

6701;

- (c) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;
 - (d) Engaging in any other activity subject to penalty under the I.R.C.; and
 - (e) Representing persons before the Internal Revenue Service.
3. 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 the Attorney General of the United States, pursuant to Code §§ 7402, 7407, and 7408.
4. Lemmon resides in and does business in Humboldt, Iowa, within this judicial district. Lemmon does business at 1303 19th St. N., Humboldt, Iowa.
5. Lemmon formed Gayle's Bookkeeping and Tax Service in 2000 and is its president and registered agent.

Lemmon's Background

6. Lemmon has prepared returns for almost forty years. In the late 1970s she received training in tax return preparation from H&R Block. She receives updates on preparing tax returns from the software company she uses to prepare returns and also receives training by attending a seminar once a year in Minneapolis.
7. Lemmon has an associate's degree in accounting from Iowa Central Community College.

Lemmon's Business

8. Since 2000 Lemmon has operated her tax return preparation business through Gayle's Bookkeeping and Tax Service, Inc.
9. Lemmon has prepared approximately 1,200 returns per year between 2003 and 2008.

10. Lemmon's customers are primarily truck drivers, wage-earners, and small business owners who rely on Lemmon's purported expertise on income tax matters.
11. Lemmon has customers from at least 27 different states.
12. Lemmon prepares returns that unlawfully understate her customers' tax liabilities by: fabricating or inflating deductions on Schedules A, "Itemized Deductions," and Schedules C, "Profit or Loss from Business."
13. Lemmon prepares returns that unlawfully understate her customers' tax liabilities by claiming improper deductions for the business use of the home and claiming deductions for her customers' personal expenses.
14. Lemmon generates new business through word of mouth as she gains a reputation, particularly among truck drivers, for being able to generate larger tax refunds than other preparers.
15. As a direct result of Lemmon's fraudulent and improper return preparation, her customers have filed federal income tax returns understating their federal income tax liabilities and claiming large income tax refunds to which they were not entitled.

IRS's Investigation

16. The IRS has examined approximately 243 returns that Lemmon prepared between 2003 and 2008. The examination revealed that 224 of those returns understated the customer's tax liability.
17. The average understatement on the examined returns was approximately \$2,582.22.
18. Customers consented to the IRS's adjustments on 196 of the 243 audited returns.
19. By June 2006, if not earlier, Lemmon knew that the IRS was investigating her return-

preparation conduct. Nevertheless, Lemmon continued to prepare federal-income-tax returns that understated her customers' income tax liabilities by improperly claiming deductions for personal expenses and including false deductions for the business of the home.

20. Assuming the tax understatement rate and average tax understatement amount from the audited returns are representative of all the returns Lemmon prepared between 2003 and 2008, the tax loss as a result of Lemmon's tax-preparation misconduct between 2003 and 2008 could be as much as approximately \$17 million (or \$2.8 million per year).¹ The IRS has incurred the additional expense of examining returns Lemmon prepares.
21. Lemmon willfully, intentionally, and/or recklessly understates her customers' income tax liabilities by preparing returns that improperly contain fabricated or inflated deductions on Schedules A and C and improperly reduce her customers' self-employment tax obligations by creating sham corporations.
22. Lemmon has repeatedly and/or continually prepared tax returns that understate her customers' tax liabilities as a result of her reckless and/or intentional disregard of internal revenue rules and regulations.

Inflated or Bogus Schedule A Deductions

23. Lemmon continually and repeatedly prepares federal income tax returns claiming inflated or bogus Schedule A "Itemized Deductions," including unreimbursed employee business expenses and charitable contributions to offset her customers' income.

¹ This figure assumes an understatement rate of approximately 92 percent with an average understatement per return in the amount of \$2,589.22.

24. Lemmon claimed inflated or bogus Schedule A deductions charitable contributions on approximately 68 of the 243 audited returns.
25. Lemmon claimed inflated or bogus Schedule A deductions for unreimbursed employee business expenses on approximately 84 of the 243 audited returns.
26. Lemmon also knowingly prepared returns for truck drivers that claimed unreimbursed employees business expenses in part based on her customers' personal expenses, such as deductions for the purchase of DVDs and televisions. Even though the IRS has rejected her position that DVDs and televisions were deductible as meals and entertainment expenses for truck drivers, Lemmon continued to prepare tax returns claiming deductions for such expenses and as recently as the summer of 2008 defended that position during IRS audits of her customers.

