

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
AURELIA SANDERSON JOHNSON)
)
Defendant.)

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil No. 2:10-cv-958-MEF

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

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

GENERAL ALLEGATIONS

1. The United States brings this complaint to enjoin Aurelia Sanderson Johnson from directly or indirectly:

(a) Preparing federal income tax returns, amended returns, or other tax-related documents and forms for any entity or person other than herself;

(b) Assisting in the preparation of federal tax returns that she knows will result in the understatement of any tax liability or the overstatement of federal tax refunds;

(c) Engaging in any conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, or 6701; or

(d) Engaging in fraudulent or deceptive conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States under 26 U.S.C. §§ 7401, 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because Johnson resides and does business in Montgomery, Alabama, within this judicial district; the events giving rise to this claim occurred within this judicial district; and a substantial number of Johnson's customers who filed false and fraudulent returns reside within this judicial district.

Experience and Extent of Return Preparation

5. Johnson has a degree in Business and Finance from Troy University and has completed a professional education course in tax return preparation.

6. Johnson's first experience with preparing returns for others came in 2005 while working for another return preparer operating under the trade name "Flash Tax."

7. In 2007, Johnson opened her own business preparing tax returns for others.

8. Johnson initially operated under the trade name "Johnson Tax Service" and listed that name as the paid preparer's firm name on income tax returns she prepared for the 2006 taxable year. However, no entity with that name is listed, in any status, in the records of the Secretary of State of Alabama.

9. For the taxable years from 2007 to the present, Johnson has operated under the trade name "On-Time Tax Service," which she also listed as the paid preparer's firm name on returns for those years. No entity with that name is listed, in any status, in the records of the Secretary of State of Alabama.

10. For the 2006 and 2007 taxable years, Johnson prepared all of the returns filed under the name of her business entity.

11. For the 2008 and 2009 taxable years, Johnson hired a return preparer and a secretary.

Some of the returns for those years submitted by Johnson may have been prepared at Johnson's direction by her employees.

12. In total, for the taxable years 2006-2008, Johnson – or a return preparer hired by her and working at her direction – prepared 967 federal income tax returns.

13. Johnson's return preparation activities are ongoing. She, or a return preparer hired by her and working at her direction, prepared 269 income tax returns for 2009, the most recent taxable year.

Johnson has utilized at least two schemes to generate overstated refunds

14. Johnson has used at least two schemes to generate erroneously large refunds for her clients. In one scheme, she creates false or overstated claims to the credit under 26 U.S.C. § 32, i.e. the Earned Income Tax Credit (EITC). The EITC is a refundable credit, which means that it can generate a refund exceeding the amount of income tax paid by an individual taxpayer.

Therefore, the false or overstated EITC claims reported by Johnson on her clients' returns generate corresponding refunds, regardless of whether the individual client paid any taxes during the year. The other scheme involves the creation of fictitious business deductions to reduce the client's tax liability and generate an excessive refund of money withheld from the client's pay throughout the tax year. On occasion, the schemes can be combined so that a client's income tax liability will be falsely minimized and their claim to the EITC will also be increased.

15. For clients with little or no income, Johnson typically prepares returns using the scheme to falsely maximize their claim to the EITC.

16. For the taxable years 2006 and 2007, Johnson's primary method for overstating her clients' income in order to generate a larger EITC was to report "HSH" income on the first page of the Form 1040 federal income tax return. Upon information and belief, "HSH" is printed on income tax returns by tax preparation software to indicate "household" or miscellaneous income.

17. In March of 2008, an IRS Revenue Agent visited Johnson's office to conduct an e-file monitoring visit to evaluate whether Johnson was in compliance with IRS e-file program requirements for participating return preparers. The Revenue Agent noted that a substantial amount of Johnson's clients had "HSH" income which had likely been overstated. As a result of that visit, Johnson was reprimanded for failing to adhere to the requirements.

18. After the monitoring visit, Johnson changed her primary method for overstating clients' income, primarily reporting false business income on a schedule C instead of false "HSH" income. For the taxable year 2008, i.e. returns prepared after the monitoring visit, over 150 of the returns prepared by or at the direction of Johnson reported business income on a schedule C.

19. For clients with real taxable income, Johnson typically uses the false business entity scheme to reduce their income tax liability by claiming deductions for false or fictitious business expenditures.

