

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

United States,)	
)	
Plaintiff,)	
)	
v.)	Case No. 10-1072-KHV-DJW
)	
Jose Alberto Lares, aka Jose)	Designation of Place of Trial:
Lares-Vargas, dba Dinero Rapido Tax)	Wichita, Kansas
Services fka Income Tax Dinero)	
Rapido,)	
)	
Defendant.)	

Complaint and Request for Injunctive Relief

Plaintiff, the United States of America, for its complaint against Jose Alberto Lares, states as follows:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.
2. This suit is brought under Sections 7402, 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) to restrain and enjoin Lares from preparing federal tax returns for others, engaging in any activity subject to penalty under 26 U.S.C. § 6694, 6695, or 6701, and engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

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 a delegate of the Attorney General under 26 U.S.C. §§ 7402, 7407, and 7408.
4. Lares resides in Holcomb, Kansas and conducts business through Dinero Rapido Tax Services, fka Income Tax Dinero Rapido, in Garden City, Kansas, within this judicial district.
 - A. Lares's Preparation of False and Fraudulent Federal Income Tax Returns Through Income Tax Dinero Rapido.**
5. Lares previously prepared federal tax returns through Income Tax Dinero Rapido ("Fast Money") in Garden City, Kansas.
6. Lares co-owned Income Tax Dinero Rapido with Aracely Romo, with whom he has two children and from whom he learned how to prepare federal tax returns.
7. Lares prepared federal tax returns through Income Tax Dinero Rapido since at least 2003.
8. Income Tax Dinero Rapido marketed its tax-preparation services to the Spanish-speaking community in Garden City, using flyers stating "Se habla español" (Spanish spoken) and advertising on Spanish radio station KSSA in the Garden City area.

9. Many of Lares's customers are recent Mexican immigrants with limited English-language skills and little or no knowledge of the complexities of the Internal Revenue Code or of the deductions and credits falsely claimed by Lares on their returns.
10. Lares, who is also fluent in English, is a native Spanish speaker who conducts most of his business in Spanish in order to serve his largely Spanish-speaking clientele.
11. In 2006 and 2007, the IRS conducted an extensive examination of 169 federal tax returns prepared by Income Tax Dinero Rapido for the 2004 through 2006 tax years.
12. As a result of its extensive investigation, the IRS discovered numerous examples of false items on returns, including incorrect filing statuses, such as claiming head of household status for taxpayers who did not qualify, false or overstated employee business expenses, improper earned income tax credits, false or overstated Schedule C business expenses, and false dependent exemptions.
13. The IRS's investigation also revealed that while working for Income Tax Rapido Dinero, Lares continually and repeatedly prepared federal tax returns with false items, including false dependent exemptions.

14. In a representative example, Lares prepared the 2005 and 2006 tax returns for Jose Castillo, claiming Castillo's mother as an additional dependent based solely on Castillo's claim that he sent his mother money.
15. In preparing Castillo's returns, Lares did not ask Castillo how much money he sent to his mother, thus failing to determine whether Castillo satisfied the "support test" under the Internal Revenue Code, which requires that the taxpayer provide more than half of the support of the dependent for the year.
16. In addition to improperly claiming Castillo's mother as a dependent, Lares inflated Castillo's car, truck, and travel expenses to unlawfully decrease Castillo's taxable income.
17. In another example of a false dependent exemption, Lares prepared the 2006 federal income tax return of Jose and Mariana Mendoza, claiming dependent exemptions for the Mendozas' step-son and nephew to whom the Mendozas sent money in Mexico.
18. In claiming these two dependent exemptions, Lares did not ask the Mendozas how much money they sent to their step-son and nephew, thus failing to determine whether the Mendozas satisfied the "support test" under the Internal Revenue Code, which requires that the taxpayer provide more than half of the support of the dependent for the year.

19. In another example of unlawful return preparation while working for Income Tax Dinero Rapido, Lares prepared the 2006 federal income tax return of Tobias and Agatha Goertzen, claiming a false \$3,317 deduction for “work clothes.”
20. In preparation for the IRS audit of this return, Agatha Goertzen met with Lares, who falsely told her that the IRS was doing a lot of small business audits to pay for the war in Iraq.
21. During the audit, Agatha Goertzen stated that when she met with Lares, she asked Lares about the deductibility of clothes that her husband, who drives a truck, wore to work, such as boots, jeans, and shirts. Lares falsely told her that all work-related clothing was deductible.
22. Lares claimed this deduction on the Goertzens’ 2006 federal income tax return even though Tobias Goertzen is not required to wear a uniform to conduct his business as a truck driver. Under the Internal Revenue Code, the cost and upkeep of a uniform, including laundering and cleaning, are deductible only if the uniform is required as a condition of employment and is not adaptable to general wear.
23. Based on the IRS’s extensive examination of the 169 returns, the total additional tax owed by Income Tax Dinero Rapido’s customers was over \$2 million.

