credit that was not verified by the taxpayer or by IRS records. The tax deficiency for 2010 was \$2,036.

E. Mr. Garza (2010). Mrs. Gutierrez prepared Mr. Garzas 2010 return. The return took substantial meals and entertainment and other expenses that the taxpayer did not try to substantiate. The total deficiency was \$4,084.

F. Mr. Hargrove (2010). Mrs. Gutierrez prepared Mr. Hargrove's 2010 return. The return took car and truck expenses and an education credit that the taxpayer could not sustain. The total deficiency was \$3,385.

G. Mr. and Mrs. Ramierez (2010). Mrs. Gutierrez prepared Mr. and Mrs. Ramierez's 2010 return. The return claimed \$18,955 in unreimbursed employee business expenses that the taxpayer could not substantiate. The tax deficiency was \$3,962.

H. Mr. and Mrs. Rios (2010). Mrs. Gutierrez prepared Mr. and Mrs. Rios' 2010 return. The return claimed a Health Savings Account, tuition and fees, education credits and various travel related expenses that the taxpayer was unable to substantiate. The tax deficiency was \$3,818.

37. Mr. and Mrs. Gutierrez prepare their own tax returns. Their tax returns for years ending December 31, 2005, 2006 and 2007 were examined by the Internal Revenue Service. The same type of lack of substantiation was found on their own returns. The Gutierrez's defaulted on their opportunities to go to Tax Court for 2006 and 2007. They subsequently conceded the deficiency for 2005.

Harm Caused by Defendants

38. Defendants' clients have been harmed because they paid Fast Cash fees to prepare and file proper tax returns on their behalf. Many clients now face large income tax deficiencies and may be liable for sizeable penalties and interest.

39. The United States is harmed because the IRS must continually devote limited resources to detecting and examining inaccurate returns filed by Defendants in an attempt to assess and collect unpaid taxes.

40. The amount of tax loss resulting from Defendants' improper tax preparation activities is incalculable, but in any event, likely exceeds \$3 million for 2006 through 2010.

41. Unless enjoined by this Court, Defendants will likely continue to prepare and file tax returns that improperly reduce their clients' tax liabilities.

Count I
Injunction under I.R.C. § 7407

42. The United States incorporates by reference the allegations in paragraphs 1 through 39.

43. I.R.C. § 7407 authorizes a district court to enjoin a federal tax return preparer from, *inter alia*:

- a. engaging in conduct subject to penalty under I.R.C. § 6694;¹
- b. engaging in conduct subject to penalty under I.R.C. § 6695;² and
- c. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal tax return preparer entirely.

¹Section 6694 is entitled "Understatement of Taxpayer's Liability by Tax Return Preparer."

²Section 6695 is entitled "Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons."

44. Defendants have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by willfully and knowingly preparing federal tax returns for clients that improperly understate clients' tax liabilities based on unreasonable, frivolous, and reckless positions, as detailed above.

45. Defendants have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by willfully preparing federal tax returns in a manner that understate their clients' tax liabilities; and/or by recklessly or intentionally disregarding rules and regulations, as detailed above.

46. Defendants have continually and repeatedly engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the federal tax laws.

47. Defendants' repeated violations of I.R.C. § 6694 fall within I.R.C. §§ 7407(b)(1)(A) and (D), and thus are subject to an injunction under I.R.C. § 7407.

48. If Defendants are not enjoined, they are likely to continue filing false and fraudulent federal tax returns and engaging in additional fraudulent conduct.

49. Defendants' continual and repeated conduct subject to an injunction under I.R.C. § 7407, detailed above, shows that a narrow injunction prohibiting only specific conduct would be insufficient to prevent their interference with the proper administration of the internal revenue laws. Thus, Defendants should be permanently barred from acting as federal tax return preparers.

Count II
Injunction under I.R.C. § 7408
For Acts Defined Under 26 U.S.C. Section 6701

50. The United States incorporates by reference the allegations in paragraphs 1 through 31.

51. Sections 7408(a) and (c) of the Internal Revenue Code authorize a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. §§ 6700³ or 6701⁴ if injunctive relief is appropriate to prevent recurrence of such conduct.

