

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 2:15-cv-1655-RMG
)	
Plaintiff,)	
)	
v.)	
)	
TONY MCGILL,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America complains and alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a), 7407, and 7408 to enjoin defendant Tony McGill, and anyone in active concert or participation with him, from:
 - a. 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;
 - b. preparing or assisting in preparing or filing federal tax returns, amended returns, or other related documents or forms that they know or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refunds as prohibited by 26 U.S.C. § 6694;
 - c. engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other penalty provision in the Internal Revenue Code; and
 - d. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. This action has been requested by the Chief Counsel of the Internal Revenue Service (“IRS”), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General.

3. Jurisdiction is conferred on the Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).

4. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396 because the defendant resides in this district and a substantial part of the actions giving rise to this suit took place in this district.

Background

5. Tony McGill resides in Ladson, South Carolina, within the jurisdiction of the Court.

6. McGill has an accounting degree from Voorhees College and has prepared tax returns for over 16 years.

7. McGill and two other individuals, Stacy Middleton and Clinton A. Broomfield, formed MBM Tax and Accounting Services, LLC, in 1997 to prepare tax returns and provide other financial services. In 2007, McGill, Middleton, and Broomfield ended their formal partnership and opened separate tax preparation businesses. McGill’s business operates under the name MBM Accounting and Tax Services, LLC, and is located in North Charleston, South Carolina. Though his formal partnership with Broomfield and Middleton ended in 2007, McGill continues to share advertising expenses with his former partners.

8. In July 2013, this Court issued an order of permanent injunction against Middleton that, inter alia, bars him from preparing federal tax returns for others. United States v. Middleton, 2:13-cv-1011-RMG (D.S.C.).

9. MBM Accounting and Tax Services, LLC, is formally owned by McGill's wife, Demetrias Chisolm, but McGill runs the business. He manages seven tax preparers, reviews the returns they prepare, and also prepares returns for costumers. On the returns he prepares, McGill regularly identifies his wife as the preparer even though she does not prepare returns.

10. McGill, individually and through MBM Accounting and Tax Services, LLC, prepares or reviews over 1,200 federal individual income tax returns ("Forms 1040") annually.

The IRS's Investigation of McGill's Improper Conduct

11. During its investigation of Stacey Middleton's conduct, the IRS discovered that McGill – Middleton's former partner – engaged in similar improper conduct when preparing returns for others. Specifically, a review of returns he prepared showed that he consistently claimed false and frivolous deductions and credits on his customers' returns. As a result, the IRS opened an investigation on McGill.

12. The IRS notified McGill of its investigation on May 1, 2012, and interviewed him on May 31, 2012.

13. Even after McGill was notified that he was under investigation, he continued to prepare returns containing false and frivolous deductions and credits on his customers' returns.

14. IRS examinations of sixty-one returns McGill prepared or filed by McGill for others for the 2010 through 2012 tax years showed that McGill regularly claimed fictitious deductions and credits, or overstated and duplicated otherwise valid deductions. These illegal practices decreased his customers' tax liabilities and/or increased the amounts of their tax

refunds. Indeed, the IRS examinations resulted in an increase of his customers' liabilities in fifty-eight of those sixty-one returns – a 95% deficiency rate. The average deficiency in reported tax was \$5,709 per return.

15. Though the IRS has yet to examine the returns McGill prepared for the 2013 and 2014 tax years, the IRS has indexed all returns McGill prepared or reviewed for those years in its Electronic Fraud Detection System (“EFDS”). Reports generated from the EFDS for 2013 and 2014 show, inter alia, the names of his customers, filing status, exemptions, adjusted gross income, tax liability, payments, overpayments, education, child, and earned income tax credits, and Schedule C profit or loss. By reviewing the EFDS reports, the IRS has determined that the returns McGill prepares include a disproportionate number of items that are frequently abused, such as head of household status, Schedules C, and the earned income tax credit. This suggests that McGill continues to engage in the improper conduct that the IRS uncovered during its examinations of returns McGill prepared.

16. Based on its examinations and review of returns prepared or reviewed by McGill, the IRS estimates that McGill's conduct has already cost the United States millions of dollars in tax revenue, and that millions more could be lost if McGill is not enjoined from preparing returns in the future.

