

12

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, )  
 )  
 )  
 Plaintiff, )

v.

MARKITA D. DARDEN, individually, )  
d/b/a/ M & M Express Tax Service, )  
 )  
 Defendant. )  
 )  
 )  
 )

Case: 5:07-cv-13785  
Assigned To: O'Meara, John Corbett  
Referral Judge: Scheer, Donald A  
Filed: 09-10-2007 At 11:12 AM  
cmp USA V. DARDEN (TAM)

**COMPLAINT FOR PERMANENT INJUNCTION**

This is a civil action brought by the United States to permanently enjoin defendant Markita D. Darden from preparing federal income tax returns, amended federal income tax returns and other related documents and forms for others; representing customers before the IRS, advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return; and from promoting tax-fraud schemes.

**Jurisdiction**

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 26 U.S.C. §§ 7402(a), 7407 and 7408.

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

3. The defendant Markita D. Darden temporarily resides without the jurisdiction of this court. She is amenable to the *in personam* jurisdiction of this court under the Michigan long-arm

statute because the claims against Ms. Darden arise from a business, M & M Express Tax Service, that she conducts in Wayne County, Michigan. MICH. COMP. LAWS § 600.705.

**Facts Common to All Counts**

4. Ms. Darden prepares or assists in the preparation of federal income tax returns for other people for compensation.

5. Ms. Darden operates a business that provides tax return-preparation services under the name M & M Express Tax Service.

6. For tax years 2003 through 2005, Ms. Darden prepared approximately 1000 federal tax returns for clients of M & M Express Tax Service. Ms. Darden also electronically filed many of the federal tax returns that she prepared for her customers.

7. The returns that Ms. Darden prepared for customers contained false deductions and credits, including falsely claimed IRA deductions, tuition and fees deductions, inflated or fictitious charitable contributions and unreimbursed employee business expenses, and falsely claimed education credits, mortgage interest credits, and work opportunity credits.

8. Ms. Darden, without the knowledge of her customers, prepared income tax returns and subsequently electronically filed some of those income tax returns for customers, indicating a refund due to the customer greater than the refund reported on the customer's copy of the income tax return. Ms. Darden charged the difference in the refund amounts as a tax preparation fee through the refund anticipation loan account that she maintained at Bank One and retained those funds for herself.

9. Despite being advised during the 2005 tax filing season that she was under investigation by the Criminal Investigation Division of the Internal Revenue Service ("IRS"), Ms. Darden continued to prepare income tax returns claiming false deductions and false credits. Ms. Darden failed to sign her name to many of the income tax returns that she prepared for compensation.

10. Ms. Darden's actions cause harm to the United States and to the public.

11. The IRS has issued erroneous refunds based on fraudulent returns prepared by Ms. Darden and has then had to audit Ms. Darden's customers and take collection action to attempt to recoup the money.

12. The IRS has spent considerable time and resources auditing returns prepared by Ms. Darden and collecting the taxes owed and erroneous refunds paid.

13. Ms. Darden has also harmed her customers because they pay her to prepare these returns, and, after the fraud is detected, are responsible for paying all taxes, interest, and penalties.

14. Ms. Darden has a history of violating federal tax laws. She was indicted on twelve counts of knowingly aiding and assisting in the preparation of false and fraudulent tax returns in violation of 26 U.S.C. § 7206(2). In 2006, Ms. Darden pleaded guilty to one count of the indictment and was sentenced to fifteen months imprisonment, one year of supervised release and ordered to pay restitution in the amount of \$164,048.

**Count I:**  
**Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701**

15. The United States incorporates by reference the allegations in paragraphs 1 through 14.

16. A court is authorized to issue an injunction if an income tax preparer engages in conduct subject to penalty under 26 U.S.C. § 6701, pursuant to 26 U.S.C. § 7408.

