

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,)	Civil Action No.: 2:15-cv-2816-RMG
)	
Plaintiff,)	
)	
v.)	
)	
LATASHA FAILEY and LATOYA WINDHAM,)	
)	
<u>Defendants.</u>)	

COMPLAINT FOR PERMANENT INUNCTION

The United States of America, through its undersigned counsel alleges as follows:

1. The United States brings this action to restrain and enjoin Latasha Failey, Latoya Windham, and all those in active concert with them or under their direction and/or control, from:
 - a. preparing, filing, or assisting in the preparation or filing of federal tax returns, amended returns, and other related documents and forms, including any electronically-submitted tax returns or tax-related documents, for any entity or person other than themselves;
 - b. preparing or assisting in the preparation of federal tax returns that they know will result in the understatement of any tax liability or the overstatement of a federal tax refund;
 - c. engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701; and
 - d. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper administration and enforcement of the internal revenue laws.

JURISDICTION AND VENUE

2. This action is authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of a delegate of the Attorney General of the United States in accordance with 26 U.S.C. §§ 7401, 7407, and 7408.

3. This Court has jurisdiction to hear the action pursuant to 28 U.S.C. §§ 1340, 1345 and 26 U.S.C. § 7402(a).

4. Venue is proper in this Court under 26 U.S.C. §§ 7407 and 7408 and 28 U.S.C. § 1391(b) because the defendants either reside within this District, or have engaged in specified conduct subject to penalty within this District, and a substantial part of the events or omissions which give rise to the United States' claims in this action occurred within this District.

5. Defendant Failey resides in North Charleston, Charleston County, South Carolina. From 2009 to 2012, she conducted her tax return business in North Charleston.

6. Defendant Windham resides in Broward County, Florida. From 2009 to 2012, defendant Windham engaged in the tax return preparation activities at issue in this case in North Charleston, Charleston County, South Carolina.

SUMMARY OF DEFENDANTS' ACTIVITIES

7. Defendants are paid tax return preparers who have engaged in a scheme of minimizing a customer's tax liability or maximizing a claim for refund by falsely manipulating a variety of tax return items. Among other things, Defendants have falsely claimed credits, falsely adjusted the business income or loss reported on Schedule C of the taxpayer's income tax return, falsely claimed Schedule A deductions, and falsely claimed the wrong filing status or number of dependency exemptions.

8. Defendant Failey started Failey's Tax Service in 2009 and operated it from 2009 to 2012. Defendant Windham, Failey's sister, was employed by Failey's Tax Service during that time. Although Windham prepared returns, they were always signed, if at all, under Failey's name. IRS records show that between 2009 and 2011, the last year for which the IRS has complete data, 2,431 returns were prepared by or at the direction of Defendants. Of these, 2,405, or 98.9%, claimed a refund. The number of returns prepared in each calendar year was as follows:

Filing Year	Number of Returns	Number of Refund Returns
2009	507	507
2010	808	802
2011	1,116	1,096

9. Apart from a basic H&R Block tax class, neither Failey nor Windham has any formal training in tax return preparation.

10. During interviews with the IRS, Defendants' customers routinely stated that their returns contained items of which they were not aware, had not discussed with Defendants, and had not authorized Defendants to claim.

Earned Income Tax Due Diligence Investigation

11. In 2010, the IRS conducted an Earned Income Tax Credit (EITC) due diligence review of Failey's Tax Service, which revealed that Defendants were not complying with the investigative and documentary requirements prescribed by 26 U.S.C. § 6695(g) and the accompanying regulations. Specifically, Defendants were not properly verifying the eligibility of their customers for whom they claimed the EITC. The IRS assessed penalties for 27 of the 75 returns they reviewed.

12. Despite the IRS's interest in Defendants' tax return preparation activities and the imposition of penalties, Defendants continued preparing and submitting false and fraudulent returns.

Criminal Investigation and Convictions

13. In February 2011, the IRS initiated a criminal investigation of Defendants' tax return preparation practices. During the investigation, Failey was observed preparing false income tax returns for two separate undercover agents posing as customers. Special Agents then executed a search warrant at Failey's Tax Service. During separate interviews by Special Agents, both Failey and Windham admitted to preparing false income tax returns at the business. The IRS immediately revoked the Electronic Filing Indicator Number (EFIN) issued to Failey's Tax Service.

14. Undeterred, Failey and Windham relocated their business to a new location by January 2012 and began submitting returns using the EFIN issued in the name of AJC Investments. AJC Investments' EFIN had been obtained by Failey's then-fiancée and current husband, D'Artagnan Gibson. Defendants attempted to submit 188 tax returns using the AJC Investments EFIN. The IRS revoked the EFIN issued to AJC Investments as well.

15. Defendants did not stop there. Instead, they continued submitting false returns using the EFIN of Nicole Murray, a Charleston-area return preparer. Defendants agreed to pay Murray \$60 to electronically file each return they prepared. According to IRS records, Defendants submitted approximately 250 additional returns in 2012 through this arrangement.

