

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

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Case No. 09-cv-2525
)	
CARLOS CRUZ a/k/a CARLOS)	
RUANO-CRUZ, individually and d/b/a)	
CARLOS INCOME TAX SERVICES,)	
)	
Defendant.)	

DEFAULT JUDGMENT AND PERMANENT INJUNCTION

Before the Court is the United States’ Motion for Default Judgment and brief in support thereof. Upon due consideration, the Court makes the following findings of fact and conclusions of law and enters this permanent injunction against Defendant Carlos Cruz, a/k/a Carlos Ruano-Cruz, individually and d/b/a Carlos Income Tax Services.

Standards for Default Judgment and Permanent Injunction

The entry of default judgment is committed to the sound discretion of this Court. *Dennis Garberg & Assocs. v. Pack-Tech Int’l Corp.*, 115 F.3d 767, 771 (10th Cir. 1997). “If the court determines that defendant is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 2688 (3d ed. 1998). In this action, the United States is seeking injunctive relief under 26 U.S.C. (I.R.C.) §§ 7402, 7407, and 7408. In order to obtain relief in a statutory-injunction action such as this, the plaintiff must demonstrate that the defendant has violated a statute and that a reasonable likelihood of future violations exists. *SEC v. Comserv Corp.*, 908 F.2d 1407, 1412 (8th Cir. 1990); *United States v.*

Kaun, 827 F.2d 1144, 1148 (7th Cir. 1987). Because I.R.C. §§ 7407 and 7408 set forth specific criteria for injunctive relief, the United States need only meet those statutory criteria, without reference to traditional equitable factors, for this Court to issue an injunction under those sections. *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

To obtain an injunction under I.R.C. § 7407, the United States may show, among other things, that the defendant (1) engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct. To obtain an injunction under I.R.C. § 7407 preventing the defendant from acting as an income-tax-return preparer, the United States must additionally show that the defendant engaged in this conduct continually or repeatedly and that a narrower injunction would be insufficient to prevent the defendant from interfering with the proper administration of the internal revenue laws. *United States v. Bailey*, 789 F. Supp. 788, 816 (N.D. Tex. 1992). To obtain an injunction under I.R.C. § 7408, the United States may show, among other things, that the defendant engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct. Finally, to obtain an injunction under I.R.C. § 7402(a), the United States must show that an injunction is necessary or appropriate to enforce the internal revenue laws.

Findings of Fact

The Clerk of Court has already found that after having been personally served with the complaint and summons, Defendant Cruz failed to answer the complaint within the 20 days granted by Fed. R. Civ. P. 12(a)(1)(A) and is therefore in default. Taking the allegations in the complaint as true, the Court additionally finds as follows:

1. Cruz, a resident of Kansas City, Kansas, is a paid tax-return preparer. He conducts business through the unincorporated entity Carlos Income Tax Services, with its principal place of business at 2315 Lawn Avenue in Kansas City, Missouri. Cruz is not—nor has he ever been—formally enrolled as a tax preparer with the IRS. Although he engages in business as a paid tax-return preparer, Cruz is neither a public accountant, a licensed Certified Public Accountant, nor a lawyer. He has no professional licenses nor any college degrees. His only education or training in the area of taxation are some H&R Block income tax preparation courses and some classes related to Drake Software, a tax preparation software company.

2. Cruz prepares tax returns for customers residing in Kansas and Missouri within the greater Kansas City metropolitan area. He prepares tax returns for customers out of his former residence in Kansas City, Missouri, and out of the restaurant El Pulgarcito in Kansas City, Kansas.

3. Cruz claims to have prepared income tax returns for customers since 1992. His files reflect that he prepared at least 6,790 federal income tax returns for tax years 2004 through 2007: 1,506 for tax year 2004; 1,305 for tax year 2005; 2,086 for tax year 2006; and 1,893 for tax year 2007. Additionally, IRS records reflect that Cruz prepared at least 203 federal income tax returns for tax year 2003 and at least 479 federal income tax returns for tax year 2008.

