

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No.
)	
v.)	COMPLAINT FOR PERMANENT
)	INJUNCTION AND OTHER
DAVID M. O'BRYANT,)	EQUITABLE RELIEF
)	
Defendant.)	
_____)	

Plaintiff United States of America for its complaint against David M. O'Bryant 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 §§ 7402, 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (IRC) to restrain and enjoin O'Bryant from preparing federal income tax returns for others, engaging in any activity subject to penalty under IRC §§ 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.

4. David O'Bryant resides in and does business in St. Louis, Missouri, within this judicial district.

O'Bryant's Background

5. O'Bryant started preparing federal income tax returns for customers in 1985 while he was employed at H & R Block. He did this for H & R Block through 2000.

6. From at least 1995, O'Bryant has also been employed as a Quality Control manager at Thermal Science in St. Louis.

7. In 2001, O'Bryant began preparing returns for a Jackson Hewitt franchise in St. Louis, where he worked through 2005.

8. O'Bryant also taught a tax-preparation course from 2002 through 2004 while he worked at the Jackson Hewitt franchise.

O'Bryant Has Repeatedly Prepared False and Fraudulent Federal Income Tax Returns

9. Since 2002, O'Bryant has also prepared federal income tax returns for customers as part of a sole proprietorship that he owns and operates. O'Bryant does not have any fixed location for his operation. He advertises through word of mouth and scheduled meetings with customers at various locations.

10. Most of O'Bryant's customers are self-employed individuals or wage earners living in the St. Louis area.

11. The IRS estimates that O'Bryant has prepared 1,165 federal income tax returns from 2002 through 2005.

12. From 2002 to 2005, O'Bryant continually and repeatedly prepared federal income tax returns containing false or inflated Schedule A expenses, false Schedule C businesses and false or inflated Schedule C business losses, false education credits, false dependent exemptions, and other fraudulent items.

13. Of the estimated 1,165 federal tax returns O'Bryant has prepared for customers since 2002, over 95% have claimed tax refunds.

14. As a direct result of O'Bryant's fraudulent return preparation, his 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 Investigation of O'Bryant

15. In April 2005, IRS agents interviewed O'Bryant and advised him that he was being investigated in connection with possible improper conduct in preparing tax returns for customers.

16. In November of 2005, IRS agents interviewed O'Bryant for a second time.

17. IRS agents examined at least 157 returns that O'Bryant prepared for 54 customers for the 2002 through 2004 tax years.

18. The agents determined that every one of the 157 returns they examined contained one or more false or inflated Schedule A deductions for charitable contributions, personal property taxes, or other miscellaneous deductions.

19. The agents also determined that the 157 returns contained false or inflated Schedule C business losses, false or inflated education credits, inflated claims for the earned income tax credit, false dependency exemptions, or false head-of-household status.

20. In addition to the 157 returns that IRS agents examined, the IRS since October, 2004 has completed examinations of 306 federal income tax returns that O'Bryant prepared for customers for the 2003, 2004, and 2005 tax years. The IRS also continues to examine other returns prepared by O'Bryant for these years.

21. Of the 306 returns that IRS examiners have finished examining, 291 were determined to have understated the correct tax, and 120 O'Bryant customers have agreed to the tax deficiencies the IRS asserted.

**O'Bryant Continued to Prepare False or
Fraudulent Returns While Under Investigation**

22. By April 2005, if not earlier, O'Bryant knew the IRS was investigating the returns he prepared with false deductions and credits and knew he was being investigated for his role in this.

23. Nevertheless O'Bryant continued to prepare federal income tax returns for customers reporting false information and asserting unrealistic positions.

24. In 2006, O'Bryant prepared 262 income tax returns for customers for tax year 2005. The IRS has examined 12 of the 2005 income tax returns and found that they all contained inflated expenses, false claims for credits, and false dependent exemptions, or

false head-of-household filing status of the sort the IRS had found on returns O'Bryant prepared earlier.

