

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 3:14-cv-0318  
 )  
 RODGER S. THOMAS, SR., )  
 )  
 Defendant. )  
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**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION**

The United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this suit to enjoin the Defendant, Rodger S. Thomas, Sr., from directly or indirectly:

- (a) Engaging in any conduct or activity subject to penalty under section 6701 of the Internal Revenue Code, *i.e.*, preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the Defendant knows will (if so used) result in the understatement of tax liability;
- (b) Engaging in any conduct or activity subject to penalty under section 6694 of the Internal Revenue Code by understating taxpayers' liabilities;
- (c) Engaging in any conduct or activity subject to penalty under section 6695 of the Internal Revenue Code by failing to sign the returns that he prepared, failing to furnish an identifying number, failing to retain a copy or list of the tax returns that he prepared, failing to file correct information returns, and negotiating return checks; and
- (d) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

1. Jurisdiction over this action is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and sections 7402(a), 7407 and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (“IRC”).

2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the Defendant, Thomas S. Rodger, Sr., resides in Dayton, Montgomery County, Ohio.

### **Defendant**

3. The Defendant, Rodger S. Thomas, Sr., is a resident of Dayton, Ohio. On March 7, 2014, Thomas was released from the custody of the Bureau of Prisons after serving a sentence of 24 months for violations of 26 U.S.C. §§ 7206(1),(2).

### **Thomas’ Tax Return Business**

4. Prior to his incarceration, Thomas was an income tax return preparer within the meaning of IRC § 7701(a)(36). He prepared returns for compensation, usually charging a fee equal to 10% of any refund that he can secure for his customers.

5. Thomas first began preparing tax returns when he was sixteen years old in the Dayton, Ohio area. He obtained a Bachelor of Science Degree in Electrical Engineering from the General Motors Institute in 1977, as well as a Master’s Degree in Business Administration from the University of Dayton in 1987. In 1993, Thomas began preparing federal tax returns for compensation while simultaneously holding jobs as the operator of a janitorial service, a truck driver, and as the owner of a trucking company, Ramjet Express.

6. Thomas would only prepare returns for customers whom he personally knew, or were specifically referred to him. These customers came to Thomas because he had a reputation for securing larger tax refunds for his customers than other return preparers.

7. Between 2006 and 2009, Thomas operated an income tax preparation service out of his residence in Dayton, Ohio, and prepared over 300 individual federal income tax returns.

#### **IRS Investigation of Thomas**

8. From 2006 through 2009, Thomas prepared tax returns that reported false expenses and deductions in order to offset his customers' income. He also generated fraudulent Forms 1099 in order to increase his customers' gross income, thereby making them eligible for the earned income tax credit ("EITC"). Thomas also identified individuals who did not file tax returns and filed fictitious returns on their behalf using their stolen Taxpayer Identification Numbers ("TINs"), and arranged for the tax refunds to be deposited into his own bank account.

9. Between 2006 and 2009, Thomas continually and repeatedly prepared and filed federal income tax returns that contained fabricated Forms 1096 (Annual Summary and Transmittal of U.S. Information Returns); Forms 1099-MISC (Miscellaneous Income); Schedules C (Profit and Loss from Business); and Schedules A (Itemized Deductions).

10. The Defendant prepared paper tax returns for his customers, but failed or refused to sign the returns that he prepared. He also failed or refused to furnish a Preparer Tax Identification Number (PTIN) on the returns that he prepared. He did not file an information return notifying the Internal Revenue Service that he was engaged in the tax return preparation business.

11. Upon information and belief, Thomas destroyed all records he maintained in connection with his return preparation business.

12. As a direct result of the false returns that Thomas prepared for his customers, they have filed returns that understate their federal income tax liabilities and claim false or inflated income tax refunds.

**Fictitious Schedule C (Profit and Loss from Business) Business Losses**

13. Thomas continually and repeatedly prepared federal income tax returns for customers that falsely claimed that they were engaged in businesses in order to report non-existent Schedule C Business losses. This reduced the taxable income shown on his customers' returns, and enabled them to claim tax refunds to which they were not otherwise entitled.