4. Cruz effectively engages in result-based tax return preparation where the goal is to maximize refunds rather than accurately report his customers' actual income and allowable credits and deductions. One of Cruz's customers, Laura Cisneros, told the investigating IRS revenue agent in October of 2008 that while Cruz prepared the Cisneroses' 2004 and 2005 federal income tax returns, he advised Ms. Cisneros's husband to "just tell me how much you want to pay or want for a refund."

5. Although many of Cruz's customers bring copies of their tax documents such as Forms W-2 and 1099 and receipts for potentially deductible expenses, Cruz often ignores the documentary substantiation and reports unsupported amounts on customers' federal income tax returns and supporting schedules. During IRS audits, several customers advised the IRS that when they brought their expense records to Cruz, he did not verify the actual expense amounts and advised customers to tell him only generally what they thought the amount of their expenses were instead of taking the time to calculate the accurate sums. Salvador Garcia, a self-employed customer from Kansas City, Kansas, told the investigating IRS revenue agent in October of 2008 that he went to Cruz for tax preparation services after hearing that "[p]eople go to Carlos because he doesn't ask for anything." However, I.R.C. § 6001 requires taxpayers to maintain sufficient records to establish the amounts required to be shown on their tax returns.

6. Cruz gives improper advice regarding deductions. Cruz wrongly advises customers that general home improvements and maintenance are fully deductible and that small business owners may claim both standard mileage and actual travel expenses as an expense deduction. Cruz gives this improper advice although he holds himself out to his customers as an experienced and knowledgeable tax-return preparer.

7. Cruz claims that when he prepares a customer's federal income tax return, he typically will meet with that customer only once for about 15 minutes, during which he will fill out the tax return in front of the customer while asking only general questions. After this, he prints out the return and asks the customer to sign it. Some of Cruz's customers examined by the IRS indicated that they stood in line for over an hour to wait for Cruz's tax preparation, and felt hurried due to the sheer number of customers waiting in line. Several of Cruz's customers examined by the IRS stated that Cruz did not review their tax return with them after he prepared it and printed it out.

8. Cruz charges customers between \$50 to \$80 to prepare a federal income tax return, depending on what he judges the complexity of the return to be. He tries to distance himself from responsibility for accurate preparation of a customer's federal income tax return by advising his customers that if they are later audited by the IRS, he will not accompany the customer to or represent the customer at the audit because "he doesn't have to go." Cruz claims that an audit is only between the customer and the IRS, regardless of the tax preparation advice he gives customers.

9. Of 81 federal tax returns prepared by Cruz that the IRS has reviewed for tax years 2002 through 2007, 77 returns (or 95%) were prepared incorrectly and required adjustments. Of the 77 returns requiring adjustments, 75 adjustments reflected additional taxes owed to the IRS. For tax years 2002, 2003, 2004, 2005, 2006, and 2007, Cruz repeatedly prepared federal income tax returns claiming false or inflated expenses on Schedule A including improperly claiming deductions for general home improvement expenses, claiming false or inflated state income taxes or personal property taxes paid, claiming false or inflated mortgage interest or real estate taxes

paid, and claiming false or inflated charitable-contributions. Additionally, Cruz prepared returns with false or unsubstantiated Schedule C wages, automobile expenses, and general expenses. Cruz also failed to report customers' state tax refunds as income and claimed education credits for taxpayer dependents who were not enrolled in qualifying post-secondary school educational institutions. The majority of returns examined by the IRS reflected multiple such inaccuracies.

10. Of the 81 tax returns reviewed by the IRS that Cruz has prepared since 2003, at least 29 returns claimed deductions for improvements and maintenance on customer's residences as a miscellaneous deduction on Line 22 of the customers' Form 1040 Schedule A. During the November 2008 IRS interview, Cruz claimed that "a friend in California" advised him that this was a legitimate tax deduction, but could not confirm which statute or regulation allegedly authorized such a deduction. In fact, the Internal Revenue Code does not allow taxpayers to deduct the expenses of general improvements or maintenance on their personal residence, and allows only a narrow, limited tax credit for energy efficiency set forth in I.R.C. §§ 25C and 25D.