16. On March 12, 2013, a federal grand jury returned a twenty-one-count indictment against Failey and Windham for aiding and assisting in the preparation and presentation of false income tax returns. That case was filed in the United States District Court for the District of South Carolina as No. 2:13-cr-00184.

17. Failey pled guilty to two counts on October 21, 2013. She was sentenced to a term of 12 months and one day in prison, which she served from January 2014 to January 2015.

18. Windham pled guilty to two counts on October 18, 2013. She received a sentence of probation for 24 months.

19. On April 8, 2014, Latasha Failey signed a Permanent Injunction Agreement, agreeing to be permanently enjoined from preparing or assisting in the preparation of federal tax returns for others.

20. On August 20, 2014, Latoya Windham signed a Permanent Injunction Agreement, agreeing to be permanently enjoined from preparing or assisting in the preparation of federal tax returns for others.

Examples of Defendants' Fraudulent Return Activities

False Claims for Credits

21. Defendants have continually and repeatedly prepared income tax returns for customers where they claim false credits, such as education credits, the American Opportunity credit or the credit for child and dependent care expenses.

22. For example, Defendant Windham prepared the 2010 tax return for taxpayer E.W. On the return, Windham claimed both education credits and the American Opportunity credit, totaling \$3,000. The IRS investigation revealed that both of these claims were false.

23. Similarly, Defendant Failey prepared the 2009 and 2010 tax returns for taxpayer G.W. and claimed the credit for child and dependent care expenses in both years. The IRS investigation revealed that both claims were fraudulent.

False Schedule A Deductions

24. Defendants continually and repeatedly falsified itemized deductions on customers' Schedule A's to fraudulently decrease the amount of taxable income.

25. For example, Defendant Failey prepared the 2008, 2009, and 2010 income tax returns for taxpayer M.S. On all three returns, Failey falsely claimed inflated Schedule A itemized deductions totaling \$30,305. In fact, M.S. was only entitled to the standard deduction in each of those years, which means that Failey falsely underreported M.S.'s taxable income by \$13,455 for those three years.

False Claims of Dependency Exemptions

26. Defendants continually and repeatedly claimed falsely inflated dependency exemptions which further offset taxable income.

27. On the same taxpayer M.S.'s returns for 2008, 2009, and 2010, Failey falsely claimed additional dependents. The net result was a fraudulent underreporting of M.S.'s taxable income for the three years of an additional \$14,450.

28. Similarly, Defendant Windham falsely claimed an additional dependency exemption on the 2010 tax return of D.Y. The false claim resulted in the underreporting of D.Y.'s taxable income by \$3,650.

HARM CAUSED BY DEFENDANTS' ACTIONS

29. Defendants' customers have been harmed because they paid fees for the preparation of proper tax returns, but Defendants prepared returns that substantially understated their customers' correct tax liabilities or created or inflated improper refunds. Many customers are now liable for significant income tax deficiencies and may be further liable for sizable penalties and interest.

30. Defendants' conduct harms the United States because their customers are claiming refunds to which they are not entitled. The tax loss from just the 69 recommended criminal counts totaled \$250,980, an average of \$3,627 per return. As noted above, Defendants prepared over 2,400 returns between 2009 and 2011, and more than 98% of those claimed refunds. Accordingly, the IRS calculates that the total financial harm from just those years may exceed \$8 million.

31. In addition to the direct harm caused by preparing tax returns that understate their customers' tax liabilities and/or overstate their refunds, Defendants' activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

32. Defendants further harm the United States because the IRS must devote its limited resources to identifying their customers, ascertaining their correct tax liabilities, recovering any funds erroneously issued, and collecting additional taxes and penalties owed.

COUNT I: INJUNCTION UNDER 26 U.S.C. § 7407

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

34. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from, inter alia, (1) engaging in conduct subject to penalty under 26 U.S.C. § 6694 or § 6695; or (2) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

35. Section 6694(a) of the Internal Revenue Code penalizes a return preparer who prepares a return that contains an understatement of tax liability or overstatement of a refund that is due to an unreasonable position (as defined by section 6694(a)(2)) which the return preparer knew or should have known was unreasonable.

36. Section 6695(c) of the Internal Revenue Code penalizes a tax return preparer for failing to provide their identifying number on any tax return they prepare.

37. Section 6695(g) of the Internal Revenue Code penalizes a tax return preparer for failing to exercise the prescribed level of diligence while determining a taxpayer's eligibility for the Earned Income Tax Credit.

38. In order for this Court to issue an injunction under 26 U.S.C. § 7407, the Court must find (1) that the preparer has engaged in the specified conduct defined in paragraphs 35 – 37, above, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

39. The Court may permanently enjoin the person from further acting as a federal tax return preparer if it finds that a preparer has continually or repeatedly engaged in such conduct, and the Court further 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.

40. Defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns that understate the taxpayers' tax liabilities and overstate their refunds based upon unreasonable and reckless positions. As described in paragraphs 7 through 32 above, Defendants have prepared fraudulent returns and they have admitted to doing so. Thus, they have prepared returns with the knowledge that the positions taken on the returns are unreasonable and lacked substantial authority and are properly subject to penalty under § 6694.

41. Defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695(c) by failing to include their identifying number on the returns they prepared. Defendant Windham did not identify herself on any of the returns she prepared. Then, in an effort to hide their illegal conduct, they attempted to file approximately 438 returns using another person's or entity's EFIN, first AJC Investments and, later, Nicole Murray.

42. Defendants have engaged in conduct subject to penalty under 26 U.S.C. § 6695(g) by failing to exercise due diligence in determining eligibility for the EITC.

43. A narrower injunction against only specified conduct will not suffice. Defendants have demonstrated remarkable persistence in avoiding IRS enforcement activities, including the imposition of penalties and the revocation of not one, but two EFINs used by Defendants. Further, the variety of items falsely manipulated by Defendants supports a complete injunction. The conduct alleged above is just a sampling of what the IRS has uncovered thus far; it is possible that Defendants could manipulate additional return items to achieve the same result.

COUNT II: INJUNCTION UNDER 26 U.S.C. § 7408

44. The United States incorporates by reference the allegations in paragraphs 1 through 43 above.

45. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under 26 U.S.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

46. Section 6701 of the Internal Revenue Code penalizes any person who aids or assists in the preparation or presentation of any portion of a federal tax return when the person knows or has reason to believe that such portion will be used in connection with a material matter arising under the internal revenue laws and knows that if it is so used it will result in an understatement of another person's tax liability.

47. Defendants have engaged in conduct subject to penalty under 26 U.S.C. § 6701 by preparing or directing the preparation of income tax returns that claim a tax credit, deduction, or exemption when they knew that the taxpayer was not entitled to these, or at least not in the full amount claimed, and that this would understate the taxpayer's federal tax liability.

48. As described in paragraphs 7 through 32, above, Defendants have engaged in such conduct and have admitted to doing so. Injunctive relief is appropriate to prevent the recurrence of this conduct.

COUNT III: INJUNCTION UNDER 26 U.S.C. § 7402(A)

49. The United States incorporates by reference the allegations in paragraphs 1 through 48 above.

50. 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.

51. Defendants, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

52. Unless enjoined, Defendants are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If they are 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, much of which will never be discovered and recovered. The United States will also suffer irreparable injury because it will have to devote substantial unrecoverable time and resources to auditing Defendants' customers to detect future returns understating the customers' tax liabilities or overstating their refunds.

53. While the United States will suffer irreparable injury if Defendants are not enjoined, they will not be harmed by being compelled to obey the law. They will be able to pursue other financial endeavors to support themselves.

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

55. The Defendants should therefore be enjoined under 26 U.S.C. § 7402(a).

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

A. That the Court find that Defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, that injunctive relief barring them from acting as federal tax return preparers is appropriate under 26 U.S.C. § 7407 to prevent recurrence of that conduct, and that a narrower injunction enjoining only specified conduct would not be sufficient to prevent their interference with the proper administration of the internal revenue laws;

B. That the Court find that Defendants have engaged in conduct subject to penalty under 26 U.S.C. §6701, and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent recurrence of that conduct;

C. That the Court find that Defendants have engaged in conduct that substantially 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 26 U.S.C. § 7402(a);

D. That the Court enter a permanent injunction prohibiting Defendants, and all those in active concert or participation with them from:

- (1) acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms, including any electronically-submitted tax returns or tax-related documents, for any person or entity other than themselves;
- (2) preparing or assisting in preparing or filing federal tax returns, amended returns, or other related documents or forms that understate federal tax liability or overstate federal tax refunds based upon positions that they know or reasonably should know are unreasonable;
- (3) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, or any other penalty provision in the Internal Revenue Code; and
- (4) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court enter an injunction requiring that Defendants, within 30 days of entry of the injunction, contact by United States mail and, if an e-mail address is known, by e-mail all persons for whom they prepared a federal tax return since January 1, 2009, to inform them of the permanent injunction entered against Defendants, including sending a copy of the order of permanent injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court, and file with the Court a sworn certificate stating that they have complied with this requirement;

F. That the Court enter an injunction requiring Defendants to produce to counsel for the United States within 30 days a list that identifies by name, social security number, address, e-mail address, telephone number, and tax period(s) all persons for whom they prepared federal income tax returns or claims for refund since January 1, 2009;

G. That the Court enter an injunction requiring Defendants to produce to counsel for the United States within 30 days copies of all federal income tax returns that they prepared since January 1, 2009;

H. That the Court order, without further proceedings, the immediate revocation of any Preparer Tax Identification Number (PTIN) that is held by, assigned to, or used by Defendants, pursuant to 26 U.S.C. § 6109;

I. That the Court order the immediate revocation of any Electronic Filing Identification Number (EFIN) held by, assigned to, or used by Defendants;

J. That the United States be entitled to conduct discovery to monitor Defendants' compliance with the terms of any permanent injunction entered against them;

K. That the Court retain jurisdiction over Defendants and over this action to enforce any permanent injunction entered against them; and

L. That the Court grant the United States such other and further relief, including costs, as is just and equitable.

Respectfully submitted,

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