14. For example, Thomas prepared the 2007 return of a woman he was introduced to through a previous customer. Thomas prepared a Schedule C that falsely indicated that the customer owned and operated a lawn care service and trucking business, and had expenses totaling \$18,270.54. The false Schedule C indicated that the customer put a truck in service and accumulated 15,000 miles during the 2007 tax year. It also indicated that the customer's husband incurred \$6,248.52 in expenses attending driving school. The customer acknowledged that neither she nor her husband ever owned or operated a business, and that the entire Schedule C was false.

15. Additionally, Thomas attached a false Schedule A listing "Gifts to Charity" in the amount of \$6,464.00 and "Job Expense and Miscellaneous Deductions" in the amount of \$9,768.00. The Schedule A listed \$17,918.17 in deductions to be carried over to the 1040 Form. The customer stated that she believes that no more than \$300 of these deductions were legitimate. The customer paid Thomas approximately \$350 to prepare her return.

**Fictitious Schedule A (Itemized Deductions) Deductions**

16. Thomas continually and repeatedly prepared federal income tax returns that claimed deductions for fictitious charitable contributions and false Schedule A itemized deductions in order to reduce the taxable income reported on his customers' returns and enable them to claim tax refunds to which they were not otherwise entitled.

17. For example, in preparing a customer's 2007 and 2008 tax returns, Thomas told her that he was familiar with deductions that the IRS didn't want the American taxpayers to know about. Thomas also claimed that he could obtain a much larger refund for his customers than other commercial tax preparers.

18. Thomas prepared a false Schedule A claiming "Gifts by Cash or Check" in the amounts of \$6,298.49 and \$5,895.42, respectively, on the customer's 2007 and 2008 tax returns. The Schedule A also claimed "Unreimbursed Employee Expenses" in the amounts of \$11,443.46 and \$10,984.89 respectively. Thomas did not request that the customer provide receipts for these figures, and the customer did not have any receipts to justify the deductions.

19. Thomas also prepared false Schedules C for the customer's 2007 and 2008 tax returns, indicating that she owned and operated a janitorial business. The customer never owned or operated a janitorial business, and never provided documents or receipts to Thomas to justify the figures entered on the Schedule C.

20. The customer received an inflated tax refund of \$5,206 in 2007 and \$4,433.35 in 2008, and paid Thomas \$500 and \$350 for preparing the respective tax returns.

#### **False Forms 2441 and Fictitious Child and Dependent Care Expenses**

21. Thomas continually and repeatedly prepared federal income tax returns that inflated his customers' tax credits for child and dependent care expenses. By overstating these expenses, Thomas was able to secure inflated refunds for his customers to which they were not otherwise entitled.

22. For example, Thomas prepared a customer's 2008 tax return that claimed expenses related to YMCA daycare. The customer informed the IRS that she did not pay any amount for child care for either of her children.

23. Thomas also created a false Schedule C for the customer, claiming \$2,335.00 in false business expenses. He also fabricated a \$5,680.45 claim for unreimbursed employee expenses. The customer indicated that both of these claims were fictitious. The customer received a refund for \$4,957.98, which was applied to her outstanding tax liability. The customer paid Thomas over \$600 for his services.

**False Forms 1099 and 1096 and Thomas' False Personal Tax Returns**

24. Thomas continually and repeatedly prepared federal income tax returns that included false Forms 1099 MISC. in order to inflate his customers' income and maximize their Earned Income Tax Credits ("EITC"). Additionally, Thomas would prepare fictitious Forms 1096 and file them, along with false Forms 1099 MISC, with the IRS. Thomas would then take these miscellaneous wages and include them on his personal Schedules C as expenses incurred by his business Ramjet Express.