11. Additionally, at least 26 of the 81 returns reviewed by the IRS reflected false, inflated, or unsubstantiated amounts for state income and personal property taxes paid as a deduction on Lines 5 and 7 of the customers' Form 1040 Schedule A. Another 20 returns reflected false, fraudulent, or inflated amounts for real estate taxes or mortgage interest paid as a deduction on Lines 6, 10, and 12 of the customers' Form 1040 Schedule A. At least 12 returns reflected false or fraudulently inflated charitable contributions.

12. During IRS examinations of their Cruz-prepared tax returns, many Cruz customers informed the IRS that they had no knowledge of how Cruz came up with the deductions he reported on their returns. For example:

- a. Francisco and Laura Tarelo from Kansas City, Missouri, visited Cruz for preparation of their 2004 federal income tax return. They brought their Forms W-2, Forms 1098, and other expense receipts to substantiate their Schedule A deductions, including the Form 1098 showing \$2,816 in real estate taxes paid and \$2,300 in interest points paid for their residence as well as \$3,733 in state and local taxes withheld on their W-2. Cruz prepared their Schedule A reflecting \$270 real estate taxes, \$8,789 interest points, and \$7,466 in state and local taxes. The Tarelos did not understand why the claimed amounts did not match the substantiated amounts. Based on this and other discrepancies, the IRS audited the Tarelos and adjusted their claimed income by \$14,608, resulting in an assessment of \$2,873.09 in additional tax and penalties.
- b. Jose and Celina Ortiz from Kansas City, Kansas, visited Cruz for preparation of their 2004 federal income tax return. They brought their tax documents and other receipts to substantiate any claimed deductions, including the wage-earner's Form W-2 reflecting \$1,138.44 in state tax withheld from the annual salary. Cruz prepared their Schedule A reflecting \$2,276 in state tax withheld, double the substantiated amount. The Ortizes did not understand why the claimed amounts did not match the substantiated amounts despite the substantiation. The Ortizes also informed Cruz that they purchased a new home as his personal residence in 2004 and made a downpayment of \$36,453. Cruz claimed this sum as a miscellaneous deduction, and assured the couple that they could claim the downpayment as a deduction if the house was their personal residence. Based on this and other discrepancies, the IRS audited the couple and adjusted their claimed income by \$32,790, resulting in an assessment of \$3,573.96 in additional tax and penalties.
- c. Shoua Yang and Chue Xiong from Kansas City, Kansas, visited Cruz in early 2005 so he could prepare their 2004 federal income tax return. They brought their daughter to translate. The couple had no expense receipts for education, home improvements, or charitable contributions. Cruz asked them questions regarding their general church-going habits, whether their daughter attended school, and if they had fixed anything at their home. Yang and Xiong answered his questions, but provided no specific amounts nor had any receipts to reference. Nonetheless, Cruz filled in a deduction of \$2,865 for charitable contributions, \$5,110 for a "home improvement" deduction, and \$433 for an education credit for their daughter then attending high school. Upon examination, the IRS denied the "home improvement" deduction in full as improper and the education credit in full because the daughter was still in high school and not enrolled in any qualifying post-secondary education program. The IRS also

adjusted the claimed charitable deduction to \$505 based on information provided by the customers' church.

13. Cruz's tax return preparation is not his only wrongdoing. He also gives patently false advice to customers regarding these Schedule A deductions. For example:

