IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. BILLY PHILIPPE, Defendant.	Case No.

COMPLAINT FOR PERMANENT INJUNCTION

The United States of America, by and through undersigned counsel, complains and alleges as follows:

1) The United States of America brings this action to restrain and enjoin defendant Billy Philippe and all those acting in concert with or under his 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. engaging in any activity subject to penalty under 26 U.S.C. §§ 6694 or 6695; and

c. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper administration and enforcement of the internal revenue laws.

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.

Jurisdiction and Venue

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 28 U.S.C. § 1391(b), because the defendant resides in Broward County, within this District, and a substantial part of the events or omissions giving rise to the United States' claims occurred in this District.

Defendant's Fraudulent and Abusive Conduct

5) Philippe is a paid tax return preparer who prepares individual income tax (Form 1040) returns that overstate refunds for customers by fraudulently claiming a variety of refundable credits, including the Earned Income Tax Credit (EITC) and education credits. As part of this scheme, Philippe frequently reports falsely inflated wages or self-employment income that a customer did not earn in order to claim the maximum EITC. In addition, Philippe falsely claims head of household filing status to increase the standard deduction his customers claim, which decreases the taxable income these customers report.

6) Philippe completed high school and received training in air conditioning and refrigeration technology. According to Philippe, he learned how to prepare income tax returns by completing a course from "USA Tax" in or about 2007. He appears to have attended a three-day IRS tax forum in Orlando, Florida in 2013 and, again, in 2014. Among the seminars included in that training were "EITC Made Easy" and "Preparer Penalties – Are you at Risk? Protecting Your Practice and Your Client."

7) In 2009, Philippe began working at Value Tax Services, Inc. as a tax return preparer. Philippe knew the owner of Value Tax Services through a recreational soccer league.

In 2010, Philippe left Value Tax Services and incorporated Advantage Tax Center Plus, Inc. ("Advantage Tax"), where he is President, the registered agent, and majority shareholder.

8) Philippe owns 60% of the shares in Advantage Tax. The remaining 40% is owned by Jeannot Cesar. Neither Philippe nor Cesar are paid a salary, but they split the net income from the business among themselves on a 60/40 basis.

9) Advantage Tax engages seasonal subcontractors to prepare returns during the filing season. These subcontractors pay Advantage Tax a percentage of the fees they charge in exchange for using Advantage Tax's facilities. According to Philippe, no one reviews the returns prepared by any of these subcontract preparers prior to filing, nor does anyone review the returns prepared by Philippe.

10) Philippe, Cesar, and the subcontract preparers electronically file their customers' tax returns with the IRS using the Electronic Filing Identification Number (EFIN) issued to Advantage Tax.

11) IRS records show that between 2012 and 2015, Philippe personally prepared 659 returns bearing the Preparer Tax Identification Number (PTIN) issued to Philippe on October 29, 2010. A summary of these returns is as follows:

Filing Year	**# of Returns**	**Refunds Claimed**	**EITCs Claimed**
2012	37	37 (100%)	33 (89%)
2013	141	141 (100%)	127 (90%)
2014	259	257 (99%)	238 (91%)
2015	222	221 (99%)	207 (93%)

12) In 2012, the IRS began investigating Philippe's return preparation activities because of the high proportion of returns prepared claiming the EITC. The EITC is a refundable credit and is paid by the government even where the credit exceeds any tax liability. In an effort to curb abuse, the IRS has issued regulations that describe the due diligence a return preparer

must perform to determine a taxpayer's eligibility and the amount the taxpayer can legally claim. The IRS sought to determine whether Philippe was complying with these due diligence requirements.

13) Following an EITC due diligence visit to Advantage Tax in 2012, the IRS discovered widespread violations of the Internal Revenue Code and penalized Philippe accordingly. Specifically, the IRS identified 240 additional returns prepared by Philippe in 2011 on which Philippe failed to identify himself using his PTIN. The IRS assessed Philippe $12,000 in penalties under I.R.C. § 6695(c) for these violations. In addition, the IRS reviewed 128 EITC returns prepared by Philippe and determined that for all 128, Philippe failed to satisfy the knowledge requirements prescribed by the EITC due diligence regulations. For these violations the IRS assessed another $12,800 in penalties against Philippe under I.R.C. § 6695(g).

