

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
CECIL A. COLLIER)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America, by undersigned counsel, alleges as follows:

General Allegations

1. The United States brings this complaint to enjoin Cecil A. Collier (“Collier”) from directly or indirectly:
 - (a) preparing or assisting in the preparation of any other person’s federal income tax return, amended return, or other related documents or forms;
 - (b) preparing or assisting in the preparation of federal tax returns or amended returns that he knows will result in the understatement of any tax liability or the overstatement of federal tax refunds;
 - (c) engaging in any conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695; or
 - (d) engaging in any fraudulent or deceptive conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. 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 of the United States under 26 U.S.C. §§ 7401 and 7407.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402.

4. Venue is proper in this Court pursuant to 26 U.S.C. § 7407 and 28 U.S.C. § 1391 because Collier resides and has his principal place of business within this judicial district.

Collier's Experience and Extent of Return Preparation

5. Collier has a G.E.D. and attended Columbus Technical College for two years.

6. In 2006 or 2007, Collier opened his own business preparing tax returns for others. Collier has prepared returns since at least 2007, and continues to prepare tax returns.

7. Collier operates under the trade name "Cairo Fast Tax" ("Cairo"). The business is open from December 26 to April 15 each year. The rest of the year Collier paints houses in the Columbus, Georgia area.

8. In total, for the taxable years 2006 through 2009, Collier—or someone hired by him and working at his direction—prepared at least 3,543 federal income tax returns.

9. For the 2010 tax season, Collier hired his niece to help prepare returns. He also plans to hire his son for the 2011 tax season. Collier has hired various family members to work for him since he started Cairo.

10. Collier signs all of the returns prepared by Cairo using his social security number as the preparer identification number.

11. Collier has failed to file a personal income tax return for himself since 2004.

Collier's Schemes to Generate Overstated Refunds

12. Collier has used at least two schemes to generate erroneously large refunds for his clients. Both schemes generate false or overstated claims to the credit provided under 26 U.S.C. § 32, i.e. the Earned Income Tax Credit ("EITC"), and generate correspondingly excessive refunds. The EITC is a refundable credit, which means that it can generate a refund exceeding the amount of income tax paid by an individual taxpayer. Therefore, the false or overstated EITC claims reported by Collier on his clients' returns can generate refunds, regardless of whether the individual client paid any taxes during the year.

13. For clients with little or no income, Collier typically prepares returns using these schemes to falsely maximize their claim to the EITC.

14. Ninety-nine percent (99%) of the returns prepared and signed by Cairo have sought a refund.

15. Of the returns prepared and signed by Cairo, 89 percent processed by the IRS in the 2007 calendar year claimed the EITC, 87 percent processed in 2008 claimed the EITC, and 90 percent processed in 2009 and 2010 claimed the EITC.

16. Based upon a review of hundreds of returns transmitted by Cairo, it is believed that almost all of the EITC credits claimed are false or overstated.

17. One of Collier's schemes is to falsely claim dependent or qualifying children, which increases the maximum EITC which can be claimed. The other scheme is to prepare returns which falsely overstate his client's earned income, which creates a larger EITC than the individual is entitled to under the Internal Revenue Code.

18. Beginning with the 2006 tax year, Collier has repeatedly and regularly prepared returns utilizing at least one of the schemes referred to in paragraph 17, above.

19. Collier knew or should have known the positions taken on returns as a result of the schemes referred to in paragraph 17, above, were unreasonable.

20. Collier failed to satisfy the due diligence requirements for preparing returns in which the EITC is claimed. Pursuant to Treas. Reg. § 1.6695-2(b), a preparer has a duty to exercise due diligence in determining a taxpayer's eligibility for the EITC, including a duty to make reasonable inquiries if information provided by a taxpayer appears to be incorrect, incomplete, or inconsistent, as well as to contemporaneously document his file with respect to those inquiries.