- a. Artemio and Laura Cisneros from Kansas City, Kansas, were customers of Cruz for preparation of their tax year 2004 and 2005 federal income tax returns. At their first visit for preparation of the tax year 2004 tax return, after Ms. Cisneros explained that she earned money cleaning houses, Cruz improperly advised her that she did not have to report any money received from cleaning houses as income because it would only increase her corresponding tax liability. The Cisneroses declined to take this advice. They brought their receipts and tax documents for their Schedule A deductions as well as for their Schedule C landscaping business to substantiate any claimed deductions. Cruz never looked at their receipts, and asked the Cisneroses to just tell him the total they spent on overall expenses. During one visit, Cruz told Ms. Cisneros "you don't need to bring me all this, just tell me how much you make and how much you spend and don't worry about supplies here and gas here."
- b. During the preparation of their 2004 and 2005 federal income tax returns, Cruz improperly advised the Tarelos from Kansas City, Missouri, that they could claim as deductions anything they do to fix their personal residence, including new cabinets, a garage door, and carpets. The IRS denied in full the \$8,500 for tax year 2004 and the \$5,400 for tax year 2005 that Cruz listed as a "Home Improvement" deduction on Line 22 of their 2004 and 2005 federal income tax returns' Schedule A.
- c. Cruz improperly advised Julia Walton, a small business owner, for her 2002, 2004, and 2005 federal income tax returns that she could claim an expense deduction for automobile expenses at the standard mileage rate and for actual expenses such as gas. Based on this advice, Cruz prepared Walton's return to claim automobile expenses of \$25,829 for tax year 2002; \$46,441 for 2004, and \$11,875 for 2005. However upon an examination of these tax years, the IRS only allowed substantiated deductions of \$3,038 for 2002, \$5,063 for 2004, and \$5,770 for 2005.

14. Of the 81 tax returns reviewed by the IRS, at least 14 returns claimed false, fraudulent, or inflated amounts for wages paid to employees or contractors as a deduction on Line 26 of the customers' Form 1040 Schedule C. When examined by the IRS, customers lacked

substantiation for the claimed wages paid, despite the requirement that employers are required to keep records and issue information returns for payments to independent contractors under I.R.C. § 6041 and keep records and issue receipts for payments to employees under I.R.C. § 6051. For example:

- a. The Cisneroses managed a lawncare business and were customers of Cruz for preparation of their tax year 2004 and 2005 federal income tax returns. Although they claimed salaries and wages as expenses on the Schedule C for 2004 and 2005, Cruz never informed the Cisneroses that they needed to issue a Form W-2, Form 1099, or any other tax information document to their employees or independent contractors or keep any records to substantiate wages paid. Only when they returned in 2006 did an unidentified woman working with Cruz inform the Cisneroses that they needed to issue Forms W-2 or 1099 to employees or independent contractors to substantiate these expenses. Cruz reported \$8,596 in wages paid on Line 26 of their 2004 Schedule C, and \$10,427 in wages paid on Line 26 of their 2005 Schedule C. At the IRS audit, the couple could only provide some cancelled checks that supported \$3,058 claimed wages paid for 2004, and \$1,876 for 2005. Based on this and other discrepancies, the IRS adjusted their claimed income for tax year 2004 by \$14,022, resulting in an assessment of \$5,112.45 in additional tax and penalties, and adjusted their claimed income for tax year 2005 by \$15,158, resulting in an assessment of \$4,360.54 in additional tax and penalties.
- b. Alberto and Silvia Hernandez from Kansas City, Missouri, who both worked as contract cleaners, paid Cruz to prepare their tax year 2004 and 2005 federal income tax returns. Cruz falsely reported on Line 26 of the husband's Schedule C \$2,500 in wages that Mr. Hernandez allegedly paid to employees during tax year 2004. Upon examination, Mr. Hernandez informed the IRS that he worked alone, never had any employees for either the 2004 or 2005 tax years, and did not understand why Cruz had reported any wages paid. The IRS denied in full the claimed wage expense deduction.

15. In addition to inflated Schedule C wages, Cruz also prepared numerous tax returns for customers claiming false, fraudulent, or inflated amounts for automobile expenses as a deduction on Line 9 of the customers' Form 1040 Schedule C. When examined by the IRS, customers lacked substantiation for the claimed automobile expenses related to their business.

When interviewed by an IRS revenue agent in November of 2008 regarding the proper manner in which to claim automobile expense deductions on a Schedule C, Cruz stated that he advised customers that a taxpayer may claim both standard mileage rates and actual automobile expenses, contrary to IRS Publication 463 which gives a taxpayer the option of choosing only one method but not both.

