

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

CASE NO. 18-5827

**ADRIENNE ROBINSON THOMAS,
d/b/a AT TAX SERVICES**

SECTION: “G” (5)

ORDER AND REASONS

Pending before the Court is Plaintiff the United States of America’s (the “Government”) “Motion for Default Judgment of Permanent Injunction Against Adrienne Robinson Thomas.”¹ In the motion, the Government urges the Court to enter a default judgment against Adrienne Robinson Thomas, doing business as AT Tax Services (“Thomas”) to permanently enjoin her from preparing federal tax returns for others.² Having reviewed the motion, the memorandum in support, the record, and the applicable law, the Court will grant the motion.

I. Background

A. *Factual Background*

In this action, the Government alleges that “Thomas is a tax return preparer, as defined by 26 U.S.C. § 7701(a)(36).”³ The Government contends that Thomas prepared Forms 1040 (U.S. Individual Income Tax Returns) for compensation from 2010 through 2016.⁴ The Government

¹ Rec. Doc. 11.

² *Id.* at 1.

³ Rec. Doc. 1 at 2.

⁴ *Id.* at 1.

asserts that Thomas “operates AT Tax Services as a sole proprietorship” and has applied for and obtained a Preparer Tax Identification Number (“PTIN”) and an Electronic Filing Identification Number (“EFIN”) from the IRS to enable her to prepare and file federal tax returns for compensation.⁵ The Government avers that Thomas “receives preparation fees from customers’ refunds,” with fees ranging from two-hundred fifty dollars to five-hundred dollars per customer.⁶

The Government goes on to allege that “Thomas prepares, for paying customers, federal income tax returns (IRS Form 1040) typically containing fabricated household employee income, false tax credits including the Child Tax Credit, education credits, and Earned Income Tax Credit (“EITC”), and fabricated income tax withholdings generating improper refunds for her customers.”⁷ According to the Government, in tax year 2013, Thomas filed “bogus EITCs” for over thirty-seven percent of those with tax refunds.⁸ The Government also alleges that Thomas claimed Child Tax Credits for individuals who did not have a qualifying dependent and education credits for individuals who had not attended college and had no qualifying education expenses.⁹

The Government further alleges that Thomas “prepares returns for taxpayers without the knowledge of those taxpayers, via identity theft, with the returns reporting fraudulent [household employee] income and claiming bogus EITCs.”¹⁰ The Government lists seven customers that Thomas allegedly obtained names and Social Security numbers for and then filed federal tax

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 5.

⁹ *Id.* at 5–6.

¹⁰ *Id.*

returns without their knowledge or authorization.¹¹ The Government also details nine individuals, including incarcerated persons, whose personal information allegedly Thomas acquired without their knowledge and used to file fraudulent tax returns.¹² The Government asserts that for both sets of identity theft victims, the individuals never received the refunds because the money was directed towards accounts Thomas had set up.¹³

The Government contends that because of Thomas' actions, these taxpayers incurred penalties for underpaying taxes and individuals whose identities were stolen were unable to accurately file their taxes.¹⁴ The Government asserts that the Internal Revenue Service ("IRS") has expended unnecessary time and money into efforts to ascertain which tax filings were fraudulent, calculate accurate tax liabilities for individuals, and correct accounts that were victims of identity theft.¹⁵ The Government also alleges that Thomas' fraudulent tax filings may have resulted in up to \$1,478,686 in total revenue loss in the U.S. treasury.¹⁶ The Government avers that this financial loss hurts the public and damages citizens' trust in the tax system.¹⁷

The Government requests that under 26 U.S.C. § 7407, the Court permanently enjoin Thomas from preparing and filing federal tax returns for others because she has continually and repeatedly engaged "in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695 [and] other

¹¹ *Id.* at 6–9.

¹² *Id.* at 9–13.

¹³ *Id.*

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 13–15.

¹⁶ *Id.* at 14.

¹⁷ *Id.*

fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.”¹⁸ The Government further requests that the Court enjoin Thomas under 26 U.S.C. § 7408 from aiding others in understating their tax liability and under 26 U.S.C. § 7402 from interfering with the enforcement of internal revenue laws.¹⁹

B. Procedural Background

On June 12, 2018, the Government filed a complaint against Thomas.²⁰ On June 14, 2018, a summons was served on Thomas; Thomas’ answer was due on July 5, 2018.²¹ Thomas did not file an answer to the Government’s complaint, timely or otherwise. On July 10, 2018, the Government filed a Motion for Entry of Default against Thomas.²² The next day, the Clerk of the Court entered default against Thomas.²³ On December 18, 2018, the Government filed the instant Motion for Default Judgment against Thomas.²⁴ To date, Thomas has not filed an opposition to the motion or made any appearance in the case.