25. On the returns O'Bryant prepared for customers in 2006 he falsely claimed:

- (A) a filing status of single and head of household for customers who were married on eight income tax returns;
- (B) dependent exemptions on five of the returns for children that did not live with or were not supported by the customer;
- (C) inflated or fictitious Schedule A deductions for charitable contributions, medical expenses, un-reimbursed employee expenses, or personal property taxes, and other miscellaneous deductions;
- (D) inflated or fictitious Schedule C business expenses, in some cases for non-existent businesses. In addition, some returns reported inflated self-employment income on Schedule C for non-existent businesses in order to falsely claim an additional earned income tax credit, based on the increased income, for which the customers were not even entitled to receive; and
- (E) O'Bryant made false claims that seven of his customers were entitled to the earned income tax credit during 2005 based on children who did not live with the customer during the year.

26. The IRS examinations of the twelve 2005 returns resulted in asserted deficiencies for each O'Bryant customer, and each customer agreed he or she was not entitled to the inflated or fictitious deductions or credits.

27. For example, O'Bryant prepared a 2005 federal individual income tax return for a customer who lived in St. Louis.

28. On the customer's 2005 return, O'Bryant reported false deductions on Schedule A, an inflated claim for the earned income tax credit, falsely claimed the customer was entitled to head-of-household status, and falsely claimed dependent exemptions to which the customer was not entitled.

29. The IRS examination uncovered these false claims and resulted in a determination that this customer owed additional tax of \$5,972 for 2005.

**O'Bryant's Fraudulent Return Preparation
Has Caused an Estimated \$2 Million in Tax Losses So Far**

30. Based on the IRS's complete examinations of the 306 returns for the 2003, 2004, and 2005 tax years, O'Bryant understated his customers' tax liabilities in the total amount of \$556,758, or approximately \$1,819 per return (excluding interest and penalties).

31. The IRS has thus far fully examined 306 of O'Bryant's returns, having selected those returns as most likely to have false deductions or credits from an estimated total of 1,165 returns that O'Bryant prepared since 2002. The IRS estimates total loss to the Treasury of over \$2 million as a result of O'Bryant's fraudulent return preparation.

32. The IRS recently listed return-preparer fraud as part of its 2006 "Dirty Dozen" tax scams. The "Dirty Dozen" list can be found on the web at <http://www.irs.gov/newsroom/article/0,,id=154293,00.html>.

33. The harm to the Government will increase if O'Bryant is not enjoined because O'Bryant is likely to continue to prepare false federal income tax returns for customers during the 2006 return-filing season.

Fictitious or False Schedule C Business Expenses

34. O'Bryant continually and repeatedly prepared federal income tax returns claiming fictitious or false Schedule C business expenses for customers with businesses in order to offset their W-2 income.

35. For example, O'Bryant prepared the 2002, 2003, and 2004 federal income tax returns for a St. Louis, Missouri customer who operated a disc jockey and management business.

(A) The customer's 2002 return falsely reported that the customer paid \$210 for legal services, \$925 for utilities, \$125 for office expenses, \$425 expense for meals and entertainment, and received gross receipts of \$1,200. Following an IRS interview, the customer agreed the expenses should all be zero.

(B) The 2003 return falsely reported that the customer paid \$325 for legal services, \$685 for utilities, \$100 for office expenses, \$2,260 for supplies, and received gross receipts of \$2,250. Following an IRS interview, the customer agreed the expenses should all be zero, but the business listed a net loss of \$6,955.

(C) The 2004 return falsely reported that the customer paid \$748 for legal services, \$4,418 for utilities, \$410 for office expenses, \$2,260, a deduction for repairs and maintenance of \$4,418, and received gross receipts of \$3,285. Following an IRS

interview, the customer agreed the expenses should all be zero, but the business listed a net loss of \$22,830.

36. The return O'Bryant prepared for this St. Louis customer also contained false deductions for personal property taxes, medical expenses, charitable expenses, false dependent exemptions, false child-care expenses, and other false miscellaneous deductions.