14) Then, in 2013, the IRS informed Philippe via letter dated December 2, 2013 (Letter 4833) that he had prepared a large number of returns claiming the EITC that year that contained errors. That letter *specifically informed Philippe* that the IRS would be monitoring the returns he prepared. By letter dated February 4, 2014 (Letter 4858) the IRS again reminded Philippe of his due diligence obligations.

15) Notwithstanding the imposition of penalties and specific warnings that the returns Philippe filed were being monitored for abuse, Philippe continued preparing and filing false and fraudulent income tax returns for his customers. The following examples demonstrate a pattern of abuse and misconduct that warrants an injunction barring Philippe from preparing tax returns. To protect the privacy of the taxpayers discussed in these examples, they are identified by number (i.e. Customer 1, etc.).

False Wages or Self-Employment Income

16) Because the EITC is only available to taxpayers with earned income in a tax year, inflated earnings from wages or self-employment can increase a customer's EITC by falsely showing a certain level of earned income that would maximize the taxpayer's EITC.

17) Customer 1, responding to an advertisement that claimed she was entitled to receive up to several thousand dollars for her children, went to Philippe to have her 2013 tax return prepared. Although Customer 1 explained to Phillippe that she did not have wage income or any other earned income, Philippe falsely reported over $16,000 of income and claimed a maximum EITC of $6,044 on Customer 1's 2013 return. The next year, Philippe again falsely reported over $16,000 in earned income and claimed a maximum EITC of $6,143. Without the fabricated wages, Customer 1 would not have been able to claim any amount of ETIC in either year.

18) Similarly, Philippe prepared the tax year 2014 return for Customer 2 and falsely reported self-employment income of $15,226 on a Schedule C (Profit or Loss from Business) in order to maximize Customer 2's EITC. Customer 2 told Philippe that she styled hair out of her home up to two times per week and charged between $35 and $50 for each client. Notwithstanding this information, Philippe falsely reported over $17,000 in gross revenue for the year and falsely claimed a maximum EITC of $6,143 on Customer 2's return. The inflated income inflated Customer 2's EITC benefit by almost $5,100.

19) Philippe also filed the 2013 and 2014 tax returns for Customer 3, which returns included over $34,000 in fabricated wages. Customer 3 earned no wages in either year and was in prison or on house arrest from January 2013 until December 2014. Philippe knew of Customer 3's confinement because he personally delivered Customer 3's refund checks.

Between the two years, Philippe also falsely claimed over $12,000 in EITC. Without the fabricated wages, Customer 3 would not have qualified for any amount of EITC.

False Refundable Education Credits

20) Philippe has repeatedly and continually claimed improper refundable education credits for taxpayers who did not incur qualifying expenses.

21) On Customer 3's 2013 tax return, Philippe fraudulently claimed a $1,000 refundable education credit related to education expenses that Customer 3 did not incur. As noted above, Customer 3 was incarcerated or confined to her home during 2013 and she did not attend any qualifying educational institution or have any education expenses.

22) Philippe also prepared Customer 4's 2013 and 2014 tax returns and falsely claimed a $1,000 refundable education credit in each year. Customer 4 did not incur expenses while attending a qualifying institution, but spent $40 per semester, plus a $20 testing fee to take classes toward earning her GED. Philippe reported that Customer 4 incurred at least $4,000 in qualifying education expenses in each of 2013 and 2014, without which Customer 4 could not have claimed the education credit.

False Claims for Head of Household Filing Status

23) A taxpayer's filing status affects the taxable income that taxpayer must report. To illustrate, a qualified taxpayer filing as head of household is entitled to claim a higher standard deduction than taxpayers filing as single or married filing separately. Philippe regularly prepared returns for customers claiming head of household status when he knew the customer was not eligible to file as such, thereby falsely reducing the taxable income customers reported.

24) For example, on Customer 2's 2014 return, Philippe falsely claimed head of household status despite the fact that Customer 2 was married. Married taxpayers cannot file as

head of household. Philippe's false claim reduced Customer 2's taxable income, and allowed Customer 2 to report a smaller tax liability and claim a larger refund than Customer 2 was entitled to receive.

