

ORIGINAL

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

AUG 12 2004

ROBERT. H. SHEMPELL, CLERK
BY JVA DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DARLENE GILBERT,)
)
Defendant.)

Civil Action No. **CV04-1702**

A

JUDGE DRELL

MAGISTRATE JUDGE KIRK

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America, for its Complaint, alleges and avers the following:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and by Sections 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (I.R.C.).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.
3. This action is brought at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury. This action is commenced at the direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402, 7407, and 7408.

Defendant

4. Defendant Darlene Gilbert is a natural person who resides within this judicial district.

5. Defendant is a federal income tax return preparer, within the meaning of I.R.C. § 7701(a)(36). Defendant prepares and files with the Internal Revenue Service Forms 1040 (individual income tax returns) and Forms 1040X (administrative claims for tax refund), to assist taxpayers in filing for and receiving federal income tax refunds.

Facts Common to All Counts

6. Defendant has prepared and filed federal income tax returns on which individual taxpayers who worked as mariners aboard their employers' vessels claimed daily (per diem) incidental expense deductions that exceeded the amounts allowable as a deduction under the Internal Revenue Code. The excessive amounts varied from between approximately \$30 and \$70 per day.

7. The excessive deductions are improper, and not supported by the Internal Revenue Code or other law.

8. At least 40 income tax returns or tax refund claims prepared by Defendant contained overstated deductions, as described in paragraphs 6 and 7 above.

9. Defendant knew, or should have known, that the amounts of the deductions claimed were not allowable or authorized by the Internal Revenue Code or any other law. Defendant thus has prepared, or assisted in preparing, tax returns or refund claims that Defendant knew, or should have known, understated the claimant's tax liability or overstate the amount of

tax refund claimed, and that Defendant knew, or should have known, were frivolous.

10. The understatements of tax liability reflected on such returns or amended returns prepared by Defendant are due, at least in material part, to the assertion of a position for which there is not a realistic possibility that it will be sustained.

11. Returns containing overstated deductions in the aforesaid circumstances, or similar mariner business expense claims, interfere with the proper administration and enforcement of the internal revenue laws.

12. Defendant's conduct results in irreparable harm to the United States, for which the United States has no adequate remedy at law. Specifically:

- a. Defendant's conduct, unless enjoined, is likely to cause the United States Treasury to expend significant resources to locate and process tax returns and refund claims containing frivolous claims, and to assess and collect proper tax liabilities and penalties.
- b. If not enjoined, Defendant's actions will continue to sow confusion about the tax laws, by causing taxpayers to believe, falsely, that the United States Government is allowing a tax deduction or refund in amounts that exceed that allowable by law.
- c. Defendant's actions require the Internal Revenue Service to devote resources to processing a substantial volume of false and fraudulent returns and claims for tax refund, thereby reducing the level of service that the agency can provide to other taxpayers.

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

13. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 12.

14. Section 7407 of the Internal Revenue Code authorizes a court to enjoin an income tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, and that injunctive relief is appropriate to prevent the recurrence of the conduct.

15. Section 6694 of the Internal Revenue Code imposes penalties on income tax return preparers who prepare returns that contain frivolous positions, or who willfully understate the tax liability of another person.

16. Defendant, an income tax return preparer, has engaged in conduct subject to the I.R.C. § 6694 penalty because she knew, or should have known, that inflated or overstated amounts claimed as deductions constitute a frivolous position, with no realistic possibility of being sustained on the merits, and because she willfully prepared or assisted in preparing returns that understated the tax liabilities of other persons.

17. I.R.C. Section 7407 also authorizes a court to enjoin an income tax return preparer if the court finds (i) that the return preparer has engaged in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws and (ii) that injunctive relief is appropriate to prevent the recurrence of the conduct.

18. Defendant engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws by, among other things, filing false

and fictitious returns or amended returns that contained fictitious tax deductions.

Count II

(Injunction under I.R.C. § 7408 for violations of I.R.C. §§ 6700 and 6701)

19. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 18.

20. Section 7408 of the Internal Revenue Code authorizes a court to enjoin a person from engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701, if injunctive relief is appropriate to prevent recurrence of such conduct.

21. Section 6701 of the Internal Revenue Code imposes a penalty on any person who (i) 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; (ii) 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 (iii) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

22. Defendant has engaged in conduct subject to penalty under I.R.C. § 6701 by preparing or assisting in the preparation of documents that contained false and inaccurate amounts of deductions. Defendant knew or had reason to believe that the documents would be used in connection with material matters arising under the internal revenue laws. Defendant knew that, if so used, the documents would result in understatements of tax liabilities.