25. For example, Thomas prepared the 2007 tax return for a customer, attaching a false Form 1099 MISC reflecting that the customer had received \$7,115.00 from Ramjet Express in non-employee compensation. The customer never worked for Ramjet Express, and never earned the \$7,115.00 listed on the Form 1099 Misc. The customer did not recall the Form 1099 MISC being attached to her return when she signed it. She did not give Thomas permission to attach the Form 1099 MISC to her 2007 tax return. The customer received an inflated federal tax refund of \$3,894.05.

26. On the Schedule C attached to his personal 2007 tax return, Thomas falsely reported that he paid \$45,526.04 in non-employee compensation to six of his customers during 2007. These wages were never actually paid to his customers. He used these expenses to decrease his taxable income and receive a larger tax refund than to what he was entitled.

27. On his 2008 tax return, Defendant falsely reported paying \$12,967.00 in non-employee compensation. However, Thomas did not pay any non-employee compensation in 2008. He used this expense to decrease his taxable income and receive a larger tax refund than to what he was entitled.

**Filing False Forms 1040 and Depositing Funds in Personal Bank Account**

28. Thomas continually and repeatedly prepared federal income tax returns for persons whom he knew did not file returns. He would then arrange for any tax refunds generated by these tax returns to be deposited into his personal bank account.

29. For example, in 2006, 2007, and 2008 Thomas prepared federal income tax returns for a woman who, purportedly, had not filed returns in the past 25 years. The returns generated refunds for \$1,517.54, \$1,581.34, and \$2,991.82, respectively, which were deposited into Thomas's personal bank account. The routing number and bank account number provided on the woman's fictitious tax return matched those used on Thomas' personal income tax returns from 2007 and 2008.

**Thomas diverted customers' refund checks into his own bank account  
in violation of IRC § 6695(f)**

30. Section § 6695(f) of the Internal Revenue Code imposes a \$500 penalty on tax return preparers such as Thomas who negotiate a tax refund check (including direct deposit) into an account with the name of the preparer as the name (or one of the names) on the account. The penalty applies even if the customer has designated the return preparer as his or her authorized representative pursuant to power of attorney.

31. On at least five occasions, Thomas deposited his customers' refund checks into his own bank account in violation of IRC § 6695(f).

### **Harm to the Government**

32. As evidenced by the results of the IRS examinations over 25 of his customers' federal income tax returns for 2006, 2007, and 2008 tax years, Thomas has engaged in a pattern of preparing returns with inflated and unsubstantiated Schedule C expenses and losses, Schedule A itemized deductions, and Form 1099-MISC.

33. Because the Defendant destroyed all records pertaining to his tax return preparation business, and failed to sign his name to the tax returns he prepared, an exact dollar amount of revenue loss attributable to Thomas' actions is impossible to calculate. However, the United States can establish that Thomas has caused a tax revenue loss to the Government of at least \$126,121.00.

34. Defendant was released from custody on March 7, 2014. He has indicated to the IRS that he intends to continue preparing tax returns, and refuses to voluntarily cease his tax preparation activities.

### **Count I: Injunction under IRC § 7407**

35. The United States incorporates by reference the allegations made in paragraphs 1 through 34, above, as if fully set forth herein.

36. IRC § 7407 authorizes a court to enjoin a person from, among things:

(1) engaging in conduct subject to penalty under IRC § 6694 (which penalizes a return preparer who prepares or submits a return or claim that contains a frivolous or unrealistic position, or who willfully attempts to understate a customer's tax liability on a return or claim, or who makes an understatement on a return due to reckless or intentional disregard of rules or regulations);



(2) engaging in conduct subject to penalty under IRC § 6695 (which penalizes a return preparer who fails to sign the returns that he prepared, furnish an identifying number, retain a copy or list of the tax returns that he prepared, file correct information returns, or who negotiates return checks);

(3) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

37. Thomas has continually and repeatedly prepared and submitted federal tax returns that contain unrealistic and frivolous positions, and willfully attempted to understate his customers' tax liabilities, and has thus engaged in conduct subject to penalty under IRC § 6694.

