

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APR 12 2005
BY *[Signature]*

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
BRIAN DUFFEK,)
PATRICK O'CONNOR, and)
DUFFEK, O'CONNOR & ASSOCIATES, INC.)
Defendants.)

CIVIL ACTION NO.:

05 CV 0253S(sc)

COMPLAINT FOR PERMANENT INJUNCTION

At the request of the Secretary of the Treasury and at the direction of the Attorney General of the United States, the United States of America, by its attorney, Michael A. Battle, United States Attorney for the Western District of New York, brings this action pursuant to 26 U.S.C. §§ 7402(a) and 7407 to enjoin defendants Brian Duffek, Patrick O'Connor, and Duffek, O'Connor & Associates, Inc. from:

- a. preparing or assisting in the preparation of any federal income tax return, or any other federal tax return, for any other person or entity;
- b. engaging in any conduct subject to penalty under 26 U.S.C. § 6694;
- c. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper administration or enforcement of the internal revenue laws; and
- d. engaging in any other conduct which substantially interferes with the proper administration or enforcement of the internal revenue laws;

In support thereof, the United States alleges as follows:

Jurisdiction, Venue, and Parties

1. Jurisdiction over this action is conferred upon this Court under 28 U.S.C. §§ 1340 and

1345 and 26 U.S.C. §§ 7402(a) and 7407.

2. Venue is proper in the United States District Court for the Western District of New York pursuant to 28 U.S.C. § 1391(b) and 26 U.S.C. § 7407(a).
3. Brian Duffek resides at 180 Norwood Lane, Orchard Park, New York.
4. Patrick O'Connor resides at 6513 Hackberry Drive, Lake View, New York.
5. Duffek, O'Connor & Associates, Inc. is a domestic corporation with a principal place of business at 4945 Southwestern Boulevard, Hamburg, New York.

Defendants' Tax Preparation Scheme

6. Duffek, O'Connor & Associates, Inc. is in the business of providing income tax return preparation services. Duffek and O'Connor own Duffek, O'Connor & Associates, Inc. and are officers of the corporation.
7. Duffek is an income tax return preparer within the meaning of 26 U.S.C. § 7701(a)(36).
8. O'Connor is an income tax return preparer within the meaning of 26 U.S.C. § 7701(a)(36).
9. Duffek, O'Connor & Associates, Inc. is an income tax return preparer within the meaning of 26 U.S.C. § 7701(a)(36).
10. From 1997 to at least 2004, Duffek has worked as an income tax return preparer, in which capacity he prepared and assisted in the preparation of federal income tax returns for individual taxpayers.
11. From 1999 to the present, O'Connor has worked as an income tax return preparer, in which capacity he prepared and assisted in the preparation of federal income tax returns for individual taxpayers.

12. In 1997 Duffek and William Occhino formed Duffek, Occhino & Associates, a tax return preparation and general bookkeeping firm.
13. Duffek prepared individual income tax returns at Duffek, Occhino & Associates from 1997 through December 2002.
14. O'Connor prepared individual income tax returns at Duffek, Occhino & Associates from 1999 through December 2002.
15. In January 2003, Duffek and O'Connor formed Duffek, O'Connor & Associates, Inc., a tax return preparation and general accounting and bookkeeping firm.
16. Duffek has prepared individual income tax returns at Duffek, O'Connor & Associates, Inc. from January 2003 to at least 2004.
17. O'Connor has prepared individual income tax returns at Duffek, O'Connor & Associates, Inc. from January 2003 to the present.
18. In 2001, 2002, 2003, and 2004, Duffek prepared individual income tax returns, IRS Forms 1040, for the 2000 through 2003 tax years on which he willfully, recklessly, or due to an unrealistic position understated the taxpayers' federal income tax liabilities.
19. In 2001, 2002, 2003, and 2004, O'Connor prepared individual income tax returns, IRS Forms 1040, for the 2000 through 2003 tax years on which he willfully, recklessly, or due to an unrealistic position understated the taxpayers' federal income tax liabilities.
20. In 2003 and 2004, Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, prepared individual income tax returns, IRS Forms 1040, for the 2002 and 2003 tax years on which it willfully, recklessly, or due to an unrealistic position understated the taxpayers' federal income tax liabilities.