23. Injunctive relief is appropriate to prevent the recurrence of such conduct.

24. The United States is entitled to an injunction under I.R.C. § 7408 to prevent Defendant from engaging in conduct subject to penalty under I.R.C. § 6701.

Count III

(Unlawful Interference with the Enforcement of the Internal Revenue Laws, I.R.C. § 7402)

25. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 24.

26. Section 7402(a) of the Internal Revenue Code authorizes federal district courts to issue injunctions as may be necessary or appropriate to enforce the internal revenue laws.

27. Defendant, through the conduct described above, engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. Defendant's conduct causes irreparable injury to the United States, and an injunction under I.R.C. § 7402(a) is necessary and appropriate.

28. The United States is entitled to injunctive relief under IRC § 7402(a).

WHEREFORE, the United States respectfully requests the following relief:

A. That the Court find that Defendant has repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent recurrence of that conduct.

B. That the Court find that Defendant has repeatedly engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief is appropriate under I.R.C. § 7407 to prevent recurrence of that conduct.

C. That the Court find that Defendant has engaged in conduct subject to penalty

under I.R.C. § 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent recurrence of that conduct.

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

E. That the Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting Defendant, individually, and anyone in active concert or participation with her, including any agent, servant, or employee, from directly or indirectly, by the use of any means or instrumentalities:

- (1) engaging in any conduct subject to penalty under I.R.C. § 6694, *i.e.*, preparing any part of a return, amended return, or claim for refund that includes an unrealistic position, including, without limitation, a claim for deductions in amounts that are inflated or overstated;
- (2) assisting or aiding others to evade the payment of taxes or to prepare false or fraudulent federal income tax returns;
- (3) engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws.

F. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Defendant, individually, and anyone in active concert or participation with her, including any agent, servant, or employee, from directly or indirectly, by the use of any means or instrumentalities:

- (1) engaging in any conduct subject to penalty under I.R.C. § 6701, *i.e.*, preparing or assisting others in preparing any document (i) that is to be used in connection with any material matter arising under the internal revenue laws and (ii) that she or such other person knows will (if so used) result in understating the income tax liability of another person;
- (2) engaging in conduct that interferes with the administration or enforcement of the internal revenue laws, including preparing or assisting in preparing any return, amended return, refund claim, or other document to be filed with the IRS claiming a credit or refund that includes an overstatement of the amount of the allowable deduction.

G. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Defendant, at her own expense, to contact, in writing –

all persons for whom she prepared or assisted in preparing any federal income tax return, amended return, or refund claim that contained excessive or inflated amounts of tax deductions, from January 1, 2000 through the present, and inform each such person of (i) the entry of Final Judgment in this case, (ii) the possibility of the imposition of penalties against them, and (iii) the possibility that the United States may seek to collect additional federal income taxes, penalties, and interest that they may owe.

H. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Defendant—

- (1) to provide to counsel for the United States, within fourteen (14) days after entry of its order or judgment of injunction against Defendant, a complete list of the persons for whom Defendant has prepared any federal income tax return, amended return, or refund claim containing or including overstated or excessive deduction amounts, at any time from January 1, 2000 through the present, such list to include for each such person the name, address, phone number, e-mail address (if known), social security number or employer identification number, and the tax period(s) to which or for which such return, amended return, or refund claim relates;
- (2) to file with the Clerk of this Court, within twenty-one (21) days after entry of the Court's order or judgment of injunction a sworn certificate of compliance, stating that she has complied with the foregoing directive.

I. That this Court order that the United States may engage in post-judgment discovery to ensure compliance with the permanent injunction; and

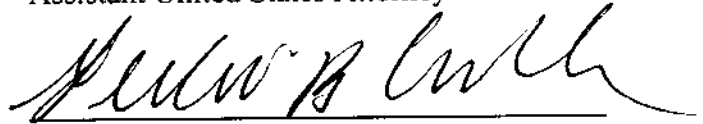
J. That this Court retain jurisdiction over this action for the purpose of implementing and enforcing the final judgment and all additional decrees and orders necessary and appropriate to the public interest.

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

Respectfully submitted,

Donald W. Washington
United States Attorney

Thomas B. Thompson (#12764)
Assistant United States Attorney

A handwritten signature in cursive script, appearing to read "Gerald B. Leedom", written over a horizontal line.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on **August 9, 2004**, consistent with the agreement reflected in the Waiver Of Service Of Process, Response, And Hearing On Injunction Application signed by Defendant, and filed with the Complaint, undersigned Government counsel has sent to the named Defendant, by prepaid FedEx overnight delivery, at the address stated on the Waiver of Service, a true, correct, and complete copy of the Complaint for Permanent Injunction and Other Relief filed herewith.



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