II. The Government’s Arguments

In the motion for default judgment, the Government argues that Thomas was served on June 14, 2018 and has failed to respond to the complaint.²⁵ The Government presents the

¹⁸ *Id.* at 15–16.

¹⁹ *Id.* at 18–19.

²⁰ Rec. Doc. 1.

²¹ Rec. Doc. 6.

²² Rec. Doc. 7.

²³ Rec. Doc. 9.

²⁴ Rec. Doc. 11.

²⁵ Rec. Doc. 11-1 at 2.

declaration of Julian T.A. Lee (“Lee”), a trial attorney for the United States Department of Justice, Tax Division.²⁶ Lee avers that Thomas was served a copy of the summons and complaint, is not currently in active duty military service, and is neither an infant nor incompetent.²⁷ The Government asserts that because the Clerk has entered a default against Thomas, the Government’s allegations against Thomas are deemed admitted.²⁸

Accordingly, the Government requests that the Court enter a default judgment permanently enjoin Thomas from acting as a tax preparer; owning, working in, or consulting with a tax preparation business; or maintaining a PTIN or EFIN.²⁹ The Government urges the Court to issue an order requiring Thomas to permanently close all tax preparations affiliated with her services, notify all former customers of the injunction against her, and submit a signed certification stating that she received a copy of the Court’s order.³⁰ The Government also requests that the IRS be immediately authorized to revoke Thomas’ PTIN and EFIN.³¹ Finally, the Government urges the Court to authorize the United States government to continue monitoring Thomas to ensure compliance with the injunction.³²

III. Legal Standard

As the Fifth Circuit has explained, Federal Rule of Civil Procedure 55 establishes three

²⁶ Rec. Doc. 11-2.

²⁷ *Id.* at 1–2.

²⁸ *Id.* (citing *Jackson v. FIE Corp.*, 302 F.3d 515, 525 (5th Cir. 2002)).

²⁹ Rec. Doc. 11 at 2–3.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 3.

steps for obtaining a default judgment: (1) default; (2) entry of default; and (3) default judgment.³³ A default occurs when “a defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules.”³⁴ The clerk will then enter an entry of default “when the default is established by affidavit or otherwise.”³⁵ After the clerk’s entry of default, “a plaintiff may apply for a judgment based on such default. This is a *default judgment*.”³⁶ Before granting a motion for default judgment, this Court “has the duty to assure that it has the power to enter a valid judgment,” and must “look into its jurisdiction both over the subject matter and the parties.”³⁷ The Fifth Circuit has held that “[a] judgment entered without personal jurisdiction is void.”³⁸

The Fifth Circuit emphasizes that “[d]efault judgments are a drastic remedy not favored by the Federal Rules and resorted to by courts only in extreme situations.”³⁹ “A party is not entitled to a default judgment as a matter of right, even where the defendant is technically in default.”⁴⁰ In cases over which the Court has subject matter jurisdiction and personal jurisdiction over the parties, the Court may only issue a default judgment when circumstances support doing so. If the procedural prerequisites for default are met, the Court must then decide whether the Government’s

³³ *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* (emphasis in original).

³⁷ *Sys. Pipe & Supply, Inc. v. M/V Viktor Kurnatovskiy*, 242 F.3d 322, 324 (5th Cir. 2001).

³⁸ *Id.*

³⁹ *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989).

⁴⁰ *Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996).

requests for relief are appropriate.⁴¹ The Court considers the following factors in deciding a motion for default judgment:

- [1] whether material issues of fact are at issue,
- [2] whether there has been substantial prejudice,
- [3] whether the grounds for default are clearly established,
- [4] whether the default was caused by a good faith mistake or excusable neglect,
- [5] the harshness of a default judgment, and
- [6] whether the court would think itself obliged to set aside the default on the defendant's motion.⁴²

On a motion for default judgment, the Court accepts as true the plaintiff's allegations of fact but remains obligated to determine whether those allegations state a claim for relief.⁴³ The pleadings must provide a sufficient basis to support the entry of a default judgment.⁴⁴

IV. Analysis

A. Jurisdiction to Enter a Default Judgment

As a preliminary matter, the Court considers whether it has subject matter jurisdiction over this action and personal jurisdiction over Thomas.

