

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA	)
	)
Plaintiff,	)
	)
v.	)
	)
CARLOS CRUZ a/k/a CARLOS	)
RUANO-CRUZ, individually and d/b/a	)
CARLOS INCOME TAX SERVICES,	)
	)
Defendant.	)

Case No. 09-CV-2525 JAR/JPO

**COMPLAINT FOR PERMANENT INJUNCTION**

Plaintiff, the United States of America, states as follows for its complaint against defendant Carlos Cruz a/k/a Carlos Ruano-Cruz, d/b/a Carlos Income Tax Services:

**Nature of the Action**

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 of the United States, pursuant to the provisions of 26 U.S.C. (“I.R.C.”) §§ 7402, 7407, and 7408.

2. The United States brings this complaint to enjoin Cruz and any persons in active concert or participation with him from directly or indirectly:

- (a) Preparing or filing, or helping others to prepare or file, federal tax returns for anyone other than himself;
- (b) Causing or assisting other persons and entities to understate their federal tax liabilities;
- (c) Engaging in conduct subject to penalty under I.R.C. § 6701;
- (d) Engaging in any conduct subject to penalty under I.R.C. § 6694; and

- (e) Engaging in any other conduct subject to any penalty under the Internal Revenue Code.

3. An injunction is warranted based on Cruz's continual and repeated violation of the internal revenue laws, including engaging in conduct subject to penalty under I.R.C. §§ 6701 and 6694.

### **Jurisdiction and Venue**

4. This Court has jurisdiction over this action to enjoin Cruz from violating and interfering with the administration of the internal revenue laws pursuant to 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402, 7407, and 7408.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because Cruz resides in this judicial district and has multiple customers who reside in this judicial district.

### **Defendant**

6. Cruz resides at 3119 Suntree Plaza, Apt. 404, in Kansas City, Kansas.

7. Cruz conducts business through the unincorporated entity Carlos Income Tax Services with its principal place of business at 2315 Lawn Avenue in Kansas City, Missouri, which also served as his former residence. He has been a paid tax-return preparer since at least 1992. He is not and has not ever been enrolled as a tax preparer with the IRS.

8. Cruz is neither a public accountant, a licensed Certified Public Accountant, nor a lawyer. He has no professional licenses nor college degrees. His only education or training in the area of taxation are some H&R Block income tax preparation courses and some classes related to Drake Software, a tax preparation software company.

### **Overview of Defendant's Activities**

9. Cruz prepares tax returns for customers residing in Kansas and Missouri within the greater Kansas City metropolitan area. He prepares tax returns for customers out of his former residence in Kansas City, Missouri, and out of the restaurant El Pulgarcito in Kansas City, Kansas.

10. Cruz claims to have prepared income tax returns for customers since 1992. Cruz's files reflect that he prepared at least 6,790 federal income tax returns for tax years 2004 through 2007: 1,506 for tax year 2004; 1,305 for tax year 2005; 2,086 for tax year 2006; and 1,893 for tax year 2007. Additionally, IRS records reflect that Cruz prepared at least 203 federal income tax returns for tax year 2003 and at least 479 federal income tax returns for tax year 2008.

11. In a November 19, 2008, interview with the IRS revenue agent investigating Cruz's return preparation business, Cruz claimed that he has no promotional materials, but instead gains customers by word-of-mouth. Cruz claimed that when dealing with tax issues, he primarily relies on a "big tax book"—of which he claims to have read about half—which, upon information and belief, was provided by Drake Software, his tax software provider. Cruz claimed that he occasionally used Drake Software's telephone support line as well.

12. Cruz effectively engages in result-based tax return preparation where the goal is to maximize refunds rather than accurately report his customers' actual income and allowable credits and deductions. One of Cruz's customers, Laura Cisneros, told the investigating IRS revenue agent in October of 2008 that while Cruz prepared the Cisneroses' 2004 and 2005 federal income tax returns, he said to Ms. Cisneros's husband "just tell me how much you want to pay or want for a refund."