17. Section 6701 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.

18. Ms. Darden prepares or assists in the preparation of federal income tax returns for her customers.

19. Ms. Darden knows or has reason to believe that these income tax returns will be filed with the IRS and thus will be used in connection with a material matter arising under the internal revenue laws.

20. Ms. Darden knows that the federal tax returns she prepares will result in understatements of other persons' tax liabilities.

21. If Ms. Darden is not enjoined, she is likely to continue to engage in conduct which violates § 6701.

**Count II:**

**Injunction under 26 U.S.C. § 7407 for Violation of 26 U.S.C. §§ 6694 and 6695**

22. The United States incorporates by reference the allegations in paragraphs 1 through 21.

23. A court is authorized to issue an injunction if an income tax return preparer engages in conduct subject to penalty under 26 U.S.C. § 6694 or § 6695, pursuant to 26 U.S.C. § 7407.

24. Section 6694(a) penalizes a tax return preparer if (1) the preparer prepares a return or claim for refund that includes an understatement of liability due to a position for which there is not a realistic possibility of being sustained on the merits; (2) the preparer knew (or reasonably should have known) of such position; and (3) the position was not disclosed in accordance with § 6662(d)(2)(B)(ii) or was frivolous.

25. Section 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability (1) in a willful attempt to understate the liability or (2) with a reckless and intentional disregard of rules or regulations.

26. Section § 6695 penalizes a tax return preparer who does not sign her name to tax returns she prepares.

27. Ms. Darden's conduct as described above is subject to penalty under §§ 6694(a), 6694(b) and 6695.

28. Ms. Darden has prepared income tax returns that include understatements of her customers' liability which had no realistic possibility of being sustained on the merits; Ms. Darden knew or reasonably should have known about these understatements; Ms. Darden did not disclose them in accordance with 26 U.S.C. § 6662(d)(2)(B)(ii); and such understatements are

frivolous. Ms. Darden has thus engaged in conduct subject to penalty under § 6694(a).

29. Ms. Darden prepares returns for customers with false entries in a willful attempt to understate the customers' liability or with a reckless and intentional disregard of rules and regulations. Ms. Darden has thus engaged in conduct subject to penalty under § 6694(b).

30. Ms. Darden did not sign all of the tax returns she prepared. Ms. Darden has thus engaged in conduct subject to penalty under § 6695.

31. Ms. Darden has continually and repeatedly engaged in conduct that violates §§ 6694 and 6695. An injunction merely prohibiting Ms. Darden from engaging in conduct subject to penalty under §§ 6694 and 6695 would not be sufficient to prevent her interference with the proper administration of the tax laws. Accordingly, Ms. Darden should be permanently enjoined from acting as an income tax return preparer.

**Count IV:  
Injunction under I.R.C. § 7402(a) for Unlawful Interference  
with Enforcement of the Internal Revenue Laws  
and Appropriateness of Injunctive Relief**

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

33. A court is authorized to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws, pursuant to 26 U.S.C. § 7402(a).

34. Section § 7402(a) expressly provides that its injunction remedy is "in addition to and not exclusive of" other remedies for enforcing the internal revenue laws.

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

36. Ms. Darden's conduct causes irreparable harm to the United States and to her customers.

37. Ms. Darden is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

38. If Ms. Darden is not enjoined, she is likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws.

39. The United States will suffer irreparable injury if Ms. Darden is not enjoined. This outweighs the harm to Ms. Darden from being enjoined from return-preparation and violating tax laws.

40. The public interest would be advanced by enjoining Ms. Darden because an injunction will stop her illegal conduct and the harm that conduct is causing to the United States Treasury.

WHEREFORE, the United States of America, prays for the following:

A. That the Court find that Ms. Darden has engaged in conduct subject to penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;

B. That the Court find that Ms. Darden has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that, pursuant to 26 U.S.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent Ms. Darden's interference with the proper administration of the tax laws and that Ms. Darden should be enjoined from acting as an income tax return preparer;

C. That the Court find that Ms. Darden is interfering with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;

D. That this Court, pursuant to 26 U.S.C. § 7408, enter a permanent injunction prohibiting Ms. Darden, individually and doing business as M & M Express Tax Service or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with her, from directly or indirectly:

1. Engaging in activity subject to penalty under 26 U.S.C. § 6701, including aiding or assisting in, procuring, or advising with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; knowing (or having reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and knowing that such portion (if so used) would result in an understatement of the liability for tax of another person; and
2. Engaging in any other activity subject to penalty under 26 U.S.C. § 6701 or any other provisions of the Internal Revenue Code.

E. That this Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting Ms. Darden, individually and doing business as M & M Express Tax Service or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with her, from directly or indirectly acting as a federal income tax return preparer;

F. That this Court, pursuant to 26 U.S.C. § 7402(a), enter a permanent injunction prohibiting Ms. Darden, individually and doing business as M & M Express Tax Service or under any other name or using any other entity, and her representatives, agents, servants,



employees, attorneys, and those persons in active concert or participation with her, from directly or indirectly:

1. Preparing or assisting in the preparation of any federal tax return for anyone other than herself;
2. Advising, counseling, or instructing anyone about the preparation of a federal tax return;
3. Owning, managing, controlling, working for, or volunteering for a tax-return-preparation business;
4. Representing customers in connection with any matter before the IRS; and
5. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

G. That this Court, pursuant to 26 U.S.C. § 7402(a), require Ms. Darden at her own expense to contact by mail all customers for whom she has prepared federal tax returns or assisted in preparing tax returns, and send them a copy of this Complaint and the permanent injunction order, and to certify to the Court within eleven days of entry of the permanent injunction that she has complied with this provision;

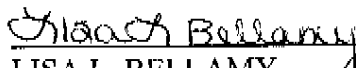
H. That this Court require Ms. Darden to provide the United States with a list of everyone for whom she has prepared (or helped to prepare) a federal tax return for the years 2003-2005 and set forth on said list all of the names, addresses, e-mail addresses, telephone numbers, and social security numbers of the customers.

I. That this Court permit the United States to conduct post-judgment discovery to ensure Ms. Darden's compliance with the permanent injunction; and

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

Respectfully submitted,

STEPHEN J. MURPHY, III  
United States Attorney

  
\_\_\_\_\_  
LISA L. BELLAMY  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 55  
Ben Franklin Station  
Washington, D.C. 20044-0055  
Telephone: (202) 307-6416  
Facsimile: (202) 514-5238  
E-Mail: [lisa.l.bellamy@usdoj.gov](mailto:lisa.l.bellamy@usdoj.gov)

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 UNITED STATES OF AMERICA

**(b) County of Residence of First Listed Plaintiff**  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's Firm Name, Address, and Telephone Number**  
 Lisa L. Bellamy, DOJ Civil Tax Division, P.O. Box 55, Wash, DC 20044 (202) 307-6416

**DEFENDANTS**  
 MARKITA D. DARDEN

County of Residence of First Listed Defendant Wayne  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Select One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Select One Box for Plaintiff and One Box for Defendant)

Case: 5:07-cv-13785  
 Assigned To: O'Meara, John Corbett  
 Referral Judge: Scheer, Donald A  
 Filed: 09-10-2007 At 11:12 AM  
 cmp USA V. DARDEN (TAM)

F DEF  
 1 4  4  
 1 5  5  
 1 6  6

**IV. NATURE OF SUIT** (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff of Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (Select One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 26 U.S.C. sections 7402, 7407 and 7408

Brief description of cause:  
 Permanent injunction

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint

JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE: \_\_\_\_\_

DOCKET NUMBER: \_\_\_\_\_

DATE: August 30, 2007

SIGNATURE OF ATTORNEY OF RECORD: *Lisa L. Bellamy*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

IN ACCORDANCE WITH LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

- Yes
- No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- Yes
- No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

\_\_\_\_\_

\_\_\_\_\_