

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case Number:
)	
v.)	
)	
FRANCIS KENNETH ALBERT,)	
individually and doing business as)	
ALBERT'S TAX SERVICE,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America complains against defendant Francis Kenneth Albert, a.k.a. Frank Albert, individually and doing business as Albert's Tax Service, as follows:

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, pursuant to the provisions of Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7401, 7402, 7407, and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and I.R.C. §§ 7401, 7402(a), 7407, and 7408.

3. This is a civil action brought by the United States under I.R.C. §§ 7402(a), 7407, and

7408 to enjoin Albert and anyone in active concert or participation with him from:

- A. acting as a federal income tax return preparer or assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as representatives on behalf of any person or organization before the Internal Revenue Service;
- B. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents or forms for others;
- C. engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6701, or any other penalty provision of the I.R.C.; and
- D. engaging in other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Albert resides in Sparks, Nevada, within this judicial district and a substantial part of the actions giving rise to this suit took place in this district.

Defendant and Basic Facts

5. Frank Albert is a paid federal tax return preparer, d/b/a Albert's Tax Service, located at 1020 Turtledove Drive, Sparks, NV 89441.

6. Albert owns and manages Albert's Tax Service. Albert specializes in preparing returns for auto salesmen, construction workers, and policemen. He tells his customers that he knows the typical expenses incurred by people working in these industries or professions, that he does not use records when preparing tax returns even if records are provided to him by his customers, and that documentation is not required to claim tax deductions or business expenses.

7. Regarding tax years 2002-2005, Albert prepared approximately 1,363 tax returns for compensation. For those years, the IRS has examined 543 tax returns prepared by Albert and discovered income tax deficiencies totaling \$1,185,608, which equals an average additional tax

deficiency of \$2,183.44 per return. Providing similar results can be expected for other returns Albert prepared, the harm to the United States Treasury, when that average is extrapolated across all 1,363 tax returns, could be as much as \$2.9 million, or more.

8. Albert is a federal income tax return preparer who prepares fraudulent tax returns for his customers on which he fabricates Schedule C businesses, and employee business expenses, makes claims of questionable filing status, and claims undocumented charitable contributions.

9. In September 2008, Albert entered a pre-indictment plea to one count of attempting to interfere with the administration of the Internal Revenue laws, in violation of 26 U.S.C. § 7212(a). Albert was sentenced on December 16, 2008 to five years probation, standard and special conditions of supervision, and a \$100 special assessment.

Bogus Schedule C Business Scheme

10. Generally, income or loss from a business operated by a sole proprietor is reported on the Schedule C portion of a tax return. An activity qualifies as a business if the primary purpose is for income or profit and the taxpayer is involved in the activity with continuity and regularity. For example, a sporadic activity or a hobby does not qualify as a business.

11. Albert creates bogus businesses for his customers in order to deduct fictitious business expenses, thereby creating a “loss” that lowers his customers’ total income and reduces their tax liabilities. In short, Albert creates phony businesses on Schedule C forms and then fabricates income and/or expenses related to that fictitious business.

Unreimbursed Employee Expense Deduction Scheme

12. Unreimbursed employee expenses are different from the Schedule C business expense deduction explained above. Unreimbursed employee expenses are the total ordinary and

necessary job expenses an employee pays for, but for which they are not reimbursed. An ordinary expense is one that is common and accepted in a field of trade, business, or profession. A necessary expense is one that is helpful and appropriate for business. An expense does not have to be required to be considered necessary. These unreimbursed employee expenses are listed on the Schedule A portion of the tax return.

13. Examples of expenses that could qualify, if not reimbursed by an employer, include: safety equipment and supplies needed for work; uniforms required by the employer that are not suitable for ordinary wear; physical examinations required by the employer; dues to professional organizations; and subscriptions to professional journals.

14. Albert repeatedly fabricates and/or inflates unreimbursed employee expenses on his customers tax returns.

Specific Examples of Fraudulent Returns Prepared by Albert

15. Albert prepared the income tax returns for 2002 and 2003 for Customer #1, a husband and wife. Albert claimed fraudulent amounts for unreimbursed business expenses related to the husband's work in both 2002 and 2003. On the 2002 return, Albert identified \$8,108 in unreimbursed expenses, including over \$1,222 in vehicle expenses. On the 2003 return, Albert listed \$7,529 in unreimbursed expenses, including \$2,943 for accessories and \$899 for a cell phone. When questioned by the IRS, the couple said that they had not discussed these expenses or provided any receipts to Albert that would substantiate these expenses. They also said that neither of them had unreimbursed vehicle expenses or cell phone expenses, and they did not know how Albert determined the nature or amount of these expenses.

