

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2:13-CV-01011-RMG
)	
STACY MIDDLETON and)	
GEORGE JENKINS,)	
)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America complains and alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a), 7407, and 7408 to enjoin defendants Stacy Middleton and George Jenkins, and anyone in active concert or participation with them, from:

- a. acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
- b. preparing or assisting in preparing or filing federal tax returns, amended returns, or other related documents or forms that they know or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refunds as prohibited by 26 U.S.C. § 6694;
- c. engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other penalty provision in the Internal Revenue Code; and
- d. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

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, pursuant to the provisions of 26 U.S.C. §§ 7401, 7407, and 7408.

3. Jurisdiction is conferred on the Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).

4. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396 because the defendants reside in this district and a substantial part of the actions giving rise to this suit took place in this district.

Defendants

5. Stacy Middleton resides in Charleston, South Carolina, within the jurisdiction of the Court.

6. George Jenkins resides in Blythewood, South Carolina, within the jurisdiction of the Court.

7. Middleton and Jenkins are paid federal tax return preparers who operate through a business called MBM Tax and Accounting Services, LLC (“MBM”). In addition to preparing tax returns for clients, MBM purports to provide services including bookkeeping, payroll, and financial consulting services.

8. Middleton, who has a B.S. in accounting from South Carolina State University, has been preparing tax returns for over thirteen years.

9. Jenkins, who has an A.A. degree from John C. Smith College in Charlotte, North Carolina and an M.B.A. in business administration from Webster University in Columbia, South Carolina, has been preparing tax returns since 2008.

10. In 1997, Middleton and two others, Antonio Bromfield and Tony McGill, formed MBM. In 2007, Middleton, Bromfield, and McGill stopped working as a partnership and began to operate separate tax preparation businesses, each of which operated under the name MBM. They operate separate businesses but still pool funds for shared advertising expenses.

11. Middleton operates his business from an office in Charleston, South Carolina, and prepares approximately 4,000 returns per year.

12. In 2008, Middleton wanted to open another branch of his business in Columbia, South Carolina, and he asked Jenkins to run that office. Jenkins now operates from MBM's office in Columbia, South Carolina and prepares approximately 200 returns per year.

Defendants' Activities

13. Middleton and Jenkins prepared approximately 17,000 federal tax returns for the years 2008 through 2011. To date, the IRS has examined 842 of those returns, which resulted in adjustments to 789 of the 842 returns. Based on these audits, the IRS estimates an average deficiency per return of \$3,285 and estimates the total revenue lost by the government from these returns could be as much as \$55 million.

14. The examinations revealed that Middleton and Jenkins created fictitious deductions and credits, or overstated and duplicated existing ones, on their customers' returns. Additionally, Middleton created fraudulent Forms 1099 on behalf of those customers, creating fake income to enable him to claim the earned income tax credit on behalf of customers.

False, Improper, and Inflated Deductions

15. Middleton and Jenkins seek fraudulent tax refunds for customers or, at a minimum, to reduce their liability, by fabricating bogus deductions on Forms 1040, Schedule A (Itemized Deductions), and Schedule C (Profit or Loss from Business). Middleton and Jenkins prepare returns on which they report nonexistent business expenses and deductions in order to create phony business losses to offset their customers' wages and to fraudulently reduce their customer' income tax liability.

16. For example, Middleton (with assistance from an employee, Jackie Lowndes) prepared returns for customers "R.C. and L.C." for 2009, 2010, and 2011 that included numerous fraudulent items. Middleton reported \$5,483 in home business expenses, even though R.C. and L.C. did not use their home for business. Middleton also reported \$9,116 in deductions for contributions to an individual retirement account (IRA), even though R.C. and L.C. made no such contributions. Middleton reported numerous other phony expenses, deductions, and credits that were disallowed in full or in majority part, including:

- \$8,809 in medical expenses, all of which were disallowed by the IRS;
- \$10,050 of unreimbursed travel and entertainment business expenses, \$8,751 of which was disallowed by the IRS;
- \$10,361 in cash charitable contributions, \$8,847 of which was disallowed by the IRS; and
- \$8,096 in expenses, \$7,155 of which was disallowed by the IRS.

17. Middleton also prepared 2009, 2010, and 2011 returns for "L.H. and G.H." that included numerous fraudulent items. Among other fraudulent items, Middleton reported \$13,305 in charitable contributions, \$36,909 in unreimbursed

employee business expenses, and \$8,885 in deductions for contributions to an IRA, all of which were later completely disallowed by the IRS.

