IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 12-00893-CV-W-GAF**
	)	
MARK STEVEN HALL,	)	
	)	
Defendant.	)	

ORDER

Presently before the Court is Plaintiff United States of America's (the "Government") Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. (Doc. # 26). The Government moves for summary judgment, requesting the Court grant a permanent injunction prohibiting Defendant from acting as a tax return preparer, assisting in preparing tax returns, and filing false tax returns with the Internal Revenue Service ("IRS") pursuant to 26 U.S.C. §§ 7402, 7407, and 7408. (*Id.*; Complaint ¶ 1). *Pro se* Defendant Mark Steven Hall ("Defendant") opposes. (Doc. # 28). For the reasons set forth below, the Government's Motion is GRANTED.

DISCUSSION

As an initial matter, the Court must address the issues raised by Defendant's response to the Government's Motion. (Doc. # 28). Defendant labeled his response as a "Motion to Stay Summary Judgment." (*Id.* at 1). Defendant argues the Court should forego the summary judgment procedure because the summary judgment procedure is "ill-equipped" in that it does not account for the credibility of witnesses. (*Id.*). Defendant asserts he wants to "face [his] accusers and cross exam the depositions" through "live trial [and] live questioning." (*Id.*).

"Summary judgment serves an important efficiency function by resolving cases lacking material factual dispute by more efficient means than a trial." *Torgerson v. City of Rochester*, 643 F.3d 1031, 1058 (8th Cir. 2011). Thus, foregoing the summary judgment procedure would not be appropriate simply because Defendant finds it deficient or because he perceives trial as the better forum. Further, Defendant need not worry that the credibility of witnesses has not yet been tested. When the Court considers motions for summary judgment, the Court does not decide factual issues or determine credibility issues. *See Great Plains Real Estate Dev., L.L.C. v. Union Cent. Life Ins. Co.*, 536 F.3d 939, 943-44 (8th Cir. 2008) (quoting *Morris v. City of Chillicothe*, 512 F.3d 1013, 1018 (8th Cir. 2008)). If there are genuine and material factual issues presented at the summary judgment stage, the Court will deny the Government's Motion for Summary Judgment and let the factfinder decide the factual issues at trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit . . . will properly preclude the entry of summary judgment."). Accordingly, the Court will proceed with the summary judgment stage because Defendant's protestations are not warranted.

I. FACTS[1]

In 1982, Defendant received a Bachelor's Degree from Rockhurst University in Kansas City, Missouri. (Deposition of Mark Steven Hall ("Hall Depo.") 5:17-6:4). Defendant was not and is not a Certified Public Accountant ("CPA"). (*Id*. at 46:15-17). He also does not have a

[1] In response to the Government's Motion, Defendant offered no facts or evidence to demonstrate a genuine issue of material fact. (*See* Doc. # 28). Nor did Defendant dispute any of the facts and evidence offered by the Government to support its Motion. (*See id*.). Under Local Rule 56.1, "[a]ll facts set forth . . . [by the Government] shall be deemed admitted . . . unless specifically controverted by [Defendant]." Because Defendant did not dispute any facts set forth in the Government's Motion, Defendant is deemed to have admitted all the facts in the Government's Motion.

valid tax preparer identification number from the IRS and never attempted to apply for one (1). (*Id*. at 26:3-20). Additionally, Defendant has not filed a personal federal tax return in over thirty (30) years, and his future plans to file a federal tax return "[d]epend[] on how this case comes out." (*Id*. at 16:10-16, 60:12-14).

Since 2006, Defendant prepared federal income tax returns for customers. (Plaintiff's Statement of Facts ("PSoF") ¶ 1). From 2006 to 2010, Defendant worked as an employee or independent contract for various accounting firms. (Declaration of James Graczyk ("Graczyk Decl.") ¶ 5). Beginning in the 2010 tax season, Defendant prepared federal tax returns from his home in Kansas City. (PSoF ¶ 3). As recently as April 16, 2013, Defendant prepared a customer's federal tax return. (Declaration of Melissa Williams ("M. Williams Decl.") ¶ 4).