1. Subject Matter Jurisdiction

The Government alleges in its complaint that this is a suit for violations of 26 U.S.C.

⁴¹ *Fagan v. Lawrence Nathan Assocs., Inc.*, 957 F. Supp. 2d. 784, 796 (E.D. La. 2013) (Brown, J.) (citations omitted).

⁴² *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998).

⁴³ *Lewis v. Lynn*, 236 F.3d 766, 767 (5th Cir. 2001).

⁴⁴ *Wooten v. McDonald Transit Assocs., Inc.*, 788 F.3d 490, 498 (5th Cir. 2015) (citations omitted).

§§ 7402, 7407, and 7408.⁴⁵ Thus, the Government asserts that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402(a).⁴⁶ 28 U.S.C. § 1340 states that “[e]xcept as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.” Accordingly, the Court finds that it has subject matter jurisdiction over the Government’s claims against Thomas.

2. Personal Jurisdiction

Next, the Court must determine whether it has personal jurisdiction over Thomas. The Government alleges that Thomas is a resident of Louisiana.⁴⁷ A citizen is subject to personal jurisdiction in the state of which the person is a resident.⁴⁸ Accordingly, the Court finds that it has personal jurisdiction over Thomas.⁴⁹

3. Service of Process

In order for a federal court to exercise personal jurisdiction over a defendant, “the procedural requirement of service of summons must be satisfied.”⁵⁰ Consequently, absent proper

⁴⁵ Rec. Doc. 1.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1–2.

⁴⁸ *Shaffer v. Heitner*, 433 U.S. 186, 202 (1977).

⁴⁹ (“It is ... incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business.” See *Limited Liability Companies: Tax and Business Law* § 5 (2017) (noting that an LLC is subject to personal jurisdiction in the state where it was formed).

⁵⁰ *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987) (citing *Miss. Publ’g Corp. v. Murphee*, 326 U.S. 438, 444–45 (1946) (“[S]ervice of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served.”)).

service, the court lacks personal jurisdiction over the defendant, and any default judgment entered against the defendant is void.⁵¹

Proper service of process must occur in accordance with Federal Rule of Civil Procedure 4. With respect to serving individuals, Rule 4(e) authorizes service by “delivering a copy of the summons and of the complaint to the individual personally.”⁵² Here, the record indicates that Thomas was personally served at her residence in Avondale, Louisiana on June 14, 2018.⁵³ Accordingly, the Court finds that service of process was proper under federal law.

B. Entry of Judgment

1. Whether Default Judgment is Appropriate

The Court must next decide whether the Government’s request for entry of default judgment is appropriate.⁵⁴ The Court considers the following factors when determining whether to grant a default judgment:

- [1] whether material issues of fact are at issue,
- [2] whether there has been substantial prejudice,
- [3] whether the grounds for default are clearly established,
- [4] whether the default was caused by a good faith mistake or excusable neglect,
- [5] the harshness of a default judgment, and

⁵¹ See *Rogers v. Hartford Life and Accident Ins. Co.*, 167 F.3d 933, 940 (5th Cir. 1999) (“When a district court lacks jurisdiction over a defendant because of improper service of process, the default judgment is void”); *Omni*, 484 U.S. at 104.

⁵² Fed. R. Civ. P. 4(e)(2)(A).

⁵³ Rec. Doc. 46-1 at 12; Rec. Doc. 46-3 at 2.

⁵⁴ *Fagan v. Lawrence Nathan Assocs., Inc.*, 957 F. Supp. 2d 784, 796 (E.D. La. 2013) (Brown, J.) (citations omitted).

[6] whether the court would think itself obliged to set aside the default on the defendant's motion.¹²⁸

As for the first factor, when a party fails to respond to a complaint, as Thomas has done here, it fails to place any material facts in dispute, and the party is barred from contesting on appeal the facts as established by the participating party's pleadings.⁵⁵ Turning to the second factor, Thomas' failure to respond to the complaint in this matter has substantially prejudiced the Government's interest in resolving its claims against Thomas.⁵⁶ Third, the grounds for default are clearly established. The record indicates that on June 14, 2018, Thomas was served with a copy of the summons and complaint.⁵⁷ The Clerk of the Court ordered an entry of default on July 12, 2018.⁵⁸ Despite proper service of process, Thomas has not appeared to answer this matter or challenge the entry of default against her. Fourth, since Thomas has not participated in this matter at all, she has not offered any evidence to show that her failure to appear was the product of good faith mistake or excusable neglect.