Rhonda and Marvin Winther

27. For example, Marvin and Rhonda Winther, of Fort Dodge, Iowa, paid Ms. Lemmon to prepare their 2002 and 2003 federal income tax returns. Marvin Winther was employed as a truck driver in 2002 and 2003. Gayle Lemmon was recommended to them by another truck driver who told them that Lemmon could help them lower their tax liabilities.
28. Prior to the preparation of the Winthers' 2002 tax return, Lemmon provided the Winthers with a list of trucker deductions and advised them that they could deduct any of the purchases or expenses shown on that list, including expenses for sunglasses, hand cleaner, coffee pots, televisions, and razors.
29. The Winthers advised Lemmon that they did not keep receipts of their expenses for 2002,

- and Lemmon told them that they could estimate their expenses for 2002.
30. The Winthers provided Lemmon with a summary of their business expenses based on the list of trucker deductions Lemmon gave them. After reviewing the Winthers' summary of their 2003 business expenses, Lemmon informed them that the amount of the expenses was too high, which would be a red flag to the IRS and so she reduced some of the deductions.
 31. Lemmon did not advise the Winthers that there were restrictions with respect to the deduction of expenses for the items on the list she provided to the Winthers. For example, Lemmon did not advise the Winthers that the area of the home the Winthers used for business purposes had to be used regularly and exclusively for business purposes.
 32. As a result, the Winthers' 2002 and 2003 federal income tax returns falsely reported deductions for the business use of their home. The Winthers did not use any part of their home regularly and exclusively for business purposes in 2002 and 2003.
 33. The Winthers 2002 and 2003 returns also reported deductions for personal property taxes. However, the Winthers did not provide Lemmon with any information concerning personal property taxes and do not know how Lemmon derived the amounts claimed on their returns as deductions for personal property taxes.
 34. Lemmon also falsely advised the Winthers that they could deduct up to \$1,200 as a deduction for charitable contributions without any substantiation.
 35. Lemmon fabricated charitable deductions on the Winthers' 2002 and 2003 federal income tax returns. The Winthers did not provide Lemmon with any information to support the

claimed deductions for charitable contributions on the Winthers' 2002 and 2003 federal income tax returns.

36. The Winthers consented to the IRS's determination that their 2002 and 2003 federal income tax returns understated their income tax liabilities by \$738 and \$1,103 respectively.

Steven and Pamela Harkema

37. Steven and Pamela Harkema of Hampton, Iowa, paid Gayle Lemmon to prepare their 2002, 2003 and 2004 federal income tax returns.
38. Lemmon inflated deductions on the Harkema's 2002-2004 federal income tax returns for unreimbursed employee business expenses. Even though Mr. Harkema informed Lemmon that his employer reimbursed him for his employee business expenses in 2002-2004, she failed to reduce the deductions for unreimbursed employee business expenses by the amount of those reimbursements.
39. Lemmon also fabricated deductions for charitable contributions on the Harkemas' 2003 federal income tax return.
40. The Harkemas consented to the IRS's determination that their 2002-2004 federal income tax returns understated their tax liabilities by \$602, \$2,220, and \$1,356 respectively.

Dickie and Virginia Rodgers

41. Dickie and Virginia Rodgers of Hamton, Iowa, paid Gayle Lemmon to prepare their 2002-2004 federal income tax returns.
42. On the Rodgerses' 2002 federal income tax return Lemmon fabricated a \$1,750 deduction for charitable contributions. The Rodgerses did not make contributions in this

amount in 2002 and did not provide Lemmon with information to support such a claim.

Lemmon simply made up the amount.

Joe and Janice Dodson

43. Joe and Janice Dodson of Dayton, Iowa, paid Gayle Lemmon to prepare their 2003 and 2004 federal income tax returns.
44. On their 2003 and 2004 federal income tax returns Gayle Lemmon inflated a deduction for unreimbursed employee business expenses by failing to reduce that deduction by the amount of reimbursements for employee business expenses Joe Dodson received from his employer.
45. Lemmon knew or should have known of the reimbursements that Joe Dodson received from his employer for employee business expenses because those amounts were reported on Mr. Dodson's 2003 and 2004 IRS Forms W-2 that he supplied to Lemmon.

Inflated or False Schedule C Expenses

46. Lemmon repeatedly and continually prepares returns that report inflated or false expenses on Schedules C, including deductions for the business use of the home.
47. Lemmon knowingly prepares returns that falsely report deductions for the business use of the home and/or recklessly fails to inquire whether her customers are eligible to claim a deduction for the business use of their homes.
48. Of the 243 returns the IRS examined, 122 contained Schedules C. The IRS found that Lemmon prepared returns that claimed inflated or false Schedule C expenses on approximately 53 of those 122 returns containing Schedules C.

