

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. _____
	)	
KODJOVI RAPHAEL TOTOU;	)	
individually and d/b/a	)	
QUEEN CITY TAX SERVICE	)	
	)	
Defendant.	)	

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The plaintiff, the United States of America, complains and alleges against the defendant, Kodjovi Raphael Totou, individually and doing business as Queen City Tax Services, as follows:

1. This is a civil action brought by the United States pursuant to sections 7402(a) and 7407 of the Internal Revenue Code of 1986 (26 U.S.C.) (“IRC”) to enjoin the defendant, Kodjovi Raphael Totou, and those acting in active concert or participation with him, from:

- (a) further acting as a federal income tax return preparer;
- (b) assisting in the preparation or filing of federal tax returns that he knows or should know will result in the understatement of any tax liability or the overstatement of a federal tax refund;
- (c) understating taxpayers’ liabilities as subject to penalty under IRC §6694;
- (d) engaging in any other activity subject to penalty under IRC §§6694, 6695, 6700, or 6701; and
- (e) engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme.

### **Jurisdiction**

2. This action has been authorized and 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 of the United States, pursuant to the provisions of IRC §§7401 and 7408.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§1340 and 1345, and IRC §§7402(a) and 7407.

4. Defendant Kodjovi Raphael Totou resides and has an office in Charlotte, North Carolina, within this judicial district.

### **Defendant's Activities**

5. Totou is a commercial tax return preparer doing business under the name of "Queen City Tax Services." Totou prepares tax returns seasonally and part-time, otherwise employed at a major U.S. bank as a Retail Investment Specialist. He has prepared more than 450 federal income tax returns since 2004.

6. Totou holds no professional or business license. In 2003 he was assigned an Electronic Filing Identification Number (EFIN) by the IRS. His only background in tax preparation is a three-hour course given by H&R Block in 2002.

7. On information and belief, many of Totou's customers are immigrants from Togo, with limited English-language ability and possibly little if any understanding of U.S. tax law or the deductions and credits Totou claims on their behalf.

8. In the past four years, nearly all of Totou's customers have received income tax refunds, due in part to the fraudulent use of federal fuel tax credits and false or otherwise inflated

Schedule A and Schedule C deductions that Totou claims on his customers' returns.

9. Totou claimed the federal fuel tax credit for all of his customers in the 2003 tax year. Totou's customers clearly do not qualify for the fuel tax credit because their businesses or purported businesses (e.g., machine operator; hair braider) do not involve "off-highway business use" of gasoline.

10. The IRS has reviewed 17 federal income tax returns prepared by Totou that claimed fuel tax credits ranging from \$1,768 to \$4,613. In support of these large credits, Totou falsely reported that his customers consumed absurdly large amounts of gasoline, often 20,000 to 25,000 gallons per year. In many cases, the claimed fuel tax credit is flatly inconsistent with the number of business miles claimed on the Schedule C of those customers' returns, and the purchase of such quantities of gasoline would have been financially impossible for many of those customers.

Specific examples include:

- a) Totou reported on one customer's 2005 Schedule C that the customer drove 61,807 miles for business in 2005. Totou claimed fuel tax credit for 25,110 gallons. The customer's automobile would have to get 2.46 mpg in order for those two figures to be consistent, and even then the customer would have spent \$50,000 on gasoline, assuming an average 2005 price of roughly \$2.00 per gallon.
- b) Another customer reported \$704 in total income on his 2005 return, consisting of \$1,221 in wages and a \$517 business loss. He claimed fuel tax credit for 23,635 gallons. Assuming a 2005 price of roughly \$2.00 per gallon, the customer would have spent \$47,000 on gasoline alone, more

than double his reported wages and receipts.

11. Totou has also reported false Schedule A deductions and Schedule C business expenses on his customers' federal income tax returns for 2005 and 2006. These false claims include fictitious expenses related to fabricated businesses, fabricated charitable contributions, and exaggerated or otherwise false unreimbursed business expenses.

### **Harm to the Public**

12. Totou's customers have been harmed because they paid him fees to prepare tax returns that substantially understate their correct tax liabilities. Many customers now face large income tax deficiencies, and may be liable for sizeable penalties and statutory interest.

13. The United States has been harmed because Totou's customers received refunds to which they were not entitled. While the exact revenue loss is difficult to estimate, IRS examinations of 17 federal income tax returns prepared by Totou for the 2005 tax year revealed a revenue loss of at least \$56,000.

14. The United States has also been harmed because the IRS has spent scarce resources investigating Totou's activities, examining the returns that he prepared for his customers, as well as assessing and collecting tax deficiencies.

