

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 WAYNE A. PERRY, individually and)
 doing business as PREMIER CHOICE,)
 INC., and PERRY TAX SERVICES,)
)
 Defendant.)
 _____)

Case Number:

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against defendant Wayne A. Perry, individually, and doing business as Premier Choice Inc., and Perry Tax Services, as follows:

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 (IRC) (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 IRC §§ 7402(a), 7407, and 7408.

3. This is a civil action brought by the United States under IRC §§ 7402(a), 7407, and 7408 to enjoin Perry and anyone in active concert or participation with him from:

- A. acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;

- B. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents and forms for others;
- C. understating customers' liabilities as subject to penalty under IRC § 6694;
- D. engaging in activity subject to penalty under IRC § 6701;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- F. engaging in other conduct that substantially 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 Perry resides in Macon, Georgia, within this judicial district, and because all or a substantial part of the actions giving rise to this suit took place in this district.

Defendant and Basic Facts

5. Wayne A. Perry is a paid federal tax return preparer operating as Premier Choice and Perry Tax Service, located at 828 Riverside Drive in Macon, Georgia.

6. Perry has worked as a paid return preparer for approximately 11 years.

7. Perry prepares and files federal income tax returns for his customers on which he improperly claims false or fraudulent fuel tax credits under IRC § 6421.

8. The IRS has identified at least 19 federal income tax returns that Perry prepared claiming improper fuel tax credits.

9. The IRS has identified more than \$73,000 in fraudulent fuel tax credits that Perry claimed on returns he prepared for customers.

10. Perry has prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." Under IRC § 6421(a), the fuel tax credit is

available only to taxpayers who operate farm equipment or other off-highway business vehicles. Moreover, the equipment or vehicles using the fuel must not be registered for highway uses.

Overview of IRC § 6421(a): Credit for Federal Tax Paid on Fuels

11. Fraudulently claiming the fuel tax credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, Perry improperly claims the fuel tax credit for his customers for purported personal or business motor fuel purchases.

12. IRC § 6421(a) provides a credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered, and not required to be registered, for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines such as generators, compressors, power saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. *See* IRS Publication 225 (2006), Farmer's Tax Guide, Chapter 14 (2006) (available online at: <http://www.irs.gov/publications/p225/ch14.html#d0e19048>).

13. IRS Publication 510 defines a highway vehicle as any "self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions." A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the Fuel tax credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the Fuel tax credit: passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. *See* IRS

Publication 510 (2006), Excise Taxes for 2006, Chapter 2 (2006) (available online at: <http://www.irs.gov/publications/p510/ch02.html#d0e3533>)

14. IRS Publication 510 provides the following example of an appropriate application of the fuel tax credit:

Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify.

15. In short, the fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

Perry's Fraudulent Claims of the Fuel Tax Credit

16. Perry reduces his customers' reported federal tax liabilities by claiming bogus fuel tax credits under IRC § 6421. The IRS has determined that Perry claimed false fuel tax credits on at least 19 federal income tax returns he prepared.

17. Perry prepares Forms 4136 for his customers falsely stating that the customer has used gasoline for off-highway business purposes.

18. Perry claims absurdly large credits by falsely reporting purchases of huge quantities of gasoline.

19. For example, Perry fraudulently prepared a federal income tax return claiming a fuel tax credit, and claiming that in 2004 the customer purchased 62,400 gallons of gasoline for off-highway business use. This customer, whose occupation is listed as "Trucking" and whose total reported income for the year was \$45,423, would have had to spend approximately \$124,800 (assuming \$2.00 per gallon) to purchase that amount of gasoline – which was nearly three times his total income for the year. Moreover, to use that volume of gasoline (assuming mileage of 20

miles per gallon), this customer would have had to drive approximately 1,248,000 business miles during the year – which means driving 3,419 miles each day, seven days a week (which translates to driving non-stop at speeds over 142 mph). This example shows the blatantly fraudulent nature of Perry’s use of the fuel tax credit.

20. Even if the amount of gasoline claimed had been more reasonable, this customer and the others for whom Perry claimed improper fuel tax credits still do not qualify for the fuel tax credit, which is only available for customers using fuel in off-highway business uses.

21. The following chart shows several more examples of Perry’s fraudulent preparation of federal income tax returns using the fuel tax credit:

Occupation	Tax Year	Amount of off-highway business use of gasoline claimed on Form 4136	Cost of claimed business use of gasoline*	Estimated yearly/daily mileage**	Total Income	Amount of gasoline credit	Refund Requested
Truck Driver	2003	5,646	\$11,292	112,920 mpy / 309 mpd	\$17,878	\$1,039	\$2,102
Truck Driver	2005	28,571	\$57,142	571,420 mpy / 1566 mpd	\$11,948	\$5,257	\$3,278
Truck Driver	2005	30,123	\$60,246	602,460 mpy / 1651 mpd	\$11,309	\$5,543	\$9,423
Fabtech	2003	35,000	\$70,000	700,000 mpy / 1918 mpd	\$55,758	\$6,440	owes \$4,148
Fabtech	2004	15,600	\$31,200	312,000 mpy / 855 mpd	\$17,805	\$2,870	\$5,157
Truck Driver	2005	33,079	\$66,158	661,580 mpy / 1,813 mpd	\$7,859	\$6,079	\$7,444
Trucker	2005	15,541	\$31,082	310,820 mpy / 852 mpd	\$50,498	\$2,851	\$7,942
Unlisted	2003	31,255	\$62,510	625,100 mpy / 1713 mpd	\$12,264	\$5,751	\$6,656
Lab Tech	2005	9,621	\$19,242	192,420 mpy / 527 mpd	\$33,049	\$1,770	\$6,007
Truck Driver	2004	15,650	\$31,300	313,000 mpy / 858 mpd	\$10,929	\$2,880	\$4,314.00

