

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
LUDIVINA SALINAS, d/b/a EZ TAX)	
SERVICES,)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION

The Plaintiff, the United States of America, alleges against Defendant as follows:

1. This action is brought under 26 U.S.C. (“26 U.S.C.”) §§ 7402, 7407, and 7408 to enjoin Defendant, Ludivina Salinas, and all those in active concert or participation with her, from directly or indirectly:

- a. Preparing, assisting in the preparation of, or filing others’ federal income tax returns, including amended federal income tax returns;
- b. Engaging in any activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other section of the Internal Revenue Code;
- c. Engaging in any activity subject to penalty under 26 U.S.C. § 6695, including § 6695(g), which penalizes claiming an Earned Income Tax Credit (EITC) without first complying with the due diligence requirements imposed by Treasury regulations;
- d. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. The Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, has requested this action, and a delegate of the Attorney General of the United States commences this action pursuant to the provisions of 26 U.S.C. §§ 7402, 7407, and 7408.

3. This Court has jurisdiction under 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407(a), and 7408(a).

4. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this judicial district and a substantial portion of the events giving rise to this action have occurred in this judicial district and division.

Defendant

5. Defendant, Ludivina Salinas, is a paid return preparer who resides and does business from locations within this judicial district and division.

6. Defendant does business under the name EZ Tax Services, which operates at 7310 Buckhorn Drive, Mission, Texas, a location within this judicial district and division.

Summary of Defendants' Activities

7. Defendant began preparing tax returns professionally in 2004.

8. Defendant has prepared approximately 1,134 federal tax returns in 2009. She prepared approximately 816 federal tax returns in 2008, approximately 492 tax returns in 2007, and approximately 477 tax returns in 2006.

9. Beginning on January 16, 2008, the IRS examined 100 returns that Defendant prepared on which she claimed an EITC for a customer. The IRS penalized Defendant for

claiming each of these EITCs based on her failure to comply with applicable Treasury regulations.

10. The EITC is a refundable tax credit available to certain low-income individuals. The amount of the credit depends on both the individual's annual wages and the number of dependents for which the taxpayer is responsible.

11. Because the EITC is a refundable credit, claiming an EITC can reduce a taxpayer's federal tax liability below zero, entitling the taxpayer to a refund from the United States Treasury.

12. Due to the method used to calculate the EITC, an individual can claim a larger EITC by claiming at least two dependents. Also, because of the method used to calculate the EITC, for certain income ranges, individuals with higher annual income are entitled to a larger credit than those with lower annual incomes.

13. The requirements for claiming an EITC are located in 26 U.S.C. § 32.

14. Because of the potential for abuse in claiming the EITC, Congress has authorized the Secretary of the Treasury to impose "due diligence" requirements on federal income tax return preparers claiming the EITC for their customers.

15. These "due diligence" requirements obligate the return preparer to obtain certain types of information from the customer and to ask the customer questions to ensure the customer is legitimately entitled to the EITC. Return preparers must document their compliance with these requirements and keep that documentation for three years. *See* 26 C.F.R. § 1.6695-2 (2008).

16. During the IRS audit of 100 returns Defendant prepared on which she claimed an EITC for a customer, the IRS determined that Defendant had not satisfied the due diligence requirements as to any of the returns.

17. On October 20, 2008, the IRS assessed \$10,000 in penalties against Defendant for her 100 separate violations of 26 U.S.C. § 6695(g).

18. Defendant paid this \$10,000 in § 6695(g) penalties on February 19, 2009.

19. On March 13 and March 16, the IRS reviewed 16 returns Defendant filed for customers electronically for the 2008 tax year.

20. On 11 of these filings, Defendant had improperly failed to include the required Form W-2 with the return. Employers provide their employees with Forms W-2 to verify, among other things, the amount of wages the employer paid the employee during a particular year.

21. Due to the misconduct described in paragraph 20, the IRS suspended Defendant's electronic filing privileges for two years on May 4, 2009.

22. On or about July 22, 2009, the IRS interviewed Defendant and examined 13 randomly-selected 2008 returns Defendants had prepared. During this interview, the IRS also reviewed the associated file of materials Defendant had compiled and maintained as part of her return preparation.

23. Defendant told IRS representatives during the July 22, 2009 interview that she is not very knowledgeable about federal tax laws.

