

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FARAI MUSHANINGA, individually and)
 doing business as FW HAWK SERVICES)
 and FW HAWK TAXES,)
)
 Defendant.)

Case Number:

3-07CV0724-N

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against defendant Farai Mushaninga, individually and doing business as FW Hawk Services and FW Hawk Taxes, 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. This is a civil action brought by the United States under IRC §§ 7402(a), 7407, and 7408 to enjoin Mushaninga 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;

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- 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 Mushaniga resides in Dallas, Texas, 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

5. Farai Mushaniga is a paid unenrolled federal tax preparer operating in Dallas, Collin and Denton counties in Texas.

6. Mushaniga 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. Mushaniga 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 461 federal tax returns prepared by Mushaniga for customers in 2006. In addition, the IRS has identified 746 returns that Mushaniga has electronically filed since January 1, 2007.

9. The IRS has identified more than \$900,000 in fraudulent Fuel Tax Credits claimed on returns Mushaniga prepared.

Fuel Tax Credit Fraud

10. Mushaniga 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 Mushaniga 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

11. 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, Mushaniga improperly claims the Fuel Tax Credit for his customers for purported personal or business motor fuel purchases.

12. 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>).

13. 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>)

14. 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.

15. 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.

Mushaniga’s Fraudulent Claims of the Fuel Tax Credit

16. Mushaniga 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. The IRS has determined that 89% of the 461 federal tax returns Mushaniga prepared for customers in 2006 claimed false Fuel Tax Credits.

17. Mushaniga prepares Forms 4136 for his customers falsely stating that the customer has used gasoline for off-highway business purposes. Mushaniga claimed the credit for city

residents in purported occupations such as cashiers, clerks, cooks, warehouse workers, and administrators.

18. Mushaniga claimed absurdly large credits by falsely reporting purchases of huge quantities of gasoline.

19. For example, Mushaniga fraudulently prepared a return with a reported Fuel Tax Credit for a customer claiming to be a cashier. On the return Mushaniga prepared for this customer, Mushaniga claimed that in 2005 the customer purchased 19,050 gallons of gasoline for off-highway business use. This customer, whose total reported income for the year was \$392, would have to have spent approximately \$41,910 to purchase that volume of gasoline—nearly 110 times her reported total income for the year. Moreover, to use that volume of gasoline, assuming mileage of 20 miles per gallon, this Mushaniga customer would have to have driven 381,000 business miles during the year—which comes to 1,084 miles each day of the year, seven days a week. This example shows the blatantly fraudulent nature of Mushaniga’s use of the Fuel Tax Credit.

20. The following chart shows ten more examples of Mushaniga’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
Supervisor; Dallas, Texas	16,000 gallons	\$35,200	320,000 per year /877 per day	\$25,589	\$2,944	\$3,048

Driver; Dallas, Texas	16,000 gallons	\$35,200	320,000 per year /877 per day	\$5,144	\$2,944	\$2,940
Clerk; Dallas, Texas	15,000 gallons	\$33,000	300,000 per year/822 per day	\$13,148	\$2,760	\$6,050
Clerk; Grand Prairie, Texas	15,000 gallons	\$33,000	300,000 per year/822 per day	\$751	\$2,760	\$2,798
Delivery person; Dallas, Texas	16,000 gallons	\$35,200	320,000 per year /877 per day	\$6,650	\$2,944	\$3,410
Clerk; Mesquite, Texas	15,000 gallons	\$33,000	300,000 per year/822 per day	\$38,870	\$2,760	\$5,878
Clerk; Dallas, Texas	15,000 gallons	\$33,000	300,000 per year/822 per day	\$2,379	\$2,760	\$3,733
Courier; Dallas, Texas	16,000 gallons	\$35,200	320,000 per year /877 per day	\$38,558	\$2,944	\$7,203
Clerk; Dallas, Texas	16,500 gallons	\$36,300	330,000 per year/904 per day	\$1,283	\$3,036	\$3,093
Clerk; Dallas, Texas	16,500 gallons	\$36,300	330,000 per year/904 per day	\$23,270	\$3,036	\$5,275

* Estimated total cost based on \$2.20 per gallon.

** Estimated milage based on 20 miles per gallon.

Harm to the public

21. Mushaniga'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 \$900,000 in refunds based on fraudulent fuel tax credits. While most of these were detected before erroneous refunds were issues, the IRS estimates that it has refunded \$50,000 in error based on these fraudulent returns submitted by Mushaniga.

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

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

24. Mushaniga further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Mushaniga'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 \$38,000.

Other Enjoinable Conduct

25. Mushaniga's fraudulent federal tax return preparation is not limited to preparing returns with bogus Fuel Tax Credits. Mushaniga falsely claims head-of-household filing status, the Lifetime Learning Credit, and the Hope Credit on customers' returns.

26. For example, eligible educational institutions are required to issue each enrolled student a Form 1098-T, Tuition Statement. The IRS reviewed a sample of the returns of individuals on whose returns Mushaniga claimed an education credit, and none of the customers received a Form 1098-T from an eligible educational institution.

27. Mushaniga also prepares federal income tax returns that falsely claim head-of-household reporting status and claim false earned income credits, child tax credits, and schedule A and C deductions.

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

29. Finally, the IRS sent Mushaniga letter on March 21, 2007, requiring, under the authority of IRC § 6107(b), that he provide copies of all of the federal income tax returns that he has prepared on or after December 31, 2004. Mushaniga has failed to respond to the IRC § 6107(b) letter. His failure to respond is conduct subject to penalty under IRC § 6695(d) and therefore subject to injunction under IRC § 7407.

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;
 - 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.

32. Mushaniga 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.

33. Mushaniga'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. In addition, Mushaniga has failed to comply with an IRS request under IRC § 6107(b), which failure is subject to penalty under IRC § 6695 and thus subject to injunction under IRC § 7407.

35. If he is not enjoined, Mushaniga is likely to continue to file false and fraudulent tax returns and to fail to turn over customer information as required by IRC § 6107(b).

36. Mushaniga's continual and repeated conduct subject to an injunction under IRC § 7407 including his failure to respond to an IRS request under IRC § 6107(b), his continual and repeated misapplication of several credits and deductions, and his flagrant misuse of the Fuel Tax

Credit demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Mushaniga'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. Mushaniga prepares federal tax returns for customers that he knows will understate their correct tax liabilities. Mushaniga's conduct is thus subject to a penalty under IRC § 6701.

41. If the Court does not enjoin Mushaniga, 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. Mushaniga, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

45. Unless enjoined, Mushaniga is likely to continue to engage in such improper conduct. If Mushaniga 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 Mushaniga 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 Mushaniga 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 Mushaniga 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 Mushaniga has engaged in conduct subject to penalty under IRC § 6695(d);

D. That the Court find that Farai Mushaniga 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);

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Farai Mushaniga, and all those 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 himself, 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.

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Farai Mushaniga 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 Mushaniga's prior representations and enclose a copy of the permanent injunction against him;

G. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Farai Mushaniga 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;

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

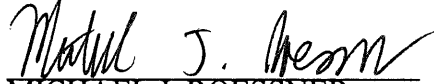
I. That the United States be entitled to conduct discovery to monitor Mushaniga's compliance with the terms of any permanent injunction entered against him; and

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

DATED: April 24, 2007

Respectfully submitted,

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