When preparing federal tax returns for customers, Defendant understated his customers' tax liability by claiming unsupported and inflated expenses and deductions on Schedules A and C. (*See* Hall Depo. 19:9-20:1, 42:11-17; Declaration of Joseph G. Hershewe ("Hershewe Decl.") ¶¶ 5-8; Declaration of James Bench ("Bench Decl.") ¶ 5). According to Defendant, understating his customers' tax liabilities was a form of "civil disobedience." (Hall Depo. 26:19-27:8). He claimed his actions were justified because the Government "breach[ed] a contract" with its citizens and "cheated [United States citizens] over the years" by "quietly misusing . . . tax dollars[,] misusing how they collect tax dollars," and "systematic[ally] stealing . . . poor peoples' money." (*Id*. at 20:2-9, 26:19-27:8, 40:11-42:2, 60:19-21). The Government offered the tax returns and the sworn declarations or depositions of several of Defendant's former customers that were subject to Defendant's practices of preparing tax returns with false Schedules A and C, including Daniel Watson ("Watson"), Eliseo Cooper ("Cooper"), James Bench ("Bench"), Jason

Wolf ("Wolf"), Steven Riley ("Riley"), Melissa Williams ("M. Williams"), Veronica Williams ("V. Williams"), Wendy Carlisle ("Carlisle"), and Jerry Lewis ("Lewis"). (*See* Doc. # 27).

A. Reporting False or Inflated Charitable Contributions

When preparing his customers' tax returns, Defendant reported on some customers' returns that they made charitable contributions of at least 3.5% to 4% of their adjusted gross income "whether they ha[d] supporting documentation or not." (*Id*. at 19:7-20:1, 29:3-30:17). Rather than requiring customers to provide proof of a charitable contribution, Defendant would report that his customers donated 3.5% to 4% of their adjusted gross income by looking to "regional trends" and determining that individuals in Missouri and Kansas, on average, donated to charity 4% of their adjusted gross income. (*Id*.). Defendant testified it was "okay" for him to file tax returns with charitable deductions without documentation because he "believe[d] that most every American [gave] something to charity." (*Id*. at 42:11-17).

In some cases, Defendant prepared tax returns with unsupported charitable contribution deductions. For instance, Watson paid Defendant to prepare his tax returns for the 2006 through 2008 tax years. (Declaration of Daniel Watson ("Watson Decl.") ¶ 4). During those years, Watson donated personal items and made small cash donations through a workplace program, of which he neither had receipts nor other proof. (*Id*. ¶ 7). Defendant did not tell Watson that Defendant included a "large Schedule A charitable contribution" in his tax returns for each year, totaling $4450, $4650, and $6485, respectively. (*Id*.).

Additionally, Riley and his wife paid Defendant to prepare their 2007 and 2008 joint tax returns. (Declaration of Steven Riley ("Riley Decl.") ¶ 3). According to Riley, he and his wife made no charitable contributions in 2007, and they did not tell Defendant they made any contributions that year. (*Id*. ¶ 5). However, on Riley and his wife's 2007 tax return, Defendant

listed they reported $7025 of Schedule A charitable contribution deductions, but Riley later stated he did "not know where those figures came from." (*Id*.).

The same reporting practice occurred with Bench and his wife. Bench and his wife paid Defendant to prepare their joint tax return for the 2007 tax year. (Bench Decl. ¶ 3). According to Bench, although he and his wife did not make any charitable contributions in 2007, and Bench did not discuss any charitable contributions with Defendant, their 2007 tax return reported $3550 of Schedule A charitable contribution deductions. (*Id*. ¶ 5).

In other instances, Defendant inflated the charitable contributions of his customers, even if a customer provided documentation. For example, V. Williams and her husband paid Defendant to prepare their tax returns for the 2008 to 2012 tax years. (Declaration of Veronica Williams ("V. Williams Decl.") ¶ 2). In 2012, V. Williams and her husband provided Defendant two (2) receipts for charitable cash donations to two (2) churches, totaling $847.27. (*Id*. ¶ 10). Without V. Williams or her husband's knowledge, Defendant reported $3550 in Schedule A charitable contribution deductions that year. (*Id*.).