13. As more specifically set forth below, although many of Cruz's customers bring copies of their tax documents such as Forms W-2 and 1099 and receipts for potentially deductible expenses, Cruz often ignores the documentary substantiation and reports unsupported amounts on customers' federal income tax returns and supporting schedules. During IRS audits, several customers advised the IRS that when they brought their expense records to Cruz, he did not verify the actual expense amounts and advised customers to tell him only generally what they thought the amount of their expenses were instead of taking the time to calculate the accurate sums. Salvador Garcia, a self-employed customer from Kansas City, Kansas, told the investigating IRS revenue agent in October of 2008 that he went to Cruz for tax preparation services after hearing that "[p]eople go to Carlos because he doesn't ask for anything." However, I.R.C. § 6001 requires taxpayers to maintain sufficient records to establish the amounts required to be shown on their tax returns.

14. As more specifically set forth below, Cruz gives improper advice regarding deductions. Cruz wrongly advises customers that general home improvements and maintenance are fully deductible and that small business owners may claim both standard mileage and actual travel expenses as an expense deduction. Cruz gives this improper advice although he holds himself out to his customers as an experienced and knowledgeable tax return preparer.

15. Cruz claims that when he prepares a customer's federal income tax return, he typically will meet with that customer only once for about 15 minutes, during which he will fill out the tax return in front of the customer while asking general questions. After this, he prints out the return and asks the customer to sign it. Some of Cruz's customers examined by the IRS indicated that they stood in line for over an hour to wait for Cruz's tax preparation, and felt

hurried by Cruz due to the sheer number of customers waiting in line. Several of Cruz's customers examined by the IRS stated that Cruz did not review their tax return with them after he prepared it and printed it out.

16. Cruz charges customers between \$50 to \$80 to prepare a federal income tax return, depending on what he judges the complexity of the return to be. Cruz tries to distance himself from responsibility for accurate preparation of a customer's federal income tax return by advising his customers that if they are later audited by the IRS, he will not accompany the customer to or represent the customer at the audit because "he doesn't have to go." Cruz claims that an audit is only between the customer and the IRS, regardless of the tax preparation advice he gives customers.

17. Of 81 federal tax returns prepared by Cruz that the IRS has reviewed for tax years 2002 through 2007, 77 returns (or 95%) were prepared incorrectly and required adjustments. Of the 77 returns requiring adjustments, 75 adjustments reflected additional taxes owed to the IRS.

18. For tax years 2002, 2003, 2004, 2005, 2006, and 2007, Cruz repeatedly prepared federal income tax returns claiming false or inflated expenses on Schedule A including improperly claiming deductions for general home improvement expenses, claiming false or inflated state income taxes or personal property taxes paid, claiming false or inflated mortgage interest or real estate taxes paid, and claiming false or inflated charitable-contributions. Additionally, Cruz prepared returns with false or unsubstantiated Schedule C wages, automobile expenses, and general expenses. Cruz also failed to report customers' state tax refunds as income and claimed education credits for taxpayer dependents who were not enrolled in qualifying post-secondary school educational institutions. The majority of returns examined by

the IRS reflected multiple such inaccuracies. The chart below summarizes adjustments the IRS made on the 81 Cruz-prepared returns it examined:

<b>Description of Adjustment Discovered by IRS Examination</b>	<b>Number of Incidents</b>	<b>% of Occurrences in 81 Examined Returns</b>
<i>Improper Home Improvement Deductions</i>	29	36%
<i>State Income or Personal Property Tax Deduction</i>	26	32%
<i>Mortgage Interest or Real Estate Tax Deduction</i>	20	25%
<i>Charitable Contributions</i>	12	15%
<i>Schedule C Wages Paid</i>	14	17%
<i>Schedule C Auto Expenses</i>	14	17%
<i>Schedule C General Expenses</i>	15	19%
<i>State Tax Refunds</i>	18	22%
<i>Improper Education Credits</i>	4	5%

#### **Improper, False, or Inflated Schedule A Deductions on Tax Returns Prepared by Cruz**

19. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 29 returns claimed deductions for improvements and maintenance on customer's residences as a miscellaneous deduction on Line 22 of the customers' Form 1040 Schedule A. During the November 2008 IRS interview, Cruz claimed that "a friend in California" advised him that this was a legitimate tax deduction, but could not confirm which statute or regulation allegedly authorized such a deduction. In fact, the Internal Revenue Code does not allow taxpayers to deduct the expenses of general improvements or maintenance on their personal residence, and allows only a narrow, limited tax credit for energy efficiency set forth in I.R.C. §§ 25C and 25D.

20. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 26 returns claimed false, fraudulent, or unsubstantiated amounts for state income and personal

property taxes paid as a deduction on Lines 5 and 7 of the customers' Form 1040 Schedule A.

Cruz's typical method is to inflate state income or personal property taxes paid.

21. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 20 returns claimed false, fraudulent, or inflated amounts for real estate taxes or mortgage interest paid as a deduction on Lines 6, 10, and 12 of the customers' Form 1040 Schedule A. Cruz's typical method is to inflate real estate taxes or mortgage interest paid.

22. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 12 had false or fraudulently inflated charitable contributions. Cruz's typical method is to inflate reported cash charitable contributions.

23. During IRS examinations of their Cruz-prepared tax returns, many Cruz customers advised the IRS that they had no knowledge of how Cruz came up with the deductions reported on their returns. For example:

- a. Francisco and Laura Tarelo from Kansas City, Missouri, visited Cruz for preparation of their 2004 federal income tax return. They brought their Forms W-2, Forms 1098, and other expense receipts to substantiate their Schedule A deductions, including the Form 1098 showing \$2,816 in real estate taxes paid and \$2,300 in interest points paid for their residence as well as \$3,733 in state and local taxes withheld on their W-2. Carlos prepared their Schedule A reflecting \$270 real estate taxes, \$8,789 interest points, and \$7,466 in state and local taxes. The Tarelos did not understand why the claimed amounts did not match the substantiated amounts. Based on this and other discrepancies, the IRS audited the Tarelos and adjusted their claimed income by \$14,608, resulting in an assessment of \$2,873.09 in additional tax and penalties.
- b. Jose and Celina Ortiz from Kansas City, Kansas, visited Cruz for preparation of their 2004 federal income tax return. They brought their tax documents and other receipts to substantiate any claimed deductions, including the wage-earner's Form W-2 reflecting \$1,138.44 in state tax withheld from the annual salary. Carlos prepared their Schedule A reflecting \$2,276 in state tax withheld, double the substantiated amount. The Ortizes did not understand why the claimed amounts did not match

the substantiated amounts despite the substantiation. The Ortizes also informed Cruz that they purchased a new home as his personal residence in 2004 and made a downpayment of \$36,453. Cruz claimed this sum as a miscellaneous deduction, and assured the couple that they could claim the downpayment as a deduction if the house was their personal residence. Based on this and other discrepancies, the IRS audited the couple and adjusted their claimed income by \$32,790, resulting in an assessment of \$3,573.96 in additional tax and penalties.

- c. Shoua Yang and Chue Xiong from Kansas City, KS, visited Cruz in early 2005 so he could prepare their 2004 federal income tax return. They brought their daughter to translate. The couple had no expense receipts for education, home improvements, or charitable contributions. Cruz asked them questions regarding their general church-going habits, whether their daughter attended school, and if they had fixed anything at their home. Yang and Xiong answered his questions, but provided no specific amounts nor had any receipts to reference. Nonetheless, Cruz filled in a deduction of \$2,865 for charitable contributions, \$5,110 for a “home improvement” deduction, and \$433 for an education credit for their daughter then attending high school. Upon examination, the IRS denied the “home improvement” deduction in full as improper and the education credit in full because the daughter was still in high school and not enrolled in any qualifying post-secondary education program. The IRS also adjusted the claimed charitable deduction to \$505 based on information provided by the customers’ church.

24. Cruz gives patently false advice to customers regarding deductions. For example:

- a. Artemio and Laura Cisneros from Kansas City, Kansas, were customers of Cruz for preparation of their tax year 2004 and 2005 federal income tax returns. At their first visit for preparation of the tax year 2004 tax return, after Ms. Cisneros explained that she earned money cleaning houses, Cruz improperly advised her that she did not have to report any money received from cleaning houses as income because it would only increase her corresponding tax liability. The Cisneroses declined to take this advice. They brought their receipts and tax documents for their Schedule A deductions as well as for their Schedule C landscaping business to substantiate any claimed deductions. Cruz never looked at their receipts, and asked the Cisneroses to just tell him the total they spent on overall expenses. During one visit, Cruz told Ms. Cisneros “you don’t need to bring me all this, just tell me how much you make and how much you spend and don’t worry about supplies here and gas here.”