18. Similarly, Jenkins prepared a 2010 income tax return for customers “C.L. and T.L.” that claimed nonexistent business expenses. C.L. gave information for Jenkins to use to prepare C.L. and T.L.’s 2010 tax return, but the information that C.L. provided did not include any figures that showed deductible business expenses. Nevertheless, Jenkins included on C.L. and T.L.’s tax return thousands of dollars of nonexistent business expenses, including car and truck expenses, meals and entertainment expenses, rent expenses, and utilities expenses. All of these expenses were disallowed completely by the IRS.

Fabricated Forms 1099

19. Middleton also prepared fraudulent federal income tax returns for customers by fabricating Forms 1099 (Miscellaneous Income forms) and filing them with the IRS. Doing so enabled Middleton to report fictitious income for the customers, thereby enabling him to fraudulently claim or increase the earned-income tax credit for those customers.

20. For example, Middleton fabricated Forms 1099 for customer “K.B.” K.B., who received only wage income in 2010, gave Middleton her forms W-2 for 2010 (upon which all of her wage income was reported) so that he could prepare her 2010 income tax return. In addition to reporting her W-2 income, Middleton reported on her return that she had received \$6,825 in business income. At the same time, Middleton fabricated a Form 1099 stating that a company named Sparkle Clean LLC had paid K.B. \$6,825 in

nonemployee compensation for 2010 and filed that form with the IRS. In fact, Sparkle Clean did not pay any money to K.B., who later told the IRS that she had never heard of Sparkle Clean. Likewise, Sparkle Clean had never heard of K.B. However, Middleton prepared Sparkle Clean's Forms 1099.

21. Similarly, Middleton fabricated a Form 1099 for customer "S.C." stating that Sparkle Clean had paid S.C. \$9,620 in nonemployee compensation in 2010. Middleton also fraudulently reported \$9,620 of business income on her 2010 income tax return when, in fact, S.C. received only wage and unemployment income in 2010. As with K.B., S.C. had never heard of Sparkle Clean, and Sparkle Clean had never heard of S.C.

22. In addition, Middleton even issued Forms 1099 that fraudulently listed businesses he owns as paying miscellaneous income to his customers. For example, Middleton prepared returns for "M.S." for 2009, 2010, and 2011. Forms 1099 were filed with the IRS that stated that M.S. received \$14,038 and \$13,928 in nonemployee compensation from MBM Media Group, which Middleton owns, in 2009 and 2010. However, as M.S. later told the IRS, she never worked for MBM Media Group.

Harm Caused by Middleton and Jenkins

23. Middleton's and Jenkins's customers have been harmed because they paid Middleton and Jenkins fees to prepare proper tax returns, but Middleton and Jenkins prepared returns that substantially understated their customers' correct tax liabilities or created or inflated improper refunds. Many customers now face large income tax deficiencies and may be liable for sizable penalties and interest.

24. Middleton's and Jenkins's conduct harms the United States because their customers are underreporting and underpaying their tax liabilities. The IRS has examined 842 federal income tax returns that Middleton and Jenkins prepared for customers for the tax years 2008 through 2011, with a total of \$2,765,816 in lost revenue (an average of \$3,285 per return) based on false claims and deductions. If this average deficiency per return was spread over the universe of returns Middleton and Jenkins prepared, the IRS estimates that Middleton's and Jenkins's return preparation could have resulted in as much as \$55 million in revenue lost to the United States for returns prepared for tax years 2008 through 2011.

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

26. Middleton and Jenkins further harm the United States because the IRS must devote its limited resources to identifying their customers, ascertaining their correct tax liabilities, recovering any funds erroneously issued, and collecting additional taxes and penalties.

Count I: Injunction under 26 U.S.C. § 7407

27. The United States incorporates by reference the allegations in the above paragraphs.

28. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from engaging in 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 overstatement of a refund that is due to an unreasonable position which the return preparer knew or should have known was unreasonable, or engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

29. In order for a court to issue such an injunction, the court must find (1) that the preparer has engaged in such conduct, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

30. The court may permanently enjoin the person from further acting as a federal tax preparer if it finds that a preparer has continually or repeatedly engaged in such conduct, and the court further finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws.

31. Middleton and Jenkins have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal income tax returns that understate their customers' liabilities or overstate their refunds based on unrealistic, frivolous, and reckless positions.

32. Middleton's and Jenkins's continual and repeated violations of § 6694 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under § 7407.

33. If they are not enjoined, Middleton and Jenkins are likely to continue to prepare and file false and fraudulent tax returns, causing economic loss to the United

States, causing the United States to commit finite, scarce, and unrecoverable resources to the examination of Middleton and Jenkins and their customers, and exposing their customers to large liabilities that include penalties and interest.

