

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-Civ-23065-COOKE/TORRES

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNICE JOSEPH,
PRIMO TAX SERVICE, INC., and
EBENEZER TAX SERVICES, INC.,

Defendants.

PERMANENT INJUNCTION BY CONSENT

THIS MATTER is before me on the Joint Motion for Entry of permanent Injunction by Consent made by Plaintiff, the United States, and Defendants Ernice Joseph and Ebenezer Tax Services, Inc., (ECF No. 44).

The Court having reviewed the submissions, as stipulated and consented to by the parties, and being fully advised in the premises, hereby **FINDS** as follows:

1. Plaintiff, the United States of America, has filed a Complaint seeking a permanent injunction against Defendants Ebenezer Tax Services, Inc. ("Ebenezer"), Ernice Joseph ("Joseph") (collectively, "Ebenezer Defendants"), and others, under 26 U.S.C. §§ 7402(a), 7407, and 7408.

2. Ebenezer Defendants admit for purposes of this injunction that the Court has personal jurisdiction over them and subject matter jurisdiction over this matter.

3. Ebenezer Defendants admit that they engaged in conduct subject to penalty under 26 U.S.C. § 6701 during the years 2012, 2013, and 2014, but without admitting any of the other allegations in the Complaint. Ebenezer Defendants further waive the entry of findings of fact and conclusions of law and voluntarily consent to the entry of this permanent injunction under 26 U.S.C. §§ 7402(a), 7407, and 7408 without further notice and agree to be bound by its terms.

4. Ebenezer Defendants further understand and agree that:

a. This Permanent Injunction by Consent will be entered under Fed. R. Civ. P. 65 and will result in the entry, without further notice, of a Final Judgment against them in this matter;

b. Ebenezer Defendants waive any right they may have to appeal from this Permanent Injunction by Consent;

c. The Court will retain jurisdiction over this matter to enforce this Permanent Injunction by Consent, if necessary;

d. If either Ebenezer or Joseph violates this injunction, it or he may be subject to civil and criminal sanctions for contempt of court;

e. The United States may conduct full post judgment discovery to monitor compliance with this injunction; and

f. Entry of this Permanent Injunction by Consent resolves only this civil injunction action, and neither precludes the United States, or any of its agencies, from pursuing any other current or future civil or criminal matters or penalties or proceedings, nor precludes Ebenezer Defendants from contesting any liability in any other matter or proceeding except that they will not contest penalties pursuant to 26 U.S.C. § 6701 which the Internal Revenue Service may assess against them for conduct engaged in during 2012, 2013, and 2014 in the amounts to which the parties have already agreed.

I. Accordingly, it is hereby **ORDERED and ADJUDGED** pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, that Ebenezer Defendants and any other person or entity owned or operated by them or acting in concert and/or participation with them are **PERMANENTLY ENJOINED** from directly or indirectly, by use of any means or instrumentalities:

A. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that Ebenezer Defendants know or have reason to know will be used as to a material matter arising under federal tax law, and will result in the understatement of the liability for tax of another person;

B. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or training or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) taxpayers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that Ebenezer Defendants know (or have reason to know) will result in the understatement of any tax liability under 26 U.S.C. § 6662, or is subject to penalty under 26 U.S.C. § 6694;

C. Knowingly and improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) customers to evade or avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;

D. Knowingly engaging in any activity subject to penalty under 26 U.S.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining taxpayers' eligibility for the Earned Income Tax Credit;

E. Knowingly organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business or tax services that facilitate or promote noncompliance with federal tax laws or regulations administered by the Internal Revenue Service;

F. Knowingly, directly or indirectly, accepting assistance from, or assisting any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service;

G. Preparing any federal income tax return which claims a Fuel Excise Tax Credit under section 34 of the Internal Revenue Code; and

H. Knowingly engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

II. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants and any other entity they own or operate and their employees, independent contractors, and agents shall, in their preparation of tax returns, in accordance with applicable IRS rules and regulations:

A. Prepare and file tax returns reporting Schedule C income and expenses only in instances when the customer substantiates with proper documentation that the customer engages in activity properly reported on a Schedule C and the reported income and expenses prior to the filing of the tax return;

B. Retain in customer files a copy of all customer records and documentation for at least five years that substantiate reported Schedule C income and expenses reflected in tax returns prepared for their customers;

C. Retain in customer files all records and documentation for at least five years that substantiate deductions claimed in those tax returns.