- b. During the preparation of their 2004 and 2005 federal income tax returns, Cruz improperly advised the Tarelos from Kansas City, Missouri, that they could claim as deductions anything they do to fix their personal residence, including new cabinets, a garage door, and carpets. The IRS denied in full the \$8,500 for tax year 2004 and the \$5,400 for tax year 2005 that Cruz listed as a “Home Improvement” deduction on Line 22 of their 2004 and 2005 federal income tax returns’ Schedule A.
- c. Cruz improperly advised Julia Walton, a small business owner, for her 2002, 2004, and 2005 federal income tax returns that she could claim an expense deduction for automobile expenses at the standard mileage rate and for actual expenses such as gas. Based on this advice, Cruz prepared Walton’s return to claim automobile expenses of \$25,829 for tax year 2002; \$46,441 for 2004, and \$11,875 for 2005. However upon an examination of these tax years, the IRS only allowed substantiated deductions of \$3,038 for 2002, \$5,063 for 2004, and \$5,770 for 2005.

**Improper, False, or Inflated Schedule C Deductions on Tax Returns Prepared by Cruz**

25. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 14 returns claimed false, fraudulent, or inflated amounts for wages paid to employees or contractors as a deduction on Line 26 of the customers’ Form 1040 Schedule C. When examined by the IRS, customers lacked substantiation for the claimed wages paid, despite the requirement that employers are required to keep records and issue information returns for payments to independent contractors under I.R.C. § 6041 and keep records and issue receipts for payments to employees under I.R.C. § 6051. For example:

- a. The Cisneroses from Kansas City, Kansas, managed a lawncare business and were customers of Cruz for preparation of their tax year 2004 and 2005 federal income tax returns. Although they claimed salaries and wages as expenses on the Schedule C for 2004 and 2005, Cruz never informed the Cisneroses that they needed to issue a Form W-2, Form 1099, or any other tax information document to their employees or independent contractors or keep any records to substantiate wages paid. Only when they returned in 2006 did an unidentified woman working with Cruz inform the Cisneroses that they needed to issue Forms W-2 or 1099 to employees or independent contractors to substantiate these expenses. Cruz reported \$8,596 in wages paid on Line 26 of their 2004 Schedule C,

and \$10,427 in wages paid on Line 26 of their 2005 Schedule C. At the IRS audit, the couple could only provide some cancelled checks that supported \$3,058 claimed wages paid for 2004, and \$1,876 for 2005. Based on this and other discrepancies, the IRS adjusted their claimed income for tax year 2004 by \$14,022, resulting in an assessment of \$5,112.45 in additional tax and penalties, and adjusted their claimed income for tax year 2005 by \$15,158, resulting in an assessment of \$4,360.54 in additional tax and penalties.

- b. Alberto and Silvia Hernandez from Kansas City, Missouri, who both worked as contracted cleaners, paid Cruz to prepare their tax year 2004 and 2005 federal income tax returns. Cruz falsely reported on Line 26 of the husband's Schedule C \$2,500 in wages that Mr. Hernandez allegedly paid to employees during tax year 2004. Upon examination, Mr. Hernandez informed the IRS that he worked alone, never had any employees for either the 2004 or 2005 tax years, and did not understand why Cruz had reported any wages paid. The IRS denied in full the claimed wage expense deduction.

26. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 14 returns claimed false, fraudulent, or inflated amounts for automobile expenses as a deduction on Line 9 of the customers' Form 1040 Schedule C. When examined by the IRS, customers lacked substantiation for the claimed automobile expenses related to their business. When interviewed by an IRS revenue agent in November of 2008 regarding the proper manner in which to claim automobile expense deductions on a Schedule C, Cruz stated that he advised customers that a taxpayer may claim both standard mileage rates and actual automobile expenses, contrary to IRS Publication 463 which gives a taxpayer the option of choosing only one method but not both.

27. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 15 returns claimed false, fraudulent, or inflated amounts for general business expenses—not including wages and automobile expenses as described above in paragraphs 25 and 26—as a deduction on Line 2 of the customers' Form 1040 Schedule C-EZ and Lines 8 through 28 of the

customers' Form 1040 Schedule C. When examined by the IRS, customers lacked substantiation for the claimed wages paid. For example:

- a. Trinidad Guerra, a part-time babysitter from Kansas City, Kansas, had Cruz prepare her tax year 2004 federal income tax return. Cruz reported on Line 2 of her Schedule C-EZ wages of \$10,500 and expenses of \$2,300. Guerra did not know how Cruz came up with the claimed wage amount because she told him that she was only paid \$125 per week and worked only 9 months. Additionally, Guerra never provided to Cruz any expense receipts, nor did Cruz inquire about any expenses she incurred. Based on this and other discrepancies, the IRS audited Guerra and reduced her claimed income for tax year 2004 by \$1,540.80, which reduced her Earned Income Tax Credit. This adjustment resulted in an assessment of \$313.06 in additional tax and penalties.
- b. Salvador Garcia from Kansas City, Kansas, owned his own construction business and paid Cruz to prepare his tax year 2003 and 2004 federal income tax returns. Cruz reported on Line 22 of the Schedule C a total supply expense of \$31,255 for tax year 2003, and \$15,410 for tax year 2004. Garcia brought a notebook containing his supply receipts when he visited Cruz for preparation of the tax returns, but Cruz said he didn't need the notebook and never looked at the receipts. Garcia did not know how Cruz determined the supply expenses claimed on the return without basing them on the receipts provided. When the IRS examined Garcia's 2003 and 2004 tax returns, Garcia could substantiate only \$3,937 for 2003 and \$9,318 based on his retained supply receipts. The IRS only allowed these substantiated amounts as an expense deduction.

28. Cruz falsely advised customers that they can fabricate a business on Schedule C of the federal income tax return in order to claim tax refunds to which they are not entitled. For example, Cruz prepared the 2004 federal income tax return for Lara Noemi of Kansas City, Missouri. In a discussion between Cruz and Noemi, Cruz advised her that in order to maximize the Earned Income Tax Credit, she had to have an income between \$8,000 and \$12,000. When Noemi replied that she did not make enough to maximize the Earned Income Tax Credit based on that range, Cruz advised her that he could manufacture a false Schedule C house-cleaning business in her name, and that she should inform any future tax preparer that she was self-

employed, owned a Schedule C business, and claim that her customers paid her in cash. He then drafted a Schedule C-EZ with false and unsubstantiated gross receipts and expenses and claimed an Earned Income Tax Credit of \$3,770 for a total refund of \$2,619. The IRS denied the gross receipts and expenses on the Schedule C-EZ in their entirety, reduced the Earned Income Tax Credit accordingly, and assessed \$2,352.32 in tax, penalties, and interest against the customer.

**Improper Education Credits and State Tax Refunds Falsely or Fraudulently Unreported or Underreported by Cruz**

29. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 4 returns reflected improper education credits for dependents who were not enrolled in post-secondary education or other qualified educational institutions. In at least one case involving a customer, Salvador Garcia, a father from Kansas City, Kansas, Cruz never discussed with Garcia how a dependent may qualify for an education credit, and Garcia was unaware that such a credit even existed. Garcia only remembers Cruz asking for his children's birthdates and social security numbers. Nonetheless, Cruz prepared Garcia's return claiming education credits for the father's 8-year-old and 14-year-old sons for the 2003 tax year. Upon examination, the IRS disallowed both claimed education credits because neither children were enrolled in qualifying, post-secondary education institutions.

30. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 18 returns falsely or fraudulently failed to include as income to his customers any state tax refunds from the previous year.

31. Some customers claimed that although they received previous years' state income tax refunds from using Cruz's services for that tax year, Cruz never asked for information about such refunds and failed to inform customers that such refunds were taxable as income.

### **Harm to the Public and the United States**

32. Based upon the 81 tax returns selected at random by the IRS for examination, Cruz's preparation of false and fraudulent returns has resulted in a significant percentage of his customers under-reporting and underpaying their taxes. Specifically, 95% of the examined tax returns prepared by Cruz required an adjustment by the IRS.

33. Cruz's conduct harms his customers because they paid Cruz to prepare their federal tax returns that substantially understate their tax liabilities. Many of Cruz's customers now face large federal income tax liabilities and may be liable for substantial penalties and interest.

34. The IRS must audit Cruz's customers to determine their correct tax liabilities, or request that they file correct amended returns. Such effort may be required for each of Cruz's customers filing tax returns prepared by Cruz within the last three years.