21. The individual income tax returns for the 2000 through 2003 tax years prepared by Duffek represented that certain taxpayers were entitled under the provisions of the internal revenue laws to claim certain expenses and other deductions, and Duffek knew or reasonably should have known that said taxpayers were not entitled to claim such expenses and other deductions. Examples of the improper deductions claimed on the tax returns prepared by Duffek include:

- a. fictitious or inflated charitable contributions; and
- b. fictitious or inflated unreimbursed employee expenses for work clothes and uniforms, professional subscriptions, business mileage, depreciation on computers, teaching and coaching supplies, student and athlete rewards, and cellular telephone expenses.

22. The individual income tax returns for the 2000 through 2003 tax years prepared by O'Connor represented that certain taxpayers were entitled under the provisions of the internal revenue laws to claim certain expenses and other deductions, and O'Connor knew or reasonably should have known that said taxpayers were not entitled to claim such expenses and other deductions. Examples of the improper deductions claimed on the tax returns prepared by O'Connor include:

- a. fictitious or inflated charitable contributions; and
- b. fictitious or inflated unreimbursed employee expenses for work clothes and uniforms, professional subscriptions, business mileage, depreciation on computers, teaching and coaching supplies, student and athlete rewards, and cellular telephone expenses.

23. The individual income tax returns for the 2002 and 2003 tax years prepared by Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, represented that certain taxpayers were entitled under the provisions of the internal revenue laws to claim certain expenses and other deductions, and Duffek, O'Connor & Associates, Inc., through its officers and employed income tax return preparers, Duffek and O'Connor, knew that said taxpayers were not entitled to claim such expenses and other deductions. Examples of the improper deductions claimed on the tax returns prepared by Duffek, O'Connor & Associates, Inc. include:
- a. fictitious or inflated charitable contributions; and
 - b. fictitious or inflated unreimbursed employee expenses for work clothes and uniforms, professional subscriptions, business mileage, depreciation on computers, teaching and coaching supplies, student and athlete rewards, and cellular telephone expenses.

Defendants' Knowledge of the Illegality of their Conduct

24. Duffek, in his personal capacity and as an officer of Duffek, O'Connor & Associates, Inc., knows or should know of the illegality of his conduct, as alleged in this complaint.
25. Duffek took two classes in tax return preparation at Mercyhurst College in Pennsylvania, engages in self-study of tax law by reading tax manuals and other materials related to tax law, and has been preparing federal income tax returns for individuals since 1997 and, therefore, should be knowledgeable concerning tax law.
26. O'Connor, in his personal capacity and as an officer of Duffek, O'Connor & Associates, Inc., knows or should know of the illegality of his conduct, as alleged in this complaint.

27. O'Connor completed the H & R Block tax course in the fall of 2000, reads tax manuals and other materials regarding tax law, and has been preparing federal income tax returns for individuals since 1999 and, therefore, should be knowledgeable concerning tax law.

Harm to the United States, the Public, and Defendants' Customers

28. Duffek and/or O'Connor prepared a total of 500 returns for the 2000 tax year.
29. Duffek and/or O'Connor prepared a total of 740 returns for the 2001 tax year.
30. The defendants prepared a total of 700 returns for the 2002 tax year.
31. The defendants continued to prepare returns for the 2003 tax year in numbers as yet uncounted by the Internal Revenue Service.
32. O'Connor and Duffek, O'Connor & Associates, Inc. continued to prepare returns for the 2004 tax year in numbers as yet uncounted by the Internal Revenue Service.
33. The returns prepared by Duffek understating his customers' tax liabilities have resulted in his customers receiving tax refunds to which they were not legally entitled.
34. The returns prepared by O'Connor understating his customers' tax liabilities have resulted in his customers receiving tax refunds to which they were not legally entitled.
35. The returns prepared by Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, understating its customers' tax liabilities have resulted in its customers receiving tax refunds to which they were not legally entitled.
36. As a result of the defendants' preparation of returns understating their customers' tax liabilities, the United States has suffered significant tax losses.
37. The Internal Revenue Service estimates that the federal income tax returns prepared by the defendants for the 2000 through 2002 income tax years alone understated the tax

liabilities of their customers by over \$2,264,000.