20. In addition to these two schemes, the returns prepared by Johnson or at her direction report a high occurrence of uncommon positions which indicate that additional schemes may be employed on the returns. For example, many of the returns prepared by Johnson claim an EITC based on at least one permanently and totally disabled adult dependent.

21. Johnson has also inflated her clients' claims to the EITC by filing returns under the "Head of Household" filing status when the taxpayer was not eligible.

22. Beginning with the 2006 taxable year, Johnson has repeatedly and regularly prepared or directed the preparation of returns utilizing at least one of the schemes referred to in paragraph 14, above.
23. Johnson knew or should have known the positions taken on the returns as a result of the schemes referred to in paragraph 14, above, were unreasonable.
24. Johnson failed to satisfy the due diligence requirements for preparing returns in which the EITC is claimed.
25. Johnson also has failed to obtain or maintain Forms 8879, IRS e-file Signature Authorizations, which are required for clients that file returns electronically.

First Scheme: Generating false or overstated refunds by reporting fictitious income and other false information to generate inflated EITC

26. The amount of the EITC increases in proportion to a taxpayer's wages or other earned income up to a certain dollar amount. As such, there is a "plateau" of earned income amounts which will result in the maximum possible EITC credit for each taxpayer. Because that "plateau" amount may be more than the amount of income the taxpayer actually earned, a return falsely overstating earned income will, in certain circumstances, generate a larger refund.
27. Johnson obtained falsely increased EITC refunds for her clients by reporting fictitious wages to obtain the maximum possible credit, as well as reporting other false positions to maximize the refund claimed on the return.
28. Johnson prepared an income tax return for the 2007 taxable year for a customer named Robert Banks. This return provides a typical example of the scheme employed by Johnson to

claim false refunds based on a false or overstated EITC. The pertinent details of the return

Johnson prepared for Banks are as follows:

- (a) Banks's return reported income of \$12,500 from false, undocumented, or unconfirmed sources and Schedule C business income of \$840 from employment in the lawn care industry. The \$12,500 was reported on the return as "HSH," with no further explanation.
- (b) Banks's purported business income was reported on a schedule C-EZ which indicated that he had gross receipts of \$985 from a lawn care business, against expenses of \$145, resulting in self-employment income of \$840.
- (c) No withholdings or estimated payments were reported on the return, which indicated that Banks owed \$119 in self-employment taxes based on his reported lawn care income.
- (d) The return claimed an EITC of \$4,716, the maximum amount for a person with at least two "qualifying children" in the 2007 tax year, and an "additional child tax credit" of \$230, resulting in a corresponding claimed refund of \$4,827.
- (e) The return reported that the two "qualifying children" for EITC purposes were Banks's son, born in 1996, and his daughter, born in 1997.

29. In 2009, Banks was contacted by an IRS Revenue Agent regarding the return prepared by Johnson. Banks stated that he did not receive income as shown on his return, and that he had actually received employment income of \$2,608, which had been reported by his employer on a Form 1099. In addition, the two children reported on the return were not "qualifying children" because they were not actually his children.

30. An employee of the IRS prepared an amended return based on the truthful information Banks provided in the interview and the return was executed by Banks. The amended return showed that Banks had a tax liability of \$183, whereas the false return initially prepared by Johnson claimed a refund of \$4,827, a difference of \$5,010.

31. By way of further example, several returns prepared by Johnson reported the following information:

- (a) Johnson prepared an income tax return for the 2007 tax year for a customer named Michael Thornton, which, upon information and belief claimed a false or overstated refund based on an EITC. The return reported "HSH" income of \$11,824 from false, undocumented, or unconfirmed sources and Schedule C business income of \$307 from employment as a barber. The return reported that no withholdings or estimated payments had been made during the year and that Thornton owed no income taxes, but claimed a refund based on the EITC of \$4,716, the maximum amount for a person with at least two "qualifying children" in the 2007 tax year. In addition, Thornton's return reported that his two "qualifying children" for EITC purposes were his brother, Tommy Bedgood, born in 1950, and his sister, Nettie Wade, born in 1927, both of whom he claimed to be permanently and totally disabled.
- (b) Johnson prepared an income tax return for the 2007 tax year for a customer named Linda Nickerson, which, upon information and belief claimed a false or overstated refund based on an EITC. The return reported "HSH" income of \$11,250 from false, undocumented, or unconfirmed sources and Schedule C business income of

\$406 from employment in the child care industry. The return reported that no withholdings or estimated payments had been made during the year and that Nickerson owed no income taxes. The return claimed a refund of \$4,670, based on an EITC claim in the same amount. In addition, Nickerson's return reported that her two "qualifying children" for EITC purposes were her nephew, A.T., born in 1997, and her sister, Valerie Nickerson, born in 1974, who was claimed to be permanently and totally disabled.