16. Albert also fabricated a security business supposedly owned by the husband on Customer #1's 2002 and 2003 tax returns. In both years, the bogus business reported a loss; specifically, a loss of \$942 in 2002 (\$1,700 in income minus \$2,642 in expenses) and a loss of \$536 in 2003 (\$1,000 in income minus \$1,536 in expenses). The husband did not provide Albert with any receipts for any income or expenses from any security business and does not recall any discussions with Albert about operating a security business. While the husband did work part-time in security in both 2002 and 2003, he had no expenses related to that work and can not explain how Albert arrived at these expenses.

17. Customer #2, a husband and wife, had their income tax returns prepared by Albert for 2002 and 2003. On the returns Albert claimed fraudulent amounts for unreimbursed business expenses related to the husband's work as a car salesman. On the 2002 return, Albert listed \$10,809 in unreimbursed expenses, including over \$3,235 in vehicle expenses. On the 2003 return, Albert listed \$10,078 in unreimbursed expenses, including \$1,219 for coffees and cokes, and \$227 for trade magazines. When questioned by the IRS, the husband said that he had no unreimbursed vehicle expenses in those years because he could have used the company vehicles for company travel. Additionally, while he did purchase coffees and cokes for some clients, he never discussed these expenses or provided any receipts to Albert to substantiate these expenses, and he thinks the \$1,219 amount is high. Finally, the customer did not have trade magazine subscriptions and he does not know how Albert decided to deduct a purported magazine subscription.

18. Albert also concocted a Schedule C car sales business on Customer #2's 2002 and 2003 tax returns. On the 2002 return, the bogus business reported a loss of \$697 (\$5,049 in

income minus \$5,746 in expenses). The customer, however, did not operate a car sales business outside of his regular work as a car salesman. Also, the customer did not tell Albert he had such a business or provide Albert with any receipts for any income or expenses from a business.

Customer #2 has no idea why Albert claimed he had his own car sales business.

19. Albert also prepared the income tax returns for 2002 and 2003 for Customer #3, a married couple. On the returns, Albert claimed fraudulent amounts for unreimbursed business expenses related to the husband's work as a car salesman. On the 2002 return, Albert listed \$11,131 in unreimbursed expenses. On the 2003 return, Albert listed \$9,975, including \$1,696 in customer convenience items and \$3,196 in vehicle expenses. When questioned by the IRS, the husband said that he did have some unreimbursed vehicle expenses, but Albert inflated those claims by \$1,393 on the 2002 return and by \$2059 on the 2003 return. As for the customer convenience items, the customer said that while he does buy some token items for his customers and clients, the car dealership does not require him to buy those items. As such, those items do not qualify as unreimbursed employee expenses. According to Customer #3, he never discussed any specific amounts for the unreimbursed employee expenses with Albert, nor did he provide receipts to Albert that would substantiate the amounts Albert claimed.

20. Albert also concocted a car sales business for Customer #3 on Schedule C of the customer's 2002 tax return that reported a loss of \$3,487 (\$2,895 in income minus \$6,382 in expenses). Customer #3 has no idea why the 2002 tax return contains a Schedule C. The husband did not own any separate business in 2002. He stated that he only worked at the car dealership, he had no personal business, provided no receipts, and did no car sales with the

exception of selling his personal car. Also, Customer #3 never discussed any of the Schedule C items with Albert.

21. Customer #4, a married couple, hired Albert to prepare both their 2002 and 2003 tax returns. On their returns for both years Albert claimed fraudulent amounts for unreimbursed employee expenses, and Albert fabricated a Schedule C business.

22. Regarding the bogus unreimbursed employee expenses for Customer #4, Albert claimed \$12,028 in 2002 and \$9,753 in 2003. However, upon examination, the only unreimbursed business expense that the couple had was \$410 in 2002 and \$422 in 2003 for the wife's mileage driving her personal vehicle to job related events. The remaining amounts – \$11,618 in 2002 and \$9331 in 2003 – constituted bogus vehicle expenses that Albert attributed to the husband, meals and entertainment expenses, and miscellaneous items.