21. On March 22, 2010, the IRS assessed penalties against Collier, pursuant to 26 U.S.C. § 6695(g), in the amount of \$37,300 for failure to satisfy the EITC due diligence requirements. These penalties resulted from a due diligence examination performed on 392 returns prepared for the 2008 tax year. Of the 392 returns that were reviewed by the IRS, Collier failed to be diligent in determining eligibility for the EITC on 373 returns. Collier has made no effort to pay the assessed penalty.

22. On December 14, 2010, the IRS met with Collier to determine whether Collier was satisfying the EITC due diligence requirements after penalties, described in paragraph 21 above, were assessed against him. After reviewing 10 of Collier's client files, the IRS determined that Collier was still failing to document the eligibility of EITC "qualifying dependents" claimed by his clients.

First EITC Scheme: Falsely Claiming Dependents

23. The maximum EITC which can be claimed increases based on the number of dependent or qualifying children a taxpayer claims.

24. Collier obtained fraudulent EITC refunds for his clients by falsely claiming dependents or qualifying children for his clients. Several specific examples are listed below:

(a) A 2009 return prepared by Cairo on behalf of Tammy Bryant (“Bryant”) claims a “brother” who was born in 1960 as a qualifying child. Further investigation has shown that the brother paid mortgage interest in the amount of \$4,414 during 2009 and that the “brother” owns the property where the taxpayer filing the return resides.

(b) A 2009 return prepared by Cairo on behalf of Lee Johnson (“Johnson”) lists three qualifying children with the relationships of “sister,” “son,” and “daughter.” Further investigation has shown that the taxpayer filing the return is not the father of the children listed as “son” and “daughter.” In addition, the individual listed as “sister” filed her own 2007 federal income tax return listing the same “son” and “daughter.” An IRS employee contacted Johnson, who confirmed that the “daughter” was actually the daughter of a woman that he lived with but was not married to, and that Collier told him that he could include this “daughter” as a qualifying child for purposes of the EITC.

(c) A 2009 return prepared by Cairo on behalf of Ferlisha Harrell (“Harrell”) lists three qualifying children with the relationship of “son,” “daughter,” and “brother.” Further research has shown that the child with the relationship of “brother” was born in 1987 and filed a tax return for the 2008 tax year claiming himself as a dependent. There was no evidence in Cairo’s file indicating that this “brother” was a full-time student or disabled.

Second EITC Scheme: Overstated Income

25. The amount of the EITC increases in proportion to a taxpayer's wages or other earned income up to a certain dollar amount. As such, there is a "plateau" of earned income amounts which will result in the maximum possible EITC credit for each taxpayer. Because that "plateau" amount may be more than the amount of income the taxpayer actually earned, a return falsely overstating earned income will, in certain circumstances, generate a larger refund.

26. Collier obtained fraudulent EITC refunds for his clients by reporting fictitious wages to obtain the maximum possible credit. Several specific examples are listed below:

(a) The file of Cairo client Harrell included a handwritten Form 1099-Misc., which reported \$12,644 in "other income." Harrell's Schedule C reported \$0 in business expenses. The payer's federal identification number, handwritten on the Form 1099, is actually the social security number of a policeman residing in Camden, SC. The payer listed on the Form 1099 is "Spotless Cleaning" located in Bainbridge, GA. An IRS employee contacted the owner of Spotless Cleaning Service in Bainbridge, who stated that Spotless had never issued a Form 1099 to Harrell and had never heard of Harrell. The address for Spotless on the Form 1099 listed a mailing address with a P.O. Box. The owner of Spotless confirmed that the company never used a P.O. Box and that all mail was sent to its street address. Spotless also confirmed that it used an owner's social security number as the identifying number for the business, not the federal identification number listed on the Form 1099.

(b) The file of Cairo client Lonnie Brooks ("Brooks) included a handwritten Form 1099-Misc., which reported \$10,536 in "other income." Brooks's Schedule C reported \$0 in business expenses. The payer's identification number listed on the Form 1099 is actually the

social security number of a bank teller located in Frisco, TX. The name of the payer listed on the Form 1099, however, is an individual located in Cairo, GA.