D. Retain in customer files all records and documentation for at least five years that verify that claimed dependents and child care credits on tax returns prepared for their customers meet all qualifications for dependent status;

E. Verify and document the marital status of all customers for whom the tax return claims head-of-household status, as well as retain in customer files all records for at least five years showing that these customers meet all requirements for claiming head-of-household status;

F. Verify and document the information required by Form 8867, Paid Preparer's Earned Income Credit Checklist, or such other form as may be prescribed by the Internal Revenue Service pursuant to 26 C.F.R. §1.6995-2, for all tax returns that claim an Earned Income Credit, as well as retain in customer files for at least five years all records which substantiate that information; and

G. Retain in customer files all records and documentation, including but not limited to Form 1098-T, for at least five years that both substantiate all incurred education expenses reported on customer tax returns in connection with any claim for education tax credits and confirm that the customer qualifies for the education tax credit in the amount claimed;

III. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants or any entity they own or operate shall, among their procedures for hiring tax preparers, conduct background checks of all such individuals, including for criminal convictions, and refrain from hiring anyone convicted of a felony relating to fraud, theft or similar conduct, to act as

a tax return preparer. In addition, Defendants shall also verify that tax preparers hired by them meet the requisite standards lawfully prescribed by the I.R.S. to be designated a registered tax return preparer and possess a current and valid preparer tax identification number.

IV. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants or any other entity they own or operate shall disclose to each of their customers, both in writing and orally, the total amount of fees to be charged prior to filing the customer's tax return. Ebenezer Defendants are also permanently barred from charging fees:

- A. That are not disclosed to and agreed to by the client;
- B. For services that are not performed or for items that do not exist; or
- C. That, in total, exceed the sum disclosed to the customer and agreed to by the customer prior to the filing of each tax return.

V. It is **FURTHER ORDERED and ADJUDGED** that for the purpose of determining or securing compliance with this Permanent Injunction by Consent, for four years from the date of the injunction a neutral monitor shall be selected by Ebenezer Defendants and shall be approved by a representative designated by the United States Department of Justice, to monitor Ebenezer Defendants' tax preparation activities. Ebenezer Defendants shall execute all necessary consent forms required under 26 U.S.C. § 6103 for the I.R.S. to communicate directly with the neutral monitor. The neutral monitor shall be an outside entity or person and shall:

A. Be an enrolled agent or certified public accountant who is compensated by Defendants;

B. Commence monitoring activities on the day before Ebenezer Defendants begin preparing or filing federal tax returns for others during each tax season and cease monitoring activities no earlier than April 15 of each year (the "Annual Monitoring Period"). Ebenezer Defendants are enjoined from operating a tax return preparation business without a neutral monitor in place during the Annual Monitoring Period;

C. Have access to all records, employees, and customers of Ebenezer Defendants or any other entity which they own or operate, including permission to observe customer interviews conducted by Ebenezer Defendants' tax return preparers;

D. Randomly select, inspect, and review a minimum sample of 50 federal tax returns prepared by Ebenezer Defendants, their independent contractors, or their employees during the first 10 days of each Annual Monitoring Period, along with the corresponding customer files to ensure substantiation of information reported on each tax return (including Schedule C substantiation, where applicable) and to monitor compliance with this Permanent Injunction by Consent. At least ten percent of the tax returns reviewed shall be Schedule C returns;

E. Randomly select, inspect and review a minimum sample of 50 federal tax returns prepared on the 11th to 25th day of each Annual Monitoring Period by Ebenezer Defendants, their independent contractors or their employees, along with the corresponding customer files to ensure substantiation of information reported on each tax return (including Schedule C substantiation, where applicable) and to monitor compliance with this Permanent Injunction by Consent. At least ten percent of the tax returns reviewed shall be Schedule C returns;

F. Randomly select, inspect and review a minimum sample of 25 federal tax returns prepared by Ebenezer Defendants, their independent contractors, or their employees for the remainder of each Annual Monitoring Period, along with the corresponding customer files to ensure substantiation of information reported on each tax return and to monitor compliance with this Permanent Injunction by Consent; and

G. Provide a written report to the designated representative of the United States, within thirty days of completion of the Annual Monitoring Period, setting forth in detail the manner and form in which Ebenezer Defendants have or have not complied with the terms of this Permanent Injunction by Consent, including the results of the review of tax returns, the identity of any customers whose tax returns fail to comply with the terms of this Permanent Injunction by Consent and the identity of those tax return preparers who prepared those non-compliant returns, as well as the amount of fees or other amounts charged to each customer, and any other findings.

VI. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants shall produce to counsel for the United States within 45 days of entry of the Permanent Injunction by Consent a list that identifies by name, address, telephone number if available,

and tax period(s), all persons who have engaged them to file a federal tax return or other tax document since January 1, 2011.