16. Of the 81 tax returns reviewed by the IRS, Cruz also prepared at least 15 returns claiming false, fraudulent, or inflated amounts for general business expenses as a deduction on Line 2 of the customers' Form 1040 Schedule C-EZ and Lines 8 through 28 of the customers' Form 1040 Schedule C. When examined by the IRS, customers lacked substantiation for the claimed wages paid. For example:

- a. Trinidad Guerra, a part-time babysitter from Kansas City, Kansas, had Cruz prepare her tax year 2004 federal income tax return. Cruz reported on Line 2 of her Schedule C-EZ wages of \$10,500 and expenses of \$2,300. Guerra did not know how Cruz came up with the claimed wage amount because she told him that she was only paid \$125 per week and worked only 9 months. Additionally, Guerra never provided to Cruz any expense receipts, nor did Cruz inquire about any expenses she incurred. Based on this and other discrepancies, the IRS audited Guerra and reduced her claimed income for tax year 2004 by \$1,540.80, which reduced her Earned Income Tax Credit. This adjustment resulted in an assessment of \$313.06 in additional tax and penalties.
- b. Salvador Garcia from Kansas City, Kansas, owned his own construction business and paid Cruz to prepare his tax year 2003 and 2004 federal income tax returns. Cruz reported on Line 22 of the Schedule C a total supply expense of \$31,255 for tax year 2003, and \$15,410 for tax year 2004. Garcia brought a notebook containing his supply receipts when he visited Cruz for preparation of the tax returns, but Cruz said he didn't need the notebook and never looked at the receipts. Garcia did not know how Cruz determined the supply expenses claimed on the return without basing them on the receipts provided. When the IRS examined Garcia's 2003 and 2004 tax returns, Garcia could substantiate only \$3,937 for 2003 and \$9,318 based on his retained supply receipts. The IRS only allowed these substantiated amounts as an expense deduction.

17. Not only did Cruz prepare false and inflated Schedule C forms for customers' federal income tax returns, but he also falsely advised customers that they could fabricate a business on a Schedule C in order to claim tax refunds to which they are not entitled. For example, Cruz prepared the 2004 federal income tax return for Lara Noemi of Kansas City, Missouri. In a discussion between Cruz and Noemi, Cruz advised her that in order to maximize the Earned Income Tax Credit, she had to have an income between \$8,000 and \$12,000. When Noemi replied that she did not make enough to maximize the Earned Income Tax Credit based on that range, Cruz advised her that he could manufacture a false Schedule C house-cleaning business in her name, and that she should inform any future tax preparer that she was self-employed, owned a Schedule C business, and claim that her customers paid her in cash. He then drafted a Schedule C-EZ with false and unsubstantiated gross receipts and expenses and claimed an Earned Income Tax Credit of \$3,770 for a total refund of \$2,619. The IRS denied the gross receipts and expenses on the Schedule C-EZ in their entirety, reduced the Earned Income Tax Credit accordingly, and assessed \$2,352.32 in tax, penalties, and interest against the customer.

18. Cruz prepared several tax returns reflected improper education credits for dependents who were not enrolled in post-secondary education or other qualified educational institutions. In at least one case involving a customer, Salvador Garcia, a father from Kansas City, Kansas, Cruz never discussed with Garcia how a dependent may qualify for an education credit, and Garcia was unaware that such a credit even existed. Garcia only remembers Cruz asking for his children's birthdates and social security numbers. Nonetheless, Cruz prepared Garcia's return claiming education credits for the father's 8-year-old and 14-year-old sons for

the 2003 tax year. Upon examination, the IRS disallowed both claimed education credits because neither children were enrolled in qualifying, post-secondary education institutions.

19. Additionally, Cruz has prepared several tax returns that falsely or fraudulently failed to include as income any state tax refunds from the previous year. Some customers claimed that although they received previous years' state income tax refunds from using Cruz's services for that tax year, Cruz never asked for information about such refunds and failed to inform customers that such refunds were taxable as income.