25) On Customer 5's 2014 tax return, Philippe falsely claimed head of household status even though Customer 5 lived with her mother and did not provide more than half the cost of maintaining the home. To qualify as the head of household, a taxpayer must provide more than half the cost of maintaining the home. Customer 5 explained to Philippe that she was not a head of household, but Philippe filed the return claiming that status anyway.

Other False and Misleading Conduct

26) Philippe's misconduct is not limited to manipulation of tax return items. Indeed, Philippe systematically misleads his customers regarding the fees charged to prepare tax returns. In some cases, customers are totally unaware of the costs, and in others, a customer believes she is paying defendants one amount when, in reality, defendants are collecting and pocketing much more.

27) For example, Philippe told Customer 1 he would charge a flat $400 to prepare the return. Customer 1 received her refund directly from defendants. When Customer 1 later compared the difference between her refund check and the amount of the refund claimed on the return filed with the IRS, she discovered she was charged over $1,000.

28) Philippe did not tell Customer 4 what he would charge to prepare her 2013 tax return when he prepared it. Records show he ultimately charged Customer 4 $658. Philippe told Customer 4 her refund for 2013 would be $8,600, and Customer 4 received that amount directly from defendants. On the version of Customer 4's 2013 return filed with the IRS, however, Philippe claimed a total refund of $9,258. Customer 4 only discovered this discrepancy when

she attempted to check on the status of her 2014 refund and was told that she had incorrectly verified the amount of her 2013 refund and could not receive the status of the 2014 refund.

29) On Customer 6's 2011 return, prepared by Philippe, Philippe provided the customer with a copy of the return indicating the refund was $2,106. Customer 6 attached a copy of that return to a complaint she filed against Philippe with the IRS alleging theft of her refund, false items on the return, and preparer misconduct. Meanwhile, IRS records indicate that the return Philippe actually filed claimed a refund of $4,032, a difference of $1,926.

Harm Caused by Philippe's Conduct

30) Philippe's customers have been harmed by his actions because they paid fees for the preparation of proper tax returns, but Philppe has prepared returns that created improper, or fraudulently inflated, refunds or credits. Many customers are now liable for erroneously-claimed refunds and may be liable for sizable penalties and interest. For example, Customer 1 is now liable for the all of the $17,478 in fraudulently claimed refunds on her 2013 and 2014 returns. Likewise, Customer 5 is liable for the $8,460 in refundable credits that she was not entitled to claim on her 2014 return.

31) Philippe's conduct harms the United States because his customers are claiming refunds to which they are not entitled. The IRS examined 44 of the 481 returns prepared by Philippe during the 2014 and 2015 filing seasons. All 44 returns understated the tax actually due and/or overstated the refund claimed by claiming credits Philippe's customers were not entitled to take and/or falsely reporting income subject to tax. In all, the 44 audited returns overstated refunds and understated tax liability by over $300,000 in the aggregate. Given the number of returns prepared by Philippe, the revenue loss his fraudulent practices cause is far greater.

32) In addition to the direct harm caused by preparing tax returns that fraudulently create or overstate his customers' refunds, Philippe's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

33) Philippe further harms the United States because the IRS must devote its limited resources to identifying his customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting additional taxes and penalties owed.

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

34) The United States incorporates by reference the allegations contained in paragraphs 5 through 33, above.

35) Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from engaging in certain prohibited conduct or from further acting as a return preparer. An injunction is warranted where the preparer's conduct, *inter alia*, includes:

a. engaging in conduct subject to penalty under 26 U.S.C. § 6694, which 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;

b. engaging in conduct subject to penalty under 26 U.S.C. § 6695, which penalizes a tax return preparer for, *inter alia*, failing to provide the preparer's identifying number and failing to exercise the prescribed level of diligence while determining a taxpayer's eligibility for the Earned Income Credit; or

c. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws

36) In order for a court to issue such an injunction, the court must find (1) that the preparer has engaged in the specified conduct defined in paragraph 37, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

37) 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.