35. So far, the IRS has examined the tax liabilities of 46 Cruz customers as reported on 81 federal income tax returns, covering tax years 2002, 2003, 2004, 2005, 2006, and 2007. These preliminary examinations reveal that Cruz's customers substantially under-reported their incomes, and accordingly owe additional taxes and penalties totaling over \$700,000. The following chart shows the actual lost tax revenue per tax year examined:

<b>Tax Year</b>	<b>Returns Examined</b>	<b>Lost Revenue</b>
2002	1	\$2,355.00
2003	4	\$38,816.20
2004	44	\$305,727.43
2005	29	\$355,228.00
2006	2	\$8,151.00
2007	1	\$3,498.00
<b>TOTALS</b>	<b>81</b>	<b>\$713,775.63</b>

36. The IRS selected the examined customers and tax returns at random from Cruz's overall customer base and total number of prepared returns. Given the high percentage of returns requiring adjustments upon examination, the IRS fully expects to find in its continuing examinations that the majority of tax returns prepared by Cruz reflect a similar pattern of false, inflated, or unsubstantiated deductions and an inaccurate reflection of income. Assuming the tax understatement rate and the average tax understatement from the audited returns are representative of Cruz's tax-preparation misconduct for 2003, 2004, 2005, 2006, and 2007, the tax loss caused by Cruz's tax-preparation misconduct may exceed \$25 million.

37. The actual and potential tax losses do not fully account for the harm to the United States because there are substantial additional costs to the government for investigating and correcting Cruz's false and fraudulently prepared returns and collecting the unpaid tax liabilities, and the United States does not know the total number of returns prepared by Cruz to date.

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

38. The United States incorporates by reference the allegations contained in paragraphs 1 through 37.

39. I.R.C. § 7407 authorizes a district court to enjoin an income tax preparer from specified conduct (which is described in I.R.C. §§ 6694, 6695, and § 7407 itself) if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

40. If a court finds that a person has continually or repeatedly engaged in such conduct 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 a tax return preparer.

41. I.R.C. § 6694 provides that a tax return preparer is subject to penalty if he or she prepares a return or claim for refund understating a customer's tax liability based on an unreasonable position which lacks substantial authority, and the preparer knew or should have known of the position. A return preparer is subject to a larger penalty if the understatement is due to the preparer's willful attempt to understate the liability or the reckless or intentional disregard of rules or regulations.

42. Cruz prepared tax returns for customers which unlawfully reduced customers' reported income, improperly claimed deductions for home improvement expenses, inflated or falsely claimed state income taxes or personal property taxes paid, inflated or falsely claimed mortgage interest or real estate taxes paid, inflated or falsely claimed charitable contributions, inflated or falsely claimed Schedule C wages and other expenses, failed to report state tax refunds, and improperly claimed education credits. Cruz did so knowing or having reason to know that such expenses and deductions were unreasonable and lacked substantial authority, or did so recklessly or willfully to understate customers' tax liabilities in disregard of internal revenue laws and regulations.

43. Cruz has prepared at least 7,472 federal income tax returns for customers to submit to the IRS, a substantial number of which contain unlawful mischaracterizations and other false or fraudulent statements about the customers' income, deductions, and tax liability. IRS examinations required adjustments to 77 of 81 randomly-selected tax returns yielding a tax loss to the government of over \$700,000 so far. Because Cruz prepared at least 7,472 returns for tax years 2002 through 2008, the tax loss to the government may well exceed \$25 million.

44. Cruz has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694. Cruz's false, fraudulent, intentional, willful, or reckless return preparation substantially interferes with the administration of the internal revenue laws, and he is subject to injunction under I.R.C. § 7407. As set forth above, Cruz has continually and repeatedly engaged in fraudulent and deceptive conduct that interferes with the proper administration of the internal revenue laws.

45. Given the type, breadth, and scope of Cruz's conduct, an injunction prohibiting only certain specified conduct is not sufficient to prevent Cruz from further interfering with the proper administration of the internal revenue laws.

#### **Count II: Injunction under I.R.C. § 7408**

46. The United States incorporates by reference the allegations contained in paragraphs 1 through 45.

47. I.R.C. § 7408 authorizes a district court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. § 6701 from engaging in further such conduct if injunctive relief is appropriate to prevent recurrence of the conduct.



48. I.R.C. § 6701 penalizes a person who aids or assists in, procures, or advises with respect to the preparation or presentation of any portion of a federal tax return, refund claim, or other document, knowing or having reason to believe that such document will be used in connection with any material matter under the tax laws, and knowing that such portion, if used, would result in an understatement of another person's tax liability.