24. Of the 13 returns and files that the IRS examined on or about July 22, 2009:

- a. Three of the files contained insufficient documentation to support the EITC that Defendant claimed on the returns;

- b. Eight of the files included Forms W-2 that did not report wages in amounts that corresponded to the wages Defendant listed on the return. Some of these returns showed greater wages than appeared on the customer's Form W-2, resulting in a larger EITC for the customer;
- c. Seven of the returns showed expenses associated with the customer operating a business even though Defendant had no substantiation for these alleged business expenses in her file;
- d. Two of the returns claimed deductions for wages paid to employees even though that customer did not file employment tax returns during 2008;
- e. Three of the returns claimed a First-Time Homebuyer Credit with no documentation in the file to support a conclusion that the customer purchased a home during 2008;
- f. Four of the returns claimed both an EITC and a First-Time Homebuyer Credit;
- g. Five of Defendant's files included form letters prepared by Defendant and signed by the customer (and signed by Defendant as notary) stating that Defendant was reporting the customer's income from self-employment as wages or other income in order to avoid paying self-employment taxes, and that the customer could not hold Defendant responsible if the IRS audited the return.

25. During 2009, Defendant claimed First-Time Homebuyer credits on 137 tax year 2008 returns. On 90 of these 137 returns, Salinas claimed both a First-Time Homebuyer credit

and an EITC. In addition, Defendant has prepared approximately 100 amended 2008 returns on which she claimed a First-Time Homebuyer Credit.

26. In at least one instance, an EZ Tax Services employee helped a customer claim a First-Time Homebuyer credit on a 2008 tax return even though the customer had not bought a home in 2008. The EZ Tax Services employee knew that this customer had not purchased a home at the time the customer was paying EZ Tax Services to prepare his return.

27. Defendant prepares returns for customers that she knows earn income from self-employment. Instead of reporting this income as self-employment income subject to self-employment taxes, Defendant reports this income as wages or other income, thereby evading self-employment taxes.

28. Defendant memorializes this conduct in letters that state in English and Spanish that the customer may not hold Defendant liable for any actions the IRS takes as result of this evasion of self-employment taxes.

29. In English, the letters referenced in paragraph 27 states on EZ Income Tax Services letterhead:

I, [blank], Testify under oath that I have placed / reported Self-Employment Income on my 200[blank] Income Tax Return. I also testify that I have advice [sic] the Tax Preparer, employed at EZ Tax Services, that I will NOT be paying my Self-Employed [sic] Taxes. I have also advice [sic] them to input / report my Miscellaneous Income as other income (not report [sic] on a W2). Therefore, when my return is finalized, I owe No Self-Employed [sic] Taxes due to the form that I advised them to input them [sic]. I understand that I am fully responsible for the ACTION that the IRS might take towards me and that My Tax Preparer holds NO responsibility. [capitalization and underscore in original]

30. As of July 16, 2009, the IRS had audited 199 returns that Defendant prepared for the 2005, 2006, 2007, and 2008 tax years. Of these 199 audits, the IRS made adjustments on 94%, with an average adjustment of \$4,800 per return.

31. In 2009, Defendant has prepared 1,134 returns for tax year 2008, and she has claimed a refund on 1,126 (99%) of them. Further, Defendant has claimed an EITC on 945 (83%) of the 2008 returns she has prepared.

32. Defendant claimed a refund on 99% of the 2005 returns she prepared, 98% of the 2006 returns she prepared, and 97% of the 2007 returns she prepared.

Count I: Injunction Under § 7407 for Conduct Subject to Penalty Under §§ 6694 and 6695

33. The United States incorporates by reference the allegations in paragraphs 1 through 32.

34. Section 7407, 26 U.S.C., authorizes the United States to seek an injunction against any tax preparer who, among other things, has engaged in any conduct subject to penalty under section 6694 or 6695.”

35. If a return preparer’s conduct 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 acting as a return preparer.

36. Section 6695(g), 26 U.S.C., and the Treasury regulations promulgated thereunder, prohibit a return preparer from claiming an EITC without first conducting the proper due diligence and documenting her compliance with the due diligence requirements. *See* 26 C.F.R. § 1.6995-2 (2008).

37. Defendant has continually and repeatedly prepared federal income tax returns that claim EITCs for which Defendant has not conducted nor documented the required due diligence procedures.

38. Even after the IRS assessed 100 penalties against Defendant for conduct subject to penalty under section 6695(g) on October 20, 2008, Defendant continued to claim EITCs for customers on 2008 returns (prepared during 2009) for which she failed to conduct or document the required due diligence procedures imposed by Treasury regulations.