52. Section 6701(a) of the Internal Revenue Code penalizes any person

- (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,
- (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and
- (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person,

53. Section 6701(c)(1) clarifies that the term “procure” used in 6701(a) includes:

- (A) ordering (or otherwise causing) a subordinate to do an act, and
- (B) knowing of, and not attempting to prevent, participation by a subordinate in an act.

54. By claiming improper deductions, tax credits, and filing statuses, Defendants knowingly and willfully prepared false federal income tax returns for clients, and knew the false returns would understate their clients’ correct tax liabilities. This conduct, therefore, is subject to penalty under I.R.C. § 6701.

55. By supervising, ordering, training and allowing the employees of Defendants to claim improper deductions and tax credits Defendants knowingly and willfully aided and assisted in

³Section 6700 is entitled “Promoting Abusive Tax Shelters, ETC.

⁴Section 6701 is entitled “Penalties for Aiding and Abetting Understatement of Tax Liability.”

procuring false federal income tax returns for clients, knowing the false returns would understate their clients' correct tax liabilities. This conduct, therefore, is subject to penalty under I.R.C. § 6701.

56. If the Court does not enjoin Defendants, they are likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III
Injunction Under I.R.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws

57. The United States incorporates by reference the allegations of paragraphs 1 through 52.

58. Section 7402, I.R.C., authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

59. Defendants have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Defendants have intentionally claimed false business deductions, improper filing statuses, false earned income tax credits, and other credits to which their clients are not entitled.

60. Unless enjoined, Defendants are likely to continue to engage in this improper conduct. If Defendants are not enjoined from preparing returns for others, the United States will suffer irreparable injury by failing to receive accurate tax payments from Defendants' clients, and erroneously providing federal income tax refunds to clients not entitled to receive them.

61. Permanently enjoining Defendants is in the public interest because an injunction, backed by the Court's contempt powers, if needed, will stop their illegal conduct and the harm they have already caused the United States.

62. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States prays for the following:

A. That the Court finds that Defendants have continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific conduct would be insufficient;

B. That the Court finds that Defendants have engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court finds that Defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Defendants, and all those in active concert or participation with them, from:

1. further acting as federal tax return preparers;
2. assisting in the preparation of federal tax returns that they know or should know will result in the understatement of any tax liability or the overstatement of a federal tax refund;
3. organizing or selling abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;
4. understating taxpayers' liabilities as prohibited by I.R.C. § 6694;

5. failing to comply with the due diligence requirements for claiming earned income tax credits under I.R.C. § 6695(g);
6. preparing and/or filing federal tax returns and other documents as prohibited by I.R.C. § 6701;
7. engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701;
8. engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme; and
9. representing anyone before the IRS.

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Defendants, within 30 days of entry of the injunction, to contact by mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return or tax-related document since January 1, 2007, enclosing a copy of the executed injunction against them, and file with the Court, within 45 days of the injunction order, a sworn certificate stating that they have complied with this requirement;

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Defendants to produce to counsel for the United States within 30 days of the injunction order a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s), all persons for whom Defendants have prepared federal tax returns or claims for refund since January 1, 2007;

G. That the Court retain jurisdiction over Defendants and over this action to enforce any permanent injunction entered against Defendants;

H. That the United States be entitled to conduct discovery to monitor Defendants' compliance with the terms of any permanent injunction entered against them; and

I. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

ROBERT L. PITMAN
United States Attorney

/s/ Joseph A. Pitzinger
JOSEPH A. PITZINGER
State Bar No. 16055800
STEPHANIE M. PAGE
State Bar No. 13428240
Attorneys, Tax Division
Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
(214) 880-9728/9749
(214) 880-9742 (FAX)
Joseph.A.Pitzinger@USDOJ.gov
Stephanie.M.Page@USDOJ.gov

ATTORNEYS FOR THE UNITED STATES