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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ANTHONY McBRYDE,)
d/b/a ANTHONY McBRYDE &)
ASSOCIATES,)
)
Defendant.)

U.S. DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK, VA

Civil No. 2:05cv527

COMPLAINT FOR PERMANENT INJUNCTION

The United States of America complains as follows against defendant, Anthony
McBryde, doing business as Anthony McBryde & Associates:

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 Internal Revenue Code (I.R.C.) (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
I.R.C. §§ 7402(a), 7407, and 7408.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because McBryde resides
within this jurisdictional district in Norfolk.

McBryde's Activities

4. Doing business as Anthony McBryde & Associates, McBryde prepares or assists in the
preparation of fraudulent federal income tax returns (Forms 1040) and amended federal income

tax returns (Forms 1040X) for customers in Hampton Roads, including Norfolk, Suffolk, Chesapeake, Portsmouth, and Virginia Beach.

5. On at least 187 returns and amended returns that he has prepared and filed for customers since August 2003, McBryde has claimed an improper deduction that he calls the “claim of right” deduction.

6. McBryde calculates the “claim of right” deduction by subtracting the customer’s other deductions and exemptions from his or her taxable income and claiming an amount equal to the remaining income, or a portion of it, as a “claim of right” deduction, thus purporting to eliminate or substantially reduce the customer’s taxable income.

7. On many of these returns, McBryde cites I.R.C. § 1341 in support of the “claim of right” deduction; in others, he simply uses the term “claim of right.”

8. I.R.C. § 1341, however, does not support McBryde’s “claim of right” deductions, nor does any other section of the Internal Revenue Code.

9. In addition to his returns asserting a “claim of right” deduction, McBryde prepares and files for customers returns claiming improper deductions under I.R.C. §§ 162 (Trade or Business Expenses), 183 (Activities Not Engaged in for Profit) or 212 (Expenses for Production of Income).

10. These improper deductions, like his “claim of right” deductions, eliminate or substantially reduce his customers’ taxable income.

11. McBryde has prepared and filed returns falsely reporting a customer’s income as a negative amount and falsely labeling the customer’s income as “NON TAXABLE INCOME - LABOR ONLY.”

12. On his own federal income tax return for tax year 2000, McBryde reported his income as \$0, while at the same time attaching an IRS Form W-2 that showed he had earned \$24,690.35.

13. On several returns he has prepared and filed for customers, McBryde has improperly claimed deductions for non-deductible residential utilities such as gas and electricity.

14. Even after the IRS informed him that the returns he prepared and filed for customers contained improper deductions, McBryde has persisted in filing such returns.

15. McBryde charges his customers a flat rate of approximately \$60 to \$130 per return, plus an additional contingent fee of up to 33% of any tax refund his customers receive.

16. McBryde signs his customers' names to their returns.

17. McBryde files returns for customers without furnishing a copy of the returns to the customers.

18. McBryde fails to sign the returns he prepares and files for customers.

19. McBryde fails to furnish his identifying number on the returns he prepares and files for customers.

20. McBryde fails to retain copies of all the returns he has prepared and filed for customers and fails to maintain a list of customers' names and taxpayer identification numbers.

21. The IRS issued an administrative summons to McBryde on June 24, 2004 for documents and testimony.

22. McBryde refused to meet with the IRS or produce the summoned documents until Magistrate Judge James E. Bradberry, in *United States v. Anthony McBryde*, Docket No. 04-MC-19, ordered him to do so.

23. McBryde has informed the IRS that he does not maintain records of the customers for whom he prepares returns.

24. McBryde kept copies of only some of the returns he has prepared and filed on behalf of customers.

25. The IRS has identified a total of 187 returns—thirty-seven Forms 1040 and 150 Forms 1040X (amended returns)—that McBryde prepared and filed claiming the fraudulent “claim of right” deduction. This total does not include his other frivolous returns.

26. The 150 “claim of right” amended returns (Forms 1040X) the IRS has identified claimed a total of \$854,121 in refunds.

27. The IRS erroneously issued \$102,299.74 of these refunds before detecting the improper deductions.

28. The thirty-seven “claim of right” returns (Forms 1040) the IRS has identified claimed a total of \$727,494 in improper “claim of right” deductions, resulting in an estimated understatement of tax of \$87,128.

