

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

Case No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELI ST. PHARD,

Defendant.

COMPLAINT FOR PERMANENT INJUNCTION

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

1. The United States brings this action to restrain and enjoin Defendant Eli St. Phard 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. 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 federal tax refunds;
 - c. engaging in any 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.

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 7408, and 28 U.S.C. § 1391(b) because the defendant resides within this District, has 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 Eli St. Phard resides in Oakland Park, Broward County. He conducts business in Lauderdale Lakes and Fort Lauderdale, both within Broward County.

St. Phard's Fraudulent and Deceptive Conduct

6. Eli St. Phard is a paid tax return-preparer who prepares returns that understate his customers' tax liabilities and/or overstate the amount to be refunded by fabricating deductions for business expenses and falsely claiming credits to which the customers are not entitled.

7. St. Phard began preparing tax returns in about 2006. Prior to preparing tax returns, he was a clerk in Publix supermarkets. Apart from a Jackson Hewitt tax class in about 2006, St. Phard does not have any formal tax return preparation training.

8. In 2009, St. Phard incorporated his return preparation practice and began doing business under the name E.S.T. Tax Services LLC (E.S.T.). Returns prepared by E.S.T. identify St. Phard by his Preparer Tax Identification Number (PTIN). From 2009 through 2012,

returns prepared by E.S.T. were filed electronically using the Electronic Filing Identification Number (EFIN) assigned to St. Phard and associated with E.S.T.

9. IRS records indicate that from 2010 through 2012, St. Phard submitted about 2,416 returns using his EFIN.

10. In 2012, the IRS began investigating St. Phard's return preparation practices, in part, because of the very high percentage of returns he prepared claiming losses for individuals who were purportedly self-employed. Upon learning of the investigation, St. Phard attempted to conceal his identity as a return preparer by submitting returns under the name of another business using a different EFIN. These returns were prepared in the name of Bernard Louis, on behalf of E&B Tax and Multiservices (E&B), and submitted using a newly-acquired EFIN in the name of Bernard Louis.

11. IRS records indicate that the EFIN associated with Bernard Louis was used to submit 495 returns in 2013, another 195 returns in 2014, and 26 returns in 2015 before it was revoked by the IRS in February 2015. In the examples in paragraphs 15 through 23, below, St. Phard identified himself and E.S.T. as the preparer on 2011 returns, but for 2012 and later, used the names Bernard Louis and E&B Tax & Multiservices. To protect the privacy of the taxpayers discussed in these paragraphs, they are identified by number (i.e. Customer 1, etc.).

12. In addition to concealing his identity from the IRS, St. Phard evaded inquiries from his customers. Upon learning of the IRS investigation, some customers attempted to contact St. Phard about their returns. For example, when Customer 1 learned that his 2012 return was selected for audit, he attempted to contact St. Phard in order to obtain copies of the return St. Phard filed. Despite making plans to meet at a "new" office location, St. Phard never appeared. According to Customer 1, the meeting location immediately appeared suspicious

because the address was that of a business unrelated to tax preparation. When Customer 1 tried unsuccessfully to contact St. Phard he received a text in which St. Phard asked for Customer 1's forgiveness.

13. Another customer, Customer 2, alleged St. Phard offered her money when she complained about the preparation of her 2011 return. In a complaint submitted to the IRS in 2012, Customer 2 claims that she attempted to question St. Phard about her 2011 return after learning that his office was under investigation. Along with her refund check, St. Phard handed Customer 2 a second check for \$300 drawn on the E.S.T. account. The memo line for that check includes the notation "Tax Credit." Customer 2 provided a copy of that check to the IRS.

14. As the accounts of Customers 1 and 2 suggest, St. Phard knows that returns he prepares do not accurately report the tax his customers owe, claim credits and request refunds they are not entitled to receive, or both. He does so in a variety of ways without alerting his customers.

False Schedule C (Profit or Loss From Business) Business Losses

15. St. Phard continually and repeatedly claimed bogus business expenses to offset a customer's taxable income and reduce the overall tax liability reported by his customers. Self-employed taxpayers use Schedule C – Profit (Loss) From Business – to report the gross receipts and deductible expenses incurred by the business. When business expenses exceed income, the resulting loss reported on the Schedule C offsets the taxable income reported by the taxpayer from other sources. St. Phard claimed expenses on Schedules C that his customers did not incur and used the losses reported there to decrease his customers' taxable income.