Truck Driver	2005	9,925	\$19,850	198,500 mpy / 544 mpd	\$12,345	\$1,826	\$4,532.00
Unlisted	2003	8,100	\$16,200	162,000 mpy / 444 mpd	\$5,820	\$1,490	\$1,049.00
Self Employed	2004	6,978	\$13,956	139,560 mpy / 382 mpd	\$37,202	\$1,284	\$3,304.00
Truck Driver	2005	14,264	\$28,528	285280 mpy / 782 mpd	\$13,078	\$2,625	\$3,829.00

* Estimated total cost based on \$2.00 per gallon.

** Estimated milage based on 20 miles per gallon.

Harm to the public

22. Perry'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 by not reporting and paying taxes that they owe. Perry has filed returns for customers seeking more than \$73,000 in refunds based on fraudulent fuel tax credits.

23. Since 2004, Perry has prepared over 6,300 returns, and over 90% of those returns sought refunds.

24. Perry's conduct harms the United States because his customers are receiving refunds to which they are not entitled, and are failing to pay taxes that they owe.

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

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

penalties. The IRS estimates that its administrative costs associated with this scheme thus far exceed \$43,000.

Count I

Injunction under IRC § 7407

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. Section § 7407 of the Internal Revenue Code authorizes a district court to enjoin a federal tax return preparer from:

- A. engaging in conduct subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;
- C. failing to comply with an IRS request under IRC § 6107(b);
- D. misrepresenting his experience or education as a tax return preparer; or
- E. 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 tax return preparer.

29. Perry has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal income tax returns that understate his customers' tax liabilities based on unrealistic, frivolous, and reckless positions.

30. Perry's repeated violations of IRC § 6694 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

31. If he is not enjoined, Perry is likely to continue to prepare and file false and fraudulent tax returns.

32. Perry's continual and repeated conduct subject to an injunction under IRC § 7407, and flagrant misuse of the fuel tax credit, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Perry'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 IRC § 7408

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

34. Section § 7408(a)-(c) of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either IRC §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

35. Section § 6701(a) of the Internal Revenue Code 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.

36. Perry prepares federal tax returns for customers that he knows or should have known will understate their correct tax liabilities. Perry's conduct is thus subject to a penalty under IRC § 6701.

37. If the Court does not enjoin Perry, he is likely to continue to engage in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

Count III
Injunction under IRC § 7402(a)
Necessary to Enforce the Internal Revenue Laws

38. The United States incorporates by reference the allegations of paragraphs 1 through 37.

39. Section § 7402 of the Internal Revenue Code authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

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

41. Unless enjoined, Perry is likely to continue to engage in such improper conduct. If Perry is not enjoined from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

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

43. 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 Wayne A. Perry has continually and repeatedly engaged in conduct subject to penalty under IRC § 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 Wayne A. Perry has engaged in conduct subject to a penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Wayne A. Perry 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 IRC § 7402(a);

D. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Wayne A. Perry, individually, and d/b/a Premier Choice Inc., and Perry Tax Services, and all those in active concert or participation with him, from:

- A. acting as a federal tax return preparer or requesting, 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 whose tax liabilities are under examination by the Internal Revenue Service;
- B. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents and forms for others;
- C. understating customers' liabilities as subject to penalty under IRC § 6694;
- D. engaging in activity subject to penalty under IRC § 6701;

- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- F. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an order requiring Wayne A. Perry, within 20 days of entry of the injunction, to contact by U.S. mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared a federal tax return since January 1, 2004, and provide them a copy of the executed permanent injunction against him;

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an order requiring Wayne A. Perry to produce to counsel for the United States, within 20 days of entry of the injunction, a list that identifies by name, social security number, address, e-mail address, telephone number and tax period(s), all persons for whom Perry prepared federal tax returns or claims for a refund since January 1, 2004;

G. That the Court retain jurisdiction over Wayne A. Perry and over this action to enforce any permanent injunction entered against Perry;

H. That the United States be entitled to conduct discovery to monitor Perry'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,

A. BRIAN ALBRITTON
United States Attorney

/s/ Grayson A. Hoffman

GRAYSON A. HOFFMAN

VA Bar # 73726

Trial Attorney, Tax Division

U.S. Department of Justice

Post Office Box 7238

Ben Franklin Station

Washington, DC 20044

Telephone: (202) 616-2904

Facsimile: (202) 514-6770

Grayson.A.Hoffman@usdoj.gov