False, Improper, and Inflated Deductions

17. McGill seeks fraudulent tax refunds for customers or, at a minimum, to reduce their liability, by fabricating bogus deductions on Forms 1040, Schedule A (Itemized Deductions), and Schedule C (Profit or Loss from Business). McGill reports nonexistent business expenses and deductions on his customers' returns to create phony business losses that offset their wages and fraudulently reduce their income tax liability.

18. For example, McGill (with the assistance of his employee Sandra Nesbit) prepared joint returns for customer “M.W. and E.W.” for 2010, 2011, and 2012 that claimed numerous bogus Schedule C business expenses, including costs of goods sold, advertising expenses, car and truck expenses, rent expenses, utilities, and phone bills. M.W. and E.W. did not operate a business during those years. McGill, however, reported the following fictitious business loss on their Schedule C for each year:

- \$13,057 for 2010;
- \$12,363 for 2011; and
- \$6,285 for 2012.

19. The IRS examined M.W. and E.W.’s 2010, 2011, and 2012 returns. Because M.W. and E.W. admitted that they did not operate a business during those years, the IRS disallowed all the Schedule C deductions reported on M.W. and E.W.’s returns. As a result, the IRS increased their tax liabilities by \$3,200 for 2010, \$2,032 for 2011, and \$945 for 2012, excluding penalties and interest.

20. McGill personally prepared returns for customer “B.J.” for 2010 and 2011 (but signed his wife’s name) and, with the assistance of his employee Katrina King, prepared B.J.’s 2012 return. B.J.’s returns claimed numerous fraudulent items, including an improper filing status, earned income and child tax credits for which he did not qualify, and fabricated Scheduled C expenses. The improper information reported on B.J.’s returns included the following:

- Head of household filing status;
- Earned income tax credits in the amounts of \$2,582 (2010), \$1,166 (2011), and \$1,996 (2012);
- Child tax credits in the amounts of \$632 (2010), \$234 (2011) and \$762 (2012); and
- Unsubstantiated Schedule C deductions totaling \$12,536 (2011) and \$5,606 (2012).

21. The IRS examined B.J.'s returns for the 2010 through 2012 tax years. Because B.J. was married during those years, the IRS changed his filing status to married filing separate. In addition, the IRS disallowed the earned income tax and child tax credits because B.J. did not have any dependents in those years. The IRS also disallowed all Schedule C expenses that B.J. was unable to substantiate. As a result, the IRS increased B.J.'s tax liabilities by \$4,299 for 2010, \$7,417 for 2011, and \$6,830 for 2012, excluding penalties and interest.

22. McGill also prepared B.J.'s 2013 return. Although this return was not examined, McGill reported some of the same fraudulent items on B.J.'s 2013 return that were disallowed on his 2011 and 2012 returns, including head of household filing status and the child tax credit.

23. Similarly, McGill (with the assistance of King) prepared returns for customer "A.G." for 2011 and 2012 that claimed the following fabricated Schedule C deductions:

- \$15,409 (2011) and \$20,949 (2012) in Schedule C car and truck expenses;
- \$948 (2011) and \$1,100 (2012) in Schedule C insurance expenses; and
- \$3,975 (2011) and \$3,496 (2012) in other schedule C expenses.

24. The IRS examined A.G.'s 2011 and 2012 returns. A.G. was unable to substantiate the deductions shown above. As a result, the IRS disallowed those deductions and increased A.G.'s tax liabilities by \$4,345 for 2011 and \$6,069 for 2012, excluding penalties and interest.

25. McGill (under his wife's name) also prepared a return for customer "B.W." for the 2011 tax year. B.W. provided McGill only with her Form W-2. McGill, however, claimed fictitious Schedule C expenses, non-qualifying dependents, and an improper filing status on B.W.'s return. The false information reported on B.W.'s return included:

- \$7,800 Schedule C deduction for supplies;
- \$4,200 Schedule C deduction for her cell phone;
- Head of Household filing status; and

- The earned income tax credit in the amount of \$5,751 and child tax credit in the amount of \$1,578.

26. The IRS examined B.W.'s 2011 return. During the exam, B.W. stated that she did not know how McGill determined the Schedule C deductions because B.W. only provided McGill with a Form W-2. As a result, the IRS disallowed all the Schedule C deductions claimed on her return. The IRS also disallowed B.W.'s claimed dependents because she provided less than half the support for the dependents. Because the IRS disallowed B.W.'s dependents, B.W. did not qualify for the earned income tax credit or the child tax credit. Her filing status was also changed from head of household to single. After making all the proper adjustments to B.W.'s return, the IRS increased her tax liability by \$10,958 for 2011, excluding penalties and interest.