16. For example, St. Phard prepared the 2011 and 2012 tax returns for Customer 3 and included fraudulent Schedule C business expenses on both. Customer 3 worked

as a Comcast technician and was paid wages reported to him on a Form W-2. He did not own or operate a business in either year. Nevertheless, between the two years, St. Phard falsely claimed expenses generating Schedule C business losses of \$27,552 related to a computer repair business. By fraudulently offsetting \$27,552 against Customer 3's wages, St. Phard's conduct caused Customer 3's tax liability to be significantly understated, and contributed to the IRS erroneously issuing Customer 3 \$8,211 in refunds he was not entitled to receive.

17. Similarly, St. Phard prepared the 2011 and 2012 tax returns for Customers 4 and 5, a married couple. Between the two years, St. Phard falsely claimed Schedule C business expenses related to a business selling Mary Kay products that generated \$96,450 in Schedule C losses. Customers 4 and 5 clearly indicated to St. Phard on a client information sheet that they had no business, and instead earned W-2 wages as employees. St. Phard's fraudulent conduct caused Customers 4 and 5 to understate their taxable income and tax liability in both years, and led the IRS to issue \$36,542 in refunds Customers 4 and 5 were not entitled to receive.

18. On the 2011, 2012, and 2013 joint tax returns of Customers 6 and 7, St. Phard claimed fraudulent Schedule C expenses related to the taxpayers' purported business also selling Mary Kay cosmetics. These bogus expenses resulted in total Schedule C losses for those years of \$47,317. Customers 6 and 7 do not sell Mary Kay products and have "no business at all," according to a written statement provided by Customer 6. As a result of St. Phard's conduct, Customers 6 and 7 underreported their tax liabilities in each year, and the IRS erroneously issued \$7,709 in refunds to Customers 6 and 7 that they were not entitled to receive.

False Claims for Education or Fuels Credits

19. Unlike a deduction, which reduces taxable income, a tax credit reduces the tax a taxpayer must pay on a dollar for dollar basis. And, in the case of a refundable credit, the

taxpayer can receive the credit in the form of a refund even when no tax is reported or due. St. Phard continually and repeatedly claimed credits on his customers' returns that they were not eligible to claim.

20. St. Phard prepared the 2011 and 2012 tax returns for Customer 8 and claimed \$1,500 in false education credits on each. Under Internal Revenue Code (I.R.C.) section 25A, a taxpayer may only deduct education expenses for himself, his spouse, or his dependent. Although Customer 8 claimed to provide assistance to his son for college, he did not claim his son as a dependent on either return, and he did not otherwise incur education expenses for which credit could be claimed. By claiming education credits Customer 8 was not eligible to claim, St. Phard overstated the refund that Customer 8 was otherwise entitled to receive.

21. Likewise, on the 2011 and 2012 returns of Customers 4 and 5, described in paragraph 17, above, St. Phard falsely claimed the American Opportunity education credit of \$1,500 per year. The taxpayers did not have education expenses in either year and admitted this to the IRS during the audit of their returns. St. Phard's fraudulent claims for credits further inflated Customers 4 and 5's claims for refund in those years.

22. St. Phard falsely claimed a \$1,000 education credit on Customer 1's 2011 tax return. Although Customer 1 had taken real estate classes in 2011, he did not pay for the classes, which were not eligible for the credit in any event.

23. On Customer 1's 2011 return, St. Phard also falsely claimed a credit for fuel taxes paid. I.R.C. section 6427 allows a credit for federal excise taxes paid on fuel in certain specified nontaxable uses, including on a farm, off-highway business use, or commercial fishing. Customer 1 worked as a gate agent and/or customer service representative for JetBlue Airways

and did not purchase fuel for any purpose covered by I.R.C. § 6427. St. Phard's conduct caused Customer 1's claim for refund in 2011 to be significantly overstated.

Harm Caused by Eli St. Phard and His Businesses

24. St. Phard's customers have been harmed because they paid him fees to prepare correct and accurate tax returns, but St. Phard prepared returns that substantially understated the customers' correct tax liabilities and/or claimed refunds they were not entitled to receive. Many of St. Phard's customers are now liable for significant income tax deficiencies, and for penalties and interest.