37. This St. Louis customer requested a tax refund on each return, but as a result of an IRS examination, he owes additional taxes for 2002, 2003, and 2004.

38. For the 2003 and 2004 tax years, O'Bryant prepared 128 federal income tax returns with a Schedule C.

39. The majority of the Schedule C returns that O'Bryant prepared for the 2002 through 2005 tax years claimed a net loss on the Schedule C, which O'Bryant used to offset his customers' earned income claimed on the IRS Form 1040.

40. O'Bryant frequently claims false Schedule C income and expenses in identical amounts for multiple customers. For example, many of the 76 O'Bryant-prepared 2003 returns that the IRS has examined listed \$2,400 for gross receipts. Twelve of the returns claimed \$210 as a deduction for "professional subscriptions," and eighteen of the 76 returns claimed a \$688 deduction for union dues. IRS examinations revealed that these deductions were false.

41. On the forms Schedule C the IRS examined for 2003 for O'Bryant customers claiming the earned income tax credit, O'Bryant reported income but falsely reported no

expenses, thereby inflating the customer's earned income so as to inflate the earned income tax credit.

Fictitious Schedule C Businesses

42. For the 2002 through 2005 tax years, O'Bryant prepared federal income tax returns for some customers falsely claiming that they were engaged in businesses in order to create false Schedule C business expenses to offset their W-2 wage income.

43. For example, O'Bryant prepared the 2004 federal individual income tax return for a St. Louis, Missouri customer and falsely reported that the customer operates a baggage-handling business in order to claim bogus Schedule C business losses to offset W-2 wage income.

44. The federal income tax returns O'Bryant prepared for this customer also contained false deductions for personal property taxes, and inflated deductions for medical expenses and charitable contributions.

45. As a result of an IRS examination that disallowed this customer's deductions and Schedule C business losses, he now owes the IRS additional tax of \$2,378 for 2004.

46. When interviewed by the IRS, this customer stated that the charitable deductions and property deductions were inflated, and that he did not operate any business during 2004 as reported on his Schedule C and that he did not know why O'Bryant had claimed various Schedule C business expenses on the customer's 2004 return.

False Head-of-Household Status and Dependent Exemptions

47. O'Bryant also continually and repeatedly prepared returns for some customers claiming false head-of-household status and false dependent exemptions in order to decrease his customers' reported tax liabilities. O'Bryant falsely told his customers who were married that filing as head of household was the same as filing as "married filing separate," but that they would receive a greater tax benefit.

48. For example, O'Bryant prepared the 2003 and 2004 federal individual income tax returns for a St. Louis couple who told him that they wanted to file as married filing jointly. The couple never told O'Bryant that they were separated or living apart.

49. O'Bryant prepared two separate returns for the couple for both years for what he told them was "married filing separate" filing status. In fact, O'Bryant improperly reported head-of-household filing status on the returns.

50. O'Bryant told the couple that filing this way would entitle them to receive a greater refund but failed to tell them that they were not eligible to claim head-of-household status.

51. An IRS examination revealed that correcting O'Bryant's misreporting results in this couple owing additional tax of \$4,036 and \$3,487 for 2003 and 2004.

52. O'Bryant prepared the 2002, 2003, and 2004 federal income tax returns for a St. Louis woman on which O'Bryant falsely claimed exemptions for one dependent child and falsely claimed head-of-household status, even though the customer stated that the child, her niece, did not live with her in those years.

53. The St. Louis woman advised the IRS that she did not support her niece during

2002-2004, and that the niece had lived with her mother during that time.

54. O'Bryant falsely listed this customer's niece as a qualifying child on for purposes of the earned income tax credit on the customer's tax return.

55. The IRS disallowed the claimed exemption for the child and the claimed earned income tax credit.

Count I: Injunction under IRC § 7408

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

57. IRC § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under IRC § 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.

58. O'Bryant 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.

59. O'Bryant knew that these returns and other documents (if so used) would result in understatements of customers' tax liabilities. O'Bryant thus engaged in conduct subject to penalty under IRC § 6701.

