

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND
GREENBELT DIVISION

UNITED STATES OF AMERICA,)	
)	Case No. 8:15-cv-00296
Plaintiff,)	
)	
v.)	
)	
KOMI E. GBOTCHO dba EPLANET,)	
EPLANET LLP, EPLANET CORP., and)	
EPLANETE CORP.,)	
)	
Defendant.)	
_____)	

**ORDER GRANTING THE UNITED STATES' MOTION
FOR PRELIMINARY INJUNCTION**

Upon motion by the plaintiff, the United States of America, the Court makes the following findings of fact and conclusions of law and enters this preliminary injunction.

Standards for Preliminary Injunction

In order to obtain a preliminary injunction prohibiting Komi Gbotcho (“Gbotcho”) and his business(es) from acting as an income tax return preparer pursuant to 26 U.S.C. § 7407, the United States must show a likelihood of success on the merits that: 1) Gbotcho engaged in conduct subject to penalty under 26 U.S.C. § 6694; 2) injunctive relief is appropriate to prevent recurrence of such conduct; and 3) Gbotcho continually and repeatedly engaged in conduct described in 1) above and a more limited injunction of such conduct would not be sufficient to prevent interference with the proper administration of the internal revenue laws.

In order to obtain a preliminary injunction pursuant to 26 U.S.C. § 7408, the United States must show a likelihood of success on the merits that 1) Gbotcho engaged in conduct subject to penalty under 26 U.S.C. § 6701; and 2) injunctive relief is necessary to prevent the

recurrence of such conduct. In order to obtain a preliminary injunction under 26 U.S.C. § 7402, the United States must show a likelihood of success on the merits that an injunction is necessary or appropriate for the enforcement of the internal revenue laws.

Findings of Fact

1. Gbotcho resides at 10514 New Hampshire Avenue, Silver Spring, Maryland 20903, which is within this judicial district.
2. Gbotcho operates a tax return preparation business under various names, such as Eplanet, Eplanet LLP, Eplanet Corp., and Eplanete Corp. His tax return preparation business has a principal place of business in Silver Spring, Maryland, which is within this judicial district
3. Gbotcho held himself out as a certified public accountant to at least one customer.
4. Internal Revenue Service (“Service”) records show that for tax years 2010 through 2013, Gbotcho, through his business(es), prepared at least 1,309 tax returns.
5. The Service examined tax returns Gbotcho prepared for his clients for 2009, 2010, and 2013, making adjustments to 96% of the tax returns examined, at an average rate of \$5,063 per return.
6. At the conclusion of that investigation, the Service assessed penalties against Gbotcho in the amount of \$223,500 under 26 U.S.C. §§ 6694 and 6695 for preparing tax returns understating the liabilities due to unreasonable positions and willful or reckless conduct and for having taxpayer refunds deposited into his own bank account.
7. Gbotcho failed to pay the penalties referenced in paragraph 6 above, and the Service opened a second investigation, for tax year 2013, for substantially the same conduct.

8. Gbotcho fraudulently prepared tax returns claiming a personal property rental deduction for customers who did not have rental property, often using the same amount on multiple customers' tax returns.

9. Gbotcho fraudulently prepared tax returns claiming deductions for unreimbursed employee business expenses based on non-deductible expenses, such as multi-purpose clothing and commuting expenses.

10. Gbotcho fraudulently prepared tax returns claiming deductions for home improvement expenses, which are not deductible.

11. Gbotcho knew or should have known that the improper use of the personal property rental deductions, employee business expense deductions, and home improvement expense deductions, which led to understatements of his customers' tax liabilities, was due to unreasonable positions.

12. Gbotcho continually and repeatedly improperly claimed personal property rental deductions, employee business expense deductions, and home improvement expense deductions to reduce his customers' tax liabilities or generate erroneous refunds for his customers.

13. The following examples are illustrative of Gbotcho's fraudulent practices with respect to the personal property rental deduction:

a. Gbotcho prepared tax returns for two different customers claiming a personal property deduction in the same amount, \$12,856. When asked about the deduction during an audit, both customers said they had no rental property.

b. Gbotcho prepared a tax return for a customer claiming a personal property rental deduction in the amount of \$9,850. During an audit, the customer said that she did not have any rental property and did not know that the deduction was on her tax return.

c. Gbotcho prepared 2009 and 2010 tax returns for a customer claiming personal property rental deductions in the amounts of \$24,723 and \$28,748 respectively. The customer told the Service that he had no rental property and did not know why the deduction was claimed on his tax returns.

d. For the 2013 tax year, Gbotcho claimed a personal property deduction rental in the same amount, \$9,850, on 12 of the 30 returns selected for audit.

14. The following examples are illustrative of Gbotcho's fraudulent practices with respect to the employee business expense deduction:

a. Gbotcho claimed deductions for employee business expenses for one customer in the amount of \$12,240 for 2009 and \$14,834 for 2010. During an audit, the customer stated that she told Gbotcho she had to buy suits for work and drive to work, but that Gbotcho grossly inflated the amounts of those expenses.

b. On another customer's 2010 tax return, Gbotcho claimed a deduction for employee business expenses in the amount of \$16,914. During an audit, the customer said that he had no unreimbursed employee expenses, and the deduction was claimed for commuting expenses.

c. Gbotcho also claimed a deduction for \$15,244 on a customer's 2009 tax return for unreimbursed employee expenses. The customer told the Service that he did not have any unreimbursed employee expenses.