34. Middleton's and Jenkins's continual and repeated conduct subject to an injunction under 26 U.S.C. § 7407, including their audacious and repeated bogus claims of expenses and deductions, including fictitious business expenses, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent their interference with the proper administration of the internal revenue laws. Thus, they should be permanently barred from acting as tax return preparers.

Count II: Injunction under 26 U.S.C. § 7408

35. The United States incorporates by reference the allegations in the above paragraphs.

36. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under 26 U.S.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

37. Section 6701 of the Internal Revenue Code penalizes any person who aids or assists the preparation or presentation of any portion of a federal tax return when the person knows or has reason to believe that such portion will be used in connection with a material matter arising under the internal revenue laws and knows that if it is so used it will result in an understatement of another person's tax liability.

38. Middleton and Jenkins prepare federal tax returns for customers that they know will understate their correct tax liabilities, because they knowingly prepare returns

claiming improper expenses and deductions. Middleton's and Jenkins's conduct is thus subject to a penalty under § 6701.

39. If the Court does not enjoin Middleton and Jenkins, they are likely to continue to engage in conduct subject to penalty under § 6701. Middleton's and Jenkins's preparation of returns claiming improper expenses and deductions is widespread over many customers and tax years. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

*Count III: Injunction under 26 U.S.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws*

40. The United States hereby incorporates by reference the allegations in the above paragraphs.

41. Section 7402 of the Internal Revenue Code authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

42. Middleton and Jenkins, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

43. Unless enjoined, Middleton and Jenkins are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Middleton and Jenkins are not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them, much of which will never be discovered and recovered. The United States will also suffer irreparable injury because

it will have to devote substantial unrecoverable time and resources auditing Middleton's and Jenkins's customers to detect future returns understating the customers' liability or overstating their refund.

44. While the United States will suffer irreparable injury if Middleton and Jenkins are not enjoined, they will not be harmed by being compelled to obey the law.

45. Enjoining Middleton and Jenkins is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop their illegal conduct and the harm it causes the United States.

46. The Court should therefore impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, Plaintiff, the United States of America, prays for the following relief:

A. That the Court find that Middleton and Jenkins have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to bar them from acting as federal tax return preparers and from engaging in conduct subject to penalty under 26 U.S.C. § 6694;

B. That the Court find that Middleton and Jenkins have engaged in conduct subject to penalty under 26 U.S.C. § 6701, and that injunctive relief is appropriate under 26 U.S.C. § 7408 to bar them from engaging in conduct subject to penalty under 26 U.S.C. § 6701;

C. That the Court find that Middleton and Jenkins have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);

D. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Middleton, Jenkins, and all those in active concert or participation with them from:

- (1) acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
- (2) preparing or assisting in preparing or filing federal tax returns, amended returns, or other related documents or forms that they know or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refund(s);
- (3) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other penalty provision in the Internal Revenue Code; and
- (4) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring that Middleton and Jenkins, within 30 days of entry of the injunction, contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return since January 1, 2009, to inform them of the permanent injunction entered against Middleton and Jenkins, including sending a copy of the order of permanent injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court, and file with the Court a sworn certificate stating that they have complied with this requirement;

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Middleton and Jenkins to produce to counsel for the United States within 30 days a list that identifies by name, social security number, address, e-mail address, telephone number, and tax period(s) all persons for whom they prepared federal tax returns or claims for refund since January 1, 2009;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Middleton and Jenkins to provide a copy of the Court's order to all of their or MBM's principals, officers, managers, employees, and independent contractors within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment or receipt of the Court's order for each person to whom they provided a copy of the Court's order;

H. That the United States be entitled to conduct discovery to monitor Middleton's and Jenkins's compliance with the terms of any permanent injunction entered against them;

I. That the Court retain jurisdiction over Middleton and Jenkins and over this action to enforce any permanent injunction entered against them; and

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

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General
Tax Division

THOMAS F. KOELBL
THOMAS K. VANASKIE
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044-0683
Tel: (202) 514-5891
(202) 305-7921
Fax: (202) 514-4963
thomas.f.koelbl@usdoj.gov
thomas.k.vanaskie@usdoj.gov

WILLIAM N. NETTLES
United States Attorney
District of South Carolina

By: s/ Matthew J. Modica
MATTHEW J. MODICA
Assistant United States Attorney
151 Meeting Street
Charleston, SC 29401
(843) 266-1600
matthew.j.modica@usdoj.gov