20. Based upon the 81 tax returns selected at random by the IRS for examination, 95% of the examined tax returns prepared by Cruz required an adjustment by the IRS. Cruz's preparation of false tax returns harms his customers because they paid Cruz to prepare their federal tax returns that substantially understate their tax liabilities. Many of these customers now face large federal income tax liabilities and may be liable for substantial penalties and interest.

21. The IRS must audit Cruz's customers to determine their correct tax liabilities, or request that they file correct amended returns. Such effort may be required for each of Cruz's customers filing tax returns prepared by Cruz within the last three years. So far, the IRS has examined the tax liabilities of 46 Cruz customers as reported on 81 federal income tax returns, covering tax years 2002, 2003, 2004, 2005, 2006, and 2007. These preliminary examinations reveal that Cruz's customers substantially under-reported their incomes, and accordingly owe additional taxes and penalties totaling \$713,775.63.

22. The IRS selected the examined customers and tax returns at random from Cruz's overall customer base and total number of prepared returns. Given the high percentage of

returns requiring adjustments upon examination, the IRS fully expects to find in its continuing examinations that the majority of tax returns prepared by Cruz reflect a similar pattern of false, inflated, or unsubstantiated deductions and an inaccurate reflection of income. Assuming the tax understatement rate and the average tax understatement from the audited returns are representative of Cruz's tax-preparation misconduct for 2003, 2004, 2005, 2006, and 2007, the tax loss caused by Cruz's tax-preparation misconduct may exceed \$25 million. The actual and potential tax losses do not fully account for the harm to the United States because there are substantial additional costs to the government for investigating and correcting Cruz's false and fraudulently prepared returns and collecting the unpaid tax liabilities, and the United States does not know the total number of returns prepared by Cruz to date.

23. Cruz will not cease preparing false or fraudulent tax documents unless he is enjoined.

Conclusions of Law

Based on the above findings of fact, the Court finds that the defendant has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6701 and engaged in conduct that substantially interferes with the administration of the internal revenue laws. Moreover, the Court finds that injunctive relief is appropriate to prevent the recurrence of such conduct and that a narrow injunction only prohibiting Defendant Cruz from engaging in such conduct would be insufficient to prevent his further interference with the administration of the internal revenue laws. The Court further finds that a permanent injunction is necessary and appropriate in this instance to enforce the internal revenue laws.

Order

A. Based on the above findings of fact and conclusions of law, it is **ORDERED** that Carlos Cruz, a/k/a Carlos Ruano-Cruz, individually and d/b/a Carlos Income Tax Services, and any person in active participation with him directly or indirectly, is hereby enjoined from:

- (a) Preparing or filing, or helping others to prepare or file, federal tax returns for anyone other than himself;
- (b) Causing or assisting other persons and entities to understate their federal tax liabilities and avoid paying federal taxes;
- (c) Engaging in conduct subject to penalty under I.R.C. § 6701;
- (d) Engaging in any conduct subject to penalty under I.R.C. § 6694; and
- (e) Engaging in any other conduct subject to any penalty under the Internal Revenue Code.

B. IT IS FURTHER ORDERED that Cruz 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 customers for whom he or Carlos Income Tax Services has created, prepared, or filed federal tax returns or whom he has advised, counseled, or otherwise assisted regarding the preparation of federal tax returns or advised regarding their tax liability within the last five years;

C. IT IS FURTHER ORDERED that, using the addresses last known to him, Cruz mail all persons and entities for whom he or Carlos Income Tax Services prepared, helped to prepare, or filed any federal tax returns or any other federal tax-related document, a copy of this order;

D. IT IS FURTHER ORDERED that Cruz complete the requirements listed in paragraphs B and C, above, within 20 days of the Court's permanent injunction, and file with the

Court a certificate of compliance with those requirements, signed under penalties of perjury, along with evidence of compliance, within 22 days of the Court's permanent injunction;

E. IT IS FURTHER ORDERED that the Court retains jurisdiction to enforce this injunction and the United States may engage in post-judgment discovery to monitor the defendant's compliance with this injunction.

Dated: November 24, 2009

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

Submitted by:
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