24. Sometime after the IRS's investigation, Lares's business partner, Aracely Romo, disappeared, and her present whereabouts are unknown.

25. After Romo disappeared, Lares continued to operate Income Tax Dinero Rapido, signing most of the federal tax returns prepared by Income Tax Dinero Rapido in 2008.

26. Lares then changed the name of the business from Income Tax Dinero Rapido to Dinero Rapido Tax Services.

B. Lares's Preparation of False and Fraudulent Federal Tax Returns Through Dinero Rapido Tax Services.

27. Lares presently prepares federal tax returns through Dinero Rapido Tax Services in Garden City, Kansas.

28. Lares was the signed preparer for over 4,065 federal tax returns prepared by Dinero Rapido Tax Services for the 2008 and 2009 tax years (returns due to be filed by April 15, 2009 and April 15, 2010).

29. Lares and his sister, Maricela Lares, who also previously worked at Income Tax Rapido Dinero, are the only persons known to the IRS who currently prepare returns at Dinero Rapido Tax Services.

30. The IRS has extensively examined 19 federal income tax returns prepared by Dinero Rapido Tax Services for the 2007 through 2008 tax years (returns due to be filed by April 15, 2008 and April 15, 2009).

31. The IRS audit results reveal that Lares, through Dinero Rapido Tax Services, has repeatedly signed federal tax returns claiming false dependent exemptions and false head of household filing statuses.
32. As an example of false dependent exemptions, Lares signed the 2007 federal income tax return for Braulio J. Bernabel, falsely claiming dependent exemptions for two “grandchildren.”
33. The IRS's examination of Bernabel’s return revealed, however, that the children claimed were not Bernabel’s grandchildren or related in any way to him. In addition, the IRS’s examination revealed that the children did not reside with Bernabel but instead lived with their mother in another state. The IRS’s examination also revealed that Bernabel failed to provide any evidence to Dinero Rapido Tax Services that he provided financial support for the children.
34. The IRS’s investigation further revealed that Lares claimed these dependent exemptions even though Bernabel told Lares that the children’s mother was not his daughter (i.e., that the children were not his grandchildren). Thus Lares knew that Bernabel failed to satisfy the “qualifying relative test” under the Internal Revenue Code, which requires that the qualifying child be related to the taxpayer. Lares also claimed these dependent exemptions even though Bernabel stated that he did not provide over half of the children’s support, thus failing to satisfy the “support test” under the

Internal Revenue Code, which requires that the taxpayer provide more than half of the support of the dependent for the year.

35. The IRS's investigation further revealed that Lares falsely claimed head of household filing status for Bernabel in order to claim an \$8,000 standard deduction rather than the \$5,450 standard deduction for a single person that Bernabel should have claimed.
36. In another representative example, Lares signed the 2008 federal income tax return of Stephanie Gallegos, falsely claiming exemptions for "two nephews."
37. The IRS's audit revealed, however, that Lares improperly claimed these dependent exemptions because Stephanie Gallegos was not entitled to this exemption because the taxpayer did not verify her relationship to the dependents and the IRS records indicate that during the year in question the taxpayer was not the custodial parent of the children. The taxpayer did not establish that she provided a place of residence for the dependents and that she paid for over 50 percent of the upkeep of the home, as required under the Internal Revenue Code.
38. The IRS's audit also revealed that Lares claimed this exemption even though the taxpayer did not meet the relationship test for the dependents that would have allowed her to claim the dependents.

39. The IRS's investigation further revealed that Lares falsely claimed head of household filing status for Gallegos in order to claim a \$8,000 standard deduction rather than the \$5,450 standard deduction for a single person that Gallegos should have claimed.
40. Due to the disallowed dependent exemptions, the change of filing status from head of household to single, and the loss of the Child Tax Credit because Gallegos did not have a qualifying dependent, the additional tax owed by Gallegos was \$4,523.
41. Gallegos's 2009 federal income tax return was prepared by a different return preparer and did not claim dependent exemptions for any of the persons claimed on the return prepared by Lares.
42. Based on the IRS's extensive examination, the average tax deficiency per returns prepared by Dinero Rapido Tax Services and signed by Lares as the paid preparer is approximately \$6,062, with total additional tax owed of over \$115,173 with respect to the 19 returns.
43. If this average tax deficiency per return of \$6,062 is applied to a conservative 75% error rate of all 4,065 returns prepared by Lares through Dinero Rapido Tax Services, the estimated tax loss to the United States by Lares's improper return preparation could be almost \$18.1 million.
44. In this tax-filing season, Dinero Rapido Tax Services has already prepared at least 1,366 federal tax returns.