(c) The file of Cairo client Johnson included a handwritten Form 1099-Misc., which reported \$10,787 in “other income.” The payer’s identification number listed on the Form 1099 is the primary social security number of a married couple located in Byron, GA. The name of the payer listed on the form is Big Oak Builders located in Thomasville, GA. Further research has shown that the street address located on the Form 1099 does not exist. A company with a similar name, Big Oak Electrical Services, LLC is located in the Thomasville, GA vicinity. An IRS employee contacted Johnson, who told the IRS that Collier prepared the Form 1099 in his office and told Johnson not to say anything. Johnson told the IRS that people that do not work have their taxes prepared by Collier and leave his office with a check for \$5,000.

(d) Several Cairo client files contained copies of Form 4852 (Substitute for W-2), or pay stubs used to report wages on federal income tax returns. In many of these cases, the amount of income listed on the returns did not agree with the wages reported on the W-2s filed by employers with the IRS.

Harm to the United States

27. Collier has caused substantial revenue losses to the United States.

28. Collier’s tax preparation may have caused government losses exceeding \$12 million dollars. Of the 3,543 returns prepared by Collier or at his direction since 2006, over 99% claimed refunds and at least 87% claimed an EITC. While some of those refunds may have been legitimate, the vast majority of those refunds are likely incorrect because of the schemes used by Collier and described herein.

29. As of December 23, 2010, 287 of Cairo's returns have been audited for EITC issues. Ninety-eight percent of the audited returns have been adjusted, resulting in adjustments of \$1,192,425, averaging \$4,155 of falsified refund per return.

30. Aside from the direct financial loss from Collier's schemes, the IRS is also irreparably harmed by his improper conduct. The IRS must continue to devote scarce resources to detect and examine inaccurate returns prepared by Collier on behalf of others. The IRS must also expend valuable resources in an attempt to recover the erroneous refunds paid to Collier's clients. In particular, Collier's failure to fulfill his due diligence requirement for preparing returns in which the EITC is claimed imposes a tremendous burden on the IRS, as the determination of whether a person is entitled to the EITC involves factual questions which can be time-consuming and expensive to investigate.

31. In light of the number of the returns prepared by Collier, the high percentage of returns understating tax liability, the great financial harm to the United States, and the nature of the schemes employed by him to effectuate this end, it is necessary to permanently enjoin him from continuing to prepare tax returns.

COUNT I - INJUNCTION UNDER 26 U.S.C. § 7407

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

33. 26 U.S.C. § 7407 authorizes a District Court to enjoin a person who is a tax return preparer from engaging in certain prohibited conduct or from further acting as a tax return preparer. The prohibited conduct justifying an objection includes, among other things, the following:

(a) engaging in any conduct subject to penalty under 26 U.S.C. § 6694, which penalizes a return preparer who prepares a return that contains an understatement of tax liability or an overstatement of the net amount creditable or refundable with respect to any such tax that is due to an unreasonable position which the return preparer knew or should have known was unreasonable;

(b) engaging in conduct subject to penalty under 26 U.S.C. § 6695(g), which penalizes a tax return preparer for failing to exercise due diligence in determining eligibility for the EITC; and

(c) engaging in any other fraudulent or deceptive conduct which substantially interferes with the popular administration of the Internal Revenue Laws.

34. In order for a court to issue such an injunction, the court must find that:

- (a) The tax return preparer engaged in the prohibited conduct, and
- (b) Injunctive relief is appropriate to prevent the recurrence of such conduct.

35. The court may permanently enjoin a person from acting as a tax return preparer if it finds that the preparer has continually and repeatedly engaged in conduct prohibited by the statute and that a narrower injunction, e.g. only against the schemes identified herein, would not be sufficient to prevent the person's interference with the proper administration of the federal tax laws.

36. Collier has repeatedly and continually prepared or submitted returns that overstated the EITC and the refund owed to the taxpayer due to positions he knew or should have known were unreasonable and subject to penalty under 26 U.S.C. § 6694(a).