Carlisle also paid Defendant to prepare her tax returns for the 2008 to 2012 tax years. (Deposition of Wendy Carlisle ("Carlisle Depo.") 7:4-13, 12:4-6). For the 2010 to 2012 tax years, Carlisle provided Defendant a copy of the cash donations she made to her church, totaling $1460, $4020, and $3900, respectively. (*Id*. at 22:16-23:17, 25:15-26:16, 28:18-30:15). However, each year, Defendant prepared Schedule A forms for Carlisle, listing that she made charitable cash contributions of $4050, $4550, and $4250, respectively. (*Id*.).

B. Reporting False or Inflated Unreimbursed Business Expenses

Defendant also fabricated or inflated unreimbursed business expenses on his customers' Form 2016 that was attached to his customers' tax returns. When preparing a Form 2016,

Defendant testified he "would not necessarily have supporting documentation" for a customer's unreimbursed business expenses nor would he require his customers to provide him with documentation before reporting unreimbursed business expenses. (Hall Depo. 28:9-19).

For example, Lewis and his wife hired Defendant to prepare their tax returns for the 2010 and 2011 tax years. (Deposition of Jerry Lewis ("Lewis Depo.") 8:11-9:3). On the Lewises' 2010 tax return, Defendant prepared a tax return that reported $1884 in unreimbursed business expenses. (*Id*. at 14:20-15:16). Lewis recalled he might have told Defendant that he had some unreimbursed travel expenses, but Lewis never told Defendant he had $1884 of unreimbursed business expenses and never provided, nor was he asked to provide, any documentation about unreimbursed business expenses. (*Id*. at 14:20-16:9). The following year, the same practice occurred: Defendant prepared a tax return reporting $3499 in unreimbursed business expenses, but Lewis denied having any such unreimbursed business expenses; while Lewis may have mentioned he had some unreimbursed travel expenses, he did not provide, and was not asked to provide, Defendant any documentation demonstrating $3499 of unreimbursed business expenses. (*Id*. at 22:21-24:5).

Additionally, on Carlisle's 2010 tax return, Defendant prepared her tax return claiming Carlisle incurred $550 in business travel expenses and $875 in meals and entertainment expenses that went unreimbursed by Carlisle's employer. (Carlisle Depo. 21:2-10). Carlisle never told Defendant she had any unreimbursed business expenses because her "company cover[ed] all that." (*Id*.). Additionally, on Carlisle's 2011 tax return, Defendant reported Carlisle's unreimbursed job supply expenses as $750, which Carlisle claimed was "very inaccurate" because she never told him she had any expenses and that she spent, at most, $20 on job supplies. (*Id*. at 27:15-3).

C. Reporting False Education Credits

Additionally, the Government offered evidence Defendant prepared tax returns for customers that reported false education credits. For instance, Cooper paid Defendant to prepare his tax returns for the 2008 through 2011 tax years. (Declaration of Eliseo Cooper ("Cooper Decl.") ¶ 3). Defendant listed Cooper's friend, Adrianna Johnson ("Johnson"), as a dependent niece on Cooper's 2011 tax return. (*Id*. ¶ 7). When Cooper questioned Defendant's practice, Defendant assured him it was "okay" to do so. (*Id*.). Thereafter, Defendant attached Form 8863 to Cooper's 2011 tax return, which claimed Cooper paid $4000 in education expenses for Johnson. (*Id*. ¶ 8). Cooper attested he never paid Johnson's education expenses. (*Id*.).

Defendant similarly filed inaccurate education credits for Lewis and his wife. On Lewis and his wife's 2010 tax return, Defendant listed $4025 and $6575 in education expenses. (Lewis Depo. 17:17-18:10). Lewis recalled this was inaccurate. (*Id*. at 18:1-10). In fact, Lewis only had $1788 in tuition expenses in 2010 that were eligible for tax credits. (Graczyk Decl. ¶ 11).