39. Even after paying penalties for failing to properly claim EITCs, Defendant recently began claiming suspect First-Time Homebuyer Credits on 2008 returns she prepared during 2009.

40. Section 6694, 26 U.S.C., penalizes, among other things, willfully or recklessly understating another person's federal tax liability. *See* 26 U.S.C. § 6694(b).

41. As evidenced by the letter quoted above, Defendant improperly reports self-employment income as wages or other income in order to evade self-employment taxes.

42. Defendant prepares returns on which she claims customers have earned wages in excess of those reported on Forms W-2 in order to inflate the EITC the customer may claim on his or her return beyond any credit to which the customer is legitimately entitled.

43. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Defendant is likely to continue preparing federal income tax returns.

44. Defendant should be permanently enjoined under 26 U.S.C. § 7407 from acting as an income tax preparer because a more limited injunction would be insufficient to stop her interference with the proper administration of the tax laws.

Count II: Injunction Under 26 U.S.C. § 7408 for Conduct Subject to Penalty Under § 6701

45. The United States incorporates by reference the allegations in paragraphs 1 through 44.

46. Section 7408, 26 U.S.C., authorizes an injunction against anyone who has engaged in conduct subject to penalty under 26 U.S.C. § 6701 if injunctive relief is necessary to prevent a recurrence of the conduct.

47. Section 6701, 26 U.S.C., penalizes any person who assists, advises, or procures the preparation or presentation of a document; knows or has reason to know that the document will be used in connection with a material matter arising under the internal revenue laws; and knows that, if used, the document would result in an understatement of tax liability.

48. Defendant prepares federal income tax returns for customers she knows have earned self-employment income, but willfully assists customers in not paying those self-employment taxes by filing a return showing that the customer does not have earnings from self-employment.

49. Defendant prepares returns on which she claims customers have earned wages in excess of those reported on Forms W-2 in order to inflate the EITC the customer may claim on his or her return beyond any credit to which the customer is legitimately entitled.

50. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Defendant is likely to continue preparing false federal income tax returns.

51. Defendant should be permanently enjoined under 26 U.S.C. § 7408 from acting as an income tax preparer because a more limited injunction would be insufficient to stop her interference with the proper administration of the tax laws.

Count III: Injunction Under 26 U.S.C. § 7402 for Unlawful Interference with the Enforcement of the Internal Revenue Laws

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

53. Section 7402, 26 U.S.C., 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.” See 26 U.S.C. § 7402(a).

54. Defendant, through the actions described above, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless enjoined. Defendant’s conduct causes irreparable injury to the United States and an injunction under 26 U.S.C. § 7402(a) is necessary and appropriate.

55. Unless Defendant is enjoined, the IRS will have to continue devoting substantial time and resources to identify Defendant’s customers, and then examine the customers’ tax returns and liabilities. Pursuing all individual customers may be impossible give the IRS’s scarce resources.

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

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

A. That the Court find that Defendant has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701, and that injunctive relief is appropriate under 26 U.S.C. §§ 7402, 7407, and 7408 to bar Defendant from acting as an

income-tax return preparer and from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701;

B. That the Court, under 26 U.S.C. §§ 7402, 7407, and 7408 enter a permanent injunction prohibiting Defendant and her representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with her, from directly or indirectly

- a. Preparing, assisting in the preparation of, or filing others' federal income tax returns, including amended federal income tax returns;
- b. Engaging in any activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other section of the Internal Revenue Code;
- c. Engaging in any activity subject to penalty under 26 U.S.C. § 6695, including § 6695(g), which penalizes claiming an Earned Income Tax Credit (EITC) without complying with the due diligence requirements imposed by Treasury regulations;
- d. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

C. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Defendant to contact all persons and entities for whom she prepared any federal income-tax returns or other tax-related document after January 1, 2004, and inform those persons of the entry of the Court's findings concerning the falsity of representations Defendant made on her customers' tax returns, and that a permanent injunction has been entered against her;

D. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring 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 Defendants prepared or helped to prepare any tax-related documents, including claims for refund or tax returns since January 1, 2004;

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

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

Dated this 30th day of September, 2009.

Respectfully submitted,

TIM JOHNSON
Acting United States Attorney

s/ Robert E. Fay
ROBERT E. FAY
Attorney in Charge
VA Bar No. 74871
Attorneys for Plaintiff
Trial Attorney, Tax Division
U.S. Department of Justice
PO Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-9209
Fax: (202) 514-6770
Email: Robert.E.Fay@usdoj.gov