

Complaints and Other Initiating Documents5:09-cv-00359 UNITED STATES OF AMERICA v. JOHNSTON

U.S. District Court

Northern District of Florida

Notice of Electronic Filing

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Case Name: UNITED STATES OF AMERICA v. JOHNSTON**Case Number:** 5:09-cv-359**Filer:** UNITED STATES OF AMERICA**Document Number:** 1**Docket Text:**

COMPLAINT against all defendants, filed by UNITED STATES OF AMERICA. (Attachments: # (1) Summons - Evelyn Johnston, # (2) Summons - Abaco Executive Services, Inc.) (HOFFMAN, GRAYSON)

5:09-cv-359 Notice has been electronically mailed to:

GRAYSON A HOFFMAN grayson.a.hoffman@usdoj.gov, central.taxcivil@usdoj.gov

5:09-cv-359 Notice will NOT be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1047052653 [Date=10/27/2009] [FileNumber=2556330-0] [024d8715a607cf65e1f6f102750fd01ee98785d9f89423cab0ba3af8941c4bfa74c1a3026222eb82cc62c903523da2849f7a1fddfc4b0d53ddb0d342ad2706]]

Document description: Summons - Evelyn Johnston**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1047052653 [Date=10/27/2009] [FileNumber=2556330-1] [2d39c35661576d996b91701cae9baf23e0c04095983881559d528742f3b37205eb2fe2dc1da7968ec5a9930ed34fcad8c0c930075e8651c831a5b2447171de6a]]

Document description: Summons - Abaco Executive Services, Inc.**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1047052653 [Date=10/27/2009] [FileNumber=2556330-2] [438d2d2b04771b27789fea39dd18619e87664293896b4765811fb79f3cf74798b9135f43261388683353936a561e30a67db26c51f4c71f3592e1da652504fa50]]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
EVELYN JOHNSTON, individually,)	Complaint for Permanent
ABACO EXECUTIVE SERVICES,)	Injunction and Other Relief
INC.,)	
)	
Defendants.)	

Plaintiff, United States of America, for its complaint against Evelyn Johnston, individually, and Abaco Executive Services, Inc. (d/b/a Abaco; Abaco Financial and Tax Services; Abaco Tax Services; and Abaco Financial Tax Service)(“defendants”), states as follows:

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.) (I.R.C.) to enjoin Evelyn Johnston and Abaco Executive Services, Inc., from the following activities:
 - (a) Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return, amended return or other federal tax documents or forms for any other person or entity;
 - (b) Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or assists taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the use of false Forms 1099 or other false IRS forms based on the false claims that:

- i. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099 or other documents;
 - ii. Taxpayers can issue false Forms 1099 on behalf of a creditor and report on federal tax returns the amount on the false Form 1099 as federal income taxes withheld on their behalf; and
 - iii. Taxpayers have an account with the Treasury Department from which they can draw funds through a process that is often called “redemption” or “commercial redemption.”
- (c) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making or furnishing a statement regarding the excludability of income or securing of any other tax benefit that defendants know or have reason to know is false or fraudulent as to any material matter;
- (d) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing tax returns and other documents that understate the tax liabilities of others;
- (e) Preparing their own federal income tax returns claiming income withholding and refunds based on amounts shown in Forms 1099 or other documents issued to their own creditors;
- (f) Filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040, 1040X, 1099 or any other IRS forms for themselves or others, including the notarization or signing of certificates of service or similar documents in connection with the frivolous tax returns;
- (g) Representing anyone other than herself before the Internal Revenue Service;
- (h) Engaging in any other conduct that is subject to penalty under the Internal Revenue Code or that 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.

Defendants

4. Evelyn Johnston resides in Marianna, Florida, in the Northern District of Florida. Venue is thus proper in this Court under 28 U.S.C. § 1391.
5. Evelyn Johnston is licensed by the IRS as an enrolled agent.
6. Evelyn Johnston is the owner and president of defendant Abaco Executive Services, Inc., a corporation doing business in Panama City, Florida, in the Northern District of Florida.
7. Evelyn Johnston and her business, Abaco Executive Services, Inc., prepare federal tax returns for others in exchange for compensation. Since 2007, defendants have prepared and filed at least 1,191 federal income tax returns (not including amended returns).