15. The following examples are illustrative of Gbotcho's fraudulent practices with respect to the home improvement deduction:

a. On one customer's 2013 tax return, Gbotcho claimed a deduction in the amount of \$9,850 for home improvement. During an audit, the customer said he spent that amount to renovate a bathroom in his home.

b. Gbotcho claimed a deduction for \$18,285 on a customer's 2009 tax return. The customer told the Service that the deduction was for repairs that he made to his home, such as fixing stairs and building a patio.

c. For two other customers, Gbotcho claimed home improvement deductions of \$19,850 and \$14,950 respectively on their 2013 tax returns. For ten other customers, Gbotcho claimed home improvement deductions ranging from \$4,980 to \$9,985 for 2013.

16. Gbotcho has caused substantial revenue losses to the United States and is likely to continue to do so absent an injunction.

17. For tax years 2010 through 2013, Gbotcho, through his business Eplanet, filed at least 1,309 tax returns. Of that amount, 703 tax returns contained the personal property rental deduction and/or questionable Schedule A items discussed above, such as the employee business expense and home improvement expense. Applying the adjustment rate of 96% and the average adjustment of \$5,063 listed above, the estimated tax harm caused by Gbotcho for tax years 2010 through 2013 is approximately \$3.4 million.

Conclusions of Law

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. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

3. Under 26 U.S.C. § 7407, Congress has authorized the United States to seek an injunction against a tax return preparer who, among other things, has engaged in any conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695.

4. If a return preparer's conduct is continual or repeated and the court finds that a narrower injunction (i.e., prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a return preparer.

5. Section 6694(a) of the Internal Revenue Code penalizes a tax return preparer who prepares a tax return understating the taxpayer's liability due to an unreasonable position (one for which there is no substantial authority), and the preparer knew or should have known of the position.

6. Gbotcho has continually and repeatedly prepared and submitted federal tax returns that falsely claim deductions for personal property rental expenses, employee business expenses, and home improvement expenses, thereby reducing his customers' income and tax liabilities and generating erroneous tax refunds. The tax returns prepared by Gbotcho contain unrealistic and unreasonable positions with no basis in fact. Gbotcho has understated his customers' tax liabilities and has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

7. Absent an injunction, Gbotcho is likely to continue preparing federal tax returns for customers, enabling them to receive greater refunds than what they are legitimately entitled to receive; therefore, an injunction is necessary to prevent Gbotcho's continued misconduct. Penalties and administrative measures have been and continue to be insufficient to deter his conduct.

8. Gbotcho should be preliminarily enjoined under 26 U.S.C. § 7407 from acting as a tax return preparer and/or assisting in the preparation of federal tax returns because a more limited injunction would be insufficient to prevent his interference with the proper administration of the internal revenue laws and recurrence of conduct subject to penalty under 26 U.S.C. § 6694.

9. 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.

10. Section 6701(a) of the Internal Revenue Code penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

11. Gbotcho prepared tax returns falsely claiming deductions for personal property rental expenses, employee business expenses, and home improvement expenses, knowing that his return preparation would result in understating his customers' tax liabilities.

12. If the Court does not enjoin Gbotcho, he is likely to continue to engage in conduct prohibited by 26 U.S.C. § 6701. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

13. Section 7402(a) 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.

14. Gbotcho, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

15. Unless enjoined, Gbotcho is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws.

16. The United States has showed that it is likely to succeed on the merits of its claim. The United States has also showed that there is also a significant possibility of irreparable harm to the United States and to Gbotcho's customers without an injunction.

17. Injunctive relief under 26 U.S.C. § 7402(a) is warranted.

Preliminary Injunction

Based on the foregoing findings of fact and conclusions of law, the Court enters the following preliminary injunction against Komi Gbotcho, his business(es), including but not limited to Eplanet, Eplanet LLP, Eplanet Corp., and Eplanete Corp., and anyone in active concert with them:

A. Under 26 U.S.C. §§ 7402, 7407, and 7408, Gbotcho and his representatives, agents, employees, attorneys, independent contractors, anyone in active concert or participation with them, are enjoined from directly or indirectly acting as federal tax return preparers and from preparing or filing federal tax returns or forms for others, from representing others before the Internal Revenue Service, and from advising anyone concerning federal tax matters;

B. Under 26 U.S.C. §§ 7402, 7407, and 7408, Gbotcho and his representatives, agents, employees, attorneys, independent contractors, anyone in active concert or participation with them, are enjoined from directly or indirectly:

1. Preparing, filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any other person or entity;
2. Engaging in any activity subject to penalty under 26 U.S.C. § 6694;
3. Engaging in any activity subject to penalty under the Internal Revenue Code; and
4. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

C. Under 26 U.S.C. § 7402, Gbotcho is hereby required to contact by mail, or email, within 30 days, all persons for whom he prepared, or assisted in preparing, federal tax returns for tax years 2010 through 2013 to inform them of the preliminary injunction entered against him.

Entered this _____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE