

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case Number:

**06-23111**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TASHANNA MCFARLAND, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**CIV - COOKE**  
**MAGISTRATE JUDGE**  
**BROWN**

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff United States of America alleges against defendant Tashanna McFarland 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.) §§ 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. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because McFarland resides in Miramar, Florida, within this judicial district and a substantial part of the actions giving rise to this suit took place in this district.

### **Defendant and Basic Facts**

4. Tashanna McFarland is a paid unenrolled federal tax preparer operating out of a booth at the Liberty Flea Market in the Liberty City area of Miami.

5. McFarland obtains customers by passing out flyers and posting signs at the Liberty Flea Market. In addition, she also finds customers by advertising at the nearby Flea Market USA.

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

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

8. The IRS has identified at least 970 federal tax returns prepared by McFarland for customers since 2003. In addition, McFarland admits to preparing and filing between 800 and 900 additional federal tax returns for customers this year.

9. The IRS has identified more than \$1.5 million in fraudulent Fuel Tax Credits claimed on returns McFarland prepared. The IRS estimates that \$500,000 has been refunded to McFarland customers in error based on these fraudulent returns.

10. This is a civil action brought by the United States pursuant to IRC §§ 7402(a), 7407, and 7408 to enjoin McFarland and anyone in active concert or participation with her from:

- A. acting as a federal income tax return preparer;
- 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 evade the assessment or collection of their correct federal tax;
- D. understating customers' liabilities as prohibited by IRC § 6694;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC;
- F. engaging in other conduct that interferes with the administration and enforcement of the internal revenue laws; and
- G. engaging in conduct that violates the standards of 31 U.S.C. § 330.

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

11. McFarland prepares fraudulent tax returns for customers using IRS Form 4136 "Credit for Federal Tax Paid on Fuels." In using and preparing these forms McFarland misapplies IRC § 6421(a) ("Fuel Tax Credit"). The Fuel Tax Credit is a credit available primarily to taxpayers who operate farm equipment or other off-highway vehicles. To be eligible for the credit, the equipment or vehicles must not be registered for highway use. McFarland prepares tax returns for customers based on the frivolous position that the credit applies to driving on local roads for business purposes.

12. Fraudulently claiming entitlement to the Fuel Tax Credit is an emerging widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, individuals improperly claim the Fuel Tax Credit for their personal or business gasoline or other motor fuel purchases. Indeed, many taxpayers, including McFarland's customers, claim the credit in amounts exceeding their actual personal or business fuel purchases.

13. IRC § 6421(a) provides a credit for fuel used in an off-highway business use. Off-highway business use is any use of fuel in a trade or business or in an income-producing activity. But the use must not be in a vehicle registered or 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>).

14. 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." *See Id.* 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. *See Id.* 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>)

15. 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. *See Id.*

16. In short, the Fuel Tax Credit does not apply to passenger cars registered to drive on public highways. It is not, as McFarland fraudulently claims, a credit for individuals who drive on local roads for their business.

### **McFarland's Misuse of the Fuel Tax Credit**

17. McFarland prepares federal income tax returns primarily for low-income individuals, and increases her customers' income tax refunds by claiming a bogus Fuel Tax Credit under IRC § 6421.

18. McFarland prepares Forms 4136 for her customers falsely stating that the customer has used gasoline for off-highway business purposes. She claims the credit for city residents in occupations such as: barbers, hair stylists, tattoo designers, warehouse workers, and babysitters, who clearly do not qualify for the Fuel Tax Credit.

19. Not only does McFarland fraudulently use Form 4136 by claiming the Fuel Tax Credit for individuals who are not entitled to it, but she also claims the credit for amounts of gasoline use that wildly exceed what the customers could possibly use.

20. For example, McFarland prepared a return for one customer, a babysitter, claiming that the customer purchased 16,451 gallons of gasoline for off-highway business use in one year. This customer, whose total income for the year was \$9,316, would have to have spent approximately \$36,192—nearly four times her total income for the year—to consume that volume of gasoline. Moreover, to use that volume of gasoline, assuming a conservative 15 miles a gallon, the babysitter would have had to drive 246,765 miles during the year, or 676 miles each day of the year, seven days a week. This example highlights the frivolous and fraudulent nature of McFarland's tax preparation.

21. Moreover, McFarland claims the Fuel Tax Credit without determining whether her customers even qualify for it.

22. The enclosed chart highlights examples of McFarland's fraudulent preparation of federal income taxes using the Fuel Tax Credit:

<b>Tax Year</b>	<b>Business or profession and city and state address listed on tax return</b>	<b>Amount of off-highway business use of gasoline claimed on Form 4136 (Estimated total gasoline cost at \$2.20 a gallon) [Estimated total yearly/daily mileage based on 15 miles a gallon]</b>	<b>Total Income (1040 Line 22)</b>	<b>Amount of gasoline credit (1040 Line 70b reported from Form 4136)</b>	<b>Refund Requested (1040 Line 72)</b>
2004	Mobile car washer/barber; Opa Locka, Florida	16,950 gallons (\$37,920) [254,250 miles per year /696 per day]	\$7,450	\$3,119	\$2,415
2004	Mobile car washer; Opa Locka, Florida	17,250 gallons (\$37,950) [258,750 miles per year/708 per day]	\$6,660	\$3,174	\$2,241
2004	Hair-braider; Opa Locka, Florida	17,418 gallons (\$38,319.60) [261,270 per year/715 per day]	\$7,898	\$3,205	\$2,236
2004	Babysitter; Miami, Florida	16,451 gallons (\$36,192) [246,765 per year/676 per day]	\$9,316	\$3,027	\$1,855
2005	Cashier; Miami, Florida	11,248 gallons (\$24,846) [168,720 per year/462 per day]	\$7,561	\$2,066	\$3,568
2004	Customer Service; Ft. Lauderdale, Florida	9,983 gallons (\$21,962) [149,475 per year/410 per day]	\$4,315	\$1,832	\$1,309

2004	Tattoo Designer; Miami, Florida	16,000 gallons (\$35,200) [240,000 per year/657 per day]	\$4,250	\$2,944	\$2,343
2005	Barber; Miami, Florida	15,439 gallons (\$33,966) [231,585 per year/634 per day]	\$6,504	\$2,833	\$1,914
2005	Truck Driver; Miami, Florida	15,708 gallons (\$34,558) [235,620 per year/645 per day]	\$9,607	\$2,882	\$4,187
2004	Child Care; Miami, Florida	9,452 (\$20,794) [141,780 per year/388 per day]	\$10,891	\$1,739	\$1,533
2005	Warehouse worker; Miami, Florida	9,384 gallons (\$20,645) [140,760 per year/385 per day]	\$6,127	\$1,722	\$2,302

### **Harm to the public**

23. McFarland'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. She has filed returns for customers seeking more than \$1.5 million in refunds based on fraudulent fuel tax credits. The IRS estimates that it has erroneously refunded \$500,000 based on these fraudulent returns.

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

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

26. McFarland further harms the United States because the Internal Revenue Service must devote its limited resources to identifying McFarland'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 \$101,000.

27. In addition, McFarland's fraudulent federal tax return preparation is not limited to preparing bogus Fuel Tax Credits. McFarland prepares Schedule Cs for her customers' returns without their knowledge in order to claim bogus tax deductions to generate refunds.

28. On information and belief, McFarland also prepares federal income tax returns that claim false earned income credits and child tax credits.

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

### **Count I**

#### **Injunction under IRC § 7407**

30. The United States incorporates by reference the allegations in paragraphs 1 through 29.

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

- A. engaging in conduct subject to penalty under IRC § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position that is not adequately disclosed or that is frivolous);



- B. misrepresenting her experience or education as a tax return preparer; or
- 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 income tax return preparer.

32. McFarland has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal tax returns that understate her customer's liabilities based on unrealistic and frivolous positions.

33. McFarland'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.

34. If she is not enjoined, McFarland is likely to continue to file false and fraudulent tax returns.

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

**Count II**  
**Injunction under IRC § 7408**

36. The United States incorporates by reference the allegations in paragraphs 1 through 35.

37. IRC § 7408(a)-(c) authorize 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.

38. 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.

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

40. If the Court does not enjoin McFarland, she 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) for unlawful  
interference with the enforcement of the internal revenue laws**

41. The United States incorporates by reference the allegations of paragraphs 1 through 40.

42. 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.

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

44. Unless enjoined, McFarland is likely to continue to engage in such improper conduct. If McFarland 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 to receive them.

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

46. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States prays for the following:

A. That the Court find that Tashanna McFarland 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 Tashanna McFarland 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 Tashanna McFarland 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 Tashanna McFarland, and all those in active concert or participation with her from:

1. acting as a federal income tax return preparer;
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 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 IRC § 6694;
5. Engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC;
6. engaging in other conduct that interferes with the administration and enforcement of the internal revenue laws; and
7. engaging in conduct that violates the standards of 31 U.S.C. § 330.

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

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Tashanna McFarland 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 she prepared federal tax returns or claims for a refund since January 1, 2003;

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

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

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

DATED: December 22, 2006

Respectfully submitted,

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