- (c) Johnson prepared an income tax return for the 2007 tax year for a customer named Roderick Merriweather, which, upon information and belief claimed a false or overstated refund based on an EITC. The return reported "HSH" income of \$12,505 from false, undocumented, or unconfirmed sources and Schedule C business income of \$400 from employment in the construction industry. The return reported that no withholdings or estimated payments had been made during the year and that Merriweather owed no income taxes. The return claimed a refund of \$4,716, based on an EITC claim in the same amount, which was the maximum EITC for a person with at least two "qualifying children" in the 2007 tax year. In addition, Merriweather's return reported that his two "qualifying children" for EITC purposes were his brother, Lewis Merriweather, born in 1977, and his niece, Ashley Taylor, born in 1978, both of whom he claimed to be permanently and totally disabled.

32. The income reported by each of the taxpayers as “HSH” in paragraph 31, above, is not supported by any information reported by any third-party, such as an employer. As such, it is not readily verifiable and likely fictitious.

33. The income reported by each of the taxpayers on a schedule C in paragraph 31, above, is not supported by any information reported by any third-party, such as a client. As such, it is not readily verifiable and likely fictitious.

34. In each of the returns referred to in paragraph 31, above, there was no explanation or documentation to support the “HSH” or schedule C income, or any further explanation as to why the reported adjusted gross income of the taxpayer exceeded the amount reported by third parties, such as employers.

35. Upon information and belief, most, if not all, of the refunds claimed on the returns referred to in paragraph 31, above were falsely overstated by Johnson using the same scheme employed on Banks’s return and referred to in paragraphs 28-30, above.

**Second Scheme: Generating false or overstated refunds by reporting false
business expense deductions**

36. Johnson fabricates and inflates business expense deductions reported on Schedule C submitted with some of her clients’ income tax returns. By fabricating and inflating these deductions, Johnson reduces a client’s taxable income, which results in a reduced tax liability. Because these clients often have had taxes withheld from their paychecks, their reduced liability often results in a higher refund.

37. Upon being interviewed by an employee of the IRS, several taxpayers whose returns reported such Schedule C deductions stated that they did not have business expenses in the

amount reported on their returns and that they did not tell Johnson to prepare returns claiming such deductions.

38. Johnson prepared an income tax return for the 2008 tax year for a customer named Anthony Wyckoff. This return provides a typical example of the scheme employed by Johnson to overstate refunds by reporting false business expense deductions on a Schedule C. The pertinent details of the return Johnson prepared for Wyckoff are as follows:

- (a) Wyckoff's return reported wages of \$48,208 and a purported business loss of \$20,760. The wages were supported by a W-2 issued by his employer. The purported business loss was reported on a Schedule C filed with the return, but there was no supporting documentation or third-party verifiable information.
- (b) Wyckoff's business or profession was listed as "barber." No gross income was reported on the Schedule C, against losses of \$20,760, resulting from the following reported expenses:

Advertising expenses:	\$3,514
Contract labor:	\$3,520
Legal and professional services:	\$3,965
Office expense:	\$4,520
Repairs and Maintenance:	\$5,241
Total:	\$20,760

39. In 2009, Wyckoff was contacted by an IRS Revenue Agent regarding the return prepared by Johnson for 2008, as well as the returns she had prepared for him for the 2006 and 2007 taxable years in which similar business expenditures were reported. Wyckoff admitted that he had no more than \$5,000 in expenses in attempting to start a barber business in 2008 and stated that he had informed Johnson of that amount. He also stated that he did not know why Johnson

had prepared a return reporting excessive expenses and that he had not seen the Schedule C that was filed with his return until it was shown to him by the Revenue Agent.

40. The false or fraudulent positions reported on the return prepared by Johnson for Wyckoff resulted in a false refund of at least \$3,604.

41. For the taxable years 2006 and 2007, the most recent years for which full information is available in this regard, at least 35 returns prepared by Johnson or at her direction reported false or overstated business expense deductions on a Schedule C.