Harm Caused by McGill

27. McGill's customers have been harmed because they paid McGill fees to prepare proper tax returns, but McGill prepared returns that substantially understated his customers' correct tax liabilities or created or inflated improper refunds. Many customers now face large income tax deficiencies and may be liable for sizable penalties and interest.

28. McGill's conduct harms the United States because his customers are underreporting and underpaying his tax liabilities. The IRS has examined 61 federal income tax returns that McGill prepared for customers for the tax years 2010 through 2012, with a total of \$348,256 in lost revenue (an average of \$5,709 per return) based on false claims and deductions. If this average deficiency per return was spread over the universe of returns McGill prepared, the IRS estimates that McGill's return preparation could have resulted in millions of lost revenue to the United States for the 2008 through 2014 tax years.

29. In addition to the direct harm caused by preparing tax returns that understate his customers' tax liabilities, McGill's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

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

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

31. The United States incorporates by reference the allegations in the above paragraphs.

32. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from 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 which the return preparer knew or should have known was unreasonable, or engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

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

34. The court may permanently enjoin the person from further acting as a federal tax 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.

35. McGill has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal income tax returns that understate his customers' liabilities or overstate their refunds based on unrealistic, frivolous, and reckless positions.

36. McGill's continual and repeated violations of § 6694 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under § 7407.

37. McGill has prepared phony tax returns for years and has continued to do so even after the IRS informed him he was under investigation by the IRS. If he is not enjoined, McGill is likely to continue to prepare and file false and fraudulent tax returns, causing economic loss to the United States, causing the United States to commit finite, scarce, and unrecoverable resources to the examination of McGill and his customers, and exposing his customers to large liabilities that include penalties and interest.

38. McGill's continual and repeated conduct subject to an injunction under 26 U.S.C. § 7407, including his audacious and repeated bogus claims of expenses and deductions, including fictitious business expenses, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent his interference with the proper administration of the internal revenue laws. Thus, he should be permanently barred from acting as tax return preparers.

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

39. The United States incorporates by reference the allegations in the above paragraphs.

40. 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.

41. Section 6701 of the Internal Revenue Code penalizes any person who aids or assists 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.

42. McGill prepares federal tax returns for customers that he knows will understate their correct tax liabilities, because he knowingly prepares returns claiming improper expenses and deductions. McGill's conduct is thus subject to a penalty under § 6701.

43. If the Court does not enjoin McGill, he is likely to continue to engage in conduct subject to penalty under § 6701. McGill's preparation of returns claiming improper expenses and deductions is widespread over many customers and tax years. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

*Count III: Injunction under 26 U.S.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws*

44. The United States hereby incorporates by reference the allegations in the above paragraphs.

45. 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.

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

47. Unless enjoined, McGill is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If McGill 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 auditing McGill's customers to detect future returns understating the customers' liability or overstating their refund.

48. While the United States will suffer irreparable injury if McGill is not enjoined, they will not be harmed by being compelled to obey the law.

49. Enjoining McGill 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.

50. 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 McGill has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 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 is appropriate under 26 U.S.C. § 7407 to bar him from acting as federal tax return preparer and from engaging in conduct subject to penalty under 26 U.S.C. § 6694;

B. That the Court find that McGill 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 bar him from engaging in conduct subject to penalty under 26 U.S.C. § 6701;

C. That the Court find that McGill 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, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting McGill and all those in active concert or participation with him from:

- (1) acting as a federal tax return preparer 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 he knows or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refund(s);
- (3) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 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, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring that McGill, 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, 2009, 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 they have complied with this requirement;

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring McGill 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 prepared federal tax returns or claims for refund since January 1, 2009;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring McGill to provide a copy of the Court's order to all of his or MBM Accounting and Tax Services, 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 or receipt of the Court's order for each person to whom they provided a copy of the Court's order;

H. That the Court enter an order authorizing the IRS to rescind any EFIN and/or PTIN issued to McGill, MBM Accounting and Tax Services, LLC, and any employees of MBM Accounting and Tax Services, LLC;

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

J. That the Court retain jurisdiction over McGill 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.

Respectfully submitted,

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April 16, 2015