On another occasion, Defendant claimed false education credits for M. Williams and her husband. M. Williams and her husband paid Defendant to prepare their joint tax returns for the 2008 to 2012 tax years. (M. Williams Decl. ¶ 3). On M. Williams and her husband's 2012 tax return, Defendant attached a Form 8863 providing that M. Williams spent $2550 on "qualified education expenses." (*Id*. ¶ 8). However, M. Williams did not attend college, or otherwise incur education-related expenses, that year. (*Id*.).

D. Reporting Erroneous Schedule C Business Expenses

Finally, Defendant prepared erroneous Schedule C Business Expenses for some of his customers. For example, Wolf and his wife paid Defendant to prepare their tax returns for the 2007 and 2008 tax years. (Declaration of Jason Wolf ("Wolf Decl.") ¶ 3). Wolf owned a

business called "Jay Wolf Heating and Cooling Inc." (*Id*. ¶ 2). For his 2007 and 2008 tax returns, Wolf provided to Defendant all bank statements, invoices, ledgers, check stubs, and receipts for his business. (*Id*. ¶ 4). However, after the IRS audited Wolf for his 2007 and 2008 tax returns, it became apparent that Defendant did not prepare Wolf's tax returns using those documents. (Hershewe Decl. ¶¶ 3, 9). Defendant reported $45,903 in "gross receipts" and $ 16,532 in net profit on Jay Wolf Heating and Cooling Inc.'s 2007 Schedule C and $45,247 in gross receipts and $15,985 in net profit on Jay Wolf Heating and Cooling Inc.'s 2008 Schedule C. (Wolf Decl. ¶ 6). After the IRS commenced auditing Wolf, Wolf hired Joseph G. Hershewe ("Hershewe"), a CPA, to examine Wolf's 2007 and 2008 tax returns prepared by Defendant. (*Id*. ¶ 11). Hershewe prepared amended tax returns for Wolf. (*Id*.; Hershewe Decl. ¶ 6). On the amended returns, Jay Wolf Heating and Cooling Inc.'s 2007 and 2008 gross receipts were $217,067 and $233,740, respectively, and net profits were $62,642 and $41,261, respectively. (Hershewe ¶ 6).

E. Harm to the Government

According to IRS Revenue Agent James Graczyk ("Graczyk"), the Government incurred "a significant cost in time and resources to identify and examine the bogus tax returns prepared by [Defendant], and ultimately assess and collect any tax deficiencies related to the false tax returns prepared by [Defendant]." (Graczyk Decl. ¶ 13). According to Graczyk, there was a high probability that Defendant's customers received erroneous refunds due to Defendant's conduct. (*Id*. ¶ 14). For instance, the IRS examined sixty-four (64) federal tax returns that Defendant prepared for the 2006 through 2008 tax years. (*Id*.). The Government alleges the average tax deficiency amounted to $4225 per audited return. (*Id*.).

F. Harm to Defendant's Customers

Due to Defendant's conduct, Defendant's customers have been exposed to IRS examination, assessment, and collection. (*Id*. ¶ 15). Further, many customers have had difficulty repaying the improperly issued refunds and accompanying penalties and interest. (*Id*.). For example, beginning in 2009, the IRS audited Riley and his wife for their 2007 and 2008 tax returns. (Riley Decl. ¶ 10). When Riley attempted to contact Defendant about the audit, Defendant did not return Riley's phone calls or his documents Riley provided to him to prepare his tax returns. (*Id*. ¶ 11). Thereafter, Riley had to spend many hours contacting employers and financial institutions to retrieve their tax forms and other documentation. (*Id*.). Riley and his wife hired a CPA to assist them with their audit and prepare amended tax returns. (*Id*. ¶ 12). According to their amended tax returns, Defendant failed to report, and Riley and his wife owed, a total of $6644, which did not include penalties and interest. (*Id*. ¶ 13). They had to take out a loan to pay their tax liabilities. (*Id*. ¶ 14).