45. Of the returns that Dinero Rapido Tax Services has prepared during this tax-filing season, approximately 99 percent claim a tax refund.

C. Lares Submitted False Federal Income Tax Returns to Fraudulently Obtain a Mortgage Loan.

46. In 2007, Lares applied for a \$186,000 mortgage loan to purchase a residence in Holcomb, Kansas.

47. As part of the mortgage application, Lares provided copies of his purported 2005 and 2006 federal income tax returns.

48. On the returns he provided to the mortgage company, Lares claimed to have earned income as a satellite “dish installer” in the amounts of \$41,343 and \$43,435 for 2005 and 2006.

49. IRS records, reveal, however, that even though Lares was working as a return preparer for Income Tax Dinero Rapido in 2005, Lares did not file a federal income tax return for that year.

50. IRS records also reveal that on his 2006 federal income tax return, when Lares was working as a return preparer for Income Tax Dinero Rapido, Lares only reported wage income of \$15,580.

Count I

Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701

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

52. Section 7408 of 26 U.S.C. authorizes a court to enjoin persons who have engaged in conduct subject to penalty under 26 U.S.C. § 6701 from engaging in further such conduct. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return or other document, who knows the portion or document will be used in connection with any material matter under the internal revenue laws, and who knows the portion or document (if so used) would result in understating another person's tax liability.

53. Lares prepared tax returns and assisted in preparing tax returns and other documents for customers that were intended to be used (and were used) in connection with material matters arising under the internal revenue laws.

54. Lares knew that these returns and other documents (if so used) would result in understatements of customers' tax liabilities. Lares thus engaged in conduct subject to penalty under 26 U.S.C. § 6701.

Count II

Return-preparer injunction under 26 U.S.C. § 7407

55. The United States incorporates by reference the allegations in paragraphs 1 through 54.

56. 26 U.S.C. § 7407 authorizes a court to enjoin a person from, among other things, engaging in conduct subject to penalty under 26 U.S.C. § 6694 (which penalizes a

return preparer who prepares or submits a return that contains an unrealistic position¹).

If the return preparer's conduct is continual or repeated and the Court finds that a narrower injunction (*i.e.*, prohibiting specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of federal tax laws, the Court may enjoin the person from further acting as a return preparer.

57. Lares has continually and repeatedly prepared or submitted federal tax returns that contain unrealistic positions subject to penalty under 26 U.S.C § 6694 for which he should be permanently enjoined from preparing federal tax returns.

Count III

(Unlawful Interference with the Enforcement of the Internal Revenue Laws)

58. The United States incorporates by reference paragraphs 1 through 57.

58. Through the conduct described above, Lares engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Unless enjoined by this Court, Lares is likely to continue to engage in such conduct. Lares's conduct is causing irreparable injury to the United States, and the United States has no adequate remedy at law:

- a. Lares's conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless Lares is enjoined the IRS will have to expend substantial time and resources to detect future customers' returns with substantial understatements, and may be unable to detect all of them.

¹26 U.S.C. § 6694 has been amended to apply an "unreasonable position" standard for returns prepared after May 25, 2007.

- b. The detection and audit of returns filed by Lares's customers will place a serious burden on the IRS's resources.
- c. If Lares is not enjoined, he likely will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701 that substantially interferes with the enforcement of the internal revenue laws.

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

A. That the Court find that Lares has engaged in repeated and continual 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 bar Lares from acting as a tax return preparer;

B. That the Court find that Lares 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 him from engaging in further such conduct;

C. That the Court find that Lares 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 him is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. §§ 7407 and 7402(a);

D. That the Court, under 26 U.S.C. § 7407, enter a permanent injunction permanently barring Lares from acting as a federal tax return preparer;

E. That the Court, under 26 U.S.C. §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting Lares and his representatives, agents, servants, employees,

attorneys, independent contractors, and those persons in active concert or participation with them, from directly or indirectly:

- (1) engaging in any conduct subject to penalty under 26 U.S.C. § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;
- (2) acting as a tax return preparer;
- (3) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
- (4) engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, assisting others in the preparation of any tax returns, forms, or other documents to be used in connection with any material matter arising under the internal revenue laws and which they know will (if so used) result in the understatement of income tax liability; and

F. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Lares to contact all persons and entities for whom he prepared any federal income tax returns or other tax-related documents after January 1, 2007, and inform those persons of the entry of the Court's findings concerning the falsity of representations made by him on their tax returns, and that a permanent injunction has been entered against him.

G. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Lares to turn over to 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 Lares prepared or assisted in the preparation of any tax-related documents, including claims for refund or tax returns since January 1, 2007.

H. That this Court order that the United States be permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and

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

Dated: March 10, 2010.

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