23. Regarding the fabricated Schedule C business, Albert claimed that the husband had a “vintager” business that had a loss in both 2002 and 2003, thereby reducing Customer #4's income. Specifically, Albert claimed \$2,632 in 2002 and \$2,467 in 2003. Albert reported that this fake business had income of exactly \$750 in both 2002 and 2003. Albert also reported bogus expenses related to depreciation of equipment, office expenses, supplies, and taxes and licences.

24. During an interview with the IRS, the husband said that he had no idea why Albert prepared a Schedule C for him claiming that he is a “vintager.” He recalled discussing his *hobby* of grape growing/wine making with Albert, and said that the Schedule C looks as if Albert turned that discussion into a *business* for him on his joint tax return with his wife. The husband said that his grape growing/wine making is nothing more than a hobby, and he has no idea how Albert

came up with the dollar amounts and expenses listed. Customer #4 never discussed costs with Albert, he has no special equipment, and he has never made any income from this hobby.

25. The following chart shows five more examples of Albert's fraudulent preparation of returns by fabricating unreimbursed employee expenses:

<u>Customer</u>	<u>Employment</u>	<u>Bogus Unreimbursed Employee Expenses Claimed</u>
Customer #5	General Manager of Car Dealership / Clerk	2002 = \$7,522.00 2003 = \$15,250.00 2004 = \$13,352.00
Customer #6	Car Salesman / Homemaker	2002 = \$9,437.00 2003 = \$10,771.00 2004 = \$5,985.00
Customer #7	Carpenter	2002 = \$9,833.00 2003 = \$10,973.00 2004 = \$9741.00
Customer #8	Construction	2002 = \$8525.00 2003 = \$7899.00 2004 = \$7344.00
Customer #9	Sales	2002 = \$11,416.00 2003 = \$15,259.00

Other Bogus Claims for Tax Credits and/or Deductions

Charitable Contribution Deduction Scheme

26. Albert also fabricated and/or inflated the charitable contributions claimed on his customers' returns. Charitable contributions are directly deducted from an individual's tax liability, so Albert used this scheme to fraudulently lower customers' tax liabilities.

27. Albert fabricated thousands of dollars in cash, check, and/or in-kind donations that, upon audit, could not be verified. Most of Albert's customers did not realize that Albert had

claimed charitable donations on their returns and stated that they did not tell Albert they had given those amounts to charity, nor did they provide him with receipts that supported those claims.

28. For example, Charitable Contributions Customer (“CC Customer”) #1, a car salesman, had Albert prepare his 2002 tax return. On the return, Albert claimed that CC Customer #1 made \$400 in charitable contributions. However, CC Customer #1 did not give Albert any receipts for charitable contributions and he did not discuss any amounts with Albert. Upon exam, this customer told the IRS that the claims Albert listed on his return make no sense.

29. Albert also inflated the amounts his customers gave in charitable contributions. For example, on the 2002 and 2003 tax returns for CC Customer #2, Albert amplified her contributions by \$243 and \$646, respectively. In fact, she actually contributed \$540 to her church both years. Instead of using the proper amount, Albert listed charitable contributions of \$783 on her 2002 return and \$1,186 on her 2003 return.

30. The following chart shows five more examples of Albert’s fraudulent preparation of returns by fabricating charitable contributions:

<u>Customer</u>	<u>Bogus Charitable Contributions Claim</u>
CC Customer #3	2002 = \$878.00 2003 = \$864.00 2004 = \$515.00
CC Customer #4	2002 = \$1,587.00 2004 = \$471.00
CC Customer #5	2002 = \$522.00 2003 = \$307.00

CC Customer #6	2002 = \$1,198.00 2003 = \$945.00 2004 = \$1,770.00
CC Customer #7	2003 = \$1,099.00 2004 = \$675.00

Filing Status Scheme

31. Albert has also prepared returns with questionable filing status claims. Albert has completely disregarded the legal filing status designations in order to make claims that were obviously wrong.

32. In one case, Albert prepared and filed a tax return for two single individuals claiming that they were “married filing jointly.” In a second case, Albert prepared two separate returns using “head of household” status for a married couple that lived together. In that case, Albert even went so far as to ask the couple for a second address in order to better conceal the fraudulent claim. In a third case, Albert filed a return for a married couple living together using a “single” filing status for one spouse and a “head of household” filing status for the other spouse.