The Defendants' Tax-Fraud Scheme

8. Defendants promote a tax-fraud scheme that involves filing fraudulent federal income tax returns and other frivolous documents with the IRS on behalf of their customers.
9. Defendants fabricate federal income tax withholdings on tax returns they prepare. The fabricated tax withholding reported to the IRS on their customers' returns results in fraudulent refund claims by their customers in amounts as large as \$1,060,032 per customer.
10. In support of their fraudulent refund claims, defendants prepare and file with the IRS false Forms 1040, 1040X, 1099-OID, 1096, Schedule B, and other false IRS documents.
11. Other courts have enjoined tax return preparers for promoting the very same tax schemes and for preparing the same type of bogus tax returns and supporting documentation. *See, e.g., United States v. Teresa Marty, et al.*, at: <http://www.usdoj.gov/opa/pr/2009/September/09-tax-937.html>; *see also United States v. Kahn*, 2004 WL 1089116, *1 (March 30, 2004 M.D. Fla.) (court held defendants in

violation of injunction that arose from defendants' promotion of abusive tax schemes including "outlandish mechanisms" such as using counterfeit bonds and checks to draw on fictitious treasury accounts supposedly in their customers' name). Other courts have condemned the tax scheme. *Ray v. Williams*, 2005 WL 697041, *5-6 (March 24, 2005 D. Or.) (in considering prison's bar on the delivery of the book "Cracking the Code, Third Edition," held that book contained fraudulent claim of "Redemptionists" that direct treasury account exists that has a balance equal to the monetary value the government places on the life of an individual); *Monroe v. Beard*, 2007 WL 2359833, *2 (Aug. 16, 2007 E.D. Pa.) (characterized Redemption as an "anti-government scheme that utilizes commercial law to harass and terrorize its targets").

12. The IRS issued a nationwide "problem alert" warning taxpayers about the very same tax scheme that defendants are promoting in this case, on October 10, 2008:
<http://www.irs.gov/newsroom/article/0,,id=98129,00.html>
13. IRS Forms 1099-OID are used to report Original Issue Discount (OID) income (and any federal income tax withheld from that income). Original issue discount income refers to the difference between the discounted price at which a debt instrument is sold at issuance, and the stated redemption price at maturity. OID is generally included in a taxpayer's income as it accrues over the term of the debt instrument, whether or not the taxpayer actually receives payments from the issuer of the debt instrument. OID is treated like a payment of interest, and a party issuing a financial instrument generating OID must issue a Form 1099-OID.
14. IRS Forms Schedule B are used to report interest and dividend income, and are attached to IRS Forms 1040.
15. IRS Forms 1096 are used to transmit Forms 1099-OID (and other forms) to the IRS.
16. The frivolous IRS Forms 1099-OID submitted with the returns that defendants prepare typically show false OID income paid by a customer's creditor – usually a credit card company or a mortgage company – to the customer.

17. Some of the fraudulent Forms 1099-OID that defendants prepare and submit with returns they prepare falsely state that their customers are payees who receive OID income from their creditors.
18. Other fraudulent Forms 1099-OID that defendants prepared and filed with the IRS state that their customers were both the payer and payee of the interest income reported on the false Form 1099-OID.
19. Other fraudulent Forms 1099-OID that defendants prepared and filed with the IRS state that their customers were the payer of OID income to their creditors.
20. The Forms 1099-OID that defendants prepare and submit also falsely state that federal income taxes were withheld from some or the full amount of OID purportedly received by the customer.
21. Defendants prepare bogus tax returns reporting false income which equals or approximates the total amount of the false OID, and claim false withholding on the customer's IRS Form 1040 (or 1040X). On the returns, defendants claim huge false refunds, often exceeding \$500,000. One of the returns defendants prepared for a customer in April of 2009 included a fraudulent refund claim for \$1,060,132.
22. Consequently, defendants' customers fail to file correct federal income tax returns (and amended returns) and falsely claim tax refunds to which they are not entitled.
23. In some cases, defendants do not prepare IRS Forms 1099-OID and, instead, just prepare and submit a false Form Schedule B reporting false interest income from creditors and false withholding on line 62 of the return.
24. The IRS Forms Schedule B that defendants prepare and file with their customers' federal tax returns typically show the customer as the "payee" of purported interest income paid to them by a creditor.
25. The IRS Forms 1096 that defendants prepare and file with the IRS also falsely report federal income tax withheld.
26. The apparent purpose of defendants' frivolous IRS Forms 1040, 1040X, 1099-OID, 1096, and Schedule B is to request fraudulent income tax refunds. The scheme is based