Harm to the United States

42. Johnson has caused substantial revenue losses to the United States.

43. Of the 1236 returns prepared by Johnson or at her direction for the taxable years 2006-2009, over 98% claimed refunds and approximately 95% claimed an EITC. While some of those refunds may have been legitimate, the vast majority of those refunds are likely incorrect because of the use of either of the schemes described herein.

44. Johnson's tax preparation may have caused government losses exceeding \$500,000.

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

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

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

47. The United States incorporates by reference the allegations in paragraphs 1 through 46.

48. 26 U.S.C. § 7407 authorizes a District Court to enjoin a person who is a tax return preparer from engaging in certain prohibited conduct or from further acting as a tax return preparer. The prohibited conduct justifying an injunction includes, among other things, the following:

(a) 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 that is due to an unreasonable position which the return preparer knew or should have known was unreasonable;

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

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

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

(a) The tax return preparer engaged in the prohibited conduct, and

(b) Injunctive relief is appropriate to prevent the recurrence of such conduct.

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

51. Johnson has repeatedly and continually prepared or submitted returns that contained understatements of tax liability that were due to positions that she knew or reasonably should have known were unreasonable and subject to penalty under 26 U.S.C. § 6694(a).

52. Johnson has repeatedly and continually failed to exercise due diligence in determining her customers' eligibility for the EITC and prepared returns incorrectly claiming the EITC.

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

54. A narrow injunction against only Johnson's currently identified schemes would be insufficient to prevent her interference with the proper administration of the federal tax laws, because she has understated her clients' liability in the vast majority of returns she prepared and used several different schemes to do so. Indeed, legitimate return preparation appears to be an insignificant part of her business.

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

56. Because Johnson engaged in conduct prohibited by 26 U.S.C. § 7407(b)(1), she is subject to an injunction for those activities.

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

COUNT II - INJUNCTION UNDER 26 U.S.C. § 7408

58. The United States incorporates by reference the allegations in paragraphs 1 through 46.

59. 26 U.S.C. § 7408 authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under 26 U.S.C. § 6701, which penalizes a person who aids or assists in the preparation of tax returns that the person knows will result in an understatement of tax liability.

60. Johnson has engaged in conduct subject to penalty under 26 U.S.C. § 6701 by preparing or directing the preparation of income tax returns that claim an EITC when she knows or should reasonably know that her clients are not eligible for the credit, or the credit in the full amount claimed. Likewise, Johnson has engaged in conduct subject to penalty under 26 U.S.C. § 6701 by creating fictitious business deductions to reduce some of her clients' tax liability or generate an excessive refund of money withheld from the clients' pay during the year.

61. Johnson's actions described in paragraphs 25-36, above, fall within 26 U.S.C. § 7408(c)(1), and injunctive relief is appropriate to prevent recurrence of this conduct.

62. Accordingly, Johnson should be permanently enjoined from preparing any returns that improperly claim or inflate a claim to the EITC.

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

63. The United States incorporates by reference the allegations in paragraph 1 through 46.

64. 26 U.S.C. § 7402(a) authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of internal revenue laws.

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

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

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

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

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

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

B. That the Court find that Aurelia Sanderson Johnson has repeatedly and continually 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 prevent recurrence of that conduct.

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

D. That the Court enter a permanent injunction prohibiting Johnson from directly or indirectly:

1. preparing or assisting in the preparation of any other person's federal income tax returns and other related documents and forms;
2. preparing or assisting in the preparation of federal tax returns that she knows will result in the understatement of any tax liability or the overstatement of federal tax refunds;
3. engaging in any activity subject to penalty under 26 U.S.C. §§ 6694 or 6695;
4. engaging in any activity subject to penalty under 26 U.S.C. § 6701; or
5. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper administration and enforcement of internal revenue laws.

E. That the Court enter an injunction requiring Johnson:

1. At her own expense, to send by certified mail, return receipt requested, a copy of the final injunction entered against her in this action to each person for whom she prepared federal income tax returns or any other federal tax forms after January 1, 2007;
2. To turn over to the United States copies of all returns or claims for refund that she prepared for customers after January 1, 2007;

3. To turn over to the United States a list with the name, address and telephone number, e-mail address (if known), and social security number or other taxpayer identification number of all customers for whom she prepared returns after January 1, 2007;

4. Within forty-five (45) days of entry of the final injunction in ther action, to file a sworn statement with the Court evidencing her compliance with the foregoing directives; and


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

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

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

Dated: November 5, 2010

John A. DiCicco
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