37. Collier has repeatedly and continually failed to exercise due diligence in determining his customers' eligibility for the EITC and prepared returns incorrectly claiming the EITC.

38. If Collier is not enjoined, he will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and that otherwise substantially interferes with the enforcement and administration of the internal revenue laws.

39. A narrow injunction against only Collier's currently identified schemes would be insufficient to prevent his interference with the proper administration of the federal tax laws, because he has understated his clients' liability in the vast majority of returns he prepared and used different schemes to do so. Indeed, legitimate return preparation appears to be an insignificant part of his business. Moreover, despite the IRS imposing \$37,300 in penalties upon him in 2009, Collier made no real attempt to correct his past practices and continued to ignore his due diligence duties in 2010.

40. Only a permanent injunction is sufficient to prevent future harm. If Collier is not permanently enjoined from preparing tax returns, the IRS will be required to spend additional resources to investigate, analyze, and determine additional schemes he may devise in the future.

41. Because Collier engaged in conduct prohibited by 26 U.S.C. § 7407(b)(1), he is subject to an injunction for these activities.

42. Moreover, because Collier has repeatedly and continually engaged in activities subject to injunction under 26 U.S.C. § 7407(b)(1), and because a narrower injunction would not be sufficient to prevent his interference with the proper administration of the federal tax laws, he should be permanently enjoined from acting as an income tax preparer.

COUNT II - INJUNCTION UNDER 26 U.S.C. § 7402

43. The United States incorporates by reference the allegations in paragraphs 1 through 42.

44. 26 U.S.C. § 7402(a) authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of internal revenue laws.

45. Collier, as described above, has repeatedly and continually engaged in conduct that interferes substantially with the administration and enforcement of internal revenue laws.

46. If Collier continues to act as a tax return preparer, his conduct will result in irreparable harm to the United States, and the United States has no adequate remedy at law.

47. Collier's conduct has caused and will continue to cause substantial tax losses to the United States Treasury, much of which may be undiscovered and unrecoverable. Moreover, unless Collier is enjoined from preparing returns, the IRS will have to devote substantial unrecoverable time and resources to auditing his clients individually to detect future returns in which false, fraudulent, or overstated refunds are claimed.

48. The detection and audit of erroneous EITC refund claims filed by Collier's customers will place a serious burden on IRS resources.

49. If Collier is not enjoined, he will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and that otherwise substantially interferes with the enforcement and administration of the internal revenue laws.

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

A. That the Court find that Collier has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent recurrence of that conduct.

B. That the Court find that Collier has repeatedly and continually engaged in conduct that substantially interferes with the proper enforcement and administration of the internal revenue laws, and that injunctive relief against him is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a).

C. That the Court enter a permanent injunction prohibiting Collier and any other person working in concert and/or participation with him from directly or indirectly:

1. preparing or assisting in the preparation of any other person's federal income tax returns, amended returns, and other related documents and forms for others;
2. preparing or assisting in the preparation of federal tax returns or amended returns that he knows will result in the understatement of any tax liability or the overstatement of federal tax refunds;
3. engaging in any conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695; or
4. engaging in any fraudulent or deceptive conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

D. That the Court enter an injunction requiring Collier:

1. At his own expense, to send by certified mail, return receipt requested, a copy of the final injunction entered against him in this action to each person for whom he has prepared federal income tax returns or any other federal tax forms after January 1, 2006;

2. To turn over to the United States copies of all returns or claims for refund that he prepared for customers after January 1, 2006;

3. To turn over to the United States a list with the name, address, telephone number, email address (if known), and social security number or other taxpayer identification number of all customers for whom he prepared returns after January 1, 2006;

4. Within 45 days of entry of the final injunction in his action, to file a sworn statement with the Court evidencing his compliance with the foregoing directives; and

5. To keep records of his compliance with the foregoing directives, which may be produced to the Court, if requested, or to the United States pursuant to paragraph F, below.

E. That the Court enter an order allowing the United States to monitor Collier's compliance with the injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

F. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated: February 21, 2011

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