Randy Cahill

49. For example, on Randy Cahill of Fort Dodge, Iowa, paid Gayle Lemmon to prepare his 2002 and 2003 Forms 1040. On his 2002 and 2003 Forms 1040, that Gayle Lemmon prepared, Lemmon reported 90 and 100 percent business use, respectively, for a pick-up truck that Cahill only used for business purposes about 25 percent of the time. Lemmon never asked Cahill how much he used the truck for business purposes.
50. On Cahill's 2003 Form 1040, Lemmon also included a depreciation deduction on Cahill's 2003 return for an asset described as "02 FFW TRL" with a cost of \$24,500. Cahill did not know to what asset this refers and did not purchase any asset for his business in 2003. Lemmon simply made up this claimed expense.
51. On Cahill's Schedule C, attached to his 2002 Form 1040, Lemmon reported inflated or fabricated deductions for "Showers" and "Washes" in the amounts of \$1,560 and \$2,709. Cahill did not know how Lemmon arrived at these amounts because his worksheets recorded no expenses for showers and only \$889 in expenses for washes.
52. On Randy Cahill's 2002 Form 1040, Lemmon also reported an additional \$3,900 in deductions for "parts and repairs" in excess of the amount Cahill provided to Lemmon.
53. Similarly on Cahill's 2003 Form 1040, Lemmon reported an excess \$1,800 deduction for insurance expenses, an excess \$1,560 for showers expenses, and an excess \$250 for snow removal expenses as compared to the amounts Cahill provided to her.
54. Cahill consented to the IRS's determination that his federal income tax returns for 2002 and 2003 understated his federal income tax liabilities by \$2,239 and \$10,240 respectively.

Steve and Kristinne Berning

55. Steven and Kristinne Berning of Thor, Iowa, paid Gayle Lemmon and Gayle's Bookkeeping and Tax Service to prepare their 2007 federal income tax return.
56. Lemmon improperly reported a deduction for the business use of the home on the Bernings' Schedule C, Profit of Loss from Business attached to their 2007 Form 1040.
57. Lemmon never asked the Bernings whether they regularly and exclusively used a portion of their home for business purposes in 2007 and the Bernings never told Lemmon that they did. In fact, the Bernings told Lemmon that they did not use any portion exclusively for business in 2007.

Dawn and John Bechtel

58. Dawn and John Bechtel of Laurens, Iowa, paid Gayle Lemmon to prepare their 2007 federal income tax return.
59. Lemmon improperly reported a deduction for the business use of the home on the Bechtels' return. The improper deduction was a result of Lemmon's failure to determine whether the Bechtels used any portion of their home regularly and exclusively for business purposes.
60. Gayle Lemmon did not ask the Bechtels whether they used any portion of their home regularly and exclusively for business purposes and in fact the Bechtels did not use any portion of their home regularly and exclusively for business purposes.

Sham Corporations to Reduce or Eliminate Self-Employment Tax

61. Lemmon also helped customers establish sham corporations to reduce her customers' self-employment tax.

62. Typically, the customer for whom Lemmon established a corporation actually owned a business. However, that customer did not operate the business through the corporation Lemmon established for the customer. The corporation also did not pay the customer-owner wages, which would be subject to employment taxes.
63. Under this scheme, the customer reported business income and expenses on a Schedule C. One of the claimed expenses was income supposedly transferred to the corporation Lemmon established for her customer. That income was then reported as flow-through income to the customer on a Schedule E, "Supplemental Income and Loss." The effect of this transfer was to improperly reduce the customer's business income and resulting self-employment tax.
64. Lemmon told Cahill he would owe a lot of taxes for 2003 unless he incorporated his business. She told him that she would take care of incorporating his business. On Cahill's 2003 federal income tax return, Lemmon claimed a business expense deduction on his Schedule C in the amount of \$10,050 titled "income to corporation." The \$10,500 was then reported as income on a Schedule E attached to his tax return. Mr. Cahill had no idea how that amount was arrived at and Mr. Cahill did not open a checking account in the corporation's name, no assets were actually transferred to the corporation, and he did not treat himself as an employee of the corporation.

Count I: Injunction Under §§ 7407 and 7408

65. The United States incorporates by reference the allegations in paragraphs 1 through 64.
66. Code § 7407 authorizes the United States to seek an injunction against any tax-return preparer who has engaged in any "fraudulent or deceptive conduct which substantially

interferes with the proper administration of the Internal Revenue laws,” or who has “engaged in any conduct subject to penalty under section 6694 or 6695.” Code § 7408 authorizes an injunction against anyone who has engaged in conduct subject to penalty under § 6701.