VII. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants, within thirty (30) days of entry of this Permanent Injunction by Consent, 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, 2011, to inform them of the permanent injunction entered against Ebenezer Defendants, including sending a copy of the injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court;

VIII. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants send by certified mail an executed copy of this Permanent Injunction by Consent to all former employees and independent contractors of Ebenezer Defendants since January 1, 2011 who currently operate a tax return preparation business or are paid tax return preparers. Defendants must mail the copies within 30 days of the date of the injunction to the last known address of each of these individuals. The mailings shall include a cover letter in a form agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures except the injunction;

IX. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants shall mail or hand deliver an executed copy of this Permanent Injunction by Consent to all current employees and independent contractors and all employees and independent contractors hired by Defendants for the next three years beginning on December 31, 2015. Defendants must mail the copies or hand deliver the copies to all current employees within 30 days of the date of the injunction or immediately upon their hiring, if after the thirty days. The mailings shall include a cover letter in a form agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures except the injunction

X. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants, within forty-five (45) days of entry of this Permanent Injunction by Consent, file with the Court a sworn certificate stating that they have complied with paragraphs VI, VII, VIII, and IX of this Permanent Injunction by Consent;

XI. It is **FURTHER ORDERED and ADJUDGED** that Ebenezer Defendants maintain records of their compliance with paragraphs I through IX of this Permanent Injunction by Consent, which may be produced to the Court, if requested, or to the United States pursuant to paragraph XIV, below;

XII. It is **FURTHER ORDERED and ADJUDGED** that in the event that Ebenezer Defendants or their agents or employees violate the terms of the injunction:

A. the United States will seek an order from this Court for Ebenezer Defendants to show cause why they should not be held in contempt for violating the injunction; and

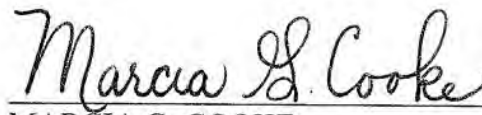
B. if the Court finds any of Ebenezer Defendants violated any of the terms of the injunction, then Ebenezer Defendants agree in advance to be permanently enjoined from acting as federal tax return preparers, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization in connection with any laws or regulations administered by the Internal Revenue Service. In the event the Court finds any of Ebenezer Defendants violated any of the terms of the injunction, Ebenezer Defendants consent, without further proceedings, to immediate revocation of their PTINs and disbarment from practice before the Internal Revenue Service in any capacity. For this purpose, the procedures contained at 31 C.F.R. §§10.82(c) - (e) shall apply, without benefit of the provisions contained in §§10.82(f) or (g) and the Internal Revenue Service will be authorized to revoke any Preparer Tax Identification Number (PTIN) that is held by, or assigned to, or used by such Ebenezer Defendants, pursuant to 26 U.S.C. Section 6109;

XIII. It is **FURTHER ORDERED and ADJUDGED** that that the IRS and/or Department of Justice will have access to all records in possession of Ebenezer Defendants and any other entity which they own or operate pertaining to any federal income tax return prepared by them in the future. Ebenezer Defendants further agree that they will provide copies within 10 business days of any such records up to 500 pages upon request by the Department of Justice and/or the IRS; and

XIV. It is **FURTHER ORDERED and ADJUDGED** that the Court shall retain jurisdiction to enforce this injunction and that the United States is permitted to monitor Ebenezer Defendants' compliance with this injunction and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure.

The Clerk shall **CLOSE** this case. All pending motions, if any, are **DENIED as moot.**

DONE and ORDERED in Chambers, Miami, Florida, this 23rd day of September 2015.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
Edwin G. Torres, U.S. Magistrate Judge
Counsel of Record

This Permanent Injunction by Consent is consented to and submitted by:

For Plaintiff United States

CAROLINE D. CIRAULO
Acting Assistant Attorney General

By: /s/ Michael W. May
MICHAEL W. MAY
Trial Attorney, Tax Division

U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-1857
Facsimile: (202) 514-9868
michael.w.may@usdoj.gov

Of Counsel:

For Defendants Ernice Joseph and
Ebenezer Tax Services, Inc.

Law Office of A. Antonio Tomas, PA
815 Ponce De Leon Blvd., Suite 210
Coral Gables, Florida 33134
Phone: (305) 648-1040
Facsimile No: (305) 648-1060

By: /s/ A. Antonio Tomas
A. Antonio Tomas
Florida Bar No. 662003

-and-

Ernice Joseph, individually and as sole

WIFREDO A. FERRER
United States Attorney

shareholder and CEO
Ebenezer Tax Services, Inc.