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ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FARAI CHIHOTA, individually and)
 doing business as QUICK RETURN TAX)
 SERVICE,)
)
 Defendant.)

Case Number: .

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 23 2008
CLERK, U.S. DISTRICT COURT
By _____
Deputy

3-08CV0104-N

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against defendant Farai Chihota, individually and doing business as Quick Return Tax Service, as follows:

1. This action has been requested by the Chief Counsel of the Internal Revenue Service, 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 Internal Revenue Code (IRC) (26 U.S.C.) §§ 7401, 7402, 7407, and 7408.

Jurisdiction and Venue

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

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

- A. acting as a federal income tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;

- B. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
- C. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
- D. understating customers' liabilities as subject to penalty under IRC § 6694;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
- F. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because a substantial part of the actions giving rise to this suit took place in this district.

Defendant and Basic Facts

5. Farai Chihota is a paid unenrolled federal tax preparer operating in the Dallas County area of Texas. Chihota has also prepared tax returns in St. Louis, Missouri.

6. Chihota is a federal income tax return preparer engaged in the unlawful promotion of a tax scheme in which he gives customers false and fraudulent tax advice regarding the Fuel Tax Credit, and prepares fraudulent tax returns for customers to implement the scheme.

7. Chihota prepares customers' federal income tax returns consistent with his scheme by improperly claiming fraudulent IRC § 6421 Fuel Tax Credits.

8. The IRS has identified at least 251 federal tax returns prepared by Chihota since 2005. At least 156 of those tax returns contained fraudulent or false information.

9. Chihota claimed fraudulent Fuel Tax Credits exceeding \$1.2 million dollars on at least 135 tax returns.

10. Chihota also prepared at least 21 bogus Schedule C forms naming phony self-employment occupations, which Chihota used to reduce his customers' tax liabilities by claiming false business deductions and losses. Chihota caused more than \$130,000 in additional losses to the U.S. Treasury by preparing these false Schedule C forms.

11. Chihota also prepared numerous federal income tax returns claiming inflated deductions, using bogus W-2 forms and inflated or fraudulent business expenses.

Fuel Tax Credit Fraud

12. Chihota has prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms Chihota misapplied IRC § 6421(a) ("Fuel Tax Credit"). The Fuel Tax Credit is a credit available only to taxpayers who operate farm equipment or other off-highway business vehicles, or burn kerosene in their homes. Moreover, the equipment or vehicles must not be registered for highway uses.

Overview of IRC § 6421(a): Credit for Federal Tax Paid on Fuels

13. Fraudulently claiming entitlement to the Fuel Tax Credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, Chihota improperly claims the Fuel Tax Credit for his customers for purported personal or business motor fuel purchases.

14. IRC § 6421(a) provides a credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines such as generators, compressors, power

saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. *See* IRS Publication 225 (2006), Farmer’s Tax Guide, Chapter 14 (2006) (available online at: <http://www.irs.gov/publications/p225/ch14.html#d0e19048>).

15. IRS Publication 510 defines a highway vehicle as any “self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions.” A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the Fuel Tax Credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the Fuel Tax Credit: passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. *See* IRS Publication 510 (2006), Excise Taxes for 2006, Chapter 2 (2006) (available online at: <http://www.irs.gov/publications/p510/ch02.html#d0e3533>).

16. In addition, IRS Publication 510 provides the following example of an appropriate application of the Fuel Tax Credit:

Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify.

17. In short, the Fuel Tax Credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

Chihota’s Fraudulent Claims of the Fuel Tax Credit

18. Chihota prepares federal income tax returns for individuals who are part or full-time wage earners, and reduces his customers’ reported tax liabilities by claiming a bogus Fuel Tax

Credit under IRC § 6421. 98% of the 137 federal tax returns Chihota prepared for customers in 2006 claimed Fuel Tax Credits, all of which were fraudulent or false.

19. Chihota prepares Forms 4136 for his customers falsely stating that the customer has used gasoline for off-highway business purposes. Chihota claimed the credit for city residents in purported occupations such as nurse assistants, babysitters, appraisers, janitors, and maids.

20. Chihota claimed absurdly large credits by falsely reporting purchases of huge quantities of gasoline.

21. For example, Chihota fraudulently prepared a return with a reported Fuel Tax Credit for a customer claiming to be a driver. On the return, Chihota claimed that, in 2005, the customer purchased 54,000 gallons of gasoline for off-highway business use. This customer, who reported no income for the entire year, would have to have spent approximately \$108,000 to purchase that volume of gasoline. Moreover, to use that volume of gasoline, assuming mileage of 20 miles per gallon, this Chihota customer would have to have driven 810,000 business miles during the year—which comes to 2,220 miles each day of the year, seven days a week. This would mean driving 92 miles every hour of every day. This example shows the blatantly fraudulent nature of Chihota's use of the Fuel Tax Credit.

22. The following chart shows five more examples of Chihota's fraudulent preparation of federal income tax returns for the 2005 year using the Fuel Tax Credit:

Business or profession, city and state	Amount of off-highway business use of gasoline claimed on Form 4136	Cost of claimed business use of gasoline*	Estimated yearly/daily mileage**	Total Income	Amount of gasoline credit	Refund Requested
CNA; Burleston, Texas	40,000 gallons	\$80,000	800,000 per year /2192 per day	\$41,621	\$7,360	\$8,839
CSR; Duncanville, Texas	52,890 gallons	\$105,780	1,057,800 per year /2898 per day	\$290	\$9,732	\$9,732
Contractor; Dallas, Texas	44,000 gallons	\$88,000	880,000 per year/2,410 per day	\$5,583	\$8,096	\$9,612
Manager; Grand Prairie, Texas	48,000 gallons	\$96,000	960,000 per year/2,630 per day	\$25,167	\$8,832	\$9,892
Janitor; Dallas, Texas	53,454 gallons	\$106,908	1,069,080 per year /2929 per day	\$20,250	\$9,836	\$9,836

* Estimated total cost based on \$2.00 per gallon.