Count I
Injunction under I.R.C. § 7407

29. The United States incorporates by reference the allegations in paragraphs 1-28.

30. I.R.C. § 7407 authorizes a district court to enjoin an income tax preparer from engaging in conduct subject to penalty under I.R.C. §§ 6694 or 6695 or in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

31. If a court finds that a person has continually or repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695 or in fraudulent or deceptive conduct substantially interfering with the proper administration of the internal revenue laws, and that a narrower injunction prohibiting only that specific conduct would not be sufficient to prevent the person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as an income tax return preparer.

32. I.R.C. § 6694(a) penalizes a return preparer who understates a taxpayer's liability based on a position for which there was no realistic possibility of being sustained on the merits, if the return preparer knew or reasonably should have known of the unrealistic position and the unrealistic position either was not disclosed as required by I.R.C. § 6662(d)(2)(B)(ii) or was frivolous.

33. I.R.C. § 6694(b) penalizes a return preparer who understates a taxpayer's liability due to willfulness, recklessness, or an intentional disregard of rules and regulations.

34. I.R.C. § 6695 penalizes a return preparer who fails to, *inter alia*:

(a) furnish a copy of the return to the taxpayer, as required by I.R.C. § 6107(a),

(b) sign the return,

(c) furnish the return preparer's own identifying number on the return, as required by I.R.C. § 6109(a)(4), or

(d) as required by I.R.C. § 6107(b), retain a copy of the returns he prepares or a list of the names and taxpayer identification numbers of those for whom he prepares returns, and make the copies or list available to the IRS upon request.

35. McBryde violates I.R.C. § 6694 by preparing federal tax returns that understate his customers' liabilities based on positions for which there is no realistic possibility of being sustained on the merits: specifically, his patently frivolous misinterpretation of I.R.C. §§ 162, 183, 212, and 1341, his position that a residential utility bills are deductible, and other frivolous positions.

36. McBryde knew of the unrealistic positions taken in the returns he prepared and filed for customers.

37. The unrealistic positions McBryde took were frivolous and without a reasonable basis.

38. McBryde violates I.R.C. § 6695 by failing to furnish copies of returns to his customers, failing to sign returns, failing to furnish his own identifying number on returns, failing to retain either a copy of all the returns he prepares or a list of the names and taxpayer identification numbers of those for whom he prepares returns, and failing to produce to the IRS either a copy of all the returns he prepared or a list of the persons for whom he prepared returns.

39. McBryde's repeated violations of I.R.C. §§ 6694 and 6695 fall within I.R.C. § 7407(b)(1)(A) and (D), and thus are subject to injunction under I.R.C. § 7407.

40. McBryde is likely to continue to prepare fraudulent federal tax returns unless he is enjoined.

41. McBryde's repetition of conduct subject to injunction under I.R.C. § 7407, even after the IRS informed him that his "claim of right" deductions were improper, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent McBryde's

interference with the proper administration of the internal revenue laws and that an injunction permanently barring him from acting as a return preparer is warranted.

Count II
Injunction under I.R.C. § 7408

42. The United States incorporates by reference the allegations in paragraphs 1-41.

43. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

44. I.R.C. § 6701 imposes a penalty on 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 that if it is so used it would result in an understatement of another person's tax liability.

45. McBryde prepares returns that he knows or has reason to believe would be used in connection with a material matter arising under the internal revenue laws—the determination of his customers' tax liabilities—and that result in an understatement of his customers' tax liabilities.

46. Unless enjoined by this court, McBryde is likely to continue to engage in such conduct.

47. Injunctive relief is therefore appropriate under I.R.C. § 7408.

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

48. The United States incorporates by reference the allegations in paragraphs 1 through 47.

49. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing the internal revenue laws.

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

51. The federal income tax returns that McBryde prepares and files with the IRS falsely report his customers' federal income tax liabilities and claim refunds to which the customers are not entitled.

52. By signing customers' signatures on their returns and filing them without furnishing the customers copies, McBryde interferes with the customers truthfully reporting their liabilities to the IRS.