67. If a return preparer’s misconduct is continual and/or repeated and the court finds that a narrower injunction (*i.e.*, prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer’s interference with the proper administration of federal tax laws, the court may enjoin the person from further acting as a return preparer.
68. Section 6694 penalizes tax return preparers who prepare tax returns that understate their customer’s tax liabilities as a result of an unreasonable position of which the tax return preparer either knew or should have known or who willfully attempted to understate a customer’s tax liability on a return or claim, or who understates their customers’ tax liabilities on returns they prepare due to a reckless or intentional disregard of rules or regulations.
69. Section 6701 penalizes any person who prepares, or assists in the preparation, of any tax returns, with the knowledge that the tax return will understate the tax liability of another person.
70. The defendants have continually and repeatedly prepared and submitted federal tax returns that contain unrealistic and frivolous positions and have willfully attempted to understate customers’ correct tax liabilities, and have thus engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6701.
71. The defendants have continually and/or repeatedly prepared tax returns that understate the

tax liabilities of their customers as a result of fabricated, inflated, and/or improper deductions for unreimbursed employee business expenses, personal expenses, charitable contributions, and other business expenses.

72. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, the defendants are likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint. The defendants continued to engage in conduct subject to penalty under § 6694 and continued to disregard internal revenue rules and regulations even after they were aware the IRS was investigating her tax preparation business and the IRS had rejected their unreasonable positions on the returns they prepared.
73. The defendants fail to exercise to due diligence when they prepare returns because they fail to confirm that their customers are eligible for deductions for the business use of the home.
74. The defendants fail to exercise to due diligence in determining whether business expense deductions claimed on the returns they prepare are based on non-deductible personal expenses.
75. The defendants should be permanently enjoined under Code § 7407 from acting as income tax return preparers because a more limited injunction would be insufficient to stop their interference with the proper administration of the tax laws. They should also be enjoined under Code § 7408 from further engaging in conduct subject to penalty under Code § 6701.

**Count II: Injunction under I.R.C. § 7402 for Unlawful Interference
with the Enforcement of the Internal Revenue Laws**

76. The United States incorporates by reference paragraphs 1 through 75.
77. Code § 7402(a) authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other remedies.” Code § 7402(a).
78. Lemmon and her business Gayle’s Bookkeeping and Tax Service, through the actions described above have engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and are likely to continue to engage in such conduct unless enjoined.
79. Lemmon and Gayle’s Bookkeeping and Tax Service’s conduct causes irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate.
80. Unless Lemmon and her company are enjoined, the IRS will have to devote substantial time and resources to examine her customers’ tax returns and liabilities. Pursuing all individual customers may be impossible given the IRS’s limited resources.
81. Unless Lemmon and her company are enjoined, her customers in reliance on Lemmon’s return preparation services may be subject to additional tax liabilities along with interest and penalties as a result of Lemmon’s tax return preparation.
82. The Court should order injunctive relief under Code § 7402(a).

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

- A. That the Court find that the defendants have repeatedly and continually engaged in

conduct subject to penalty under I.R.C. §§ 6694 and 6701 and that injunctive relief is appropriate under I.R.C. §§ 7407 and 7408 to bar the defendants from acting as tax return preparers and from engaging in conduct subject to penalty under I.R.C. § 6701;

- B. That the Court find that the defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws and substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief against her is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. §§ 7407 and 7402(a);
- C. That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction permanently barring the defendants from acting as federal-tax-return preparers and from preparing or filing federal tax returns for others, and from representing others before the IRS;
- D. That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction prohibiting the defendants and their representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with her, from directly or indirectly;
 - (1) engaging in any conduct subject to penalty under I.R.C. § 6694, including preparing any part of a return or claim for refund that includes an unreasonable or a willful understatement of tax;
 - (2) acting as federal-tax-return preparers;
 - (3) engaging in any other activity subject to penalty under the Internal

Revenue Code; and

(4) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and

- E. That the Court, under I.R.C. § 7402, enter an injunction requiring the defendants to contact all persons and entities for whom they prepared any federal tax return or other tax-related document after January 1, 2003, and inform those persons of the entry of the Court's findings concerning the falsity of representations the defendants made on their customers' tax returns, and that a permanent injunction has been entered against them;
- F. That the Court, under I.R.C. § 7402, enter an injunction requiring the defendants 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 individuals or entities for whom they prepared or helped to prepare any tax-related documents, including claims for refund or tax returns since January 1, 2003;
- G. That the Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and

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

Dated: April 1, 2009

Respectfully submitted,

MATT M. DUMMERMUTH
United States Attorney

/s/ John Monroe
JOHN R. MONROE
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Telephone: (202) 307-0638
Fax: (202) 514-6770
Email: john.r.monroe@usdoj.gov
Attorneys for the Plaintiff