Count II: Return-preparer injunction under IRC § 7407

60. The United States incorporates by reference the allegations in paragraphs 1 through 59.

61. IRC § 7407 authorizes a court to enjoin a person from, among other things,

(1) engaging in conduct subject to penalty under IRC § 6694 (which penalizes a return preparer who prepares or submits a return or claim that contains a frivolous or unrealistic position, or who willfully attempts to understate a customer's tax liability on a return or claim, or who makes an understatement on a return due to reckless or intentional disregard of rules or regulations);

(2) engaging in conduct subject to penalty under IRC § 6695 (which penalizes a return preparer who fails to sign returns he prepares or who fails to be diligent in determining eligibility for the earned income tax credit);

(3) misrepresenting his eligibility to practice before the Internal Revenue Service, or otherwise misrepresenting his experience or education as an income tax return preparer; or

(4) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

If the return preparer's misconduct is continual 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.

62. O'Bryant has continually and repeatedly prepared and submitted federal tax returns that contain unrealistic and frivolous positions, and that willfully attempted to understate customers' correct tax liabilities, and has thus engaged in conduct subject to penalty under IRC § 6694.

63. O'Bryant has continually and repeatedly failed to be diligent in determining eligibility for the earned income tax credit, subjecting him to penalty under IRC § 6695(g).

64. O'Bryant has continually and repeatedly misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax return preparer.

65. O'Bryant has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

Count III: Injunction under IRC § 7402 for Unlawful Interference with the Enforcement of the Internal Revenue Laws

66. The United States incorporates by reference paragraphs 1 through 65.

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

a. O'Bryant's conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless the O'Bryant 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.

b. The detection and audit of fraudulent returns that O'Bryant prepares for customers will place a serious burden on the IRS's resources.

c. If O'Bryant is not enjoined, he likely will continue to engage in conduct subject to penalty under IRC §§ 6694, 6695, and 6701 that substantially interferes with the enforcement of the internal revenue laws.

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

A. That the Court find that O'Bryant has engaged in repeated and continual conduct subject to penalty under IRC §§ 6694 and 6695, and that injunctive relief is appropriate under IRC § 7407 to bar O'Bryant from acting as an income-tax-return preparer;

B. That the Court find that O'Bryant has engaged in conduct subject to penalty under IRC § 6701, and that injunctive relief is appropriate under IRC § 7408 to prevent him from engaging in further such conduct;

C. That the Court find that O'Bryant has 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 them is

appropriate to prevent the recurrence of that conduct pursuant to IRC §§ 7407 and 7402(a);

D. That the Court, under IRC §§ 7402 and 7407, enter a permanent injunction permanently barring O'Bryant from acting as a federal income tax return preparer and from preparing or filing federal tax returns for others, and from representing customers before the IRS;

E. That the Court, under IRC §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting O'Bryant and his representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with him, from directly or indirectly:

- (1) engaging in any conduct subject to penalty under IRC § 6694, including preparing any part of a return or claim for refund that includes an unrealistic position or a willful understatement of tax;
- (2) engaging in any conduct subject to penalty under IRC § 6695(g), including failing to be diligent in determining eligibility for the earned income tax credit;
- (3) acting as federal-income-tax return preparer;
- (4) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
- (5) engaging in conduct subject to penalty under IRC § 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.

F. That the Court, under IRC § 7402, enter an injunction requiring O'Bryant to contact all persons and entities for whom he prepared any federal income tax returns or other tax-related documents after January 1, 2002, and inform those persons of the entry of the Court's findings concerning the falsity of representations O'Bryant made on his customers' tax returns, and that a permanent injunction has been entered against him.

G. That the Court, under IRC § 7402, enter an injunction requiring O'Bryant 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 O'Bryant prepared or helped to prepare any tax-related documents, including claims for refund or tax returns since January 1, 2002.

H. That the Court order that the United States is 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.

CATHERINE L. HANAWAY
United States Attorney

A handwritten signature in black ink, appearing to read 'T. Newman', is written over a horizontal line.

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