As for the fifth factor, entry of a default judgment would not be overly harsh, because, as discussed *infra*, the Government is solely seeking an injunction preventing Thomas from engaging in tax preparation services and requiring her to notify all former customers of the same. Finally, the Court is not aware of any facts that would give rise to "good cause" to set aside the default judgment if challenged by Thomas. Accordingly, the Court finds that the six factors weigh in favor

¹²⁸ *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998).

⁵⁵ *Fagan*, 957 F.Supp.2d at 797 (citing *Nishimatsu Constr. Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)).

⁵⁶ *See id.*

⁵⁷ Rec. Doc. 7.

⁵⁸ Rec. Doc. 26.

of entering a default judgment.

Next, the Court must determine whether, taking all of the Government's well-pleaded facts as true, the Government has adequately demonstrated that it is entitled to a default judgment on its claims.⁵⁹

2. The Government's Claims Against Thomas

The Government claims that Thomas violated 26 U.S.C. §§ 7402, 7407, and 7408.⁶⁰ Accordingly, the Court addresses each of these claims in turn.

a. 26 U.S.C. § 7407

The Government alleges that Thomas has continually and repeatedly violated 26 U.S.C. §§ 6694 and 6695(g) and engaged in fraudulent conduct "that substantially interferes with the proper administration of the internal revenue laws."⁶¹ Therefore, the Government asserts that Thomas should be subject to an injunction under 26 U.S.C. § 7407.⁶²

26 U.S.C. § 7407 states that "if the court finds...that a tax preparer has...engaged in any conduct subject to penalty under section 6694 or 6695...and that injunctive relief is appropriate to prevent the recurrence of such conduct...the court may enjoin such person from further engaging in such conduct." Section 6694 of the Internal Revenue Code ("IRC") penalizes "[a]ny tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to...a willful attempt in any manner to understate the liability for

⁵⁹ See *Fagan*, 957 F.Supp.2d at 797 (citing *Nishimatsu Constr. Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)).

⁶⁰ Rec. Doc. 1.

⁶¹ *Id.* at 15–16.

⁶² *Id.*

tax on the return or claim, or a reckless or intentional disregard of rules or regulations.”⁶³ Similarly, Section 6695 of the IRC penalizes “[a]ny person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining...eligibility to file as a head of household (as defined in section 2(b)) on the return.”⁶⁴

Here, the Government alleges that Thomas violated Section 6694 by repeatedly preparing “federal income tax returns that understate her customers’ liabilities based on unreasonable positions, including but not limited to falsifying [household] income and claiming false and/or unsubstantiated withholdings in an amount to which their customers are not entitled.”⁶⁵ The Government asserts that Thomas violated Section 6695 by failing to comply with due diligence requirements when preparing and submitting returns that repeatedly reported inaccurate household information and liabilities.⁶⁶ The Government further insists that Thomas’ behavior was based on willful conduct or reckless or intentional disregard of rules or regulations.⁶⁷ The Government insists that an injunction would prevent Thomas from engaging in this conduct in the future.⁶⁸

Therefore, taking the Government’s allegations as true, Thomas willfully and/or recklessly falsified individuals’ income and withholdings to understate their tax liabilities. Moreover, Thomas failed to diligently verify head of household information prior to filing individuals’ tax

⁶³ 26 U.S.C. § 6694.

⁶⁴ 26 U.S.C. § 6695.

⁶⁵ Rec. Doc. 1 at 16.

⁶⁶ *Id.* at 3–4.

⁶⁷ *Id.*

⁶⁸ *Id.*

returns. An injunction would prevent Thomas from repeating these actions in the future. Accordingly, the Court finds that the Government has sufficiently stated a claim against Thomas under 26 U.S.C. § 7407.

b. 26 U.S.C. § 7408

The Government alleges that Thomas violated 26 U.S.C. § 7408 via 26 U.S.C. § 6701 by knowingly preparing federal tax returns that understated clients' liabilities.⁶⁹ 26 U.S.C. § 7408 states that "if the court finds...that the person has engaged in any specified conduct, and that injunctive relief is appropriate to prevent recurrence of such conduct...the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title." Section 7408 proceeds to define "specified conduct" as "any action, or failure to take action, which is...subject to penalty under section 6700, 6701, 6707, or 6708."⁷⁰ Turning to 26 U.S.C. § 6701, the statute penalizes "[a]ny person--(1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document, (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person."⁷¹

As discussed above, the Government contends that Thomas violated Section 6701 by continually and repeatedly falsifying household income and EITCs to understate taxpayer's liabilities. The Government avers that aiding others in understating tax liability qualifies as

⁶⁹ *Id.* at 18.