Wolf and his wife were also audited by the IRS for their 2007 and 2008 tax returns. (Wolf Decl. ¶ 9). Wolf attempted to contact Defendant on multiple occasions to have Defendant return their documents, but Defendant never complied. (*Id*.). Thereafter, Wolf spent many hours recompiling the documents to assist with their audit. (*Id*. ¶ 10). Wolf and his wife hired a CPA to assist in the audit and prepare amended tax returns. (*Id*. ¶ 11). According to Wolf, he and his wife paid over $10,000 to their CPA and owed a total of $18,731.72, not including interest, on their amended tax returns. (*Id*. ¶ 12). They had to refinance their home to pay their tax liabilities. (*Id*. ¶ 13).

Watson also discovered he owed additional tax money due to Defendant's conduct in preparing false deductions on his tax returns. When Watson was approached by the IRS about his unsupported tax deductions, Defendant failed to attend any meeting with Watson to assist

him. (Watson Decl. ¶ 9). After the IRS audit, Watson owed $17,917 for the 2006 through 2008 tax years. (*Id*. ¶ 10). Watson declared he had to take out a $23,000 loan to pay his tax liabilities, of which he did not finish paying off until April 2013. (*Id*. ¶ 11).

Finally, Defendant did not return Bench's calls when Bench attempted to contact Defendant when Bench was being audited by the IRS. (Bench Decl. ¶ 8). Bench and his wife owed $2006 in tax liabilities for the 2007 tax year. (*Id*. ¶ 9).

II. LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Summary judgment is appropriate if the evidence, viewed in the light most favorable to the [nonmovant] and giving [the nonmovant] the benefit of all reasonable inferences, shows there are no genuine issues of material fact and [the movant] is entitled to judgment as a matter of law." *Price v. N. States Power Co.*, 664 F.3d 1186, 1191 (8th Cir. 2011) (citation omitted). "Once the moving party has made and supported their motion, the nonmoving party must proffer admissible evidence demonstrating a genuine dispute as to a material fact." *Holden v. Hirner*, 663 F.3d 336, 340 (8th Cir. 2011) (citation omitted). Summary judgment should not be granted if a reasonable jury could find for the nonmoving party. *Woodsmith Publ'g Co. v. Meredith Corp.*, 904 F.2d 1244, 1247 (8th Cir. 1990) (citing *Anderson*, 477 U.S. at 248).

III. ANALYSIS

As stated above, Defendant failed to offer evidence or dispute the Government's evidence. Thus, Defendant has not demonstrated a genuine issue of material fact. Accordingly, the Court will determine if the undisputed facts support granting the Government's Motion. The

Government argues that, as a matter of law, it is entitled to a permanent injunction enjoining Defendant from preparing federal tax returns pursuant to 26 U.S.C. §§ 7402, 7407, and 7408.

To obtain injunctive relief under §§ 7402, 7407, and 7408, the Government "must demonstrate that the defendant has violated a statute and that a reasonable likelihood of future violations exists." *United States, v. Shafer*, No. 05-5010-CV-SW-GAF, 2005 WL 1324851, at *1 (W.D. Mo. April 25, 2005) (citing *SEC v. Comserv Corp.*, 908 F.2d 1407, 1412 (8th Cir. 1990); *United States v. Kaun*, 827 F.2d 1144, 1148 (7th Cir. 1987)). If the statute sets forth the specific criteria for injunctive relief, the Government "need only meet those statutory criteria, without reference to traditional equitable factors, for this Court to issue an injunction." *Id.* (citing *SEC v. First Am. Bank & Trust Co.*, 481 F.2d 673, 681-82 (8th Cir. 1973)) (additional citation omitted).

A. 26 U.S.C. § 7407

Under 26 U.S.C. § 7407, the Government may seek to permanently enjoin a person from acting as a tax return preparer if the court finds: (1) the person engaged in conduct subject to penalty under § 6694 or criminal penalty under the Internal Revenue laws; (2) the person continually or repeatedly engaged in the conduct described above; and (3) enjoining only the prohibited conduct would not suffice to prevent the person's interference with the proper administration of the Internal Revenue laws. 26 U.S.C. § 7407(b).