25. St. Phard's conduct harms the United States because his customers are not paying the tax they owe, and/or claiming and receiving erroneous or excessive refunds. To recover the lost revenue, the IRS has already assessed more than \$1.8 million in additional taxes against St. Phard's customers on account of 340 returns he prepared between 2011 and 2013. This represents a fraction (15%) of the returns St. Phard prepared during that time. Because all but five of the 340 audited returns understated the tax owed or overstated the refund claim, the total financial harm caused by St. Phard's practices is likely much higher.

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

27. St. Phard further harms the United States because the IRS must devote its limited resources to identifying his customers, examining their returns, ascertaining their correct tax liabilities, collecting additional taxes and penalties they may owe, or recovering refunds issued to them in error.

Count I: Injunction under 26 U.S.C. § 7407

28. The United States incorporates by reference the allegations in paragraphs 1 through 27 above.

29. 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.

30. 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.

31. 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.

32. In order for a 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 30 through 31, above, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

33. 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.

34. As described in paragraphs 6 through 27, above, St. Phard has continually and repeatedly engaged in conduct subject to penalty under § 6694(a) by preparing returns that understate the taxpayers' tax liabilities and overstate their refunds based upon unreasonable and reckless positions. He has prepared returns with the knowledge that the positions taken on the returns are unreasonable and lacked substantial authority, and is properly subject to penalty under § 6694.

35. St. Phard has continually and repeatedly engaged in conduct subject to penalty under 6695(c) by failing to include his preparer identification number on the returns he prepares.

36. A narrower injunction against only specified conduct will not suffice. As described in paragraphs 10 through 11, above, St. Phard has deliberately attempted to evade detection by the IRS by preparing returns under the name of another, indicating that he intends to continue his abusive conduct. Further, the variety of items falsely manipulated by St. Phard also supports a complete injunction. The conduct alleged above is just a sampling of what the IRS has uncovered thus far; it is possible that St. Phard could manipulate additional return items to achieve the same results of understated tax liabilities and/or overstated claims for refunds.

37. St. Phard should be permanently enjoined from further tax return preparation under 26 U.S.C. § 7407.

Count II: Injunction under 26 U.S.C. § 7408

38. The United States incorporates by reference the allegations in paragraphs 1 through 27 above.

39. 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.

40. 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.

41. As described in paragraphs 6 through 27, above, St. Phard has 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 or deduction when he 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.

42. Injunctive relief is appropriate to prevent the recurrence of this conduct.

Count III: Injunction under 26 U.S.C. § 7402(a)

43. The United States incorporates by reference the allegations in paragraphs 1 through 27 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. St. Phard, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

46. Unless enjoined, St. Phard 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 St. Phard's customers to detect future returns understating the customers' tax liabilities or overstating their refunds.

47. While the United States will suffer irreparable injury if St. Phard is not enjoined, he will not be harmed by being compelled to obey the law. St. Phard will be able to pursue other financial endeavors to support himself.

48. Enjoining St. Phard 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 and the public fisc.

49. St. Phard 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 St. Phard 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, that injunctive relief is appropriate under 26 U.S.C. § 7407 to bar him from acting as a federal tax return preparer to prevent recurrence of that conduct, and that a narrower injunction enjoining only specified conduct would not be sufficient to prevent his interference with the proper administration of the internal revenue laws;

B. That the Court find that St. Phard has 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 St. Phard 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);

D. That the Court enter a permanent injunction prohibiting St. Phard, 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 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 St. Phard, 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, E.S.T. Tax Services LLC, and E&B Tax & Multiservices LLC prepared a

federal tax return since January 1, 2012 to inform them of the permanent injunction, 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;

F. That the Court enter an injunction requiring St. Phard 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 he, E.S.T. Tax Services LLC, and E&B Tax & Multiservices LLC prepared federal income tax returns or claims for refund since January 1, 2012;

G. That the Court enter an injunction requiring St. Phard to produce to counsel for the United States within 30 days copies of all federal income tax returns that St. Phard, E.S.T. Tax Services LLC, and E&B Tax & Multiservices LLC have prepared since January 1, 2012;

H. That the Court enter an injunction requiring St. Phard to provide a copy of the Court's order to all of his, E.S.T. Tax Services LLC's, and E&B Tax & Multiservices LLC's principals, officers, managers, employees, and independent contractors 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;

I. 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 St. Phard, pursuant to 26 U.S.C. § 6109;

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

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

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

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

Dated: April 18, 2016

Respectfully submitted,

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s/ Nicholas S. Bahnsen

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