33. All of Albert’s manipulations of his customers’ filing status were aimed at fraudulently lowering those customers’ tax liabilities.

34. The acts described above are merely examples of the suspicious and fraudulent nature of Albert’s return preparation. Albert’s use of bogus information to fraudulently lower his customer’s tax liabilities and obtain refunds for his customers illustrates Albert’s complete disregard for the tax laws.

Harm to the public

35. Given the IRS's limited resources, identifying and recovering all revenues lost from Albert's preparation of false and fraudulent returns may be impossible.

36. Albert's preparation of false and fraudulent tax returns, to the extent that the Internal Revenue Service has not detected them, has resulted in customers receiving substantial federal income tax refunds to which they are not entitled and in not reporting and paying taxes that they owe. As stated above, the IRS has examined 543 tax returns prepared by Albert and discovered income tax deficiencies totaling \$1,185,608, which equals an average tax deficiency of \$2,183.44 per return. Providing similar results can be expected for other returns Albert prepared, the harm to the United States Treasury, when that average is considered across all 1,363 tax returns, could be as much as \$2.9 million, or more.

37. Albert's conduct harms the United States because his customers are receiving refunds to which they are not entitled.

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

39. Albert further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Albert's customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties.

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

40. The United States incorporates by reference the allegations in paragraphs 1 through 39. |

41. Section 7407, I.R.C., authorizes a district court to enjoin an income tax preparer from:

- A. engaging in conduct subject to penalty under I.R.C. § 6694;
- B. misrepresenting his experience or education as a tax return preparer; or
- C. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court 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, the court may enjoin the person from further acting as a federal income tax return preparer.

42. Albert has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal income tax returns that understate his customers' liabilities based on unrealistic and frivolous positions.

43. Albert's continual and repeated violations of I.R.C. § 6694 fall within I.R.C. § 7407(b)(1)(A) and (D), and thus he is subject to an injunction under I.R.C. § 7407.

44. If he is not enjoined, Albert is likely to continue to file false and fraudulent tax returns.

45. Albert's continual and repeated conduct is subject to an injunction under I.R.C. § 7407 and his flagrant misuse of filing status designations, unreimbursed employee expenses, Schedule C business deductions, and charitable contribution deductions demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Albert's interference with the proper administration of the internal revenue laws. Thus, he should be permanently barred from acting as a return preparer.

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

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

47. Section 7408, I.R.C., authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

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

49. Albert prepares federal tax returns for customers that he knows will understate their correct tax liabilities. Albert's conduct is thus subject to penalty under I.R.C. § 6701.

50. If the Court does not enjoin Albert, he is likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III
Injunction under I.R.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws

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

52. Section 7402, I.R.C., authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

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

54. Unless enjoined, Albert is likely to continue to engage in such improper conduct. If Albert is not enjoined from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury because revenue losses caused by Albert will continue.

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

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

WHEREFORE, the United States prays for the following:

A. That the Court find that Frank Albert has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and has continually and repeatedly engaged in

other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court find that Frank Albert has engaged in conduct subject to a penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Frank Albert has engaged in conduct that 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 I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Frank Albert, and all those in active concert or participation with him from:

1. acting as a federal income tax return preparer or assisting in, or directing the preparation or filing of federal tax returns or other related documents or forms for any person or entity other than himself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
2. engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a documents related to a material matter under the internal revenue laws that includes a position he knows will result in an understatement of tax liability;
3. understating customers' liabilities or failing to comply with due diligence requirements as subject to penalty under I.R.C. §§ 6694;
4. engaging in any other conduct or activity subject to penalty under any other penalty provision of the I.R.C.; and

5. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Frank Albert, within fifteen days, to contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared federal tax returns or claims for a refund since January 1, 2004, to inform them of the Court's findings concerning the false or fraudulent attributes on those tax returns and enclose a copy of the permanent injunction against him;

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Frank Albert to produce to counsel for the United States within fifteen days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for refund since January 1, 2004;

G. That the Court retain jurisdiction over Frank Albert and over this action to enforce any permanent injunction entered against Albert;

H. That the United States may conduct discovery to monitor Albert's compliance with the terms of any permanent injunction entered against him; and

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

DATED: April 13, 2009

Respectfully submitted,

GREGORY A. BROWER
United States Attorney

/s/ Olivia R. Hussey

Olivia R. Hussey
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Tel.: (202) 616-1972
Fax: (202) 514-6770