A tax return preparer will be subject to penalty if he knew or should have known he prepared a tax return that understated a taxpayer's liability due to an "unreasonable position" he took when preparing a tax return. *Id.* § 6694(a). An "unreasonable position" is one (1) where there was no "substantial authority for the position." *Id.* Whether there was "substantial authority" for how a tax return preparer treated a tax item is determined by an objective standard

that is less stringent than the more-likely-than-not standard but more stringent than the reasonable-basis standard. 26 C.F.R. § 1.6662-4(d)(2). "There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting the contrary treatment." *Id*. § 1.6662-4(d)(3).

Here, there was no substantial authority supporting how Defendant prepared certain tax items on his customers' returns, including charitable deductions, unreimbursed business expenses, education credits, and Schedule C business expenses. Defendant admitted he required no documentation for many of the deductions and expenses he reported for his customers. (Hall Depo. 19:7-20:1, 28:9-19, 29:3-30:17). In addition, Defendant's customers often did not provide documentation to support any reported deductions or expenses and did not know why their tax returns listed certain deductions or expenses. (*See* Watson Decl. ¶ 7; Riley Decl. ¶ 5; Bench Decl. ¶ 5; Lewis Depo. 14:20-16:9, 22:21-24:5; Carlisle Depo. 21:2-10, 27:15-3; Cooper Decl. ¶¶ 7-8; M. Williams Decl. ¶ 8). Other times, Defendant grossly inflated deductions and expenses, unbeknownst to his customers, even if his customers provided documentation. (V. Williams Decl. ¶ 10; Carlisle Depo. 22:16-23:17, 25:15-26:16, 28:18-30:15; Wolf Decl. ¶ 4). Defendant lacked support and authority for the deductions and expenses he reported on his customers' tax returns. Because the manner by which Defendant reported these tax items on his customers' returns demonstrates there was no substantial authority for how and why he reported these tax items, Defendant had an unreasonable position for understating his customers' tax liabilities.

Further, Defendant knew he had an unreasonable position for preparing tax returns with false deductions and expenses on his customers' tax returns. As stated above, Defendant either did not have proper documents to substantiate such deductions and expenses, his customers

never reported a basis for such deductions and expenses, or he grossly inflated such deductions and expenses. Additionally, Defendant admitted he would not require documentation for certain deductions and expenses and would simply give customers those deductions or credits because of his view that the Government "breached a contract" with its citizens and "cheated the poor." (*See* Hall Depo. 20:2-9, 26:19-27:8, 40:11-42:2). Therefore, Defendant is subject to § 6694 penalties because he knew that he prepared tax returns that understated his customers' liabilities due to an unreasonable position, in that his position lacked substantial authority for reporting any deductions and expenses. *See* 26 U.S.C. § 6694(a).

In addition, by his own admission, Defendant has failed to file his own tax returns for the past thirty (30) years. (Hall Depo. 16:10-16). Defendant's failure to file tax returns subjects him to criminal penalties under § 7203, which penalizes a willful failure to file a tax return when one (1) is required. *See* 26 U.S.C. § 7203. Thus, Defendant's willful failure to file his own tax returns is conduct that is subject to criminal penalty and supports enjoining Defendant from acting as a tax return preparer. *See id*. § 7407(b)(1)(A).

Also, Defendant continuously and repeatedly engaged in the above-described prohibited conduct. Defendant began preparing customers' tax returns in 2006 and continued to do so as recently as April 2013. (*See* PSoF ¶ 1; Gracyzk Decl. ¶ 5; PSoF ¶ 3; M. Williams Decl. ¶ 4). The Government offered multiple tax returns of Defendant's customers, evidencing Defendant continuously reported false deductions and expenses, violating § 6694. (*See* Docs. ## 27-2 through 27-20). Additionally, Defendant failed to file his personal tax returns for the past thirty (30) years, violating § 7203. (Hall Depo. 16:10-16). Thus, Defendant continuously and repeatedly engaged in prohibited conduct under §§ 6694 and 7203, justifying an injunction under § 7407.