38) Philippe has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns that overstate the customers' refunds based upon unreasonable and reckless positions. As described in paragraphs 16 through 25, above, Philippe prepares returns that claim credits to which the taxpayer is not entitled. He does so with the knowledge that the positions taken on the returns are unreasonable and lacked substantial authority. Philippe has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

39) As described in paragraphs 11 through 13, above, Philippe has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695(c) by failing to provide his PTIN on all the returns he prepares.

40) As described in paragraphs 13 through 25, above, Philippe has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §6695(g) by failing to exercise the prescribed level of EITC due diligence. He has done so despite a review by the IRS, the

imposition of penalties for failing to follow due diligence procedures, and multiple specific notices of Philippe's obligation to abide by the due diligence regulations.

41) As described in paragraphs 26 through 29, above, Philippe has continually and repeatedly engaged in additional conduct which interferes with the proper administration of the internal revenue laws and justifies an injunction under 26 U.S.C. § 7407.

42) Only a permanent injunction against acting as a return preparer, as opposed to a narrower injunction against specified conduct, will suffice to secure Philippe's compliance with the tax laws and put an end to his substantial interference with the administration of the tax laws. The imposition of penalties has failed to deter Philippe. As described above, Philippe engages in a variety of fabrications and manipulations to achieve the intended tax results. False income and false claims of head of household filing status are but a few of the schemes that the IRS has uncovered through which Philippe fraudulently inflate a customer's claims for refund. Philippe further falsely claims refundable education credits, and there may be other schemes he employs to understate tax liabilities or inflate claims for refunds. This underscores the need to enjoin Philippe from all tax preparation.

COUNT II – INJUNCTION UNDER 26 U.S.C. § 7402(a)

43) The United States incorporates by reference the allegations of paragraphs 5 through 33, above.

44) 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.

45) Philippe, through the actions described above, has repeatedly and continually engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

46) Unless enjoined, Philippe is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If he 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, 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 Philippe's customers to detect future returns understating customers' liabilities or overstating their refunds.

47) While the United States will suffer irreparable injury if Philippe is not enjoined, he will not be harmed by being compelled to obey the law.

48) Enjoining Philippe 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.

49) The Court should therefore impose injunctive relief 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 Billy Philippe has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and has continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, and that injunctive relief barring him from acting as a federal tax return preparer is appropriate under 26 U.S.C. § 7407 to prevent recurrence of that conduct;

B. That the Court find that Billy Philippe has 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);

C. That the Court enter a permanent injunction prohibiting Billy Philippe and all those in active concert or participation with him 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, 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;

D. That the Court enter an injunction requiring that Philippe, 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 he prepared a federal tax return since January 1, 2012 to inform them of the permanent injunction entered against him, 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 he has complied with this requirement;

E. That the Court enter an injunction requiring Philippe to produce to counsel for the United States within 30 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 he prepared federal income tax returns or claims for refund since January 1, 2012;

F. That the Court enter an injunction requiring Philippe to produce to counsel for the United States within 30 days copies of all federal income tax returns that he prepared since January 1, 2012;

G. That the Court enter an injunction requiring Philippe to provide a copy of the Court's order to all of the principals, officers, managers, employees, and independent contractors of Advantage Tax Center Plus, Inc. within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment of receipt of the Court's order for each person to whom he provided a copy of such Order;

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 Philippe, pursuant to 26 U.S.C. § 6109;

I. That the United States be entitled to conduct discovery to monitor Philippe's compliance with the terms of any permanent injunction entered against him;

J. That the Court retain jurisdiction over the defendant and over this action to enforce any permanent injunction entered against him; and

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

Dated: January 23, 2017

Respectfully submitted,

DAVID A. HUBBERT
Deputy Assistant Attorney General

s/ Nicholas S. Bahnsen
NICHOLAS S. BAHNSEN
Bar No. A5502098
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Washington, D.C. 20044
202-616-3309 (v)
202-514-4963 (f)
Nicholas.S.Bahnsen@usdoj.gov

Of Counsel:

WIFREDO FERRER
United States Attorney

Attorneys for Plaintiff the United States of America