38. As a result of the defendants' preparation of returns understating their customers' tax liabilities, the Internal Revenue Service is forced to devote its limited resources to identifying and recovering lost tax revenues from their customers, thereby reducing the level of service that the Internal Revenue Service can give to honest taxpayers.
39. Some of the revenue losses caused by the defendants' preparation of returns understating their customers' tax liabilities, may never be recovered, resulting in permanent loss.
40. As a result of the defendants' preparation of returns understating their customers' tax liabilities, some of their customers have had to undergo audits and have incurred unanticipated financial burdens due to their liability for tax beyond the amount reported on their original returns, plus statutory interest, and penalties.
41. As a result of the defendants' preparation of returns understating their customers' tax liabilities, some of their customers will have to file amended returns or undergo audits and will incur unanticipated financial burdens due to their liability for tax beyond the amount reported on their original returns, plus statutory interest, and penalties.

Count I: Injunction under 26 U.S.C. § 7407

42. The United States incorporates by reference the allegations contained in paragraphs 6 through 41 above.
43. Section 7407 of the Internal Revenue Code provides that a court may enjoin an income tax return preparer from engaging in, among other things:
 - a. conduct subject to penalty under Section 6694 of the Internal Revenue Code (understatement of a taxpayer's liability due to an unrealistic position, willful

understatement of a taxpayer's liability, or understatement of a taxpayer's liability due to a reckless or intentional disregard of the rules or regulations); or

- b. any fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws,

if the court finds that the income tax preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of such conduct. Section 7407 further provides that if the court finds that an income tax return preparer has continually or repeatedly engaged in such conduct and that an injunction prohibiting such conduct would not be sufficient to prevent the tax return preparer's interference with the proper administration of the Internal Revenue Code, the court may enjoin the preparer from acting as a federal income tax return preparer.

- 44. Duffek has continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(a) by preparing income tax returns in which he understated taxpayers' liabilities based on undisclosed, frivolous positions which he knew or reasonably should have known did not have a realistic possibility of being sustained on the merits.
- 45. Duffek has continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(b) by preparing income tax returns in which he understated taxpayers' liabilities willfully or in reckless or intentional disregard of rules or regulations.
- 46. Duffek has continually or repeatedly engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws by preparing income tax returns in which he understated taxpayers' liabilities by claiming fictitious or inflated deductions.

47. Injunctive relief against Duffek is appropriate to prevent the recurrence of the conduct described in paragraphs 44 through 46.
48. An injunction merely prohibiting the conduct described in paragraphs 44 through 46 would not be sufficient to prevent Duffek's interference with the proper administration of the Internal Revenue Code.
49. O'Connor has continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(a) by preparing income tax returns in which he understated taxpayers' liabilities based on undisclosed, frivolous positions which he knew or reasonably should have known did not have a realistic possibility of being sustained on the merits.
50. O'Connor has continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(b) by preparing income tax returns in which he understated taxpayers' liabilities willfully or in reckless or intentional disregard of rules or regulations.
51. O'Connor has continually or repeatedly engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws by preparing income tax returns in which he understated taxpayers' liabilities by claiming fictitious or inflated deductions.
52. Injunctive relief against O'Connor is appropriate to prevent the recurrence of the conduct described in paragraphs 49 through 51.
53. An injunction merely prohibiting the conduct described in paragraphs 49 through 51 would not be sufficient to prevent O'Connor's interference with the proper administration of the Internal Revenue Code.
54. Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, has

continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(a) by preparing income tax returns in which it understated taxpayers' liabilities based on undisclosed, frivolous positions which Duffek, O'Connor & Associates, Inc., through its officers and employed income tax return preparers, Duffek and O'Connor, knew or reasonably should have known did not have a realistic possibility of being sustained on the merits.

55. Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, has continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(b) by preparing income tax returns in which it understated taxpayers' liabilities willfully or in reckless or intentional disregard of rules or regulations.
56. Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, has continually or repeatedly engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws by preparing income tax returns in which it understated taxpayers' liabilities by claiming fictitious or inflated deductions.
57. Injunctive relief against Duffek, O'Connor & Associates, Inc. is appropriate to prevent the recurrence of the conduct described in paragraphs 54 through 56.
58. An injunction merely prohibiting the conduct described in paragraphs 54 through 56 would not be sufficient to prevent Duffek, O'Connor & Associates, Inc.'s interference with the proper administration of the Internal Revenue Code.

Count II: Injunction under 26 U.S.C. § 7402

59. The United States incorporates by reference the allegations contained in paragraphs 6

through 58 above.

60. Section 7402 of the Internal Revenue Code authorizes the court to issue orders of injunction as may be necessary or appropriate for the enforcement of the Internal Revenue laws.
61. Through the conduct described above, Duffek has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. His conduct causes significant injury to the United States. Injunctive relief against Duffek is appropriate to prevent the recurrence of such conduct.
62. Through the conduct described above, O'Connor has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. His conduct causes significant injury to the United States. Injunctive relief against O'Connor is appropriate to prevent the recurrence of such conduct.
63. Through the conduct described above, Duffek, O'Connor & Associates, Inc., acting through Duffek and/or O'Connor, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. Its conduct causes significant injury to the United States. Injunctive relief against Duffek, O'Connor & Associates, Inc. is appropriate to prevent the recurrence of such conduct.

WHEREFORE, plaintiff United States of America requests the following relief:

- A. That the Court find that each of the defendants continually or repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 and in fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws; that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent each

defendant from engaging in such conduct; that an injunction only prohibiting such conduct would not be sufficient to prevent each defendant's interference with the proper administration of the internal revenue laws; and that an injunction under 26 U.S.C. § 7407 to prevent each defendant from acting as an income tax return preparer is appropriate;

- B. That the Court find that each of the defendants engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws and that injunctive relief is appropriate under 26 U.S.C. § 7402 to prevent each defendant from engaging in such conduct.
- C. That the Court enter a permanent injunction pursuant to 26 U.S.C. §§ 7402 and 7407 against each defendant and any persons acting in concert with any of the defendants enjoining them from:
- a. preparing or assisting in the preparation of any federal income tax return, or any other federal tax return, for any other person or entity;
 - b. engaging in any conduct subject to penalty under 26 U.S.C. § 6694;
 - c. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper administration or enforcement of the internal revenue laws; and
 - d. engaging in any other conduct which substantially interferes with the proper administration or enforcement of the internal revenue laws;
- D. That the Court, pursuant to 26 U.S.C. § 7402(a), enter an order requiring the defendants, within 11 days after entry of the Court's order, at their own expense, to send by certified mail, return receipt requested, a copy of the Court's injunction order, along with a court-


approved letter, to all persons for whom they have, since January 1, 2001, prepared or assisted in the preparation of federal tax returns.

- E. That the Court, pursuant to 26 U.S.C. § 7402(a), enter an order requiring the defendants, within 11 days after entry of the Court's order, to provide to the United States a list of the names, telephone numbers, addresses, e-mail addresses, and social security numbers of all individuals for whom they prepared or assisted in the preparation of federal tax returns since January 1, 2001;
- F. That the Court, pursuant to 26 U.S.C. § 7402(a), enter an order requiring each defendant to file an affidavit with the Court certifying compliance with the requirements described in paragraphs D and E;
- G. That the Court enter an order permitting the government to engage in post-judgment discovery in order to monitor each defendant's compliance with the injunction against him or it; and

H. That the Court grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

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