Moreover, Defendant's conduct interfered with the administration of the Internal Revenue laws. There is no dispute that Defendant repeatedly filed false deductions and expenses that understated his customers' tax liabilities. Such actions caused the Government to incur significant costs in time and resources in investigating the false deductions and expenses as well as assessing and collecting the tax deficiencies due to these false deductions and expenses. (Graczyk Decl. ¶ 12). Further, Defendant's conduct has caused financial hardship to his customers due to reassessed tax liabilities. (*See* Riley Decl. ¶¶ 10-13; Wolf Decl. ¶¶ 9-13; Watson Decl. ¶¶ 9-11; Bench Decl. ¶¶ 8-9). Defendant's conduct demonstrates he interfered with the administration of the Internal Revenue laws under § 7407, justifying enjoining Defendant from acting as a federal tax return preparer.

Finally, permanently enjoining Defendant from preparing any federal tax returns for others is appropriate because any narrower injunction would not suffice. It is apparent that Defendant's conduct stems from his opinions on the Government's tax structure. He admitted he believed the Government disadvantaged people, and therefore, he manipulated the tax system for his customers' benefit without their consent or knowledge. (*See* Hall Depo. 20:2-9, 26:19-27:8, 40:11-42:2). Were the Court to simply enjoin Defendant from filing false charitable deductions on tax returns, for example, Defendant would likely find other ways to manipulate the tax system for his customers. Thus, permanently enjoining Defendant from acting as a federal tax return preparer, or assisting others in preparing taxes, is appropriate.

Moreover, Defendant's conduct encompassed a broad range of false claims and deductions that occurred since 2006. Defendant reported false or inflated charitable deductions, education credits, Schedule C business expenses, and unreimbursed business expenses. (*See, e.g.*, Watson Decl. ¶ 7; V. Williams Decl. ¶ 10; Lewis Depo. 14:20-16:9, 22:21-24:5; Cooper

Decl. ¶¶ 7-8; Wolf Decl. ¶¶ 4-11). Any injunction that would be pointed toward specific conduct, such as filing false unreimbursed business expenses for customers, would likely not deter other kinds of conduct in which he currently engages or might engage in the future. Thus, permanently enjoining Defendant from acting as a federal tax return preparer is appropriate.

Accordingly, the Government demonstrated, as a matter of law, that permanently enjoining Defendant from acting as a federal tax return preparer is proper under § 7407.

B. 26 U.S.C. § 7408

Under 26 U.S.C. § 7408, a court may enjoin a defendant from further engaging in certain conduct that is subject to penalty under §§ 6700, 6701, 6707, or 6708. 26 U.S.C. § 7408(b), (c)(1). Section 6701 penalizes any person who: (1) aids, assists, procures, or advises the preparation of any proportion of a tax return; (2) knows, or should have known, that such portion will be used in connection to tax laws; and (3) knows that such portion would result in understating a person's tax liability. *Id*. § 6701(a).

There is no dispute that Defendant's customers hired and paid Defendant to assist and advise them in preparing their tax returns. (Watson Decl ¶ 4; Riley Cecl. ¶ 3; Vench Decl. ¶ 3; Carlisle Depo. 7:4-13, 12:4-6; Lewis Depo. 8:11-9:3; Cooper Decl. ¶ 3, M. Williams ¶ 3; Wolf Decl. ¶ 3; V. Williams ¶ 2). Further, Defendant knew that those tax returns would be used in connection with tax laws when determining his customers' tax liabilities. (*See* Watson Decl ¶ 4; Riley Cecl. ¶ 3; Vench Decl. ¶ 3; Carlisle Depo. 7:4-13, 12:4-6; Lewis Depo. 8:11-9:3; Cooper Decl. ¶ 3, M. Williams ¶ 3; Wolf Decl. ¶ 3; V. Williams ¶ 2). It is also undisputed that Defendant knew those tax returns were false or inflated, resulting in his customers receiving improper refunds. For example, often times, Defendant did not require substantiation for any deductions he claimed on behalf of his customers. (*See* Hall Depo. 19:7-20:1, 28:9-19, 29:3-

30:17; Watson ¶ 7; Riley ¶ 5; Bench Decl. ¶ 5; Lewis Depo. 14:20-16:9, 22:21-24:5). Additionally, his customers did not know he made such deductions on their behalf. (*See* Lewis Depo. 14:20-16:9, 22:21-24:5; Carlisle Depo. 21:2-30:15; Cooper Decl. ¶¶ 7-8; V. Williams Decl. ¶ 10; Hershewe Decl. ¶¶ 3, 9). Thus, Defendant is subject to penalty under § 6701.