49. Cruz prepared tax returns for customers with falsely or fraudulently inflated expenses and deductions. Cruz prepared and filed false federal tax returns for these customers knowing or having reason to believe that the filing of tax returns would result in understatements of customers' correct tax liability and that many of the claimed expenses could not be substantiated.

50. Cruz engaged in conduct subject to penalty under I.R.C. § 6701, and is subject to an injunction under I.R.C. § 7408.

### **Count III. Injunction Under I.R.C. § 7402**

51. The United States incorporates by reference the allegations contained in paragraphs 1 through 50.

52. 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 those laws.

53. By holding himself out as a tax preparation professional, Cruz knew or had reason to know that the federal income tax returns he prepared and filed or caused to be filed had no basis in fact and lacked substantial authority, that the claims and deductions and statements he made therein were false, and that his statements to customers regarding the deductibility of expenses

and fabrication of Schedule C businesses would result in unlawfully reducing customers' reported tax liabilities. Cruz made factual misstatements to customers and failed to undertake proper due diligence in investigating the propriety of claimed deductions.

54. Cruz is subject to an injunction under I.R.C. § 7402 for his conduct and actions. Unless enjoined by this Court, Cruz is likely to continue to engage in such conduct.

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

A. That the Court find that Carlos E. Cruz, a/k/a Carlos Ruano-Cruz, d/b/a/ Carlos Income Tax Services, has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6701 and 6694, and has engaged in conduct that interferes with the administration and enforcement of the internal revenue laws;

B. That the Court find that injunctive relief is appropriate under I.R.C. §§ 7402, 7407, and 7408 to prevent Carlos E. Cruz, a/k/a Carlos Ruano-Cruz, d/b/a/ Carlos Income Tax Services, and anyone acting in concert with him from further recurrence of such conduct;

C. That the Court enter a permanent injunction pursuant to I.R.C. §§ 7402, 7407, and 7408, prohibiting Carlos E. Cruz, a/k/a Carlos Ruano-Cruz, d/b/a/ Carlos Income Tax Services, and all persons acting in active concert or participation with him, from:

- (a) Preparing or filing, or helping others to prepare or file, federal tax returns for anyone other than himself;
- (b) Causing or assisting other persons and entities to understate their federal tax liabilities and avoid paying federal taxes;
- (c) Engaging in conduct subject to penalty under I.R.C. § 6701;

- (d) Engaging in any conduct subject to penalty under I.R.C. § 6694; and
- (e) Engaging in any other conduct subject to any penalty under the Internal Revenue Code.

D. That the Court order Cruz to turn over to counsel for the United States a list of the names, addresses, e-mail addresses, phone numbers, and Social Security numbers of all customers for whom he or Carlos Income Tax Services has created, prepared, or filed federal tax returns or whom he has advised, counseled, or otherwise assisted regarding the preparation of federal tax returns or advised regarding their tax liability;

E. That the Court order Cruz to contact all persons and entities for whom he or Carlos Income Tax Services prepared, helped to prepare, or file any federal tax returns or any other federal tax-related document, and provide those persons or entities with a copy of the permanent injunction against Cruz;

F. That the Court order Cruz to complete the requirements listed in paragraphs D and E within 20 days of the Court's permanent injunction, and order Cruz to file with the Court a certificate of compliance with those requirements, signed under penalties of perjury, along with evidence of compliance, within 22 days of the Court's permanent injunction;

G. That the Court allow the United States full post-judgment discovery to monitor compliance with the injunction;

H. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

I. That the Court grant the United States such other and further relief, including costs, as the Court deems appropriate.

The United States respectfully requests that the trial for this matter be held in the United States District Courthouse in Kansas City, Kansas.

Dated this October 8, 2009.

LANNY D. WELCH  
United States Attorney

/s/ Thomas W. Curteman, Jr.  
THOMAS W. CURTEMAN, JR.  
Virginia Bar No. 70924  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 7238  
Washington, D.C. 20044  
Telephone: (202) 616-9379  
Fax: (202) 514-6770  
E-mail: [thomas.w.curteman.jr@usdoj.gov](mailto:thomas.w.curteman.jr@usdoj.gov)  
Attorney for Plaintiff.