15. Totou's activities have further harmed the public by reducing confidence in the integrity of the tax system, and encouraging noncompliance with internal revenue laws.

### **Count I**

#### **Injunction under IRC §7407**

16. The United States incorporates by reference the allegations in paragraphs 1-14.

17. Section 7407 of the Code authorizes a district court to enjoin a tax preparer from:

- (a) engaging in conduct subject to penalty under IRC §6694 (which penalizes a tax preparer who prepares or submits a return that understates a person's tax liability relying on an unrealistic position);
- (b) engaging in conduct subject to penalty under IRC §6695 (which penalizes a tax return preparer who fails to keep a list of customers or copies of tax returns and turn over the list or copies to the IRS upon request);
- (c) misrepresenting his experience or education as a tax preparer; or
- (d) 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 injunctive relief is appropriate to prevent the recurrence of such conduct.

Furthermore, if the court finds that such conducts is repeated or continual, and "that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as an income tax preparer." §7407(b)(2).

18. Totou prepared at least 17 tax returns that falsely claimed the federal fuel tax credit, understated his customers' tax liabilities with reckless disregard for tax rules and regulations, and subjected him to potential penalties under IRC §6694(b)(2). The position that Totou took with respect to his customers' entitlement to federal fuel tax credits was frivolous and had no realistic chance of being sustained on the merits, subjecting him to potential penalties under IRC §6694(a).

19. Likewise, Totou reported false Schedule A deductions and Schedule C business expenses on the tax returns he prepared that understated his customers' tax liabilities, again with

no possibility that those frivolous claims would be sustained on their merits. This subjects Totou to penalties under IRC §6694(a).

20. Totou's actions, as described above, fall within IRC §7407 (b)(1)(A) and (D) and are therefore subject to being enjoined.

21. Totou's repeated and continual understatement of his customers' federal tax liabilities demonstrates the appropriateness of an injunction under IRC §7407(b) prohibiting him from acting as a federal income tax return preparer altogether.

## **Count II**

### **Injunction under IRC §7402(a) for unlawful interference with the enforcement of the internal revenue laws**

22. The United States incorporates by reference the allegations of paragraphs 1-21.

23. IRC §7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

24. Totou, through his actions as described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

25. The federal income tax returns that Totou prepares for his customers improperly and illegally reduce their reported federal income, self-employment, and social security tax liabilities. If Totou is not enjoined from engaging in fraudulent and deceptive conduct, such as preparing false or fraudulent tax returns, the United States will suffer irreparable injury because the revenue losses caused by Totou will continue to increase.

26. While the United States will suffer irreparable injury if Totou is not enjoined, Totou will not be harmed by being compelled to obey the law.

27. The public interest would be advanced by enjoining Totou because an injunction will stop his illegal conduct and the harm that his conduct is causing the United States Treasury.

28. If Totou is not enjoined, he is likely to continue to interfere with the enforcement of the internal revenue laws.

WHEREFORE, the plaintiff, the United States of America, respectfully prays as follows:

A. That the Court find that Totou has continually and repeatedly engaged in conduct subject to penalty under IRC §6694, and that injunctive relief under IRC §7407 is necessary and appropriate to prevent recurrence of that conduct;

B. That the Court, pursuant to IRC §7407, enter a permanent injunction prohibiting Totou from acting as a federal income tax return preparer;

C. That the Court find that Totou 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), enter a permanent injunction prohibiting Totou from:

- (1) preparing or filing, or assisting in or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as a representative on behalf of any person or organization before the Internal Revenue Service;
- (2) preparing or assisting in the preparation of tax returns that defendant knows will result in the understatement of any tax;
- (3) understating customers' liabilities as prohibited by IRC §6694;

- (4) engaging in any other activity subject to penalty under IRC §§6694 and 6695; and
- (5) 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) and 7407, enter an injunction requiring Totou to contact by mail all persons for whom he prepared a federal tax return, and inform them of the Court's findings concerning the falsity or fraudulent attributes of those tax returns and enclose a copy of the permanent injunction against Totou;

F. That the Court, pursuant to IRC §7402(a) and 7407, enter an injunction requiring Totou to produce to counsel for the United States within ten days a list that identifies by name, social security number, address, e-mail address, telephone number and tax period(s) all persons for whom Totou prepared federal tax returns and/or claims for refund since January 1, 2003;

G. That the Court retain jurisdiction over the defendant, Kodjovi Raphael Totou, individually and doing business as Queen City Tax Services, and this action for the purpose of enforcing any permanent injunction entered against defendant;

H. That the United States be entitled to conduct all discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring defendant'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 this 19th day of September, 2007.

GRETCHEN C. F. SHAPPERT  
United States Attorney

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