As discussed previously, Defendant's conduct caused, and will likely continue to cause, harm to the Government and harm to his former and potential customers. Due to Defendant's philosophical stance, Defendant will likely continue to defraud the Government by filing false or inflated tax returns for others, resulting in harm to the Government and his potential customers. Enjoining Defendant from preparing federal tax returns, or assisting others in preparing federal tax returns, is appropriate in this case. Thus, as a matter of law, the Government demonstrated that enjoining Defendant from further preparing federal tax returns is proper under § 7408.

C. 26 U.S.C. § 7402

"[T]o obtain an injunction under . . . § 7402(a), the [Government] must show that an injunction is necessary or appropriate to enforce the internal revenue laws." *Shafer*, 2005 WL 1324851, at *1; 26 U.S.C. § 7402(a). As discussed above, Defendant's conduct interfered with the administration of tax laws. There is no dispute that Defendant repeatedly filed false deductions and expenses that understated his customers' tax liabilities. Such actions caused the Government to incur significant costs in time and resources in investigating the false deductions and expenses as well as assessing and collecting the tax deficiencies due to these false deductions and expenses. (Graczyk Decl. ¶ 12). Further, Defendant's conduct has caused financial hardship to his customers due to reassessed and increased tax liabilities. (*See* Riley Decl. ¶¶ 10-13; Wolf Decl. ¶¶ 9-13; Watson Decl. ¶¶ 9-11; Bench Decl. ¶¶ 8-9). There is also no evidence that Defendant would stop his prohibited conduct if he not enjoined. In fact, the

evidence suggests that Defendant would continue his prohibited conduct because he considered his actions as a form of justified "civil disobedience." (*See* Hall Depo. 26:19-27:8). Thus, Defendant's conduct in preparing false or inflated deductions and expenses on customers' tax returns will likely continue if he is not permanently enjoined. The Government demonstrated a permanent injunction is necessary and appropriate to enforce the Government's tax laws under § 7402(a). Accordingly, as a matter of law, permanently enjoining Defendant from further preparing federal tax returns is proper under § 7402.

CONCLUSION

Under the undisputed facts before the Court, the Government demonstrated, as a matter of law, that Defendant must be permanently enjoined from preparing, or assisting others in preparing, federal tax returns under 26 U.S.C. §§ 7407, 7408, and 7402. First, the Government demonstrated Defendant continuously engaged in conduct that is subject to penalty under §§ 6694 and 7203, thereby interfering with the administration of the Government's tax laws, which would persist if not enjoined. Thus, as a matter of law, Defendant is enjoined from preparing, or assisting others in preparing, federal tax returns under § 7407. Second, the Government demonstrated Defendant engaged in conduct that is subject to penalty under § 6701 when he aided others in preparing their tax returns, knowing those tax returns would result in understating their tax liabilities. Thus, as a matter of law, Defendant is enjoined from preparing, or assisting others in preparing, federal tax returns under § 7408. Finally, the Government demonstrated it is necessary and appropriate to enjoin Defendant from further preparing federal tax returns because his conduct did, and will continue to, violate Internal Revenue laws to the determinant of the public and the Government and interfere with the administration of those laws. Thus, as a matter of law, Defendant is enjoined from preparing, or assisting others in preparing, federal tax returns

under § 7402. For these reasons and the reasons set forth above, the Government's Motion is GRANTED. Defendant is PERMANENTLY ENJOINED from preparing, or assisting others in preparing, federal tax returns.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: September 24, 2013