53. McBryde's refusal to identify himself on the returns he prepares and files, and his failure to keep complete customer records and produce them to the IRS, impedes the IRS from identifying his customers and recovering lost revenue from them.

54. McBryde interfered with the enforcement of the internal revenue laws by refusing to answer the IRS's questions or produce requested documents until this Court ordered him to do so.

55. McBryde interferes with the administration of the internal revenue laws by charging a contingent fee for his return preparation, notwithstanding that IRS regulations prohibit contingent fees for the preparation of original tax returns and allow contingent fees for the preparation of amended tax returns only if the preparer reasonably anticipates that they will receive substantive review by the IRS.

56. If McBryde is not enjoined, he is likely to continue to interfere with the enforcement of the internal revenue laws.

57. The United States is harmed by McBryde's tax return preparation service and by his interference with IRS examinations because McBryde's customers are not reporting or paying the correct amount of taxes and because they are claiming, and in some instances receiving, refunds to which they are not entitled.

58. The United States is also harmed because the IRS is forced to devote its limited resources to identifying and recovering this lost revenue from McBryde's customers.

59. The United States will suffer irreparable harm if McBryde is not enjoined because the tax losses he causes with his fraudulent returns will continue to accumulate and may prove to be unrecoverable, and because the IRS will have to continue to devote resources to assessing and collecting his customers' taxes.

60. While the United States will suffer irreparable harm if McBryde is not enjoined, McBryde will not be harmed by being compelled to obey the law.

61. The public interest will be advanced by enjoining McBryde because an injunction will stop his illegal conduct and the harm that conduct is causing.

62. McBryde harms his customers by preparing fraudulent and frivolous returns that lead to additional penalties and interest when the IRS discovers McBryde's errors and assesses taxes against the customers.

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

A. That the Court find that McBryde has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695, and 6701 and that injunctive relief under I.R.C. §§ 7407 and 7408 is necessary and appropriate to prevent recurrence of that conduct;

B. That the Court find that McBryde has interfered with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers;

C. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter a permanent injunction prohibiting McBryde from preparing or assisting in the preparation of federal income tax returns on behalf of any person other than himself;

D. That the Court, pursuant to I.R.C. §§ 7402(a) and 7408, enter a permanent injunction prohibiting McBryde, individually and doing business under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

1. Preparing or assisting in the preparation of documents relating to a matter material to the internal revenue laws, including federal tax returns and related documents, on behalf of any person other than himself;
2. Advising, assisting, or instructing anyone regarding federal taxes;

3. Advising, assisting, or instructing anyone to fail to report any portion of taxable income to the IRS;
4. Engaging in any other activity subject to penalty under I.R.C. § 6701 or any other penalty provision of the Internal Revenue Code; and
5. Engaging in other conduct interfering with the enforcement of the internal revenue laws;

E. That the Court, pursuant to I.R.C. § 7402(a), enter an injunction requiring McBryde to contact by mail, at his expense, all individuals for whom he has prepared returns, or any other tax-related document for submission to the IRS, and inform those individuals of the Court's findings and attach a copy of the permanent injunction against him;

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 6695 enter an injunction requiring McBryde to produce to counsel for the United States a list identifying by name, taxpayer-identification number, address, e-mail address, and telephone number all persons for whom he has prepared federal tax returns and any other tax-related document for submission to the IRS;

G. That the Court, pursuant to I.R.C. § 6695, order McBryde to produce to counsel for the United States copies of all federal tax returns, including amended returns, and any other documents he has prepared for any person for submission to the IRS from January 1, 2000, to the present;

H. That the Court order McBryde to complete the requirements listed *supra* in paragraphs E through G within eleven days of the Court's order and order McBryde to file with

the Court a certificate of compliance with those requirements, signed under penalties of perjury, along with evidence of compliance, within twelve days of the Court's order;


I. That the Court retain jurisdiction over McBryde and this action for the purpose of enforcing any permanent injunction entered against McBryde;

J. That the United States be entitled to conduct discovery for the purpose of monitoring McBryde's compliance with the terms of any permanent injunction entered against him; and


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

Respectfully submitted,

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