⁷⁰ 26 U.S.C. § 7408.

⁷¹ 26 U.S.C. § 6701.

specified conduct under 26 U.S.C. § 7408. Additionally, the Government insists that an injunction would be appropriate to prevent Thomas from continuing to aid others in understating tax liabilities. Taking these allegations as true, the Government has alleged that Thomas engaged in conduct that warrant the imposition of an injunction under 26 U.S.C. § 7408. Accordingly, the Court finds that the Government has sufficiently stated a claim against Thomas under 26 U.S.C. § 7408.

c. **26 U.S.C. § 7402**

The Government argues that “Thomas’ conduct caused irreparable injury to the United States and an injunction under 26 U.S.C. § 7402(a) is necessary and appropriate.”⁷² 26 U.S.C. § 7402 authorizes federal courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” These remedies “are in addition to and not exclusive of any and all other remedies of the United States.”⁷³

Here, the Government alleges that Thomas’ conduct substantially interfered with the administration and enforcement of internal revenue laws and caused irreparable harm to the United States.⁷⁴ The Government contends that an injunction is necessary to prevent further injury and a waste of substantial time and resources by the IRS.⁷⁵ Specifically, the Government insists that if Thomas is enjoined from preparing taxes, she will be unable to file erroneous tax returns that cause the federal government to issue incorrect refunds to individuals that are not entitled to the funds.⁷⁶

⁷² Rec. Doc. 1 at 18.

⁷³ 26 U.S.C. § 7402.

⁷⁴ Rec. Doc. 1 at 18.

⁷⁵ *Id.*

⁷⁶ *Id.*

Taking these allegations as true, the Government has alleged that an injunction against Thomas would aid in the enforcement of internal revenue laws. Accordingly, the Court finds that the Government has sufficiently stated a claim against Thomas under 26 U.S.C. § 7402.

C. *Permanent Injunction*

Although the Court has found that entry of a default judgment is warranted on the Government's claims, it must further determine if it would be appropriate to award the remedies requested by the Government in the pending motion.⁷⁷ The Fifth Circuit has stated that “[w]hen an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose.”⁷⁸ Here, the Court finds that the Government demonstrated that the requirements of 26 U.S.C. §§ 7402, 7407, 7408 are satisfied.

Further, the Fifth Circuit has found that the legislative purpose of 26 U.S.C. §§ 7408 and other provisions of the IRC are to “allow the IRS to attack the growing phenomenon of abusive tax shelters at their source -- the organizer and salesman -- in the ‘most effective way’ -- by injunction.”⁷⁹ The Fifth Circuit further notes that injunctions against individuals who abuse the tax process help “avoid the drain on the resources of the IRS required by auditing individual accounts, a multiplicity of suits on the same issue against individual taxpayers, and piecemeal litigation.”⁸⁰ Based on these determinations, this Court finds that issuing an injunction against

⁷⁷ *Fagan v. Lawrence Nathan Assocs., Inc.*, 957 F. Supp. 2d 784, 801 (E.D. La. 2013) (Brown, J.).

⁷⁸ *United States v. Buttorff*, 761 F.2d 1056, 1059 (5th Cir. 1985).

⁷⁹ *Id.* at 1063–1064.

⁸⁰ *Id.*

Thomas would serve the IRC's legislative purpose because the injunction would combat abusive tax practices and aid the agency in maintaining an efficient and accurate tax system. Accordingly, the Court will enter a permanent injunction against Thomas barring her from engaging in federal tax preparation services.

IV. Conclusion

For the foregoing reasons, the Court finds that it has jurisdiction to enter a default judgment against Thomas and that entry of a default judgment is appropriate in this case. The Court further finds that taking all of the Government's well-pleaded facts as true, the Government has adequately demonstrated that it is entitled to default judgment on its claims for violation of 26 U.S.C. §§ 7402, 7407, 7408. The Court finds it appropriate to issue a permanent injunction barring Thomas from engaging in federal tax preparation services.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff the United States' "Motion for Default Judgment of Permanent Injunction Against Adrienne Robinson Thomas"⁸¹ is **GRANTED**.

NEW ORLEANS, LOUISIANA, this 11th day of February, 2019.


NANNETTE JOLIVETTE BROWN
CHIEF JUDGE
UNITED STATES DISTRICT COURT

⁸¹ Rec. Doc. 11.