38. Thomas has continually and repeatedly failed to sign the returns that he prepared, furnish an identifying number, retain a copy or list of the tax returns that he prepared, and file correct information returns in violation of IRC § 6695. He has also continually and repeatedly negotiated refund checks and deposited them into his personal bank account in violation of IRC § 6695.

39. Thomas has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

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

40. The United States incorporates by reference the allegations made in paragraphs 1 through 39, above, as if fully set forth herein.

41. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC § 6701 from further engaging in such conduct. IRC § 6701 imposes a penalty on any person who aids in the preparation of any portion of a return or other document, who knows the portion or document will be used in connection with any material matter under

the internal revenue laws, and who knows the portion or document (if so used) would result in understating another person's tax liability.

42. Thomas prepared tax returns and other documents for customers that were intended to be used (and were used) in connection with material matters arising under the internal revenue laws.

43. Thomas knew that these returns and other documents would result in understatements of his customers' tax liabilities. Thomas thus engaged in conduct subject to penalty under IRC § 6701.

### **Count III: Injunction under IRC § 7402**

44. The United States incorporates by reference the allegations made in paragraphs 1 through 43, above, as if fully set forth herein.

45. IRC § 7402(a) authorizes courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." The remedies available to the United States under section 7402(a) "are in addition to and not exclusive of any and all other remedies of the United States in such courts..." IRC § 7402(a).

46. Thomas has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless he is enjoined.

47. Thomas' conduct caused irreparable injury to the United States and an injunction under IRC § 7402(a) is necessary and appropriate. If Thomas is not enjoined, the United States will suffer irreparable injury by erroneously providing tax refunds to persons who are not entitled to receive them, and by taxpayers who are not reporting and paying the correct amount of taxes as a result of Thomas' actions as a tax return preparer.

48. Unless Thomas is enjoined, the IRS will have to devote substantial time and resources to identifying and locating all of his customers, and then examine his customers' tax returns and liabilities. Pursuing all of Thomas' customers may be impossible given the IRS's limited resources.

WHEREFORE, the Plaintiff, the United States of America, respectfully prays as follows:

- A. That the Court find the Defendant, Rodger S. Thomas, Sr., has engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and that injunctive relief is appropriate under IRC §7407 to prohibit Thomas from engaging in further such conduct;
- B. That the Court find that the Defendant, Rodger S. Thomas, Sr., has engaged in conduct subject to penalty under IRC §6701, and that injunctive relief is appropriate under IRC § 7408 to prevent him from engaging in further such conduct;
- C. That the Court find that the Defendant, Rodger S. Thomas, Sr., has engaged in conduct that substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief against him 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 and 7407, enter a permanent injunction requiring the Defendant to, Rodger S. Thomas, Sr. to identify himself on returns using his name and PTIN or Social Security Number, make a list of the names of individuals for whom he prepares federal tax returns or claims for refund, file correct information returns, and provide for inspection by the Internal Revenue Service the list of customers upon demand of the Government;

- E. That the Court, pursuant to § 7402(a), enter a mandatory injunction requiring the Defendant, Rodger S. Thomas, Sr., within fifteen days of the entry of any injunction against him in this action, to contact by United States mail all persons for whom he has prepared a federal tax return or claim for refund since January 1, 2006, to inform them of the Court's findings in this matter, and enclose a copy of the injunction entered against him;
- F. That the Court authorize the United States to engage in post-judgment discovery to monitor compliance with the terms of any injunction entered against the Defendant, Rodger S. Thomas, Sr.;
- G. That the Court retain jurisdiction over this civil action for the purpose of enforcing the terms of any injunction entered against the Defendant, Rodger S. Thomas, Sr.;
- H. That if the Defendant, Rodger S. Thomas, Sr. is found in violation of this Court's injunction, that the Court enter a permanent injunction barring the Defendant, Rodger S. Thomas, from acting as a federal income tax return preparer and from preparing or filing returns for others, and from representing customers before the IRS; and
- I. For such other and further relief as the Court may deem to be appropriate.

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Dated: September 25, 2014

TAMARA W. ASHFORD  
Acting Assistant Attorney General

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United States Attorney

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