** Estimated milage based on 20 miles per gallon.

Harm to the public

23. Chihota's preparation of false and fraudulent tax returns, to the extent that the Internal Revenue Service has not detected them, has resulted in customers receiving substantial federal income tax refunds to which they are not entitled and in not reporting and paying taxes that they owe. He has filed returns for customers seeking more than \$1.2 million dollars in refunds based on fraudulent fuel tax credits. Many of these refunds were paid.

24. Chihota's conduct harms the United States because his customers are receiving refunds to which they are not entitled.

25. In addition to the direct harm caused by preparing tax returns that understate his customers' tax liabilities, Chihota's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

26. Chihota further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Chihota's customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. The IRS estimates that its administrative costs associated with this scheme total more than \$400,000.

False Schedules C

27. Chihota's fraudulent federal tax return preparation is not limited to preparing returns with bogus Fuel Tax Credits. Chihota also claims false Schedule C deductions on customers' returns.

28. For example, Chihota prepared a 2004 federal income tax return that said the taxpayer was a clerk who made \$54,563 in wages. Chihota then attached a Schedule C form showing that the taxpayer had a janitorial business that generated no income, but had \$25,375 in business expenses, including \$5,600 in advertising costs. The unrealistic nature of these figures shows Chihota's fraud; it is highly unlikely that a business spending \$25,375 on business expenses and \$5,600 on advertising generated no reportable income. Here, Chihota used the false Schedule C form and business expenses to reduce the taxpayer's overall tax liability.

29. Given the IRS's limited resources, identifying and recovering all revenues lost from Chihota's preparation of false and fraudulent returns may be impossible.

30. On March 2, 2007, the IRS sent Chihota two letters (one to each address known by the IRS) informing him that he was under investigation, and asking him to meet with the IRS and produce certain documents and records. The United States Postal Service confirmed that both letters were delivered. However, Chihota did not respond to either letter.

Count I
Injunction under IRC § 7407

31. The United States incorporates by reference the allegations in paragraphs 1 through 30.

32. IRC § 7407 authorizes a district court to enjoin an income tax preparer from:

- A. engaging in conduct subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;
- C. failing to comply with an IRS request under IRC § 6107(b);
- D. misrepresenting his experience or education as a tax return preparer; or
- E. 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 income tax return preparer.

33. Chihota has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal income tax returns that understate his customers' liabilities based on unrealistic and frivolous positions.

34. Chihota's continual and repeated violations of IRC § 6694 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

35. If he is not enjoined, Chihota is likely to continue to file false and fraudulent tax returns.

36. Chihota's continual and repeated conduct subject to an injunction under IRC § 7407, his continual and repeated use of bogus deductions, and his flagrant misuse of the Fuel Tax Credit, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Chihota's interference with the proper administration of the internal revenue laws. Thus, he should be permanently barred from acting as a return preparer.

Count II
Injunction under IRC § 7408

37. The United States incorporates by reference the allegations in paragraphs 1 through 36.

38. IRC § 7408(a)-(c) authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either IRC §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

39. IRC § 6701(a) penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

40. Chihota prepares federal tax returns for customers that he knows will understate their correct tax liabilities. Chihota's conduct is thus subject to a penalty under IRC § 6701.

41. If the Court does not enjoin Chihota, he is likely to continue to engage in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

Count III

Injunction Under IRC § 7402(a) Necessary to Enforce the Internal Revenue Laws

42. The United States incorporates by reference the allegations of paragraphs 1 through 41.

43. IRC § 7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

44. Chihota, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

45. Unless enjoined, Chihota is likely to continue to engage in such improper conduct. If Chihota is not enjoined from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

46. Enjoining Chihota is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop his illegal conduct and the harm it causes the United States.

47. 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 find that Farai Chihota has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694, and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court find that Farai Chihota has engaged in conduct subject to a penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Farai Chihota has 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 IRC § 7402(a);

D. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Farai Chihota, and all those in active concert or participation with him from:

1. acting as a federal income tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as representatives on behalf of any

person or organization whose tax liabilities are under examination by the Internal Revenue Service;

2. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
3. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
4. understating customers' liabilities as subject to penalty under IRC § 6694;
5. engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
6. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Farai Chihota within fifteen days to contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared a federal tax return to inform them of the Court's findings concerning the falsity of Chihota's prior representations and enclose a copy of the permanent injunction against him;

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Farai Chihota to produce to counsel for the United States within fifteen days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for a refund since January 1, 2005;

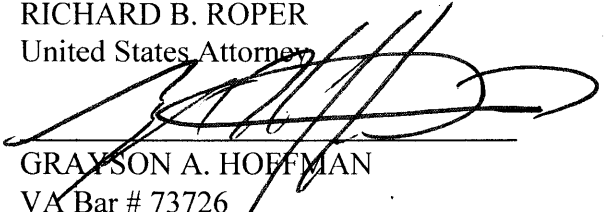
G. That the Court retain jurisdiction over Farai Chihota and over this action to enforce any permanent injunction entered against Chihota;

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

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

DATED: January 22, 2008

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